



RACHAEL A. CABRAL-GUEVARA

STATE SENATOR • 19TH SENATE DISTRICT

Testimony before the Senate Committee on Education

Senator Rachael Cabral-Guevara

September 26, 2023

Hello, Chairman Jagler and members of the committee. Thank you for allowing me to testify on Senate Bill 83, an important piece of legislation that will provide more information to voters and increase transparency in local referenda.

In recent years, municipalities, counties, and school boards have increasingly utilized their ability to bring referenda to voters across the state in order to spend money on various projects. Many of these projects can have a base cost well above \$100 million, which can often result in accruing millions of dollars' worth of interest on loans.

In circumstances such as this, interest can increase the total cost of referenda dramatically. In one instance, a referendum was brought forward by one of my local school boards to build a new high school. The estimated base cost of the project was \$114.9 million, which appeared on the ballot and was approved by the voters. However, there was an additional \$55 million worth of estimated interest, bringing the total actual cost of the project to just under \$170 million. Although the district was transparent about this interest cost, including it in presentations and posting it on their website, it did not appear on the ballot itself.

To be clear, this bill does not impact the ability for local governments and school boards to bring referenda to voters. Rather, it simply gives voters the full picture on the actual estimated cost of a referendum question. As a state that prides itself on good government, ensuring our constituents have all available information before voting on any given subject is essential to upholding this standard. This bill requires accrued interest costs to appear on the ballot, including the extremities of total costs if the bonds are based on variable interest rates; or, if bonds are issued at fixed interest rates, including the total cost using that fixed rate.

Following the assembly hearing in April, my office reached out to both the Department of Public Instruction and the Wisconsin Association of School Boards to sit down and discuss possible solutions, but unfortunately I did not receive any input. Regardless, I did introduce an amendment to clarify that all estimates would be in "good faith".



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Thank you again for your time. I am hopeful you are able to support this piece of legislation which will help bring more transparency and accountability to our local referendum process.



School Administrators Alliance

Representing the Interests of Wisconsin School Children

TO: Members of the Senate Education Committee

FROM: Dee Pettack, SAA Executive Director

DATE: 9/26/2023

RE: Senate Bill 83

In anticipation of this hearing, I sought input on Senate Bill 83 from a cross-section of SAA members with an emphasis on school superintendents and school business officials. I also discussed the bill with Attorney Allison Buchanan, partner at Quarles & Brady and a highly respected bond counsel. Attached is a memo highlighting the concerns that the SAA has on SB 83 including the amendment that was introduced.

To: Dee Pettack, Executive Director, School Administrators Alliance
From: Allison Buchanan, Public Finance Partner, Quarles & Brady LLP
Date: September 25, 2023
Re: Wisconsin 2023 Senate Bill 83 -
Bond Counsel Comments

Summary

Wisconsin 2023 Senate Bill 83 ("SB 83") would impact what a municipality, including a school district, must include in a referendum ballot question to issue bonds pursuant to Section 67.05(3)(d) of the Wisconsin Statutes. In addition to the current ballot question requirements of providing a statement of the purpose for which the bonds are to be issued and the maximum amount of the bonds to be issued, SB 83 provides that a ballot question to issue bonds would also need to include:

...the estimated amount of the interest accruing on the amount of the bonds, along with the interest rate. If the interest rate is a variable rate, the statement shall specify the amount of the interest accruing on the amount of the bonds calculated by using the lowest rate during the term for which the rate is applicable and the amount of the interest accruing on the amount of the bonds calculated by using the highest rate during the term for which the rate is applicable.¹

General Considerations

Below is a summary of some general considerations regarding the implementation of SB 83 from a bond counsel perspective. The estimated amount of the interest accruing and the "interest rate" information that would be required by SB 83 in the ballot question cannot be meaningfully conveyed in the context of a ballot question. This information is better suited for the informational materials that are provided and explained before a referendum is held. Even then, such information is based on a plan or estimation using the best information available at that point in time, but at least the information could be explained and discussed in detail in the context of informational materials and at informational meetings. This sort of explanation and discussion would not be possible at the time a voter is going to the polls to vote on the referendum ballot question.

