July 7th, 2022

DLS
DIVISION OF LOCAL SERVICES
MA DEPARTMENT OF REVENUE

In this edition:

- ***Ask DLS: Treatment of Opioid Settlement Payments***
- **Area of Fiscal Stress: Statutory Property Tax Limits**

Important Dates & Information

DLS Posts Three New Webinars

Recorded versions of recently held DLS webinars are now available on our YouTube channel! These include:

Free Cash Upload & Certification Walkthrough: On April 26th, Bureau of Accounts staff highlighted how to complete the forms necessary for free cash certification. These forms, uploaded in Gateway, are used to request certification of and calculate a city or town's free cash certification from BOA each fiscal year. As mentioned during the webinar, you can also refer to our Introduction to Free Cash video for an overview of how free cash is calculated, and an additional video providing a brief overview of the upload process. Slides from the presentation are also available to download.

How to Value a Massachusetts Town for Taxation: On May 25th, DLS' Chris Wilcock, Chief of the Bureau of Local Assessment (BLA), provided an overview of mass appraisal, the standardized procedures for collecting data and appraising property to ensure that all properties within a municipality are valued

Ask DLS: Treatment of Opioid Settlement Payments

This month's *Ask DLS* features answers to frequently asked questions concerning municipal treatment of anticipated settlement payments from opioid defendants in connection with opioid settlements, including recent statewide opioid settlements. Please let us know if you have other areas of interest or send a question to cityandtown@dor.state.ma.us. We would like to hear from you.

Can a municipality that anticipates receiving settlement funds from the recent opioid settlements set up a special revenue account to record them?

No. All money received or collected from any source by a city, town or district belongs to its general fund and can only be spent after appropriation unless a general or special law provides an exception, i.e., expressly restricts use for a particular purpose or allows expenditure by a department or officer without appropriation. G.L. c. 44, § 53. At present, there is no general or special law that provides an exception for these settlement proceeds. Accordingly, statewide opioid settlement funds received by a municipality belong to its general fund.

Is the Legislature considering an amendment to create an exception to G.L. c. 44, § 53 for statewide opioid settlement funds paid to municipalities?

Yes. The Legislature is currently considering an amendment to G.L.

uniformly and equitably. Slides from the presentation are also available to download.

Excess and Deficiency Upload: On June 8th, BOA staff provided instruction about how to complete the forms necessary for excess and deficiency certification. These forms, uploaded in Gateway, are used to calculate and approve a regional school district's excess and deficiency amount each fiscal year. Slides from the presentation are also available to download.

FY2023 Telephone Company Central Valuations

Local boards of assessors will find the fiscal year 2023 telephone company central valuations pursuant to M.G.L. Chapter 59, Section 39 on the our website effective Wednesday, June 15, 2022. Also included is a memorandum to assessors about the FY2023 valuation, the new growth figures, a list of company billing addresses, and the *Additional Landline Telephone Personalty by FCC Code* for each of the centrally valued telephone companies by community.

FY2023 Pipeline Company Central Valuations

Local boards of assessors will find the fiscal year 2023 pipeline company central valuations pursuant to M.G.L. Chapter 59, Section 38A on our website effective June 15, 2022. Also included is a memorandum to assessors about the FY2023 valuation as well as the new growth figures and a list of company billing addresses.

FY2023 Budget Issues and Other Related Matters

The Division of Local Services (DLS) Bureau of Accounts (BOA) has issued and posted Bulletin (BUL) 2022-5. This Bulletin addresses several topics that cities, towns, regional school and other districts should consider for FY2023 budgeting and other related matters.

BUL-2022-5: **FY2023 Budget Issues and Other Related Matters**

To view the bulletin, click here. To access additional IGRs and Bulletins, please visit this webpage. For additional information and guidance regarding emergency procedures, please visit our webpage here.

One-Time Assistance for

c. 44, § 53 that would permit municipalities to deposit statewide opioid settlement funds in a separate fund, outside of the general fund, upon the approval of the Director of Accounts. Under the proposed amendment, municipalities would still be required to appropriate the funds for their intended purposes. The Division of Local Services linked to and summarized the proposed amendment in its May 19, 2022 issue of *City & Town*.

Can a municipality that received opioid settlement proceeds prior to June 30, 2022 make an appropriation directly from those proceeds for their intended purpose at a meeting of the legislative body?

