

To: John Forester, Executive Director, School Administrators Alliance
From: Allison Buchanan, Public Finance Partner, Quarles & Brady LLP
Date: September 14, 2021
Re: Wisconsin 2021 Assembly Bill 475 -
Bond Counsel Comments

Summary

Wisconsin 2021 Assembly Bill 475 ("AB 475") 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, AB 475 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 AB 475 from a bond counsel perspective. The estimated amount of the interest accruing and the "interest rate" information that would be required by AB 475 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 AB 475 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, 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 are issued with a variable rate.

phrase "interest rate" in AB 475.² 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 (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 May Change

Financing plans are not often finalized at the point 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. 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 by AB 475 in the ballot question given the length of time between when the ballot question is drafted and when the final financing may be done.

IV. Possible Legal Challenges

AB 475 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 even a good 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 substantially 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, it seems AB 475 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.

² For example, a long-term bond financing typically has multiple maturities with different coupons or "interest rates" for each maturity. There are also many types of interest rate calculations in a bond-financing context.