"Dollars, CPI, and Voter Empowerment": Public Act 94-976 and its Impact on Local Government Tax Referenda

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TABLE OF CONTENTS

I. INTRODUCTION ................................................................. 378

II. LOCAL GOVERNMENT TAX REFERENDA BEFORE PUBLIC ACT 94-976 ................................................................. 378
   A. APPLICABILITY AND IMPACT OF PTELL ................................................................. 379
   B. PTELL TAX INCREASE PHASE-INS ........................................................................... 383
   C. COMPLEXITY AND VARIETY OF REFERENDA QUESTIONS ........................................ 384

III. IMPETUS FOR PASSAGE OF PUBLIC ACT 94-976 ..................................................... 385
   A. DOCUMENTED ABUSES IN EXISTING SYSTEM ..................................................... 385
   B. NEED FOR BETTER EDUCATION OF THE ELECTORATE ........................................ 387
   C. NEED FOR UNIFORMITY ......................................................................................... 388

IV. ANALYSIS OF PUBLIC ACT 94-976 ............................................................................ 389
   A. LEGISLATIVE HISTORY ......................................................................................... 389
   B. SUMMARY OF CHANGES TO PROPERTY TAX CODE / ELECTION CODE ......................... 392
   C. ANALYSIS OF PRIMARY PTELL REFERENDUM OPTIONS ...................................... 393
      1. Authorization of a New Tax Rate ............................................................................ 394
      2. Authorization of an Increase to the PTELL Limiting Rate .................................... 395
      3. Authorization to Increase the PTELL Extension Limitation .................................. 396
   D. REQUIREMENT OF MANDATORY SUPPLEMENTAL BALLOT INFORMATION ............ 398

V. IMPACT OF PUBLIC ACT 94-976 ON THE NOVEMBER 7, 2006 GENERAL ELECTION ................................................................. 399
   A. REVIEW OF REFERENDA RESULTS OF NOVEMBER 7, 2006 GENERAL ELECTION ........................................................................ 400
   B. INITIAL PROBLEMS IN THE IMPLEMENTATION OF PUBLIC ACT 94-976 ....................... 405
   C. TAXING DISTRICT POLITICAL PRESSURES FROM PASSAGE OF PUBLIC ACT 94-976 ........................................................................ 406

VI. SUMMATION ......................................................................................... 407

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I. INTRODUCTION

Local government plays a large role in the lives of residents of the State of Illinois, perhaps more so than any other state in the union. The raw numbers provide support for this theory as a recent public count found that Illinois has more than 6,800 independent units of local government – more units than any other state in the union.\(^1\) Beyond the typical general purpose governments such as municipalities and counties, there are more than three thousand special districts that are granted power to provide basic services ranging from public safety to water supply to parks and recreation.\(^2\) The primary revenue source for the operations of the majority of Illinois units of local government is the property tax.\(^3\)

Since 1991, the Illinois General Assembly has taken efforts to limit the ability of units of local government to raise property taxes, most notably with the adoption of the Property Tax Extension Limitation Law (PTELL), which was originally made applicable to the collar counties, and later, Cook County.\(^4\) From 1991 though 2005, the PTELL was adopted by other counties via referendum, and has been amended both to clarify original provisions and to add exceptions from the PTELL tax cap in limited instances.\(^5\)

II. LOCAL GOVERNMENT TAX REFERENDA BEFORE PUBLIC ACT 94-976

The Property Tax Extension Limitation Act (PTELA), perhaps more commonly referred to as the “Tax Cap Law,” was enacted by the Illinois General Assembly effective October 1, 1991 with the aim of limiting increases in property tax extensions for taxing districts located in the collar counties.\(^6\) In 1994, PTELA was renamed the Property Tax Extension Limitation Law (PTELL).\(^7\) The phrase “tax cap” has been somewhat of a misnomer. The Illinois Department of Revenue readily admits in its

1. ILL. COMM’N ON INTERGOVERNMENTAL COOPERATION, LEGISLATOR’S GUIDE TO LOCAL GOVERNMENT IN ILLINOIS: SPECIAL DISTRICTS iii (March 2003).
2. Id. at iii-iv. The Illinois Commission on Intergovernmental Cooperation reported that Illinois has 102 counties, 1,422 townships, 944 school districts and 3,068 special districts.
5. ILL. DEP’T OF REVENUE, PROPERTY TAX EXTENSION LIMITATION LAW: TECHNICAL MANUAL 24 -27 (2001) [hereinafter PTELL MANUAL]
PTELL Technical Manual that PTELL neither caps individual property tax bills nor individual property tax assessments.  

A. APPLICABILITY AND IMPACT OF PTELL

Two important distinctions among groups of local governments must be delineated from the start. Units of local government in counties subject to the provisions of the Property Tax Extension Limitation Law (PTELL) are subject to differing property tax extension treatment than are those units of government located in non-PTELL counties. The second distinction exists between home rule and non-home rule units of government. The PTELL only applies to units of local government specifically defined as "taxing districts," and no home-rule units are included in the PTELL definition of "taxing district."

The law was first made effective for the collar counties of DuPage, Kane, Lake, McHenry and Will in 1991, and the PTELL was made applicable to Cook County in 1994. Other counties began adopting PTELL referenda beginning in November 1996 to the present. As of the date of this writing, the PTELL had been adopted by the voters in thirty-three counties and had been rejected by the voters in nine other counties. Currently, the PTELL is applicable in thirty-nine counties and not

8. PTELL MANUAL, supra note 5, at 6.
10. PTELL MANUAL, supra note 5, at 5.
14. History of the PTELL, supra note 12. The voters of the following counties approved the implementation of PTELL against their county's non-home rule districts: Boone County (11/96), Champaign County (11/96), Christian County (11/96), Franklin County (11/96), Jackson County (11/96), Kankakee County (11/96), Lee County (11/96), Logan County (11/96), Macoupin County (11/96), Menard County (11/96), Monroe County (11/96), Morgan County (11/96), Randolph County (11/96), Sangamon County (11/96), Schuyler County (11/96), Union County (11/96), Williamson County (11/96), Winnebago County (11/96), McDonough County (4/97), Jo Daviess County (11/97), Kendall County (11/97), Stephenson County (11/97), Tazewell County (3/98), Jefferson County (11/98), Marion County (11/98), Washington County (11/98), DeKalb County (4/99), Livingston County (4/99), Greene County (11/00), Massac County (11/00), Shelby County (11/00), Coles County (11/02) and Cumberland County (11/02).

The PTELL vote was rejected by the electorate in the following counties: Adams County (4/97), McLean County (4/97), Carroll County (11/97), LaSalle County (11/97), Whiteside County (11/97), Bureau County (3/98), Madison County (4/99), Edgar County (4/01) and Moultrie County (4/03). Id.
applicable in the remaining sixty-three counties.\textsuperscript{15} By one estimate, approximately eighty percent of the State’s population resides in a county subject to the PTELL, while the remaining twenty percent live in a non-PTELL county.\textsuperscript{16} The non-PTELL counties are not required to present tax rate increase referenda in the manner established by the PTELL, as revised by Public Act 94-976.\textsuperscript{17} Accordingly, there are two different manners in which tax rate increase questions are required to be submitted to the electorate – one for non-home rule units in PTELL counties and a second manner for taxing bodies in the sixty-three counties that are not impacted by the PTELL.\textsuperscript{18}

As stated earlier, the primary source of revenue for Illinois units of local government—especially special districts—is the property tax. In general, units of local government must adopt tax levy ordinances or resolutions, as the particular case may be, and file the annual levy with the respective county clerk or clerks before the statutory deadline of the last Tuesday in December of each year.\textsuperscript{19} Taxing districts levy dollars for corporate and special purpose funds as authorized by law; next, county clerks analyze the levies and compute tax extensions back to the taxing districts.\textsuperscript{20} Once the county clerk’s tax extension office receives the levies, they must analyze the levy, apply any fund limitations as appropriate, and compute the tax rates that ultimately are sent by the tax collector—usually the County Treasurer, but in some counties it is the township collector—to the taxpayers.\textsuperscript{21} Once taxpayers pay their property tax bills, the collector will forward receipts collected to the taxing bodies.\textsuperscript{22}

The clerks of counties that are subject to the PTELL must perform one additional step: they must calculate a “limiting rate” for each taxing districts subject to the PTELL and apply this limiting rate against each taxing district’s “aggregate extension base.”\textsuperscript{23} The “limiting rate” is the

