

May 6, 2019

# A New School District Levy Lid: ESSB 5313

The Washington Legislature recently passed ESSB 5313, which resets the school district levy lid for tax collections commencing in 2020. ESSB 5313, which awaits the Governor's signature, will permit districts to increase tax collections for existing educational programs and operation levies (a/k/a enrichment levies) under certain circumstances. ESSB 5313 also effectively provides an LEA "hold harmless." Foster Pepper has prepared a White Paper analyzing ESSB 5313 and a variety of scenarios for school districts to consider under the new levy lid.

## EPO Levy Amounts: Authorized by Voters, Limited by Statute

**EPO Excess Levies.** Under Article VII, Section 2(a) of the Washington Constitution and RCW 84.52.053, 84.52.0531 and 84.52.054, school districts may impose voter-approved excess property tax levies for educational program and operation expenses not funded by the State. These are designated "enrichment" levies under state law, but are also commonly referred to as "educational programs and operation" or "EPO" levies. EPO levies are authorized up to their voted amounts, but limited by statute.

**Voter-Approved Amount.** Voters authorize EPO levy amounts, not levy rates. Under RCW 84.52.010(1), EPO levies "must be levied or voted in specific amounts." EPO levies accordingly "shall be set forth in terms of dollars on the ballot of the proposition ... together with an estimate of the dollar rate of tax levy ...." RCW 84.52.054. When extending the levy upon the tax rolls, the county assessor determines "the eventual dollar rate required to produce the amount of dollars so voted upon, regardless of the estimate ...." RCW 84.52.054.

**Statutory Levy Lid.** State law provides a separate statutory maximum amount called the "levy lid." Prior to 2019 tax collections, the Washington Legislature set the levy lid as a percentage of each district's basic education allocation funding. For 2019 tax collections, the Legislature set the levy lid at an amount equal to the lesser of (i) \$2,500 per pupil or (ii) \$1.50 per \$1,000 of assessed value (AV). For 2020 tax collections, the Legislature has reset the levy lid under ESSB 5313 (pending Governor Inslee's signature) to an amount equal to the lesser of (i) \$2,500 per pupil (\$3,000 for districts with 40,000+ students) or (ii) \$2.50 per \$1,000AV.

**Levy Rollback.** If a district's voter-approved levy amount is greater than its then-applicable levy lid in a particular tax collection year, the EPO levy is reduced to the District's then-current levy lid for that year. This is referred to as "rollback." Prior to 2019, the Office of Superintendent of Public Instruction (OSPI) calculated each district's rollback based on its basic education allocation funding. Starting with 2019 tax collections, rollback is applied each year when the county assessor extends the EPO levy upon the tax rolls and calculates levy rates.

## 2020 Tax Collections: Common Scenarios under ESSB 5313

**Rollback to \$2.50.** Many districts have outstanding voter-approved EPO levy amounts that would result in levy rates in excess of \$2.50 per \$1,000AV. For these districts, the EPO levy will be reduced to the amount that results in a rate of \$2.50 per \$1,000AV or \$2,500 per pupil, whichever is less. This is true even if the district's ballot proposition listed a lower estimated levy rate (e.g., \$1.50 per \$1,000AV), because the county assessor determines the actual levy rate "regardless of the estimate" in the EPO levy proposition. RCW 84.52.054. Once the new EPO levy amount is included in the district's budget and certified to the county, no further action by the district's board of directors (or voters) is required.

**Run Supplemental Levy up to \$2.50.** Other districts may have outstanding voter-approved EPO levy amounts that result in levy rates below \$2.50 per \$1,000AV. State law limits districts to a single 2-year through 4-year EPO levy in any given period. However, state law does allow "additional levies to provide for subsequently enacted increases affecting the district's maximum levy." RCW 84.52.053(2)(a). These additional levies are referred to as

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“supplemental” or “piggyback” levies. Districts may seek voter approval of supplemental levies for the remaining term of their existing EPO levy authorizations in amounts up to the new levy lid.

### Other Considerations for Supplemental Levies

**OSPI Pre-Ballot Approval.** Prior to submitting a supplemental EPO levy to the voters, districts must receive approval from OSPI of an enrichment levy expenditure plan required under RCW 28A.505.240 and 84.52.053(4).

**Timing.** For a supplemental EPO levy to be effective for 2020 tax collections, a district’s voters must approve the supplemental levy in 2019. In other words, if a district wants to submit a supplemental levy to the voters in February 2020, the supplemental levy will only be effective beginning with 2021 tax collections. This means a district could have two consecutive years of levy collections below the new \$2.50 per \$1,000AV levy lid, depending on its existing EPO levy authorization.

**Filing Deadlines.** The levy election resolution filing deadline for the August 6, 2019 primary election date is May 10, 2019 and the filing deadline for the November 5, 2019 general election date is August 6, 2019.

**Voter Fatigue.** Districts should plan supplemental levies around their future ballot propositions. If 2020 is the last year of collections for a district’s current EPO levy, then a supplemental EPO levy election in 2019 will likely be followed by a “replacement” EPO levy in 2020 (as early as February 2020). Future bond, capital levy and transportation vehicle levy propositions may also impact supplemental EPO levy planning.

### 2020 Local Effort Assistance: Hold Harmless under ESSB 5313

**Eligibility.** Under ESSB 5313, a school district is eligible to receive local effort assistance (LEA) funding if its EPO levy at \$1.50 per \$1,000AV will generate less than \$1,550 per student (increased for inflation beginning in calendar year 2020, as measured by the CPI). The district’s “maximum LEA” is the difference between these two numbers.

**LEA Hold Harmless.** Eligible districts levying at \$1.50 per \$1,000AV up to \$2.50 per \$1,000AV will receive their maximum LEA (i.e., they will not lose any LEA). However, they will not receive any additional LEA by virtue of levying above \$1.50 per \$1,000AV.

**LEA Reduction.** If a district EPO levy is less than \$1.50 per \$1,000AV, its LEA is reduced from its maximum LEA by a factor equal to the district’s actual levy rate divided by \$1.50 per \$1,000AV. For example, a district that levies at \$1.00 per \$1,000AV will receive  $\frac{2}{3}$  of its maximum LEA (i.e., \$1.00 divided by \$1.50).

**Individual LEA Calculations.** For projected LEA impacts on all school districts, see Senate Ways & Means analysis “District Level Comparison of Current Local Levy Law and ESSB 5313, CY 2020” available [here](#).

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For more information about EPO levies, contact Jim McNeill ([jim.mcneill@foster.com](mailto:jim.mcneill@foster.com), 800.995.5902) or Lee Marchisio ([lee.marchisio@foster.com](mailto:lee.marchisio@foster.com), 206.447.6264).

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