

Property Tax Taskforce – Education Subcommittee, May 23, 2024 Meeting

November even-year school
elections and other options for
turnout and passage rate
requirements

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Topic 2: November Even Year K-12 School Elections



The Legislature has previously, and the Property Tax Taskforce has currently, expressed an interest in determining the feasibility of moving the current May school district election to coincide with the November general election in even years.



The introduction of [House Bill 774](#) (Rep Hopkins, R.) in the 2023 Legislative Session is the most recent and visible example of legislation proposing this change.



Proponents of a November general election have cited the consistent higher turnout in such elections as an opportune time to ensure that passage or failure of levies and election of trustees is made by the highest number of voters possible.

Reasons for and the Importance of May in the Current System

1. The current system of funding and adopting budgets for schools requires that schools obtain voter approval of what the Legislature already approved in setting inflation. This is a flaw in the funding formula that disconnects and/or requires supplemental approval of local funding just to fulfill the funding decisions made by the Legislature.
2. Example: When the Legislature approves 3% inflation, schools only receive 80% of that amount, or 2.4% unless they can pass a local levy to complete the inflation adopted by the Legislature.
3. The local levy elections are not being run for discretionary extras but are rather to ensure the district can maintain current programs and services without disproportionate cuts.

Reasons for and the Importance of May in the Current System– Cont.

Fiscal Year	State Increase K-12 BASE Aid (Including Prop Tax to GTB Shift)	Inflation Factor Applied to Formula Elements	CPI-U Inflation	K-12 BASE Aid Increase Compared to CPI-U	Inflation Factor on Formula Elements Compared to CPI-U
2020	1.50%	0.91%	1.80%	-0.30%	-0.89%
2021	3.80%	1.83%	1.00%	2.80%	0.83%
2022	1.80%	2.16%	5.40%	-3.60%	-3.24%
2023	4.60%	1.91%	8.50%	-3.90%	-6.59%
2024	0.40%	2.70%	3.20%	-2.80%	-0.50%
2025	4.70%	3.00%	3.80%	0.90%	-0.80%
Cumulative 5 Year Total				-6.90%	-11.19%

Critical Dates Under Current Law

Critical dates in building a budget for the ensuing school year, *all of which fall immediately before or long after November.*

- 1. October** - The first Monday in October is the first of two enrollment counts which, together represent over 90% of a school district's budget authority for the ensuing school year.
- 2. December**
 - a. December 1 deadline for DOR to provide OPI with certified taxable values, which must be known for a district to finalize their ballot for their general fund levy election.
 - b. December 1 deadline to report for qualification under TEACH Act
 - c. December 15 deadline to report certified FTE to qualify for QEP in ensuing year.

Critical Dates Under Current Law – Cont.

Critical dates in building a budget for the ensuing school year – Cont.

- 3. February** - The first Monday in February is the second of two enrollment counts which, together represent over 90% of a school district's budget authority for the ensuing school year. A school district does not generally have a confirmation of its budgeted ANB from OPI until late February or early March.
- 4. February** – The trustees must adopt a resolution calling for a levy election no later than 70 days prior to its occurrence. This deadline typically falls in late February.

Critical Dates Under Current Law – Cont.

Critical dates in building a budget for the ensuing school year – Cont.

5. **March** – The earliest schools know the level of inflation funded by the Legislature in odd years is early March. The Legislature has done a good job getting inflation passed early since 2015 onward but if the Legislature ever went back to the way schools were funded prior to the 2015 Session, schools won't know the inflation levels adopted by the Legislature until the end of April or even early May.
6. **June** – The statutory deadline for renewing or nonrenewing teachers is June 1. It used to be April 1 and then May 1 and the date has been pushed out as far as it can while allowing schools to reasonably recruit and retain staff. The results of the levy election are a major factor in identifying whether a nonrenewal of nontenure teachers or a reduction in force is needed to balance the budget.

None of the Current System will Work with a November General Election in even years.

However

1. None of the current system for funding and budgeting for schools would work with school elections confined to the November General Election in even years.
2. With a complete overhaul of the system for funding and budgeting for schools, a November General Election in even years is feasible and is something several public education advocates (i.e., MASBO, MQEC, MREA, MTSBA and SAM) have previously supported through amendments offered to House Bill 774, 2023 Legislature.

Concept for moving school elections to November in even numbered years

1. The timing of an election that takes place only once every two years in November is such that the outcome of that election could only apply to future years beginning several months (July 1) after completion of the election.
2. Elections conducted without the availability of critical information needed under the current system to budget and set the ballot accurately and to project the impact on taxpayers require substantial changes to avoid disruption of the current method of funding the basic system of free quality schools.
3. Schools would have to run their election without knowing the calculation of inflation, certified taxable values and what amounts the Legislature may pass in school funding during the ensuing legislative session.
4. Substantial changes are necessary to make this work.

Concept for moving school elections to November in even numbered years - Details

1. Create funding formula growth for a school district's adopted budget that matches the inflation passed by the Legislature.
 - a. Currently, only the 80% BASE budget grows by inflation and schools must conduct elections to complete funding of the public policy already adopted by the Legislature. This is redundant, unnecessary and conflicts with the Legislature's definition of quality.
 - b. Allowing limited tax increases to complete the inflation adopted by the Legislature will reduce the necessity of elections and will also assist the Legislature in defending its formula that is required to be "self-executing with annual inflationary adjustments." (20-9-309).

