

Proposition 2 1/2

Overrides, Underrides, and Debt Exclusion

What is Proposition 2 1/2?

- G.L. c. 59, § 21C
 - Limits the amount of property taxes that may be levied in a fiscal year
 - Taxes cannot exceed a certain limit determined by a calculation made by the Department of Revenue
 - Limits expenditures
 - Once the levy limit is calculated, municipalities must budget within those limits

But why refer to 2 ½?

- Two and one-half comes into play in two ways:
 - The levy limit can only be increased one year over the next by 2 ½% (plus new growth)
 - The levy ceiling cannot exceed 2 ½% of the assessed valuation of all real and personal property
- It does *not* mean that spending can only be increased by 2 ½% over the prior year

Levy Limit vs. Levy Ceiling

- The Levy Limit is the amount available for expenditure determined by increasing last year's levy limit by 2 ½% plus the value of development over the past year multiplied by the last year's tax rate
- The Levy Ceiling is 2 ½% of the full and fair cash valuation of all real and personal property in the municipality
- The Levy Limit cannot exceed the Levy Ceiling and is the lesser of the two

Ex: Levy Limit vs. Levy Ceiling

- Last year's levy limit was \$50 million
 - This year it is \$54 million ($\$50 \times 1.025 = \51.25 million plus \$2.75 million new growth)
- Last year's levy ceiling was \$100 million
 - But this year all real property was revalued and is now valued at \$4.5 Billion
 - That makes the levy ceiling \$112,500,000 ($\$4.5 \text{ billion} \times 2.5\%$)

The levy ceiling exceeds the levy limit so the limit for the year is \$54 million

Why Do I Need to Know About Levy Limits and Levy Ceilings?

- Proposition 2 ½ gives municipalities flexibility to spend differently from the constraints imposed by the levy limit and levy ceiling.
- *Overrides* – permanently increase the levy limit
- *Underrides* – permanently decrease the levy limit
- *Debt Exclusions and Capital Outlay Expenditure Exclusions* – temporarily increase the levy above the levy limit or levy ceiling

So, How Do Overrides, Underrides, and Exclusions Work?

- An **Override** is a question on the ballot that increases the levy limit
 - Using our example above, if the levy limit is \$54 million and the municipality wants to spend \$54.5 million, it needs to approve an override of \$500,000
 - An override can be for any purpose for which municipal funds may be spent
 - An override question is always voted on by ballot at an election and is always placed on the ballot by majority vote of the Select Board or City Council/Mayor
 - The override question on the ballot *must* use the language set forth in the statute (Section 21C(g))

Underrides

- An **underride** permanently decreases the levy limit.
- Rare beasts. Why permanently decrease the levy limit? Just spend below the limit.
- Unlike overrides, underrides can get on a ballot by citizen petition as well as by majority vote of the select board or city council/mayor
- Like overrides, the question on the ballot *must* use the language set forth in the statute (Section 21C(h))

Debt Exclusions

- A **debt exclusion** permits a temporary increase of expenditure over the levy limit or levy ceiling
- The increase is in effect only until the indebtedness is paid
- The debt exclusion must mirror the purpose for which the underlying indebtedness is incurred
- The question is always voted on by ballot at an election and is always place on the ballot by a two-thirds vote of the Select Board of City Council/Mayor
 - The debt exclusion question on the ballot *must* use the language set forth in the statute (Section 21C(k))

Capital Outlay Exclusions

- Like debt exclusions, **capital outlay exclusions** only temporarily increase permitted expenditures over the levy limit or levy ceiling
- The increase is in effect only for the fiscal year of the appropriation for the expenditure
- The expenditure to which the exclusion relates must be for a purpose for which the municipality would be authorized to borrow money under G.L. c. 44, §§ 7 or 8
- The question is always voted on by ballot at an election and is always placed on the ballot by a two-thirds vote of the Select Board of City Council/Mayor
 - The capital exclusion question on the ballot *must* use the language set forth in the statute (Section 21C(i1/2))

General Principles

- Override, underide, debt exclusion, and capital outlay exclusions require majority vote of the election voters to pass
- Override, underide, debt exclusion, and capital outlay exclusion votes may be at an election that occurs before or after the vote to appropriate the funds
 - The ballot questions do not appropriate the money; they only provide a flexible mechanism for funding the appropriation
- A question may be included in more than one ballot, so if it fails the first time, the municipality can try again
- If the municipality has accepted G.L. c. 53, § 18B, the ballot must include a description of the effect of a yes or no vote and arguments for and against

Relation of Ballot Questions to Spending

- Legislative body approves all spending and borrowing
 - May approve before or after election vote on Prop 2 ½ question
 - May approve even if ballot question fails and spending is within the levy limit
 - If spending disapproved and ballot question is approved, the result is the additional levy capacity is not used

Contingent Appropriations

G.L. c. 59, § 21C(m)

- Available only to towns with town meetings
- Town Meeting may vote any spending or borrowing contingent on passage of a Prop 2 ½ ballot question
 - The contingency can be added or removed in the main motion or in an amendment to the main motion; generally deemed to be within the scope of the article
- Contingent appropriation not valid unless related ballot question approved by deadline
 - By September 15 for Annual Town Meeting appropriation; 90 days after appropriation at any other Town Meeting
- Appropriation and ballot question purposes must be "substantially the same"

Contingent Appropriations (continued)

- Contingent appropriation vote does not place question on ballot
 - Select Board may place, decline to place, place lower amount
- Can use single, menu, or pyramid approach for ballot questions
- See Appendix C of DLS's Proposition 2 ½ Ballot Questions Requirements and Procedures (August 2017) for examples of ballot questions utilizing these different approaches
 - <https://www.mass.gov/files/documents/2018/07/31/prop2.pdf>

Further Resources

- Proposition 2 ½ and Tax Rate Process <https://www.mass.gov/service-details/proposition-2-12-and-tax-rate-process>
- Levy Limits: A Primer on Proposition 2 ½ <https://www.mass.gov/files/documents/2017/09/08/levylimitsprimer.pdf>
- Proposition 2 ½ Ballot Questions Requirements and Procedures https://www.mass.gov/files/documents/2018/07/31/prop2.pdf?_ga=2.31456890.473442665.1568319595-2112828183.1568219200