No. Funds received prior to the end of FY22 (June 30, 2022) will close to the general fund. In the ordinary course, the funds will then become part of the free cash certified by the Director of Accounts and once certified, may be appropriated. Free cash is traditionally certified in late fall in most communities. If certified by the time a town has their fall town meeting, the funds could be appropriated at that time. If a town does not have a fall town meeting or free cash is not certified until after a fall town meeting, presumably the spring town meeting could then vote to make the appropriation. A city could likewise make an appropriation once free cash is certified. However, it is important to note that free cash can be appropriated for any lawful purpose and difficulties can therefore arise when mandating that the settlement portion of free cash must be used for specific purposes. An additional issue arises if the community chooses not to certify their free cash or has a negative free cash balance.

How can a municipality that receives opioid settlement proceeds after July 1, 2022 use those funds in FY2023?

A city or town may classify settlement funds received in FY23 as general fund estimated receipts (Page 3 Local Receipts) and make an appropriation for the settlement purposes by amending their existing FY23 budget to reflect that new source of revenue before their tax rate is set. The amount they estimate should be the equivalent of what they raised and appropriated from taxation for the purpose, otherwise the excess will simply be reducing the tax levy.

Districts with Pandemic-Related Enrollment Disruptions Impacting Chapter 70 Aid

The Division of Local Services (DLS) and the Department of Elementary and Secondary Education (DESE) have jointly issued guidance regarding FY2022 One-Time Assistance for Districts with Pandemic-Related Enrollment Disruptions Impacting Chapter 70 Aid. The information provided includes the spending timeframe and purpose as well as accounting matters.

Click here to view the DLS/DESE guidance.

DLS Links:

COVID-19 Resources and Guidance for Municipal Officials

Events & Training Calendar

Municipal Finance Training and Resource Center

Local Officials Directory

Municipal Databank

Informational Guideline Releases (IGRs)

Bulletins

Tools and Financial Calculators

If a municipality does not follow the above-described process, is there anything else they can do with these proceeds in FY2023?

If the settlement proceeds are received by March 31, 2023, a municipality can request that the Director of Accounts update their free cash certified as of the previous July 1 to include the unappropriated proceeds and make them available for appropriation on or before June 30, 2023. If the request is approved before the spring town meeting, the town could then make the appropriation at their spring town meeting or, in a city, at their subsequent regularly scheduled meeting.

Can a municipality vote to dedicate to a special purpose stabilization fund some or all of the opioid settlement funds it receives?

Yes. IGR 17-20 outlines the procedures that a municipality can follow to create and dedicate funds to a special purpose stabilization fund. If a municipality receives opioid settlement funds before establishing a stabilization fund, it would need to utilize the processes noted above to appropriate into the stabilization fund after it is created. IGR 17-20 notes the required votes of the legislative body to effectuate these actions.

Must amounts appropriated from free cash for opioid remediation purposes be closed to the general fund if they are not expended prior to the next year end?

No. These funds may be reserved as a fund balance reserved for continuing appropriations until the purpose of the appropriation has been fulfilled.

Area of Fiscal Stress: Statutory Property Tax Limits

Tony Rassias - Bureau of Accounts Deputy Director

In the December 6th, 2018 and March 7th, 2019 editions of *City & Town*, we highlighted two areas that factor into a municipality's fiscal stress: reserve levels and pension funding. This article reviews another area of fiscal stress that may be seen graphically for your community in Category Three of the Division of Local Services' (DLS) Municipal Finance Trend Dashboard (Dashboard): property tax limits. This article provides information for local officials related to provisions allowed for under Prop 2½ that may provide relief from budget stress.

The Tax Levy

In November of 1980, the people of Massachusetts passed by ballot vote Proposition 2½, or Prop 2½ so called, that among other things, placed constraints on the dollar amount of a community's annual property tax levy beginning in FY1982. These constraints have continued to the present day.

The tax levy is an annual revenue source raised by the community's taxation of real and personal property. For FY2022, with 349 of 351 communities reporting as of this writing, the aggregate tax levy is $19.8 billion, $834 million or 4.4% over FY2021 for the same 349 communities.

For most communities, the tax levy is the largest source of revenue that, along with state aid and other local receipts and reserves, supports local spending for public services. As shown below, over the last several fiscal years, statewide tax levies have represented close to two-thirds of all general fund operating budget revenue sources.