\textsuperscript{15} See id.
\textsuperscript{16} Chapman and Cutler LLP, Senate Bill 1682, at 1 (May 3, 2006) (available from author upon request) [hereinafter Chapman and Cutler].
\textsuperscript{17} PTELL MANUAL, supra note 5, at 6.
\textsuperscript{18} Id.; 35 ILL. COMP. STAT. 200/18-185 (2004).
\textsuperscript{20} In general, levies are the property taxes by fund requested by taxing bodies, while extensions are the property tax dollars that are issued by the county tax extension office to the county treasurer and appear on the tax bills of the taxpayers of the taxing district. The extension nearly always differs from the actual property taxes collected by a taxing district.
\textsuperscript{21} 35 ILL. COMP. STAT. 200/18-45 (2004). The county clerk must also consider whether tax increment financing (TIF) districts, enterprise zones and annexation and disconnection of property have any impact on the overall aggregate tax rate for a unit of local government in a given year. Id.
\textsuperscript{22} 35 ILL. COMP. STAT. 200/20-5 (2004).
\textsuperscript{23} 35 ILL. COMP. STAT. 200/18-45 (2004).
outcome of a county clerk’s calculations to implement the PTELL; indeed, it is defined by the component parts used to calculate it. The “aggregate extension” is defined as “the annual corporate extension for the taxing district and those special purpose extensions that are made annually for the taxing district,” then excepting therefrom a dozen or so specifically listed special purpose extensions. The aggregate extension base is normally the previous year’s aggregate extension subject to certain adjustments as provided by the PTELL, such as when two taxing districts merge or consolidate districts, or if a taxing district transfers a service to another taxing district. The PTELL also dictates that newly formed taxing districts and taxing districts operating without a property tax must obtain voter approval before the taxing districts are able to levy for the first time, and the amount of the first aggregate extension is included on the face of the ballot question.

The effect of the PTELL is to limit the ability of a taxing district to increase its total tax extension upon existing property within the taxing district’s jurisdiction. The PTELL applies an “extension limitation” on the ability of a taxing district to levy taxes. This extension limitation is “the lesser of five percent or the percentage increase in the Consumer Price

24. “Limiting rate” is a “fraction the numerator of which is the last preceding aggregate extension base times an amount equal to one plus the extension limitation . . . and the denominator of which is the current year’s equalized assessed value of all real property in the territory under the jurisdiction of the taxing district,” not including “new rates” or recovered tax increment value. 35 ILL. COMP. STAT. 200/18-185 (2004). A suitable explanation of the limiting rate formula can be found in the Property Tax Extension Limitation Law Manual. PTELL MANUAL, supra note 5, at 11.

25. 35 ILL. COMP. STAT. 200/18-185 (2004). Noteworthy among the special purpose extensions exempted from the PTELL definition of “aggregate extension” are referendum general obligation bonds, general obligation bonds issued prior to the applicable cutoff date, several other forms of specifically identified financial instruments issued for particular purposes, expenses for providing joint recreational programs for the handicapped, special service area extensions, and contributions paid into firefighter pension funds to finance a portion of the expense of enhanced widow and orphan survivor pensions. Id.

26. 35 ILL. COMP. STAT. 200/18-215 (2004). If two taxing districts merge or consolidate, the aggregate extension base of each taxing districts are added together to create a new base. Similarly, if responsibility for a service is transferred from one taxing district to another, both taxing districts will have their aggregate extension bases altered to the extent that the service was financed by property taxes included in the aggregate extension base.

27. 35 ILL. COMP. STAT. 200/18-210 (2004). This particular referendum question reads as follows:

Under the Property Tax Extension Limitation Law, may an aggregate extension not to exceed . . . (aggregate extension amount) . . . be made for the . . . (taxing district name) . . . for the . . . (levy year) . . . levy year?

Id. Another little-used method also exists to seek voter approval of a referendum to increase a taxing district’s debt service extension base. 35 ILL. COMP. STAT. 200/18-212 (2004).

28. PTELL MANUAL, supra note 5, at 6.
Index during the twelve-month calendar year preceding the levy year," or alternatively, an increased extension limitation rate approved by voter referendum for a specific year.

To further complicate matters, the Illinois General Assembly has granted taxing districts some relief from the effects of the PTELL limiting rate by permitting taxing bodies to exclude the impact of certain increases from the PTELL limiting rate, which includes newly-annexed properties into a taxing district, voter-approved limiting rate increases or new rates for a taxing district, as well as “new property.” "New property” generally consists of any assessed value of “new improvements or additions to existing improvements on any parcel of real property that increased the assessed value of that parcel during the levy year,” as well as property formerly exempt from property taxes that has been reclassified and assessed as non-exempt property during the levy year. “New property” does not include increases in land assessments nor does it include new improvements to properties lying within a tax increment financing (TIF) district. The assessment authorities are responsible for calculating and certifying the new growth figures to the county clerk in advance of the clerk’s PTELL limiting

29. 35 ILL. COMP. STAT. 200/18-185 (2004). The CPI-U figure used is published the third week of January each year and measures the percentage change increase or decrease from the consumer price index from December to December over the past two years. For instance, the CPI-U figure released in January 2007 measures the percentage change in the CPI-U from December 2005 to December 2006. PTELL MANUAL, supra note 5, at 6.

30. 35 ILL. COMP. STAT. 200/18-205 (2004). This particular referendum question reads as follows:

Shall the extension limitation under the Property Tax Extension Limitation Law for . . . (taxing district name) . . . be increased from . . . (the lesser of 5% or the increase in the Consumer Price Index over the prior levy year) . . . % to . . . (percentage of proposed increase) . . . % for the . . . ( levy year)?

Id. If a majority of voters approve the adoption of this referendum question, the extension limitation set forth in the ballot question replaces the default statutory provision (the lesser of the CPI-U increase or 5%) for the applicable levy year. 35 ILL. COMP. STAT. 200/18-105 (2004).

33. 35 ILL. COMP. STAT. 200/18-185 (2004). Also excluded from the limiting rate calculations are the values of tax increment financing (TIF) districts the year that the TIF districts expire. Id.; see also 35 ILL. COMP. STAT. 200/18-235 (2004).
34. ILL. ADMIN. CODE tit. 86, § 110.190(a)(1)(A), (B) (2004). Also included in the definition of “new property” are “new improvements or additions to existing improvements” that increase the assessed valuation of property in an enterprise zone (unless abated).
35. ILL. ADMIN. CODE tit. 86, § 110.190(a) (2004). This code section lists other assorted and little-utilized scenarios as specifically not meeting the definition of “new property.”
rate calculations. Taxing districts located in high-growth areas are often the beneficiary of increased tax dollars stemming from the new properties, provided that the taxing district levies enough dollars to capture the new growth in a given levy year and, when necessary, complies with the precise notice and hearing requirements set forth in the Truth in Taxation Law.

B. PTELL TAX INCREASE PHASE-INS

The PTELL limited the ability of a taxing district to impose a “new rate” or rate increase without referendum or through the use of a back door referendum. Section 18-190 of the PTELL requires that a taxing district submit any new rate or rate increase to a direct referendum before the taxing district may levy for it. The Illinois Department of Revenue has taken the position that Section 18-190 applies in three instances: (1) when the legislature enacts a new rate and the taxing district wishes to levy for the new rate, (2) the legislature previously enacted a new rate for which the district has not previously levied and the taxing district now wishes to levy for this rate, and (3) the legislature increased the maximum rate for a fund and the taxing district wishes to levy an amount that will produce a tax rate for the fund which is above the old maximum rate. Prior to the adoption

36. 35 ILL. COMP. STAT. 200/18-240(a) (2004). The assessment authorities consist of the township or multi-township assessor, the chief county assessment officer, a board of review or a board of appeals, as the case may be. Id.

37. 35 ILL. COMP. STAT. 200/18-55 to 18-100 (2004). A taxing district’s failure to comply with the strict dictates of the Truth in Taxation Law prevents a county clerk’s tax extension office from levying more than 105% of the amount extended or abated upon the final aggregate levy of the previous year, exclusive of election costs. 35 ILL. COMp. STAT. 200/18-90 (2004).

38. 35 ILL. COMP. STAT. 200/18-190 (2004). The PTELL defines a “new rate” as any tax rate for a fund in which the taxing district has never levied in the past. A “back door referendum” is defined in the Election Code as “the submission of a public question to the voters of a political subdivision, initiated by a petition of voters or residents of such political subdivision, to determine whether an action by the governing body of such subdivision shall be adopted or rejected.” 10 ILL. COMP. STAT. 5/28-2(f) (2004). The back door referendum is contrasted with the direct or front door referendum which is initiated by the adoption of an ordinance or resolution by a unit of local government.

