Overrides and Exclusions

Municipalities can raise tax revenue beyond annual statutory limits imposed by Proposition 2½ M.G.L Ch. 59 Sec. 21C through a referendum to approve an override or an exclusion, or they can reduce the amount taxed through an underride. With one exception, legal authority to place a question on the ballot rests solely with the board of selectmen, city council or town council. Only an underride can also be placed before the voters through a local initiative petition process. Otherwise, overrides and underrides require a majority vote, while exclusions require a two-thirds vote of the local appropriating authority and, to take affect, all must receive a majority of votes in a city or town election. Under the Proposition 2½ statute, local appropriating authority is defined, in a town, as the board of selectmen; in a city, as the council, with the mayor's approval when required by law; and in a municipality having a town council form of government, as the town council.

Proposition 2½ Overrides and Exclusions

An override (Ch. 59 Sec. 21C(g)) may be sought for any municipal spending purpose and is most often used when additional revenue is sought to fund an annual operating budget. Once approved, the override amount becomes a permanent part of the levy limit and increases by 2 ½ percent each year after its acceptance. The override revenue is "earmarked" for specific purposes in the first year it is available, but in subsequent years, it becomes an indistinguishable part of the revenue base.

A levy limit underride (Ch. 59 Sec. 21C(h)) reduces the amount of property tax revenue a community may raise and, like an override, has a permanent impact on taxing authority, but in the opposite direction. If the loss of tax revenue through an underride occurs after approval of the annual budget, it would prompt a corresponding reduction in expenditures, unless the community has significant unused levy capacity.

A capital outlay expenditure exclusion (Ch. 59 Sec. 21C (i 1/2)) is a mechanism that allows a community to raise the total dollar cost of a capital purchase or capital project through a one-year increase in the tax levy. In this way, the city or town avoids long-term interest costs, if it were to borrow the needed funds. A capital exclusion can only be used to fund purposes, specified in Ch. 44 Sec. 7 and Sec. 8, for which a community may incur debt.

A debt exclusion (Ch. 59 Sec. 21C(j)) raises additional tax revenue to pay debt service costs to finance a capital project, or sometimes to fund a major capital purchase (i.e., a fire engine). The excluded amount, or additional tax, is not specified in the referendum language, but need not equal the anticipated annual debt service obligation in its entirety. A limit on the amount to be raised is initially set in the bond authorization which actually funds the capital project or purchase. It requires a two-thirds vote of town meeting, a town council or city council. The additional property taxes are not permanent, but are removed from the levy when the term of the bond ends.

Lastly, amendments in 2003 to Ch. 40, Sec 5b allow a municipality to establish special purpose stabilization funds and to build balances in them through a type of override, which also has characteristics of a debt exclusion. Through initial approval, by two-thirds vote, of town meeting (and the selectmen), a city council or a town council, a referendum can be placed before the voters asking whether to raise tax revenue, by majority vote, above Proposition 2½ limits for the purpose of the stabilization fund. In succeeding years, solely through an annual vote of the selectmen, city council or town council, the override can be continued, lowered or deferred entirely and resumed, or not, in a later year. Like an override, the additional tax can continue year-after-year without town-wide or city-wide referendum votes beyond the year of inception and, each year, the amount available to be raised increases by 2½ percent. However, like an exclusion under Proposition 2½, the levy limit increase need not be permanent. It can be discontinued in any year.

Contingent Appropriations

Towns only can approve a contingent appropriation (Ch. 59 Sec. 21C(m)) which is usually a single additional expenditure, or multiple appropriations made subject to subsequent voter approval of a funding source. Most often, that funding source is additional tax revenue raised through an override, debt exclusion or capital expenditure exclusion. While town meeting must approve the contingent appropriation, only the selectmen can actually place the referendum on the ballot for voter approval.

When a contingent appropriation is approved at an annual town meeting, the related referendum must be placed before the voters prior to September 15. When a special town meeting approves contingent spending, the override or exclusion vote must occur within 90 days. In any case, a failed referendum may be returned to the voters on subsequent ballots, but if not approved by the applicable deadline, the appropriation is null and void.

Depending on acceptance or rejection of the appropriation and referendum, a municipality must produce a balanced budget prior to submission of its Tax Recapitulation Sheet to DOR. Therefore, as a practical matter, at the time it approves a contingent appropriation, town meeting should also approve a second alternative balanced budget which does not rely on the additional tax revenue. By doing so, the town can avoid the necessity of reconvening town meeting to balance its budget should the referendum fail.

Referendum Format

When presented to the voters, an override, underride and capital exclusion question must specify a dollar amount and a statement of purpose. Debt exclusion questions must describe the project or purpose to be funded, but do not include a dollar amount. Otherwise, statutory language must be used. Requirements for capital expenditure exclusions (Ch. 59 Sec. 21C(i ½)) and for debt exclusions (Ch. 59 Sec. 21C(j) & (k)) are straight forward. For overrides, however, required language varies with selected approaches or formats.

An override can be presented as a single question which seeks additional tax revenue for unspecified purposes; for an expense category; for allocation to various departments; for a single department; or for specific positions, programs or services. All that the single question proposes succeed or fail together.

A multiple question override is presented in either a menu or a pyramid format. The menu approach presents two or more questions each of which would fund a different department, service or program. The questions are individually accepted or rejected by majority vote and the cumulative funding amount approved is added to the tax levy.

The pyramid approach provides voters with a choice of two or more different funding proposals for an identified spending purpose or for a specific department, service or program, i.e., for the school department. Residents can cast a yes or no vote for any or all of the proposals and each one that receives a majority of affirmative votes is deemed approved. However, among the approved alternatives, the proposal that prevails is the one with the highest dollar value - not the alternative with the greatest number of affirmative votes, or the highest winning percentage. Also, a ballot can include multiple pyramid questions, each offering funding options for a different department, service or program.

For more information, see DOR on-line publications and Informational Guideline Releases (IGR): Proposition 2½ Ballot Questions: Requirements and Procedures, IGR 2002-101 Proposition 2 1/2 Debt Exclusions and IGR 2004-201 Creation of Multiple Stabilization Funds and Proposition 2 ½ Overrides.