I. Potentially Difficult and Confusing to Provide Requested Information

The requirements of SB 83 to provide an estimated amount of the interest accruing and the "interest rate" in the ballot question would be potentially difficult and confusing. There are many variables at any given time for bond financings, including the municipality's rating and the plan of finance, such as whether the financing(s) will be short-term or long-term obligations or a combination, the number of financings contemplated, the amount of time between each of the issues if more than one financing will be done, and so on. There would need to be additional guidance provided to municipalities regarding how the additional requirements would need to be implemented given all of the potential variables that would need to be accounted for. It is also not clear what is intended by the

¹ This memo does not discuss the sentence in the proposal regarding variable rates since very few municipal obligations to finance capital projects are issued with a variable rate.

phrase "interest rate" in SB 83.² The ballot question would become quite long and confusing to voters if the additional information was required in the ballot question. It becomes even more complicated to be able to provide this information in the ballot question when a series of financings are done by a municipality (for example, one or more interim, short-term financings that will be refunded with one or more long-term general obligation refunding bonds over a series of years for the permanent financing or financings).

II. Financing Plans are Complex and May Change

Financing plans are complex and may change between the time when a municipality is adopting an initial resolution to issue bonds and finalizing the ballot language, which must occur at least 70 days before a referendum is held, and the time when a municipality is issuing the debt associated with an approved capital referendum. An estimated maximum tax impact is typically shared as part of the referendum planning process in the referendum informational materials and informational meetings, but a final financing plan is not necessarily shared since the plan may be subject to modification based on the most current market conditions when the financing or financings are completed, especially if a change in the plan of finance would result in a lower tax impact for taxpayers.

III. Market Conditions and Interest Rates are Subject to Change

Market conditions and interest rates are subject to change over time and are often difficult to predict, especially in current times. For larger financing plans, a municipality may stretch a series of financings out over multiple years (up to five years after a referendum is held), so that the issuers have a lower overall cost of interest and are only borrowing the amount needed when such amount is needed. When multiple financings occur over multiple years, it becomes increasingly difficult to provide an estimated amount of the interest accruing and the "interest rate" that would be required in the ballot question by SB 83, given the length of time between when the ballot question is drafted and when the final financing may be done.

IV. Too Many Variables to Provide Accurate Information in the Ballot Question

It would be incredibly difficult, if not impossible, to account for all of the possible variables that may happen over the life of the debt in providing the information that would be required in the ballot question with the SB 83 proposal. For example, long-term debt is typically callable (or prepayable prior to maturity), and municipalities, including school districts, often refinance referendum-approved debt over time when there is cost savings for taxpayers (much like one can refinance a mortgage when interest rates are lower). In addition, callable debt could be prepaid prior to maturity (similar to paying down principal on one's mortgage). All of these variables cannot be accounted for in a ballot question that would require the "interest rate" and an estimated amount of the interest accruing on the bonds.

² For example, a long-term bond financing typically has multiple maturities with different coupons or "interest rates" for each maturity. There are also numerous types of interest rate calculations in a bond-financing context, so clarity is needed on what is meant by "interest rate".

V. Possible Legal Challenges

A. In General

SB 83 could expose municipalities to possible legal challenges by taxpayers. There are many variables that affect the estimated amount of the interest accruing and the "interest rate" on bond financings. At the point when the ballot is filed at least 70 days in advance of the referendum, an "interest rate" is not yet determined. It would be difficult to provide an accurate estimate so far in advance of any potential financing, which could give rise to possible legal challenges if the estimated amount of interest accruing and the "interest rate" are different than what is shown in the ballot question. In a case where a municipality provides what the municipality believes to be a reasonable estimate of the amount of interest that will accrue and the "interest rate" based on the best information available at the time of the adoption of the initial resolution and at the time the ballot is finalized (at least 70 days in advance of the referendum), what happens if the information appearing in the ballot question proves to be inaccurate due to the passage of time and market changes beyond the municipality's control? Even though a municipality does not have control over changes in the market and the effect on interest rates, SB 83 could result in a taxpayer potentially challenging the results of a referendum if the estimated amount of the interest accruing and the "interest rate" shown in the ballot question prove to be inaccurate due to such market and interest rate changes.