39. 35 ILL. COMP. STAT. 200/18-190 (2004). The PTELL also provides that “[t]he direct referendum shall be initiated by ordinance or resolution of the governing body of the taxing district, and the question shall be certified to the proper election authorities” in accordance with the Illinois Election Code, 10 ILL. COMP. STAT. 5/1-1 to 5/30-3. (2004). 35 ILL. COMp. STAT. 200/18-190 (2004).

40. ILL. ADMIN. CODE tit. 86, § 110.190(a) (2004); see also PTELL MANUAL, supra note 5, at 8. At least one Illinois Appellate Court has openly disagreed with the IDOR interpretation of “new rate” for PTELL purposes. In re DuPage County Collector for the Year 1993 v. 1212 Associates-MB Mgmt. Co., 681 N.E.2d 135 (III. App. Ct. 1997) (rejecting IDOR interpretation of “new rate” on the basis that the interpretation was not supported by a reading of the statute). The Illinois Appellate Court for the Second District
of Public Act 94-976, once a taxing district subject to PTELL successfully passed either a new rate or rate increase referendum, yet another formula was put into service: the rate increase factor formula. 41

As noted previously, the PTELL provides for relief from the typical limiting rate formula when electors of a taxing district approve a new rate or an increase or decrease in a maximum rate. 42 Prior to the adoption of Public Act 94-976, referenda in which the voters of a taxing district approved a new rate or an increase or decrease in a maximum rate were factored into the PTELL limiting rate by use of a second formula known as the "rate increase factor." 43 The practical effect of the PTELL rate increase factor is that the governing board of a taxing district that passes a tax increase referenda could adjust its levies to phase-in a new rate or an increase in a tax rate maximum for up to five years. 44 This freedom to phase-in a tax increase over time using the rate increase factor led to some creative manipulation of the process, some of which could fairly be criticized as an abuse of the system. These abuses will be further discussed in Section III of this article.

C. COMPLEXITY AND VARIETY OF REFERENDA QUESTIONS

Illinois — with its numerous and varied forms of special taxing districts — had over time created several different means by which taxing districts could place tax rate increase questions on the ballot. Taxing districts were able to adopt ordinances or resolutions to place a number of direct referenda

42. Id.
43. The rate increase factor is another fractional calculation with two parts. For the first year the new rate or rate maximum increase or decrease becomes effective, the first year factor formula is used. The numerator consists of a taxing district's total combined rate for all funds comprising the aggregate extension for the taxing district for the prior year plus the rate increase approved (or subtracting the rate decrease approved). This numerator is then divided by the denominator, which is the total combined rate for the funds that make up the aggregate extension for the prior year. 35 ILL. COMP. STAT. 200/18-230 (2004). An example of the calculation of the first-year rate increase factor can be found in the Property Tax Extension Limitation Law Technical Manual. PTELL MANUAL, supra note 5, at 12.

For the second and subsequent years, the formula is changed slightly. The numerator is changed to substitute that portion of the voter-approved increase or decrease not used in the previous year for the entire rate increase or rate decrease approved. The denominator remains the same. This process repeats itself for up to three additional years until the entire voter-approved increase has been entirely utilized by the taxing district. 35 ILL. COMP. STAT. 200/18-230 (2004); PTELL MANUAL, supra note 5, at 13.
44. PTELL MANUAL, supra note 5, at 12-13.
before the voters and a variety of different back door referenda had also been enacted into law.\textsuperscript{45} Most ballot questions prescribe a specific format, but some statutes require a taxing body to provide the voter with more information than others.\textsuperscript{46} Some ballot questions required the inclusion of below-the-ballot supplementary data, while other questions did not.\textsuperscript{47} Taxing bodies were then, and are today, still urged to utilize the exact format set forth by statute for a particular referendum question and to be sure to comply with the mandatory requirements of submitting the question in a single interrogatory form with the option to vote "YES" or "NO" on the ballot.\textsuperscript{48} Taxing districts who fail to submit ballot questions in compliance with the prescribed statutory format do so at their own peril.

Litigation concerning disputes in the proper implementation and phase-in of post-PTELL tax rate increases had sprouted from among counties, taxing bodies and objecting taxpayers.\textsuperscript{49} Voter confusion and the increasing complexity in the forms and types of tax rate increase referenda had been compounding over time, and a legislative streamlining of the entire referendum process was, in the opinion of this author, long overdue.

\section{III. IMPETUS FOR PASSAGE OF PUBLIC ACT 94-976}

\subsection{A. DOCUMENTED ABUSES IN EXISTING SYSTEM}

The primary impetus for the passage of Public Act 94-976 was to repair a loophole in the current phase-in of property tax referenda increases


\textsuperscript{46} 10 ILL. COMP. STAT. 5/28-1 (2004) (providing that questions of public policy which have any legal effect shall be submitted to referendum only as authorized by a statute which so provides or by the Illinois Constitution).

\textsuperscript{47} For example, school district tax increase referenda statutes require the districts to include an estimate of the approximate amount of property taxes extendable at the maximum rate under the current rate and under the proposed increased tax rate both under the ballot question and in the public notice. 105 ILL. COMP. STAT. 5/9-11 (2004). Many other types of taxing district referenda did not require this explanatory language.

\textsuperscript{48} 10 ILL. COMP. STAT. 5/16-7 (2004); Illinois ex rel. Downs v. Scully, 97 N.E.2d 829 (Ill. 1951). \textit{See also} Illinois ex rel. Rhodes v. Miller, 64 N.E.2d 869 (Ill. 1946) (holding that the form of the ballot must conform to the statutory mandate and that elections are voidable if a ballot deviates in substance from the prescribed form).

\textsuperscript{49} \textit{See, e.g.}, Bd. of Educ. v. Cunningham, 806 N.E.2d 1219 (Ill. App. Ct. 2004) (adjudication of dispute between Kane County Clerk and Batavia School District regarding the proper calculation of the rate increase factor); \textit{In re} DuPage County Collector for the Year 1993 v. 1212 Associates-MB Mgmt Co., 681 N.E.2d 135 (Ill. App Ct. 1997) (concerning objections raised by taxpayers against public library district's levy of a building and equipment fund tax rate as a new rate).
by taxing bodies. News accounts reported that some Illinois taxing districts were able to utilize the five year rate increase factor phase-in to collect more money in a referenda than voters were informed would be collected.\textsuperscript{50} County tax extenders admitted as much in the news media.\textsuperscript{51} The Daily Herald of Arlington Heights led the media charge against the improper use of the rate increase factor phase-in with a series of articles beginning in April 2005.\textsuperscript{52} The Daily Herald studied 25 tax rate increases approved by voters in the Chicago suburbs, and uncovered that many districts ultimately recouped more dollars than promised or projected.\textsuperscript{53} The news media has demonstrated that several taxing districts have contravened the intent of the maximum tax rate referenda question by first increasing the levies in funds other than the fund authorized to be increased by referenda.\textsuperscript{54} What is reported to have happened in some school districts was that a successful referendum to increase a school district's educational purposes fund was first used to phase-in tax increases in the other eroded special purpose funds of the school district.\textsuperscript{55} Some critics have specifically targeted school districts' handling of working cash funds and tort immunity funds as funds used to increase overall tax levies to avoid earlier rate increase factor phase-

\begin{footnotesize}


\textsuperscript{51} \textit{Catherine Edman & Jeffrey Gaunt, Schools Rake in More than Voters OK, DAILY HERALD, Apr. 10, 2005, available at} http://www.dailyherald.com/search/printstory.asp?id=189852 [hereinafter Schools Rake]. Lake County tax extension director Wayne Wasyliko was quoted as saying "[c]ertain taxing districts reaped a harvest of additional dollars in excess of what the voters approved." DuPage County Clerk Gary King was reported as stating that "[t]he districts should get what people vote on, not what they think they can get out of it." \textit{Id.}

\textsuperscript{52} \textit{Id.}

\textsuperscript{53} \textit{Id.} Among the most egregious offenders cited was the Naperville Community Unit School District 203, where the owner of a $300,000 home purportedly paid more than $1,541 more over five years than the referendum campaign projected. The article also reports on the state of affairs in Huntley Community Unit School District 158, where school board members acknowledged that they erred in the preparation of pre-referenda financial information leading to administrative turnover and political upheaval. Many other examples are provided in the article. \textit{Id.}

\textsuperscript{54} \textit{Jeffrey Gaunt & Catherine Edman, Law Takes Aim at Tax Loophole, DAILY HERALD, Apr. 11, 2005, available at} http://www.dailyherald.com/news/taxgap.asp?id=186667 (reporting and also providing a graphic that shows how the rate increase factor loophole may be utilized to recoup additional tax dollars by systematically increasing levies in other funds).