General Fund Operating Budget Revenues - By Source %					
	FY2018	FY2019	FY2020	FY2021	FY2022
Property Tax	63.3	63.5	63.7	65.3	64.5
State Aid	20.9	20.7	20.8	20.6	20.4
Local Receipts	10.6	10.5	10.5	9.2	9.3
All Other	5.1	5.4	5.0	5.0	5.8
Total	100.0	100.0	100.0	100.0	100.0

For FY2022, individual community tax levies as a percent of total general fund operating budgeted revenues range from 91.1% in

Acton to 22.9% in Lawrence.

Because a community's budget must balance revenues with expenditures, placing a limit on such an important revenue source could add fiscal stress when developing the annual budget unless other revenue sources are available to replace it (see *City & Town, December 6th, 2018* for guidance on rebuilding and improving a diminishing level of reserves). If other revenue sources aren't available, further local action may be necessary.

Fiscal Budget Stress from a Property Tax Levy Limitation

Prop 2½ imposed an annual levy limit, or incremental limit of 2.5%, that may prove insufficient to completely support the community's annual spending needs. Prop 2½ also imposed a levy ceiling that caps the annual levy limit at 2.5% of the current fiscal year's total assessed property values. The lesser of the incremental limit or levy ceiling controls. For most communities, the incremental levy limit controls.

For example, in the table below, the levy ceiling controls in FY1 and FY2 since each levy ceiling is less than the incremental levy limit for those years which results in lost taxing capacity. The levy limit is said to have "hit the ceiling." In FY3, however, the incremental levy limit controls since it is less than the levy ceiling and there is no lost taxing capacity.

	FY1	FY2	FY3
PY Levy Limit	10,000,000	10,300,000	10,625,000
2.5% Increase	250,000	257,500	265,625
New Growth	150,000	150,000	150,000
Levy Limit	**10,400,000**	**10,707,500**	**11,040,625**
Assessed Value	412,000,000	425,000,000	450,000,000
Levy Ceiling (2.5% of AV)	**10,300,000**	**10,625,000**	**11,250,000**
Hit Ceiling?	Yes	Yes	No
Lost Taxing Capacity	**(100,000)**	**(82,500)**	**0**

Of these two imposed limits, the levy ceiling is less of a concern for most communities as the statewide median of local taxation is currently about 1.52%. But for some, the incremental limit has risen faster than the levy ceiling and has collided with the ceiling or the ceiling has fallen and collided with a rising incremental limit. In either case, the levy ceiling controls and either a portion of or possibly the entire allowable increase to the incremental limit is lost.

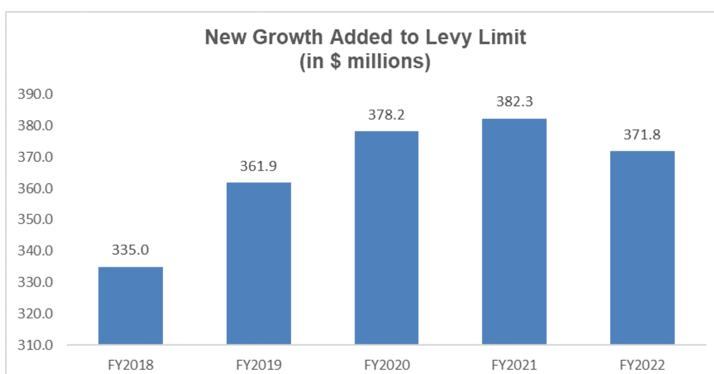
Relief of Fiscal Budget Stress from the Annual Levy Limit

Prop 2½ included means to help moderate the effects of the incremental levy limit by allowing that limit to increase. This limit increases automatically by 2.5% above the previous fiscal year's levy limit (not tax levy) and allows for further increases.

New Growth

New growth increases the annual levy limit, up to but not above the levy limit ceiling. It is based on the value of new construction and/or new articles of personal property in the community as determined by the assessors, converted into tax levy dollars, reported by the assessors to the DLS' Bureau of Local Assessment (BLA), certified by that Bureau and then added to the levy limit. Provided the incremental limit does not "hit the ceiling", new growth becomes a permanent part of the levy limit calculation.

As shown below, new growth added $371.8 million to FY2022 levy limits, but below the amounts added in FY2020 and FY2021.