B. Proposed Senate Amendment 1 - "Good Faith Effort"

The proposed Senate Amendment 1 that would add the concept of "a good faith effort to calculate the amount of the interest accruing on the amount of the bonds" will not protect a municipality from a potential legal challenge if the estimate in the ballot question ends up being inaccurate. Litigating over whether an estimate meets the definition of a "good faith effort" would only result in increased costs to municipalities, and ultimately, to the taxpayers.



September 26, 2023

Senate Committee on Education

**Department of Public Instruction Testimony
2023 Senate Bill 83
Senate Amendment 1**

I want to thank Chairman Jagler and members of the committee for the opportunity to provide testimony on Senate Bill 83 (SB 83) and Senate Amendment 1 (SA 1-SB 83). My name is Kevyn Radcliffe, and I am the Legislative Liaison for the Department of Public Instruction (DPI).

DPI opposes SB 83 and SA 1-SB 83.

DPI believes current law already allows for taxpayers to ask school districts for the impacts of approving a referendum question without imposing undue disclosure burdens on school boards. Under this bill, the statement included with the referendum question must also provide the estimated amount of the interest accruing on the amount of the bonds, along with the interest rate. The bill imposes significant burdens on school boards by requiring calculations and interest rate information that may not be available at the time of the referendum vote. This has the potential to expose school boards to legal challenges if actual debt costs are different than what was specified in the referendum.

SA 1-SB 83 requires that municipality make a “good faith effort” to calculate the amount of the interest accruing on the amount of the bonds. “Good faith effort” is not defined and will create greater school district legal liability by requiring litigation to define the standard for “good faith effort.” The amendment further muddies the water in an already murky environment.

School boards will have difficulties complying with the requirements in this bill because a year or more may pass between the time when a school board adopts a resolution to hold a debt referendum and the time bonds are sold. Macroeconomic factors, Federal Reserve policy, and rating agency decisions can cause the actual rates to vary significantly from projections. Because the referendum vote happens prior to the actual debt issuance,

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specific information concerning the total interest and related debt service costs will not be available. This bill may expose school districts to legal liability should someone challenge the board on the actual debt costs compared to what had been specified in the resolution or referendum question. It is unclear in the bill what the legal consequences would be if the interest rates on the sold bonds exceed the rate(s) specified in the referendum question.

Additionally, this bill mischaracterizes how bonds operate. The bill suggests that bonds operate like a simple bank loan, where interest rates are known. Instead, a bond issue is a collection of individual bonds maturing on specific dates with each having its own interest rate. These factors are unknown until the bonds are sold in a public auction following voter approval of the referendum.

For the reasons stated above, DPI opposes SB 83 and SA 1-SB 83. If you have questions or would like additional information, please contact Kevyn Radcliffe, Legislative Liaison, at Kevyn.radcliffe@dpi.wi.gov or (608) 264-6716.



September 26, 2023

Members of the Senate Education Committee,

Thank you for your consideration of the Senate Bills before the committee today. The School District of Beloit would like to register our position on the following bills:

Senate Bill 83 - School District of Beloit **OPPOSES** the bill given the challenges in accurately forecasting future interest rates for related bond issuances and their underlying capital improvements. Additionally, following passage of a successful capital referendum question districts often undergo a rating call with their respective bond rating agency and need to prepare their official statement prior to seeking bids on their bond issuances. This all takes time and with time interest rates and associated long term interest expense is subject to change. Financing plans can also change from the time of initial considerations, the date the school board adopts the referendum question seeking voter approval to issue bonds to marketing the bonds. It is not uncommon for districts to spread borrowing for larger projects over multiple bond issuances spanning multiple fiscal &/or calendar years. While the bill attempts to identify proposed long term interest expenses associated with the borrowing, it does not take into consideration efforts by districts to reduce long term interest via defeasance or calling certain maturities early in an effort to reduce long term interest expense.