\textsuperscript{55} \textit{Id.}

\end{footnotesize}
ins of successful property tax increase referenda. When questioned, some local government officials pled ignorance of the PTELL phase-in, others rationalized their districts' implementation of the phase-in, and still others claimed to have properly reported the impact of a successful referendum to their voters. The bad publicity caused by the Daily Herald and other news media outlets resulted in local government officials joining in the effort to eliminate the rate increase factor loophole.

B. NEED FOR BETTER EDUCATION OF THE ELECTORATE

It is axiomatic that the electorate should understand and be fully informed about the public policy matters they are asked to approve or reject. To the contrary, Illinois voters, voting rights organizations, and other media commentary have long took umbrage with the manner in which tax referenda must be submitted to the electorate; the process has generally been regarded as unnecessarily confusing and cumbersome. Surveys taken of voters concerning voter comfort with initiative and referenda questions have found that "as many as one-third to a majority of those voting" claimed to have felt uncomfortable with voting on such questions because the voters felt "they needed more information or more time to discuss the issue" or found that the referenda were "too hard to read and comprehend." When a referendum question appears on the election ballot, many voters are reading the question for the first time, leaving them with little else to base their vote upon other than the often awkwardly-worded ballot question form dictated by statute. Is it any wonder that some voters would opt to skip the ballot question altogether or even fail to show up at the polls to vote? Worse yet for the taxing body, because it is human nature to resist change, an uninformed voter is probably more likely

56. Lennie Jarratt, How School Districts Over Tax Their Residents, EDUCATIONMATTERS.US, Feb. 5, 2006, http://educationmatters.us/images/howdistrictsovertax.pdf. This author attempts to explain the manner in which some school districts utilized the rate increase factor phase-in to obtain more property taxes than disclosed prior to referenda.

57. Schools Rake, infra note 51 (detailing the responses of various school officials to the Daily Herald study of the property tax impact of successful tax rate referenda).


60. Id. at 1022.
to vote "no" on a tax increase referendum when the voter does not fully understand the impact of a "yes" vote on their property tax bill.

In practice, it is the taxing district governing boards that are often the primary source of information about a tax increase referendum. Illinois law places restrictions on the ability of taxing districts to disseminate information about their own referenda. The election interference provisions of the Illinois Election Code provide that "no public funds shall be used to urge an elector to vote for or against any candidate or proposition, or be appropriated for political or campaign purposes to any candidate or political organization." Taxing districts are not prohibited from using public funds for the dissemination of factual information relative to any proposition appearing on an election ballot. Many school districts and other taxing bodies have chosen to disseminate informational materials to resident voters; however, there is often a contingent of voters who are skeptical of the information provided by public officials. This public mistrust has likely grown as a result of some of the reported abuses of successful tax increase referenda detailed above. Supporters of tax increase referenda are lawfully permitted to form "local political committees" to provide a more partisan view on the referenda and prepare the mailings, signs, and other publicity items that are typical components of a "Vote Yes" campaign. The "Vote No" crowd will sometimes organize its own local public committee to oppose a tax referendum. The competing propaganda promulgated by the pro-referendum and anti-referendum groups can serve to further cloud the issues at hand for voters. It is evident that better education of the voting electorate is required, and ballot question clarity is a primary focal point for reform.

C. NEED FOR UNIFORMITY

The Illinois Constitution provides a guarantee that "[l]aws governing voter registration and conduct of elections shall be general and uniform." 66

61. See infra note 62.
63. 10 ILL. COMP. STAT. 5/9-25.1(b) (2004).
64. 10 ILL. COMP. STAT. 5/9-1.7 (2004).
65. The advent of the internet and the computer age has provided a greater forum in Illinois for anti-tax groups, some of which oppose most tax increase referenda as a general principle. See, e.g., Citizens for Reasonable and Fair Taxes (CRAFT), http://user.mc.net/%7Eigloo/craft.htm; see also Will and DuPage Taxpayer’s Alliance, http://www.taxpayeralliance.org. There are dozens of other such sites, most targeting one or two particular school districts or other taxing bodies.
Among the statutory duties allotted to the Illinois State Board of Elections is the power to “[p]rescribe and require the use of such uniform forms, notices, and other supplies not inconsistent with the provisions of this Act as it shall deem advisable which shall be used by election authorities in the conduct of elections and registrations.” Section 28-1 of the Illinois Election Code provides that the method of initiating the submission of “public questions” shall be as provided by the statute authorizing such public question or by the Illinois Constitution. Each of these provisions and others would lead one to believe that the Illinois General Assembly would have created a standard and uniform method for the presentation of tax rate referenda to the voting public. Unfortunately, this is not the case. The adoption into law of Public Act 94-976, however, has arguably assisted in that regard. Even with this legislation, problems will still remain into the future. How many voters truly grasp the difference between an “extension limitation” and a “limiting rate” under the Property Tax Extension Limitation Law? Until the General Assembly sees fit to overhaul the PTELL and the referendum process entirely, there will still be voter confusion on taxing district tax referenda.

IV. ANALYSIS OF PUBLIC ACT 94-976

A. LEGISLATIVE HISTORY

Senate Bill 1682 was adopted only after two full years of drafting, consensus, compromise and precursor legislative bills. State Representative Jack Franks (D) filed House Bill 1041 with the Clerk of the Illinois House on February 3, 2005. Before the bill was amended by the Senate, the bill was drafted to include a requirement that all tax rate increase or decrease referenda include supplemental language that includes an estimate of the approximate amount to be levied at the current rate and at the proposed rate for a single family residence with a market value of $100,000. The impetus for the filing of House Bill 1041 was Representative Franks’ desire that voters obtain “a very close estimate as to how much it will affect their

67. 10 ILL. COMP. STAT. 5/1A-8(4) (2004).
68. 10 ILL. COMP. STAT. 5/28-1 (2004). The Illinois Election Code defines a “public question” as “any question, proposition, or measure submitted to the voters at an election dealing with subject matter other than the nomination or election of candidates and shall include, but is not limited to, any bond or tax referendum, and questions related to the Constitution.” 10 ILL. COMP. STAT. 5/1-3(15) (2004).
70. H.R. 1041, 94th Gen. Assem. (Ill. 2005). This bill was ultimately referred to the Senate Rules Committee on July 1, 2005.
taxes.” Representative Franks’ premise that the residential taxpayer should be provided a breakdown of the cost of a tax increase referendum was a key component ultimately incorporated into Public Act 94-976.

Three weeks after Representative Franks introduced HB 1041, freshly-minted State Representative Michael Tryon (R) filed House Bill 3602. One of the primary goals of Representative Tryon’s first term in the Illinois House was PTELL clarification. House Bill 3602 sought to change the procedure in which new tax rate increases and decreases were permitted to be phased-in. Representative Tryon stated to his House colleagues during floor debates on House Bill 3602 that the bill would fix the PTELL tax phase-in loophole and “essentially provide that if a referendum in [a] fund for a rate increase is asked for and approved, that the rate increase will be locked on the aggregate rate and no taxing body could every [sic] get any additional funds other than what they told the voters they needed.” Representative Tryon also recognized that taxing bodies are “having a difficult time in the suburban communities of . . . having referendums pass.” He further surmised that the adoption of House Bill 3602 would result in voters being “more likely than they have in the past of perhaps to approve [sic] a referendum.”

Representative Franks spoke immediately after Representative Tryon in support of House Bill 3602, cited the existence of the companion bill (House Bill 1041), and professed that support of both bills would “empower the voters to know exactly what they’re voting for and know exactly how much the rate’s gonna be increased, instead of getting these after-referendum surprises.” Representative Franks continued by stating that the passage of these bills “will go a long way in alleviating a lot of the problems we’ve had with our referendums.” Indeed, Representative Tryon’s fix for the PTELL phase-in loophole introduced in House Bill 3602 was in due course incorporated in large part into Public Act 94-976.

Oak Park State Senator Don Harmon (D) filed Senate Bill 1682 on February 24, 2005. This bill became the platform for Public Act 94-976, and in its initial form laid the groundwork for the creation of an alternatively-worded referendum question that would allow for an increase in a taxing body’s overall limiting rate rather than increasing the maximum rate
in a specific fund. Senate Bill 1682 was initially met with opposition from several suburban lawmakers who found aspects of the bill to be confusing and unfair to taxpayers. The State Senate did pass the first incarnation of Senate Bill 1682 by a narrow margin (30-28-0) on April 15, 2005, but the House soon assigned the bill to the Rules Committee where it sat for the remainder of 2005.