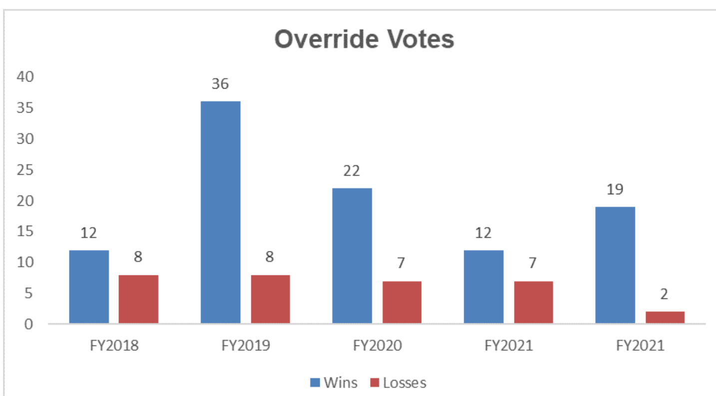
When developing revenue estimates for the next fiscal year's budget, local budget officials should request from, and then review with, the assessors any new growth estimate, any current trend, and whether a levy limit calculation demonstrates a possible ceiling collision. Assessors should then report new growth to the extent allowed by law, certify it through BLA, and then communicate the results to budget officials as final dollar amounts are determined.

Overrides

An override vote requires a majority vote of the electorate for approval to levy an additional amount above the annual levy limit for any lawful expenditure purpose. The vote must also include a certain dollar amount and a beginning fiscal year. Multiple overrides may also be presented for voter approval. If approved, the override becomes a permanent part of the levy limit calculation. For this example, assume that the levy limit has not “hit the ceiling.”

	FY1	FY2	FY3
PY Levy Limit	10,000,000	10,900,000	11,322,500
2.5% Increase	250,000	272,500	283,063
New Growth	150,000	150,000	150,000
Override	500,000	0	0
Levy Limit	**10,900,000**	**11,322,500**	**11,755,563**

The graph below shows override votes taken and reported to the DLS Databank in the most recent fiscal years. For FY2022, 19 winning override votes taken by 11 communities added $19.2 million to levy limits for the following purposes: Schools (13), General Government Operations (4), and Public Safety (2).



For FY2022, the town of Phillipston voted an underride which reduced the town’s FY2022 levy limit by $97,763. An underride vote requires a dollar amount, a beginning fiscal year and a majority vote of the electorate for approval to permanently decrease the levy limit. Multiple underrides may be presented for voter approval on a regular or special municipal election ballot, but only three on a State biennial election ballot. Underrides may be placed on a ballot by a local referendum procedure authorized by charter or special act.

A special form of override earmarks additional tax levy dollars into a general or specific purpose stabilization fund (see Informational Guideline Release 17-20 for more details). For FY2022, no new communities voted this form of override. However, 10 communities that voted this form of override in the past continued this funding.

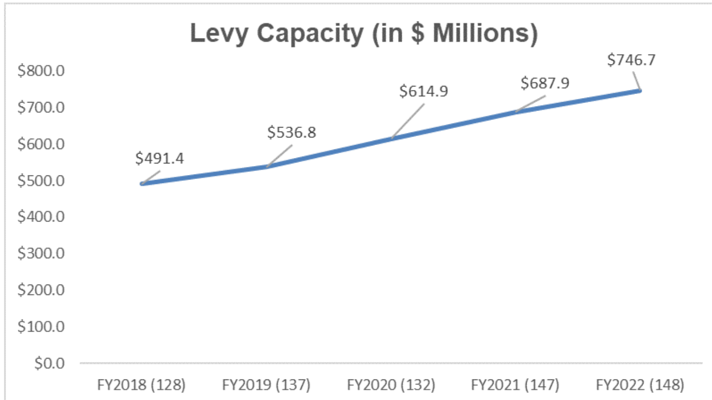
Either override form allows an increase to the incremental levy limit, up to but not above the levy ceiling. For a community where the incremental limit is nearing the levy ceiling and where an override is intended, local budget officials must be certain that the levy limit calculation shows the intended override amount not exceeding the levy ceiling. For a refresher on how to estimate what dollar amount an override will cost in tax rate terms, see the May 7th, 2015 edition of *City & Town*. DLS also provides guidance on Prop 2½ ballot questions.

Levy Capacity

A community is not obligated to levy a property tax up to its incremental limit in any fiscal year if it does not need to. The additional amount the community could have levied in a fiscal year, but did not, is called excess levy capacity. In the example below, assume that the levy limit has not "hit the ceiling."

