

# Proposed Budget Bill Eliminates Revenue Limit Exemption for Energy Efficiency Projects

Mar 22 2017

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Practice Area: School Law & Government Law

In February of 2017, Governor Walker introduced his proposed budget for the 2017-19 biennium. The Governor's Budget Bill has been numbered Senate Bill 30 (the "Bill") and contains many provisions that will impact K-12 education throughout the state. Of particular interest to school districts looking to upgrade their facilities to improve energy efficiency is a change that will eliminate the revenue limit exception for performance contracts. According to the Bill, the exemption is unavailable for school districts that fail to adopt the required resolution authorizing the project on or before the effective date of the Bill, which is likely to occur in early July of 2017, assuming the provision survives legislative amendments.

The current proposal eliminating the revenue limit exemption creates two sets of challenges for school districts contemplating facility upgrades.

## **1. The Prerequisites for Qualifying for the Exemption Remain.**

First, the existing prerequisites that school districts must satisfy to qualify for the exemption remain. Specifically, prior to adopting a resolution, a school district must first identify specific new expenditures; identify the performance indicators to measure the cost savings as a result of the expenditures (cost savings must equal or exceed the expenditures); and identify the period of time in which the expenditure will be recovered by cost savings. Additionally, a school district must undertake either the more formal Request for Proposal (RFP) process, or the more informal Request for Qualifications (RFQ) process to identify a qualified Energy Service Company (ESCO) to perform the work specified in the performance contract.

Prior to adopting a resolution or entering into a compliance contract, the school district must first give ten (10) days' notice of the meeting at which it intends to pass the resolution to exceed its revenue limit and award the performance contract. Once the resolution has been adopted, the school district must submit a copy of the resolution to the Wisconsin Department of Public Instruction within fourteen (14) days of the resolution being passed.

It is clear that the timelines for undertaking a project are now significantly compressed in order to allow the school district to qualify for the exemption before the Bill's effective date. With these compressed timelines come contractual, design and engineering challenges in that there is simply not enough time to appropriately address all component parts of an effective project. School districts should consult with legal counsel as soon as possible in order to best position the school district to meet these challenges.

## **2. Impact on Plans of Finance.**

Second, questions remain as to the proposed law's impact on existing and contemplated plans of finance. The proposal eliminates the exemption, but "grandfathers" projects when the necessary resolutions are adopted prior to the effective date of the Bill. While this concept sounds simple, challenges are presented with school districts that have engaged in short-term borrowing with the intent to later refinance or for school districts that have multi-phase upgrades and phased borrowing. Questions remain as to whether the new law would prohibit continuation of a previously-authorized revenue limit exemption if debt is restructured or refinanced following the effective date of the Bill.

It is important to note that the Governor's budget proposal is just that – a proposal. There is no guarantee that the proposal will become law. However, school districts that are contemplating energy efficiency upgrades and would like to take advantage of the revenue limit exemption are strongly encouraged to immediately discuss the situation with both legal counsel and their financial advisor.

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