Three House amendments refined Senate Bill 1682 to merge concepts from the precursor bills. During House floor debates on the Third Reading of Senate Bill 1682, Representative Tryon submitted that Senate Bill 1682 combined the changes which originated in House Bill 3602 and House Bill 1041 with portions of the first version of Senate Bill 1682. Representative Tryon noted that the newly revised SB 1682 “provides for a consolidated form of questions to be presented to the voters that build[s] on the fundamentals of the tax cap, which is dollars, CPI, and voter empowerment.” Representative Tyron later mentioned that the Senate Bill 1682, if adopted, “will make it easier for taxing districts to ask for smaller amounts of revenue for longer periods of time.” The bill passed the House on April 12, 2006, passed the Senate on May 3, 2006 and was signed by the Governor on June 30, 2006.

Senate Bill 1682 and its legislative precursors were presented as the efforts of a bipartisan group of suburban legislators looking to repair some of the original loopholes in the PTELL with a workable and comprehensible solution. The amended bill was supported by a number of organizations including the School Management Alliance, the Illinois State Chamber, the Illinois Federation of Teachers, and the Illinois Association of County Clerks and Recorders, among others. The legislation was drafted with the assistance of the public finance department of the Chicago law
firm of Chapman and Cutler, LLP, who in this author's opinion is the leading firm in Illinois public finance issues.87

B. SUMMARY OF CHANGES TO PROPERTY TAX CODE / ELECTION CODE

The Illinois Department of Revenue has submitted a circular summarizing the changes in the PTELL due to the passage into law of Public Act 94-976.88 The circular lists the six “major changes” to the PTELL as follows:

1. A PTELL taxing district must use only the referenda options in the PTELL to raise more taxes than the cap allows. It may not use any other proposition found in Illinois statutes, including those based on Section 18-120 and Section 18-125 of the Property Tax Code.

2. Taxing districts may ask voters to approve an increase in the limiting rate for one or more levy years (but no more than four) as specified on the ballot.

3. Taxing districts may ask voters to approve an inflationary increase that is greater than allowed by the PTELL (i.e., 5 percent or the CPI, whichever is the less) for one or more levy years as specified on the ballot.

4. Significant new supplemental ballot and election notice information is required.

5. The rate increase factor is eliminated for all referenda held after March 21, 2006.89

6. In some limited instances, taxing districts may exceed a voter-approved rate limit for a fund as long as the sum of all rates of funds subject to the PTELL does not exceed the limiting rate.90


89. The rate increase factor continues in effect for all referendum passed on or before March 21, 2006, and no changes were made to the five year phase-in permitted under the previous version of the PTELL. See Chapman and Cutler, supra note 16, at 7.


As amended by P.A. 94-976, this form of referendum question may only be used in the future by non-PTELL taxing districts that meet the test quoted in the previous sentence. Supplemental information must be provided below the ballot to show:
The sixth major change listed above is one of the more interesting changes made by Public Act 94-976. For the 2005 levy year and thereafter, taxing districts may increase their property tax rates in a particular fund up to the "ceiling set by statute above which the rate is not permitted to be further increased by referendum or otherwise." By inference, a two-part test is established for determining whether a county tax extension office will extend property taxes levied by a taxing district beyond the maximum rate ceiling. First, the rate extended in a given fund cannot exceed the statutory rate ceiling established for the particular fund, and second, the sum of all the taxing district's rates subject to PTELL cannot exceed the limiting rate. Some units of local government were initially confused by this new provision and believed that they could levy with impunity up to the statutory maximum rates, but that is not the case. However, this provision does afford taxing district boards some flexibility in how they apportion their tax levy among their various taxing funds, which in turn may lead to the pleasant result of fewer property tax objections being filed against local government levies.

C. ANALYSIS OF PRIMARY PTELL REFERENDUM OPTIONS

Taxing districts subject to the PTELL now have only three primary statutory methods to seek property tax rate increases by use of a referen-
The first method is a proposition to authorize the levy of a new rate; the second method is to authorize an increase in the taxing district’s limiting rate for one or more levy years; and the third method is to increase the taxing district’s extension limitation for one or more levy years. The previous methods for presenting property tax rate increase referenda questions shall no longer be employed by taxing districts subject to the PTELL; rather, one of these three forms must be used in all future elections.

1. Authorization of a New Tax Rate

A taxing district subject to the PTELL may submit a referendum question to its electorate seeking permission to levy a new tax rate. The form of the referendum question seeking authorization to levy a new tax rate is as follows:

Shall ... (insert legal name, number, if any, and county or counties of taxing district and geographic or other common name by which a school or community college district is known and referred to), Illinois, be authorized to levy a new tax for ... purposes and have an additional tax of ... % of the equalized assessed value of the taxable property therein extended for such purposes?

A taxing district submitting a new tax rate referendum question is required to provide two paragraphs of supplementary information below the ballot and as a part of the prescribed election notice. “A new tax rate approved by referendum is first effective for the levy year during which the referendum approving the new rate is held.” A taxing district can levy for a new tax rate only after the voters have approved the new tax rate by

94. See Property Tax Extension, supra note 88, at 1. The ability of taxing districts to seek approval of general obligation bonds and other bond and public debt by referendum is not impacted by the P.A. 94-976.
95. Id. at 1. The IDOR circular cites a fourth permitted method for increasing a taxing district’s aggregate extension above the limiting rate. Id. Taxing bodies can seek to increase their debt service extension base pursuant to Section 18-212 of the Property Tax Code. 35 ILL. COMP. STAT. 200/18-212 (2004). Because this method was unaffected by the adoption of P.A. 94-976, and because this particular method is of so little use to most taxing districts, no additional discussion of this fourth method is warranted.
98. Id. at 2243 (ellipses in original).
99. Id.
referendum and the appropriate election authority or authorities canvass the results of the referendum.101

2. Authorization of an Increase to the PT ELL Limiting Rate

Under the previous PTELL tax rate referendum procedure, taxing districts sought authorization from the electorate to seek an increase in the maximum rate of a specific fund.102 For example, a school district subject to the PTELL could formerly have sought an increase of 0.15% in its transportation purposes fund, and a fire protection district subject to the PTELL might have requested an increase from the maximum rate of 0.30% to 0.40% in its corporate fund.103 Under the new method, taxing districts no longer request increases in a specific fund. Instead, taxing districts may seek voter approval of a referendum to increase the overall limiting rate of the taxing district.104 As discussed earlier, it is the limiting rate calculation that regulates the ability of a taxing district to increase taxes under the PTELL.105

The statutorily prescribed form for presenting the PTELL limiting rate increase referendum to the electorate is as follows:

Shall the limiting rate under the Property Tax Extension Limitation Law for . . . (insert the legal name, number, if any, and county or counties of taxing district and geographic or other common name by which a school or community college district is known and referred to), Illinois, be increased by an additional amount equal to . . . % above the limiting rate for levy year . . . (insert the most recent levy year for which the limiting rate of the taxing district is known at the time the submission of the proposition is initiated by the taxing district) and be equal to . . . % of the

101. Id. at 6. Taxing bodies no longer serve as their own canvassing boards as local canvassing boards have been abolished by statute. 10 ILL. COMP. STAT. 5/1-8 (2004 & West Supp. 2006). County boards and boards of election commissioners now conduct the canvass of all election results occurring within their respective areas of jurisdiction. The canvass of results is required to be completed no later than 21 calendar days after the election. 10 ILL. COMP. STAT. 5/22-17(a) (2004 & West. Supp. 2006).

102. See infra note 104.

103. 105 ILL. COMP. STAT. 5/17-4 (2004) (school transportation tax increase); 70 ILL. COMP. STAT. 705/14 (2004) (fire protection district corporate fund maximum increase). There are also many other examples. These statutes are still in full force and effect for tax rate increases in non-PTELL counties.

104. Chapman and Cutler, supra note 16, at 3 n.4 (noting that the propositions to increase the maximum tax rate for particular funds no longer exist for taxing districts subject to the PTELL).

equalized assessed value of the taxable property therein for levy year(s) (insert each levy year for which the increase will be applicable, which years must be consecutive and not exceed 4)?\textsuperscript{106}

The first percentage blank in the ballot question represents the amount of the increase sought, while the second percentage blank in the ballot question represents the maximum limiting rate that would result from the passage of the referendum question.\textsuperscript{107} This second figure may or may not represent the actual voter impact of the passage of the referendum question; it depends on many factors including the timing of the referendum, the adoption of the annual levy, and the time frame in which the county tax extension office completes its annual extension process and computes the next year's limiting rate. At the very least, the electorate is provided with a fairly precise estimate of the impact of a limiting rate increase.

