

October 18, 2017

# EHB 2242 & School District Levy Propositions

## Background: School District Levy Lids

Under Article VII, Section 2 of the Washington Constitution and RCW 84.52.053 and 84.52.054, school districts may, upon voter approval, impose excess property tax levies for various general fund purposes. Beginning in 1979, the Washington Legislature has limited the levy amount school districts may collect through general fund excess property tax levies under the so-called “levy lid law.” Historically, the Legislature has set the school district levy lid as a percentage of each district’s basic education allocation funding from the State, which was originally set at 10%, increased to 20% in 1987 and increased again to 24% in 1994. The Legislature also “grandfathered” in certain districts at higher levy lid limits and, from time to time, has made other adjustments to education funding laws that affect the levy lid.

Sometimes, the levy lid law would reduce a school district’s levy below the amount its voters approved. This is commonly referred to as “rollback.” If the legally available dollar amount at the time of the levy was lower than the amount specified in the ballot proposition, the amount of the levy as well as the levy rate was rolled back to the maximum amount authorized by the then-applicable levy lid law.

## New Levy Lid Formula

On July 6, 2017, the Governor signed into law Engrossed House Bill 2242 (“EHB 2242”), which, among other changes, modifies how the levy lid will be calculated beginning with taxes levied for collection in 2019. Instead of setting the levy lid as a percentage of each district’s basic education allocation, the maximum general fund levy will be the lesser of \$2,500 per pupil (increased using IPD for inflation beginning in 2020) or \$1.50 per \$1,000 of assessed property value. As with prior levy lids, RCW 84.52.0531 outlines the process for deriving a district’s maximum levy amount under the new formula.

## New Restrictions on Levy Revenues for “Enrichment”

EHB 2242 also imposes restrictions on the use of general fund levy revenues. Beginning on September 1, 2019, local revenues (including those from general fund levies) may be expended only for documented and demonstrated “enrichment” of the State’s statutory program of basic education. These so-called enrichment activities include, but are not limited to, instruction, student services, operations and other similar educational programs and operations activities. Although EHB 2242 uses the new term “enrichment,” permitted expenditures include programs and services that have historically been funded by general fund levies.

## Ballot Proposition Statute and “Rollback” Remain Unchanged

EHB 2242 did not change the format of excess levy ballot propositions, as required under RCW 84.52.054. Propositions submitting school district general fund levies to the voters are required to set forth for each year (1) the annual tax levy amount in terms of dollars and (2) an estimate of the dollar rate of tax levy that will be required to produce that dollar amount. RCW 84.52.054. The ballot proposition statute does not require propositions to list or describe any limitations upon the rate, amount or purposes of the taxes proposed to be levied.

The new law also does not change the traditional “rollback” process. Under EHB 2242, it therefore continues to be possible that a school district’s levy will be rolled back to the maximum amount authorized by the levy lid in effect at the time of the levy (which may or may not be based on the current \$1.50 per \$1,000 rate limitation or the \$2,500 per pupil limitation).

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### School District Ballot Propositions Going Forward

Historically, school districts have not described the potential effects of the levy lid law in their ballot propositions or in the district resolutions submitting such ballot propositions to the voters. Because EHB 2242 has not changed the ballot proposition statute, many school districts will continue to submit ballot propositions to the voters that do not reference the new levy lid formula or EHB 2242's provisions with respect to "enrichment" activities.

However, other districts may choose to reference EHB 2242. County prosecutors and auditors should therefore anticipate school district ballot propositions and authorizing resolutions with the following provisions, all of which may be included *or excluded* in each district's discretion under EHB 2242:

**"Enrichment"** – Historically, general fund levies were often termed "maintenance and operations levies." A district may determine that its voters will not properly associate the term "enrichment" with the educational programs and operations activities that were historically funded by its "maintenance and operations" levies and that continue to be authorized under EHB 2242. Some districts may therefore use ballot titles like "educational programs and operations levy" or simply "general fund levy." Others may use the title "enrichment levy."

**"Maintenance"** – A district may determine that its voters will associate the term "maintenance" with activities that remain authorized under EHB 2242, for example, the maintenance of certain educational programs. In other circumstances, a district may determine that its voters will associate the term "maintenance" with regular facility upkeep that might not be authorized under EHB 2242. In either circumstance, a district's prior ballot propositions and its experience with its voters will be instructive.

**\$2,500 per pupil amount limitation** – Historically, districts have not referenced the levy lid law or "rollback" in their ballot propositions or authorizing resolutions, which until 2019 will continue to be set at a percentage of each district's basic education allocation funding from the State. A district may determine to continue this practice in its levy resolutions going forward.

**\$1.50 per \$1,000 rate limitation** – Similar to the \$2,500 per pupil limitation and consistent with its prior general fund levy resolutions, a district may determine that the \$1.50 per \$1,000 levy lid limitation need not be described going forward.

**Estimated levy rates above \$1.50 per \$1,000** – EHB 2242 does not prohibit listing higher estimated rates in ballot propositions. In anticipation of potential changes to assessed valuations, student populations or even the levy lid law itself, like the 1987 and 1994 increases, some districts may seek voter approval for levy amounts in excess of projected collections under current EHB 2242 formulas. In these circumstances, a district might seek voter approval for a levy amount that would produce an estimated levy rate in excess of \$1.50 per \$1,000, for example a district could seek approval for an estimated \$3.00 per \$1,000 or higher. Notwithstanding voter approval for a higher estimated rate, the district's levy could still be rolled back to then-applicable statutory limitations in consultation with the county assessor's office.

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