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## MEMORANDUM

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To: Dr. Ken Schroeder, Superintendent of Schools

FROM: Coady H. Pruett

DATE: August 4, 2023

RE: Board Vote to Increase Base Growth Percentage Used to Determine Property Tax Request Authority

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### I. INTRODUCTION

I am following up on your request for information and materials regarding the board of education's ability to increase the base growth percentage used to determine the school district's property tax request authority. We prepared this memorandum summarizing the steps that a school district must follow to carry out such an increase, together with the attached documents that will help your district do so.

### II. DISCUSSION

#### A. Background

As you know, Nebraska recently enacted the *School District Property Tax Limitation Act* (the "Act"), which was part of LB 243 (2023) and is now codified at NEB. REV. STAT. §§ 79-3401 to 79-3408. The Act's default rule is that the magnitude of a school district's property tax request (irrespective of either the \$1.05 levy limit, or otherwise permissible budget growth) is limited to a statutorily-defined **property tax request authority**. The Act generally requires the Nebraska Department of Education (the "Department") to calculate each district's property tax request authority as follows:

**Step One:** "The school district's property tax request<sup>1</sup> from the prior year shall be added to the non-property-tax revenue<sup>2</sup> from the prior year minus any investment income from special building funds from the prior year, and the total shall be increased by the school district's **base growth percentage**."<sup>3</sup> *Id.* § 79-3403(2)(a).

**Step Two:** The amount calculated in Step One is then "decreased by the amount of total non-property-tax revenue for the current year and adjusted for any known or documented errors in

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<sup>1</sup> "Property tax request means the total amount of property taxes for the general and special building funds requested to be raised for a school district through the levy imposed pursuant to section 77-1601." NEB. REV. STAT. § 79-3402(6).

<sup>2</sup> "Non-property-tax revenue means revenue of a school district from all state and local sources other than real and personal property taxes. Non-property-tax revenue does not include grants, donations, bonds, all revenue from a school district that has been merged into another school district or dissolved, activity funds, bond funds, cooperative funds, depreciation funds, employee benefit funds, nutrition funds, qualified capital purpose undertaking funds, or student fee funds, insurance proceeds, proceeds from the sale of property including land, buildings, or capital assets in special building funds, or proceeds of financing." *Id.* § 79-3402(5).

<sup>3</sup> The Act defines "base growth percentage" as follows:

Base growth percentage means the sum of:

(a) Three percent;

(b) The annual percentage increase in the student enrollment of the school district multiplied by:

(i) One if the school district's student enrollment has grown by an average of at least three percent and by at least one hundred fifty students over the preceding three years;

(ii) Seven-tenths if the school district's student enrollment has grown by an average of at least three percent over the preceding three years; or

(iii) Four-tenths if subdivisions (3)(b)(i) and (3)(b)(ii) of this section do not apply;

(c) The percentage obtained by first dividing the annual increase in the total number of limited English proficiency students in the school district by the student enrollment of the school district and then multiplying the quotient by fifteen hundredths; and

(d) The percentage obtained by first dividing the annual increase in the total number of poverty students in the school district by the student enrollment of the school district and then multiplying the quotient by fifteen hundredths."

*Id.* § 79-3402(3).

documentation received by the department from the school district.” *Id.* § 79-3403(2)(b).

The Department then certifies the amount calculated by this method to each school board as the district’s property tax request authority.

The Act lays out two methods by which your district can exceed this default rule for calculating the magnitude of the district’s property tax request. First, the school district’s property tax request may exceed its property tax request authority by a specific amount when such increase is “approved by a sixty percent majority of legal voters voting on the issue at a special election called for such purpose.” *Id.* § 79-3405(1). You have not asked about this method and this memo does not address the special election method of increasing your permissible property tax request. The second method is discussed in more detail below.

## **B. Board Vote to Increase Base Growth Percentage**

Unlike the special election method of increasing the actual property tax request by a certain amount, this method allows the board to vote to increase *the base growth percentage*. This should have the effect of increasing the property tax request authority for the current year, but of course the absolute amount of the property tax request authority (in dollars) will depend upon the changes in the non-property-tax revenue for the current year.

**The proposed increase in the base growth percentage must be approved by at least 70% of the school board members.** Please note that this is not 70% of a quorum, but rather 70% of the entire board—irrespective of the number of board members present for the meeting. So, as an example, for a six-member board, at least five board members must vote in favor of the proposed increase even if only five board members are present.

The maximum base growth percentage increase that a school district can adopt by a board vote **depends on the size of the school district’s average daily membership** (“ADM”). In our conversations with the Department, they plan to use the “most recent” ADM numbers for each school district, which (for now) shows the numbers for the 2021–2022 school year. The following table shows the maximum increases that correspond to the size of the school’s ADM.

<b>Average Daily Membership</b>	<b>Maximum Increase in Base Growth %</b>
Up to 471 students	7%
472 to 3,044 students	6%
3,045 to 10,000 students	5%
More than 10,000 students	4%

Prior to voting to increase your district's base growth percentage by board vote, the school board must "publish notice of the upcoming vote in a newspaper of general circulation in the school district." *Id.* § 79-3405(2)(b). This publication must "occur **at least one week prior** to the public meeting at which the vote will be taken." *Id.* As you most likely already know, just as for the date of publication for purposes of a regular board meeting, the time is measured from **when the notice actually appears in the newspaper,** and not when you submit it for publication.

We have prepared a sample meeting notice, together with a sample agenda item in the attached documents.

We recommend that the board's vote on the proposed increase take the form of a written resolution. Although a written resolution is not legally required (a simple board motion should suffice), we believe that the resolution will help organize the board's discussion and serve as good evidence of the specific vote that was taken if such a vote is later scrutinized. We prepared the attached resolution for your use. As you can see, there are placeholders for both the actual percentage growth that is approved as well as the vote tally (which must be at least 70% of the board members).

If the board approves the proposed increase, you can submit documentation of that approval (e.g., the enclosed resolution) to the Department when you submit your budget documents.

### **III. CONCLUSION**

We hope that you find this information and the attached resources helpful. If you have any additional questions or if there is anything that you would like to discuss, please do not hesitate to reach out to me at coady@ksbschoollaw.com or (402) 817-8879. We are happy to help you navigate this process.