	FY1	FY2	FY3
PY Levy Limit	10,000,000	10,900,000	11,322,500
2.5% Increase	250,000	272,500	283,063
New Growth	150,000	150,000	150,000
Override	500,000	0	0
Levy Limit	**10,900,000**	**11,322,500**	**11,755,563**
Actual Levy	10,900,000	11,272,500	11,655,563
Excess Levy Capacity	**0**	**50,000**	**100,000**

As shown in the table, excess levy capacity that is not levied when the fiscal year's tax rate is set is lost for that fiscal year but can be captured in the next fiscal year. Not every community has capacity to capture either because they are levying up to their annual levy limit already or because they have legally exceeded their annual levy limit by a certain form of vote (see "Relief of Fiscal Stress from the Levy Limit Ceiling" below). Depending upon the amount, levy capacity can help a community escape from budget stress in the next fiscal year. Seen below, statewide total levy capacity has steadily risen.



As indicated earlier in this article, when the incremental levy limit has maximized to the levy ceiling, the incremental limit has "hit the ceiling," the levy ceiling controls and either a portion of or possibly the entire allowable increase to the incremental limit is lost. As seen in the following table, the levy limit was between 95.5% to 98.9% of the levy ceiling in seven communities, and between 90.1% to 94.9% in seven communities.

FY2022 - Levy Limit as % of Levy Ceiling and Tax Levy

	% Levy Ceiling	% Tax Levy		% Levy Ceiling	% Tax Levy
Holyoke	98.9	98.5	Westfield	94.9	91.1
Pittsfield	97.7	94.7	Agawam	94.0	82.4
Heath	96.3	89.3	North Adams	93.7	99.8
Springfield	96.0	99.0	Somerset	91.8	66.9
Shutesbury	95.7	91.3	Chicopee	91.7	93.2
Wendell	95.5	97.3	Greenfield	90.9	98.2
West Springfield	95.5	85.2	Monroe	90.1	85.9

The good news seen in the table above is that nine of the 14 communities have a tax levy below 95% of their levy ceiling, relieving some fiscal stress from potential lost capacity due to "hitting the ceiling."

Relief of Fiscal Stress from the Levy Limit Ceiling

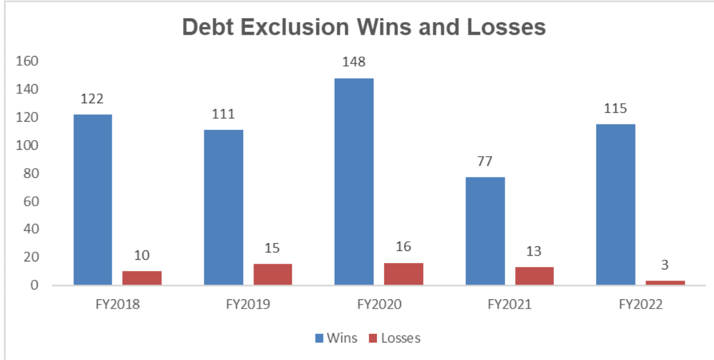
Prop 2½ also included several means to legally exceed the annual levy ceiling and relieve budget stress by moderating the effects of that limit. These means, or "exclusions," when added to the lesser of the incremental levy limit or levy ceiling, establish a maximum levy limit which the actual tax levy for the fiscal year cannot exceed. The following will highlight two of the most common exclusions that allow the incremental levy limit to exceed the levy ceiling: the debt exclusion and the capital outlay expenditure exclusion.

Debt Exclusion

The debt exclusion is by far the more frequently voted exclusion that requires a majority vote of the electorate for approval to levy an additional amount above the incremental or levy limit ceiling for permanent or temporary debt service on a certain capital project or capital asset purchase until the debt is retired. Multiple debt exclusions may also be presented for voter approval. Unlike overrides, the dollar amount of the debt exclusion does not become part of the base in calculating the next fiscal year's levy limit. Note from the table below that FY2's base is FY1's levy limit, not FY1's maximum allowable levy. Note also that FY3's base is FY2's levy ceiling, not FY2's levy limit, as FY2 in this example "hit the ceiling." The debt exclusion adds to the lesser of the levy limit or levy ceiling.