Another new feature of this form of referendum question is that a taxing district must request in the ballot question whether or not it will seek to apply the increased limiting rate beyond the first year.\textsuperscript{108} A board of education or city council seeking an increase in the limiting rate may now provide its voters with a blueprint for the impact of the tax rate question for up to four levy years.\textsuperscript{109} Tax rate increase phase-ins are allowed, but now the phase-ins are advertised upfront. Moreover, an estimate of the impact on the property taxes for subsequent years are among the four paragraphs of supplementary information that the taxing district must include below the ballot and in the required election notices.\textsuperscript{110}

3. Authorization to Increase the PTELL Extension Limitation

The third option for taxing districts subject to the PTELL to raise property taxes is a revised variation of the familiar referendum to increase the extension limitation.\textsuperscript{111} As formerly constituted, this referendum question permitted a taxing district to seek a one-year respite from the application of the PTELL extension limitation on the taxing district's aggregate extension. Recall that without a referendum, the default extension limitation is the lesser of 5% or the percentage increase in the

\textsuperscript{107} Chapman and Cutler, supra note 16, at 3.
\textsuperscript{109} Id.
\textsuperscript{110} Id.; see infra note 111.
\textsuperscript{111} 35 ILL. COMP. STAT. 200/18-205 (2004).
Consumer Price Index over the prior levy year. 112 In the past, in order for taxing bodies to recoup any significant tax relief from the use of this question, the taxing body would have had to request a large percentage increase in the ballot question. 113 This concern, when coupled with the perplexing language within the question tended to repel public officials away from this question in favor of an alternative referendum form.

In this author's opinion, Public Act 94-976 may cause some public officials to reconsider the use of this ballot question. 114 Taxing districts can now spread the PTELL extension limitation relief over several levy years instead of cramming it into just one. 115 A taxing district may now decide it wise to seek a 20% extension limitation in three consecutive levy years instead of a 60% extension limitation in a single levy year. 116 Depending on the specific assessed valuation figures and other factors, the first question will not only be more palatable to the voters but more lucrative to the taxing district. The format for the PTELL extension limitation increase referendum question is prescribed as follows:

Shall the extension limitation under the Property Tax Extension Limitation Law for (insert the legal name, number, if any, and county or counties of the taxing district and geographic or other common name by which a school or community college district is known and referred to), Illinois, be increased from the lesser of 5% or the percentage increase in the Consumer Price Index over the prior levy year to (insert the percentage of the proposed increase) % per year for (insert each levy year for which the increased extension limitation will apply)? 117

Again, the PTELL as amended requires the addition of certain supplementary financial information below the ballot and on the requisite election notice. 118 In this case, up to two paragraphs of information must be included. 119

112. Id.
114. Although the first round of this question in the November 2006 general election was not all that promising. See infra ¶ V(A) of this Article.
116. The extension limitation percentage may be requested for one or more levy years. Id. Unlike the limiting rate increases, the extension limitation percentage statute does not limit the increase to four levy years. See id.
117. Id.
118. Id.
119. Id. See infra at footnote 122.
D. REQUIREMENT OF MANDATORY SUPPLEMENTAL BALLOT INFORMATION

Public Act 94-976 mandates the presentation of uniform supplemental below-the-ballot information that must appear on the bottom of the ballot and in election notices for each of the three property tax rate referenda described in this Article. The taxing district must calculate, prepare, and ultimately certify the below-the-ballot information as a part of its tax referendum resolution or ordinance. The format is prescribed by statute and differs depending on which of the three ballot questions the taxing district submits to the voters.

Propositions to create a new rate or to increase the limiting rate of the taxing district are required to include information concerning the approximate property tax extension based on the last known limiting rate and at the proposed limiting rate, as well as an approximate financial impact of the successful referendum on a single family residence having a fair market value at the time of the referendum of $100,000. If the taxing district seeks to increase the limiting rate beyond one year, the district is required to provide data concerning the proposed amount of additional taxes to be raised for subsequent levy years, among other details.

The entire supplementary below-the-ballot information reads as follows:

(1) The approximate amount of taxes extendable at the most recently extended limiting rate is $__________, and the approximate amount of taxes extendable if the proposition is approved is $__________.

(2) For the ________ (insert the first levy year for which the new rate or increased limiting rate will be applicable) levy year the approximate amount of the additional tax extendable against property containing a single-family residence and having a fair market value at the time of the referendum of $100,000 is estimated to be $__________.

(3) Based upon an average annual percentage increase (or decrease) in the market value of such property of ______% (insert percentage equal to the average annual percentage increase or decrease for the prior three levy years, at the time the submission of the proposition is initiated by the taxing district, in the amount of (A) the equalized assessed value of the taxable property in the taxing district less (B) the new property included in the equalized assessed value), the approximate amount of the additional tax extendable against such property for the ______ levy year is estimated to be $__________ and for the ______ levy year is estimated to be $__________.

(4) If the proposition is approved, the aggregate extension for ______ (insert each levy year for which the increase will apply) will be deter-
Propositions to increase a taxing district's extension limitation must contain one paragraph of below-the-ballot supplemental information if the extension limitation is approved for a single levy year, and two paragraphs of information if the extension limitation is approved for more than one levy year.\(^{125}\)

V. IMPACT OF PUBLIC ACT 94-976 ON THE NOVEMBER 7, 2006 GENERAL ELECTION

As stated earlier, Public Act 94-976 was first made effective on June 30, 2006.\(^{126}\) The changes to the PTELL ballot forms and implementation of tax increase referenda were only made to apply prospectively.\(^{127}\) Accordingly, the Illinois General Primary Election held on March 21, 2006 was the last election in which taxing districts in PTELL counties could utilize the previously existing ballot question forms and utilize the phase-in provisions of the rate increase factor.\(^{128}\) The November 7, 2006, Illinois General

The entire supplementary below-the-ballot information reads as follows:

1. (insert the first levy year for which the increased extension limitation will be applicable) levy year the approximate amount of the additional tax extendable against property containing a single family residence and having a fair market value at the time of the referendum of $100,000 is estimated to be $...

2. Based upon an average annual percentage increase (or decrease) in the market value of such property of...% (insert percentage equal to the average annual percentage increase or decrease for the prior 3 levy years, at the time the submission of the question is initiated by the taxing district, in the amount of (A) the equalized assessed value of the taxable property in the taxing district less (B) the new property included in the equalized assessed value), the approximate amount of the additional tax extendable against such property for the...levy year is estimated to be $...


\(^{125}\) Chapman and Cutler, supra note 16, at 5-6; see also Gilbert, supra note 122.


\(^{127}\) Property Tax Extension, supra note 88, at 4.

\(^{128}\) Id. at 1.
Election was the first election date that the newly created ballot questions and below-the-ballot supplementary information were required.\textsuperscript{129}

\section*{A. \textsc{Review of Referenda Results of November 7, 2006 General Election}}

In the interest of determining whether or not Public Act 94-976 had any immediate impact on the success or failure of tax increase referenda, it was decided that a review of the referenda results from November 7, 2006 was in order. However, a threshold question to ask was which election should be selected as the comparable election for comparison purposes. After some deliberation, this author determined that the aptest comparable election would be the November 2004 General Election. Each election incorporated votes on federal and state legislative races, as well as numerous local referenda. Voter turnout for general elections is generally higher than for the general primary elections or the consolidated (municipal) elections.\textsuperscript{130} While this study has only compiled election data from two elections and is therefore statistically insignificant, certain trends may be gleaned from a side-by-side evaluation of the last two general elections – the last general election before the adoption of Public Act 94-976 and the first election after its adoption. First, we start with a review of the data from the November 2004 general election as set forth below:\textsuperscript{131}