Senate Bill 395 - School District of Beloit **SUPPORTS** this bill as the restrictions currently in place with Sec. 121.905 (1)(b) 1. to 3. WI Stats are punitive and bad public policy. The School District of Beloit is currently impacted by the statutory limitations to utilize the newly enacted \$11,000/member low revenue limit ceiling mark as a result of our April 4, 2023 operating referendum request being rejected by the voters. Following are implications specific to the School District of Beloit:

- Passage of Act 11 established a new minimum level of investment in education at \$11,000/member. Sec. 121.905 (1)(b) 1. to 3. WI Stats specifically prohibits underfunded districts like Beloit from having access to that same level of funding authority. Even with the \$325/member adjustment within the revenue limit, if the School District of Beloit is unable to utilize the full \$11,000/member we are penalized by a loss of over \$4,000,000 annually for the next three school years or until a subsequent operational referendum is passed. The financial challenges of the district are only compounded by this provision of state statutes.

Fiscal Year	Per Member Revenue Limit Adjustment	Statutory Low Revenue Ceiling per Member	SD Beloit's Low Revenue Ceiling per Member	Notes
2022-23	\$0	\$10,000	\$10,039	Actual
2023-24	\$325	\$11,000	\$10,364	Restricted by Sec. 121.905(1)(b) 1. to 3. from using the Low Revenue Ceiling adjustment.
2023-24	\$325	\$11,000	\$11,000	Authority in absence of 121.905(1)(b) 1. to 3.

- School Districts must pass a referendum question at least 70 days prior to the election date, for the April 4, 2023 election, that date was January 25, 2023. The School District of Beloit's school board adopted their operating referendum question on January 17. To our knowledge, there was no consideration being given at the state level at that time to increasing the low revenue limit ceiling threshold.
- Further, the School District of Beloit was above the previous low revenue ceiling per member authority of \$10,000/member at the time of going to referendum. Thus,



Beloit had no expectation that the decision to go to referendum would put future resources, i.e. low revenue ceiling per member adjustments, in jeopardy.

- Current statutes, i.e. Sec. 121.905(1)(b) 1. to 3. establishes a punitive prohibition on some unknown and unforeseen circumstance that extends over the course of two state biennial budget cycles given the three years following the school year in which an operating referendum failed.
- One of the goals of education is to close the opportunity/achievement gap along with furthering the academic achievement of all students. Current legislation unnecessarily hampers those efforts instead of supporting them. Instead of closing the gap between the have and have-not districts, current legislation further expands the funding gap, thereby creating additional equity and disparity concerns.
- Current state law limits the School District of Beloit to \$10,364/member, less than the recently enacted transfer amounts for students seeking other educational opportunities. The following chart anticipates increased educational expenses related to such transfer payments of over \$2,000,000.

	2022-23			2023-24			2024-25
	# students	Per Pupil Payment	Total Cost	# students	Per Pupil Payment	Total Cost	Per Pupil Payment
Private school choice, K-8 pupil	120.5	\$ 8,399.00	\$1,012,079.50	120.5	\$ 9,874.00	\$1,189,817.00	\$10,271.00
Private school choice, 9-12 pupil	44	\$ 9,045.00	\$ 397,980.00	44	\$ 12,362.00	\$ 543,928.00	\$12,765.00
Special Needs Scholarship	0	\$ 13,076.00	\$ -	0	\$ 15,046.00	\$ -	\$15,443.00
Independent Charter School	451.5	\$ 9,264.00	\$4,182,696.00	526.5	\$ 11,366.00	\$5,984,199.00	\$11,763.00
Total Non Open Enrollment related Educational Costs			\$5,592,755.50			\$7,717,944.00	
Anticipated Increased Expenses related to Non Open Enrollment related Educational Costs						\$2,125,188.50	

- The combined impact of the inability to utilize the \$11,000/member adjustment to the low revenue limit ceiling and the increased per-pupil payments for resident students attending other non-open enrollment educational opportunities provides an approximate \$6,000,000 hit to district finances.

Thank you for the opportunity to address and submit the School District of Beloit's position on the above reference senate bills under consideration before the Senate Education Committee.

Respectfully,

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