Concept for moving school elections to November in even numbered years – Details Cont.

2. Simplify the question on ballots. Any increase *above inflation passed by the Legislature* would require voter approval and districts would then state the proposed increase as a numerical difference above inflation that would apply to school fiscal years beginning after the November election for as little as 2 or as many as 4 years. A ballot question might look like:

“Shall the district be authorized to impose a local levy necessary to increase funding by _____% above inflation adopted by the Legislature for fiscal year(s) _____?”

Concept for moving school elections to November in even numbered years – Details Cont.

3. Limited, necessary exceptions:
 - a. Bond Issues – to prevent escalation in construction prices.
 - b. Unforeseen Emergencies (20-3-322) – Needed to address emergency issues like a failed sewer system, contamination in the water supply or a failed HVAC system. The law defines this as “a storm, fire, explosion, community disaster, insurrection, act of God, or other unforeseen destruction or impairment of school district property that affects the health and safety of the trustees, students, or district employees or the educational functions of the district.”
 - c. School safety levies – to ensure we can keep kids safe if a threat to school and student safety and security arises.

Concept for moving school elections to November in even numbered years – Details Cont.

4. Remove elections of limited impact and empower elected trustees to act as constitutionally-empowered officials by majority will of the board. Examples (there may be others)
 - a. Opening of junior high school in districts with county high school – 20-6-505.
 - a. No other school opening requires voter approval. This is a relic of something in the past that is not currently justified or understood.
 - b. Purchase or sale of property.
 - a. Purchases of property already require suitability, accessibility, convenience, compliance with DPHHS and building code requirements. 20-6-621. There is also an exception for contiguous property.
 - b. Sales of property already have an exception to voter approval if the Board determines the property is obsolete, abandoned or unsuitable for the school purposes of the district.
 - c. Transfer of money from fund to fund.
 - a. This should be within the authority of the elected board of trustees in exercising their fiscal responsibilities.

Concept for moving school elections to November in even numbered years – Details Cont.

5. Convert trustee terms from 3 years to 4 years and stagger initial elections to avoid majority up for election at the same time as provided by current law.
6. Provide for trustee assumption of office on the first Monday in January as provided for legislators and statewide elected offices.
7. Change the evaluation and renewal cycle for the superintendent from February 1 to December 31. Increase allowable length of superintendent contract from 3 years to 4 years consistent with election cycle.
8. Change annual reorganization of the board to January.
9. Change adoption of budget to June from August.
10. Delay Effective Date to allow for transition.

Other Options for Turnout or Passage Rate Requirements – Full Disclosure, MTSBA Opposes

Turnout and passage rate requirements have been previously held to be valid in *Gordon v. Lance*, 403 U.S. 1 (1971). Caveats:

- a. The Court's decision was based on guarantees under the United States Constitution and did not address state-specific constitutional guarantees.
- b. The Court was presented with a fact pattern where the requirements were set forth in West Virginia's state constitution and where the primary issue was bonded indebtedness.
- c. The fact pattern also included a 60% passage rate for all bond elections and the Court specifically noted that fact in distinguishing the Court's holding in *Hunter v. Erickson*, 393 U.S. 385 (1969), where the court found that a topic-specific (fair housing) supermajority requirement violated equal protection.

What might a Universally-Applied Turnout or Passage Requirement Look Like?

It could be structured in multiple ways, but one framework already exists in law for school bonds. Under 20-9-428, MCA, a school bond passes under the following requirements:

- If turnout is 40% or more, simple majority of votes cast
- If turnout is greater than 30% but less than 40%, 60% supermajority required for passage
- If turnout is 30% or less, the proposition is rejected
- If the election is held in conjunction with an election that is conducted by mail ballot or in conjunction with a general or primary election, simple majority

A school district-only turnout requirement would potentially have constitutional problems

Under Article X of the Montana Constitution:

1. The Peoples' goal for a system of public education that develops the full potential of each person;
2. The guarantee of equality of educational opportunity;
3. The state's obligation to provide for the basic system of free quality schools and
4. the definition of quality's requirement that the funding formula be self executing with a mechanism for annual inflationary adjustments.

All raise unique circumstances where fundamental rights could be found to have been violated through a turnout requirement or supermajority passage requirement for a school district-specific turnout or supermajority passage requirement.

Singling out school levy elections for special treatment could be held to single out the rights of students to a basic system of free quality schools in a manner that would fall outside the protection of the Court's holding in *Gordon v. Lance*.

A school district-only turnout requirement would potentially have constitutional problems

Making it even more difficult for a school district to pass a general fund levy consistent with inflation adopted by the Legislature that is integrated as a guarantee in the definition of quality could threaten constitutional compliance that some are already questioning.

MTSBA Levy Survey Results So Far (Results through May 14, 2024):

1. Lowest number of general fund levy elections reported ever (only 36 elementary, 23 high school reported) since 1996.
2. Elementary general fund passage rate of 55%, never previously below 70% in any year MTSBA has surveyed since 1996.
3. High school general fund passage rate of 61%, never previously below 70% in any year MTSBA has surveyed since 1996.