\begin{itemize}
\item \textsuperscript{129} Id.
\item \textsuperscript{130} Corliss Lentz, \textit{Dispelling Myth: Referenda can Succeed During General Elections}, ILL. SCH. BD. J., Sept.-Oct. 1997, at 19. From 1981 through 1993, voter turnout for general elections was an average of 51.5\%, much higher than the primary elections (35.8\%) or consolidated (municipal) elections (34.4\%). \textit{Id.}
\item \textsuperscript{131} Data compiled from the referendum search engine located on the Illinois State Board of Elections website. III. State Bd. of Elections, Election Information: Referenda Search, \url{http://www.elections.il.gov/ReferendaProfile/ReferendaSearch.aspx} (search criteria on file with author).
\end{itemize}
<table>
<thead>
<tr>
<th>Purpose</th>
<th>Max. Rate Increase</th>
<th>New Rates</th>
<th>Extension Limitation</th>
</tr>
</thead>
<tbody>
<tr>
<td>School:</td>
<td>8 Pass, 36 Fail</td>
<td>NONE</td>
<td>1 Pass, 1 Fail</td>
</tr>
<tr>
<td>Library:</td>
<td>4 Pass, 8 Fail</td>
<td>0 Pass, 1 Fail</td>
<td>0 Pass, 1 Fail</td>
</tr>
<tr>
<td>Park:</td>
<td>0 Pass, 7 Fail</td>
<td>NONE</td>
<td>NONE</td>
</tr>
<tr>
<td>Fire Protection:</td>
<td>6 Pass, 8 Fail</td>
<td>6 Pass, 2 Fail</td>
<td>5 Pass, 8 Fail</td>
</tr>
<tr>
<td>Municipal:</td>
<td>0 Pass, 1 Fail</td>
<td>NONE</td>
<td>0 Pass, 1 Fail</td>
</tr>
<tr>
<td>County:</td>
<td>NONE</td>
<td>10 Pass, 1 Fail</td>
<td>NONE</td>
</tr>
<tr>
<td>Township:</td>
<td>1 Pass, 3 Fail</td>
<td>4 Pass, 3 Fail</td>
<td>0 Pass, 3 Fail</td>
</tr>
<tr>
<td>Mosquito Abatement:</td>
<td>1 Pass, 0 Fail</td>
<td>NONE</td>
<td>1 Pass, 0 Fail</td>
</tr>
<tr>
<td><strong>TOTALS:</strong></td>
<td>20 Pass, 63 Fail</td>
<td>20 Pass, 7 Fail</td>
<td>7 Pass, 14 Fail</td>
</tr>
<tr>
<td></td>
<td>24.1% pass rate</td>
<td>74.1% pass rate</td>
<td>33.3% pass rate</td>
</tr>
</tbody>
</table>

The most noteworthy outcome of the 2004 tax increase referenda data summarized above is that property tax referenda questions where the taxing district sought the creation of a new tax rate were remarkably more successful (74.1% pass rate) than were increases in the existing tax rate (24.1% pass rate) or extension limitation increase questions (33.3% pass rate). As a side note, county and municipal sales tax and 9-1-1 surcharge

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132. The “Maximum Rate Increase” column refers to referenda questions in which a taxing district sought to increase the maximum permissible tax rate for an already existing tax fund, the “New Rates” column only includes taxing district referenda requests for a new tax rate not previously levied by the district, and the “Extension Limitation” column concerns those ballot questions where the taxing body sought a one-year reprieve from the PTELL tax cap for a specific levy year. 35 ILL. COMP. STAT. 200/18-205 (2004).

133. Not included in the total were three successful questions related to the consolidation of school districts and the creation of a new taxing rate.

134. Not included in the total was a referendum question to create a PTELL aggregate extension pursuant to 35 ILL. COMP. STAT. 200/18-210 (2004).

135. Not included in the total was a successful advisory question on the propriety of building a park and recreations building.

136. Not included in the total were referenda votes related to the merger of fire protection districts (and the creation of a new tax rate) and a question to create a PTELL aggregate extension.

137. Not included in the total were referenda votes to create a PTELL aggregate extension and another rather oddly drawn public question that did not fit nicely into any of these categories.
referenda questions were passed by voters of the taxing district more than half the time. 138

Next is an examination of the referenda success rates for non-PTELL taxing districts for the November 2006 general election, followed by a table of the referenda success rates for taxing districts subject to the PTELL. 139

<table>
<thead>
<tr>
<th>Property Tax Increase Referenda Results - 2006 General Election</th>
</tr>
</thead>
<tbody>
<tr>
<td>Non-PTELL Taxing Districts, Listed by Purpose and Referendum Form Chosen</td>
</tr>
<tr>
<td>Purpose</td>
</tr>
<tr>
<td>--------------------</td>
</tr>
<tr>
<td>School:</td>
</tr>
<tr>
<td>Library:</td>
</tr>
<tr>
<td>Park:</td>
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<tr>
<td>Township:</td>
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<tr>
<td><strong>TOTALS:</strong></td>
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</tbody>
</table>

The first conclusion that may be readily identified is that the maximum rate increase referenda for the non-PTELL taxing bodies in the November 2006 were more than twice as successful as the maximum rate increase

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138. Four of seven emergency 9-1-1 surcharge questions passed in November 2004 (57% pass rate), as did nine of fourteen sales tax hike questions posed by counties and municipalities in the same election (64.2% pass rate). Ill. State Bd. of Elections, Election Information: Referenda Search, http://www.elections.il.gov/ReferendaProfile/ReferendaSearch.aspx (search criteria on file with author).

139. Again, the data was compiled and charted based on information found on the Illinois State Board of Elections website. Some educated guesses were made in the compilation of the next two tables because the author uncovered a few strangely-worded referenda that did not appear to conform with any statutory form. The third column, entitled "Extension Limitation" is a red herring insofar as non-PTELL counties cannot lawfully present questions that suspend the application of the PTELL limiting rate. It appears as if the two taxing bodies erroneously utilized the wrong form. Neither measure passed. Ill. State. Bd. of Elections, Election Information: Referenda Search, http://www.elections.il.gov/ReferendaProfile/ReferendaSearch.aspx (search criteria on file with author).

140. Not included in the total was a successful referendum to establish a PTELL aggregate extension pursuant to 35 ILL. COMP. STAT. 200/18-212 (2004).

141. Not included in the total was a successful referendum to extend a county special materials tax rate.
ballot questions in the November 2004 election. In particular, the school districts that fell into this category had half of their referenda adopted in 2006. The new rate questions were as about as successful in 2006 as they were two years before. Two taxing districts utilized the old form of the PTELL Extension Limitation question, and neither passed. This question is no longer an option for PTELL counties or non-PTELL counties, but that did not stop two taxing districts from presenting it regardless.

The next table demonstrates the relative success of referenda questions that use one of the three new forms that were created by the passage of the P.A. 94-976 PTELL referenda amendments. Look out for the drop ahead!

<table>
<thead>
<tr>
<th>Property Tax Increase Referenda Results - 2006 General Election</th>
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<tbody>
<tr>
<td><strong>PTELL Taxing Districts, Listed by Purpose and Referendum Form Chosen</strong></td>
</tr>
<tr>
<td>Purpose</td>
</tr>
<tr>
<td>---------</td>
</tr>
<tr>
<td>School: 143</td>
</tr>
<tr>
<td>Library:</td>
</tr>
<tr>
<td>Park:</td>
</tr>
<tr>
<td>Fire Protection: 144</td>
</tr>
<tr>
<td>Municipal:</td>
</tr>
<tr>
<td>County:</td>
</tr>
<tr>
<td>Township:</td>
</tr>
<tr>
<td><strong>TOTALS:</strong></td>
</tr>
<tr>
<td><strong>pass rate:</strong></td>
</tr>
</tbody>
</table>

The taxing districts subject to PTELL passed nearly the same percentage of limiting rate increase questions in 2006 as the percentage of all taxing districts—both PTELL and non-PTELL—passed maximum tax rate questions in 2004. Again, the revised new rate question did about as well

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142. The "Limiting Rate Increase" column reports data from referenda questions in which a taxing district sought to increase the limiting rate for one or more levy years, the "Revised New Rate" column reports referenda data for taxing districts who seek to levy for a new tax rate not previously levied by the district using the new statutory format and below-the-ballot supplemental data, and the "New Extension Limitation" column addresses those referenda questions where the taxing district sought to increase the PTELL extension limitation for one or more years using the new statutory format and below-the-ballot supplemental data.

143. Not included in the total was a referendum issued by a school district to increase its debt extension base pursuant to 35 ILL. COMP. STAT. 200/18-212 (2004).