	FY1	FY2	FY3
PY Levy Limit	10,000,000	10,900,000	11,250,000
2.5% Increase	250,000	272,500	281,250
New Growth	150,000	150,000	150,000
Override	500,000	0	0
Levy Limit	**10,900,000**	**11,322,500**	**11,681,250**
Assessed Value	440,000,000	450,000,000	475,000,000
Levy Ceiling (2.5% of AV)	11,000,000	**11,250,000**	11,875,000
Debt Exclusion	750,000	700,000	650,000
Max. Allowable Levy	**11,650,000**	**11,950,000**	**12,331,250**

The graph and table below show newly added debt exclusion wins and losses as well as winning vote purposes for votes taken and reported to the DLS Databank in the most recent fiscal years.



Debt Exclusion Winning Vote Purposes	Culture and Recreation	General Government	Public Safety	Public Works and Facilities	Schools	Total
FY2018	13	17	27	35	30	122
FY2019	6	23	19	25	38	111
FY2020	9	41	22	40	36	148
FY2021	3	16	7	20	31	77
FY2022	6	13	19	42	35	115
Totals	37	110	94	162	170	573

For FY2022, a total of 1,654 debt exclusion votes added $629.2 million to levy limits in 287 communities.

Capital Outlay Expenditure Exclusion

A second and less often voted form of exclusion is the capital outlay expenditure exclusion or capital exclusion. This exclusion requires a majority vote of the electorate for approval to levy an additional amount above the incremental levy limit or the levy ceiling for a specified capital project or capital purchase. Like the debt exclusion, this exclusion does not become part of the base in calculating the next fiscal year's levy limit. From the table below, note that FY2's base is FY1's levy limit, not FY1's maximum allowable levy. Note also that FY3's base is FY2's levy ceiling, not FY2's levy limit, as FY2 in this example "hit the ceiling." The capital exclusion adds to the lesser of the levy limit or levy ceiling. Unlike the debt exclusion, this exclusion is only applicable in the fiscal year indicated in the vote.

	FY1	FY2	FY3
PY Levy Limit	10,000,000	10,900,000	11,250,000
2.5% Increase	250,000	272,500	281,250
New Growth	150,000	150,000	150,000
Override	500,000	0	0
Levy Limit	**10,900,000**	**11,322,500**	**11,681,250**
Assessed Value	440,000,000	450,000,000	475,000,000
Levy Ceiling (2.5% of AV)	11,000,000	**11,250,000**	11,875,000
Capital Exclusion	750,000	0	0
Max. Allowable Levy	**11,650,000**	**11,250,000**	**11,875,000**

The following table indicates capital expenditure exclusion votes reported to the DLS Databank between FY2018 and FY2022. Over this time, there were 66 votes, 58 or 88% were wins and 8 or 12% were losses.

Capital Expenditure Exclusion Votes - Wins and Losses

	FY2018	FY2019	FY2020	FY2021	FY2022	Totals
# Wins	18	19	9	7	5	58
$ Wins	$5,350,113	$9,330,220	$3,895,800	$2,249,352	$1,767,860	$22,593,345
# Losses	5	1	1	0	1	8
$ Losses	$1,578,000	$1,200,000	$582,090	$0	$2,250,000	$5,610,090

A Cautionary Note – Burden on Taxpayers

Local officials should evaluate the public's financial capability to pay the additional tax. The DLS Dashboard provides information on the community's average single-family residential tax bill shown in whole dollars and measured against income and property value. A growth in this average measured against income may present a fiscal stress upon the average property taxpaying family's ability to pay the property tax, which could result in disapproval of an override or exclusion vote by the electorate. To view your community's average single-family tax bill history, follow this click here.

Final Thoughts

The spotlight of this article was on an area of fiscal stress caused by statutory property tax limits. The roadmap to safety requires local officials to understand the levy limits on the community's ability to tax imposed by Prop 2½ and how to apply the provisions of that law for fiscal budget stress relief from those limits.

Remember the important points from this article:

- Maximize new growth
- Decide whether an override is needed
- Check the community's levy ceiling
- Consider a debt or capital expenditure exclusion vote
- Evaluate if an override or exclusion vote is affordable to your public
- Use the DLS Dashboard and other resources on the DLS website for further guidance on the provisions of Prop 2½ and on other matters related to municipal finance

Contact *City & Town* with questions, comments and feedback by emailing us at cityandtown@dor.state.ma.us. To view previous editions, please click here.

To unsubscribe to *City & Town* and all DLS alerts, email dls_alerts@dor.state.ma.us.