144. Not included in the total was a successful referendum question to form a new fire protection district and establish a PTELL aggregate extension pursuant to 35 ILL. COMP. STAT. 200/18-210 (2004).
as the new rate questions did in 2004 and the non-PTELL taxing district referenda questions did in 2006. Especially troubling to taxing districts is that no referenda questions passed that used the newly crafted language for increasing the PTELL extension limitation. One could posit that perhaps giving the voters more detailed information is actually working adversely to taxing districts. When the voters are armed with additional facts, they are more likely to vote against property tax increases no matter which one of the three new statutory forms is utilized. Perhaps the 2006 voters had simply been taxed enough, as sales and real estate transfer taxes and emergency 9-1-1 surcharge questions were rejected by voters more than half of the time.\(^{145}\)

As an additional means of comparison, a review of bond referenda questions presented at the same two elections was also undertaken. Remember that Public Act 94-976 did not change the ballot forms for referenda of this type. A breakdown of the bond questions by topic is set forth as follows:

<table>
<thead>
<tr>
<th>Bond Referenda Results</th>
<th>2004 GENERAL ELECTION</th>
<th>2006 GENERAL ELECTION</th>
</tr>
</thead>
<tbody>
<tr>
<td>School:</td>
<td>11 Pass, 5 Fail</td>
<td>10 Pass, 7 Fail</td>
</tr>
<tr>
<td>Library:</td>
<td>3 Pass, 3 Fail</td>
<td>3 Pass, 0 Fail</td>
</tr>
<tr>
<td>Parks:</td>
<td>3 Pass, 1 Fail</td>
<td>2 Pass, 3 Fail</td>
</tr>
<tr>
<td>Fire Protection:</td>
<td>2 Pass, 0 Fail</td>
<td>5 Pass, 2 Fail</td>
</tr>
<tr>
<td>Road/Bridge/Utility:</td>
<td>0 Pass, 2 Fail</td>
<td>2 Pass, 2 Fail</td>
</tr>
<tr>
<td>Police:</td>
<td>1 Pass, 0 Fail</td>
<td>0 Pass, 0 Fail</td>
</tr>
<tr>
<td>Other:(^{146})</td>
<td>0 Pass, 1 Fail</td>
<td>2 Pass, 0 Fail</td>
</tr>
<tr>
<td><strong>TOTALS:</strong></td>
<td><strong>20 Pass, 12 Fail</strong></td>
<td><strong>24 Pass, 14 Fail</strong></td>
</tr>
<tr>
<td></td>
<td><strong>62.5% pass rate</strong></td>
<td><strong>63.2% pass rate</strong></td>
</tr>
</tbody>
</table>

Referenda questions on bond issues remained relatively static from 2004 to 2006. In the November 2004 election, 62.5% of all bond issues passed, and two years later 63.2% of all bond issues were approved.\(^{147}\)

\(^{145}\) One of four emergency 9-1-1 surcharge questions passed in November 2006 (25% pass rate), as did thirteen of twenty-seven sales tax and real estate transfer tax questions posed by counties and municipalities in the same election (48.1% pass rate). Ill. State Bd. of Elections, Election Information: Referenda Search, http://www.elections.il.gov/ReferendaProfile/ReferendaSearch.aspx (search criteria on file with author).

\(^{146}\) Includes referenda questions such as open space bond issues and municipal refinancing bonds questions.

\(^{147}\) Data compiled from the referenda search engine located on the Illinois State Board of Elections website. Ill. State Bd. of Elections, Election Information: Referenda
the two elections we reviewed, voters have shown a proclivity to approve construction and public works referenda questions and tax rates assessed for new services, while voters were not inclined to approve increases in currently authorized property tax rates.

B. INITIAL PROBLEMS IN THE IMPLEMENTATION OF PUBLIC ACT 94-976

Some taxing districts encountered difficulty in the November 7, 2006 election and erred in wording tax rate increase questions to the electorate. For example, the Rockford School District referendum question drew fire because the question was approved by the Rockford school board months before Public Act 94-976 became law. It was reported that the school board did not realize that the law had passed until it was too late to alter the referendum question. When asked about the Rockford School District referendum questions, Representative Tryon commented that "they [the school board] have the wrong question on the ballot if they wanted their rate to be the same for five years in the future because that is not going to happen." There was some public discussion as to whether or not the school district would face a legal challenge on the validity of the ballot question, and this point remains all the more acute because school district voters overwhelmingly approved the tax referendum at the November 7, 2006 election.

Proponents and opponents of two Lake County elementary school district referenda publicly sparred over whether or not each school district properly presented the below-the-ballot supplementary financial informa-


148. Jeff Kolkey, Question on Referendum Ballot Wrong, ROCKFORD REG. STAR, Sept. 2, 2006, at C1 [hereinafter Kolkey, Question].

149. Id.

150. Id. The ballot question read as follows:
   Shall the annual tax rate for education purposes of Rockford School District Number 205, Winnebago and Boone Counties, Illinois, (commonly known as Rockford School District), be maintained for a period of five (5) years (the 2007, 2008, 2009, 2010, and 2011 levy years) at the current rate of 3.70% on the value of the taxable property in the district as equalized or assessed by the Department of Revenue?


151. Kolkey, Question, supra note 148, at C1.

tion to the voters.\textsuperscript{153} Other taxing bodies also struggled with the proper presentation of the below-the-ballot information.\textsuperscript{154} Legal counsel for the Illinois State Board of Elections was quoted as saying that he "can see a judicial challenge as to whether the questions can be put in place after the election" based on certain purportedly irregular calculations of the below-the-ballot information.\textsuperscript{155} When approached by reporters about the various interpretations of the ballot question, Senator Harmon commented that he was "glad that we’re fighting over how best to disclose information to voters, rather than whether to disclose key information to the voters at all."\textsuperscript{156}

It will be interesting to see if there are any legal challenges brought against the taxing bodies that were successful in passing tax rate increase referenda questions after Public Act 94-976 on the grounds that an improper ballot form or below-the-ballot supplementary data were utilized. One avenue of defense for the taxing bodies is the language contained in the new Act which states: "any error, miscalculation, or inaccuracy in computing any amount set forth on the ballot and in the notice that is not deliberate shall not invalidate or affect the validity of any proposition approved."\textsuperscript{157} This language seems to provide some protection for inadvertent errors in computing and presenting a referenda question. Despite this language, this author was aware of taxing district boards that decided to delay the presentation of a tax increase referendum to the voters until the full impact of Public Act 94-976 could be developed.

C. TAXING DISTRICT POLITICAL PRESSURES FROM PASSAGE OF PUBLIC ACT 94-976

The media attention given to the problems with the PTELL and the subsequent adoption of Public Act 94-976 have tightened taxpayer scrutiny of taxing district levies and this scrutiny will likely continue until the rate increase factor phase-ins are eliminated entirely. When faced with pressure from constituents about the discrepancies between the estimated and actual amounts raised through successful referenda, some taxing bodies plodded forward with their plans notwithstanding public criticism. Other taxing

\begin{footnotesize}
\begin{itemize}
\item[153.] Lee Filas & Bob Susnarja, \textit{Voters' Ballots to Stay Wrong}, \textit{Daily Herald}, Sept. 22, 2006. In this same article, Lake County Clerk Willard Helander is quoted as saying that the “dollar totals on the ballots should not be considered etched in stone, especially three years down the road.” \textit{Id.}
\item[155.] \textit{Id.} at 1, 5 (quoting ISBE legal counsel Steve Sturm).
\item[156.] \textit{Id.} at 5.
\end{itemize}
\end{footnotesize}
district boards opted to reduce property tax levies or abate property taxes. For example, when such a discrepancy was presented to the Board of Education of Hinsdale Community Consolidated Elementary District 181, the Board, in a 4-3 vote, voted to abate five million dollars in its 2005 levy.\footnote{158} This vote was made after the school superintendent and business manager pleaded to the board not to abate the taxes as it could possibly lead to lost programs and cuts.\footnote{159} Just recently, a Cook County school district voted to suspend the application of the rate increase factor for the 2006 levy year because it did not want to raise taxes beyond the tax increase estimated by the board prior to the passage of the maximum allowable educational purposes tax rate.\footnote{160}

VI. SUMMATION

Public Act 94-976 was an ambitious piece of legislation with laudatory goals and committed legislative sponsors earnestly working to patch together a tax cap law that was inadequately drafted in its original form and revised numerous times over the past several years, confounding even some of the most jaded observers. This most recent legislative enactment achieved the dual purposes of providing more information to the electorate and streamlining the methods in which taxing districts subject to PTELL present referenda to the voting public. It is a decent start.

Problems still remain. There remains a deep chasm in the manner in which property taxes are levied and increased in PTELL counties versus non-PTELL counties. Home rule entities and non-PTELL taxing bodies are still afforded preferential property tax treatment over PTELL taxing districts. The ballot question forms remain far from ideal and the calculation and presentation of the below-the-ballot supplemental information has been deemed by some to be confusing or misleading. The potential for as-of-yet unforeseen future loopholes still looms. For these reasons, I advocate for a uniform statewide property tax levy, extension and referenda system.

\footnote{158} Leslie O'Neal, \textit{Ethics Drive Board to Cut Taxes, Risk Losses}, \url{http://citizensforreasonableandfairtaxes.blogspot.com/search?q=Ethics+drive+board+to+cut+taxes}.
\footnote{159} \textit{Id}.
\footnote{160} Michael Drakulich, \textit{District Turns Down Cash from Tax Rate Increase}, \textit{DAILY SOUTHOWN}, Dec. 18, 2006, \url{available} at \url{http://www.studentsfirst.us/printer/article.asp?c=187908}. The article further noted that Orland Park School District 135 still had two more years to invoke the full impact of the rate increase factor. \textit{Id}.  
