



ALBANY LAW SCHOOL

GOVERNMENT LAW CENTER

EXPLAINER

2023 Statewide Ballot Proposal 2: Constitutional Amendment Excluding Sewage from Local Indebtedness

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Introduction

On November 7, 2023, New Yorkers will be asked to vote on whether to approve two proposed amendments to the New York State Constitution. The second of these measures (ballot proposal 2) proposes to “Exclude indebtedness for the construction or reconstruction of sewage facilities contracted prior to 2034.” If the measure is approved, Article 8, § 5(E) of the New York State Constitution would be amended to replace the words “two thousand twenty-four” with “two thousand thirty-four.”¹ In effect, the amendment will allow localities to continue to borrow for their sewage facilities without constitutional limitation for ten additional years.²

What Is Local Indebtedness and Exclusion?

Local Indebtedness

The New York State Constitution limits the amount of total debt local governments and municipalities can take on. Limits are defined as set percentages of the average value of taxable real estate in the town, village, or other locality. For example, Article 8, § 4(F) prevents towns from taking on debt in an amount greater than 7% of the town’s taxable

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¹ See N.Y. Const. art. 8, § 5(E). That section currently reads:

E. Indebtedness contracted on or after January first, nineteen hundred sixty-two and prior to January first, two thousand twenty-four, for the construction or reconstruction of facilities for the conveyance, treatment and disposal of sewage. The legislature shall prescribe the method by which and the terms and conditions under which the amount of any such indebtedness to be excluded shall be determined, and no such indebtedness shall be excluded except in accordance with such determination.

² N.Y. Assembly Bill A09958, N.Y. Leg. 2022–2023.

real estate value.³ There are, however, certain kinds of debt that are not counted toward this borrowing cap. The exclusions are detailed in Article 8, § 5, including the exception for sewage facilities that is currently set to expire at the end of 2023.

Exclusions of Local Indebtedness

Local indebtedness exclusions are the exceptions to the limits set forth in Article 8, § 4. Debt incurred by local governments that is deemed “excluded” does not count against the local government’s maximum allowable debt. For example, Article 8, Section 5, Subsection (B) excludes from debt limits all debt contracted to supply water.⁴ In other words, a town can take on debt to ensure a safe and secure supply of water without counting that water debt toward the 7% cap set by Article 8, § 4(F).

Similarly, Article 8, § 5(E) allows localities to exclude debt related to sewage facilities from their respective debt caps, but only until the end of 2023. The proposed constitutional amendment on the ballot will continue the exclusion for debt incurred for the construction and reconstruction of sewage facilities for an additional ten years (until the end of 2033).

The Purpose of Extending the Sewage Exclusion

According to a memorandum submitted by New York State Comptroller Thomas DiNapoli,⁵ the reason why New Yorkers would want to extend the sewage indebtedness exclusion is to allow local governments to more easily construct up-to-date sewage facilities or retrofit existing ones. By excluding these costs from the debt limits, local governments do not have to choose between proper sewage infrastructure and other existing projects.

Additionally, as detailed in the next section, the sewage exclusion has been in place since the 1960s and has been extended every ten years. Local governments may have relied on the continuation of the exclusion in their long-range budget planning. Localities could have their current spending plans upended if the amendment does not pass.⁶

The History of Extending the Sewage Exclusion

The sewage exclusion has been in place, with an expiration deadline, for decades. When the exclusion was first added to the Constitution in 1963, the State was concerned with waste water treatment and created a water anti-pollution program. The effort to increase the ability of local governments to improve their sewage systems was meant to coincide

³ N.Y. Const. art. VIII, § 4(F).

⁴ N.Y. Const. art. VIII, § 5(B).

⁵ N.Y. Assembly, Memorandum in Support of Legislation, N.Y. Assembly Bill A09958, N.Y. Leg. 2022–2023.

⁶ The Government Law Center has sought, but not yet received, from the State Comptroller’s Office more detailed information on how many localities may be in this situation.

with this program.⁷ Initially, a ten-year time frame was imposed, expiring at the end of 1973. The inclusion of a deadline was intended to encourage local governments to make proper waste management a priority. However, the provision would later be amended to postpone the deadline every decade.

To the extent that it is fair to describe any amendment to the New York State Constitution as “routine,” amending Article 8, § 5(E) to keep the sewage exclusion from expiring is one such amendment. The constitutional expiration date for the exclusion has always been amended before the exclusion expired. Every ten years since the addition of the sewage exclusion to the Constitution in 1963, the provision has been amended to extend the deadline for an additional ten years. For example, most recently, the accepted proposal 3 on the 2013 ballot amended the language in then-Article 8 Section 5 Subsection (E) from “two thousand and fourteen” to “two thousand and twenty-four.”⁴ The amendment has been approved by New York voters each time it has been placed on the ballot.

Is This Proposed Amendment Controversial?

The proposed amendment was not controversial in the Legislature. In fact, no one in the State Senate or Assembly voted against this amendment, although a few representatives did not vote at all. In the 2021–22 session of the NY State Senate, the bill for this amendment was passed 63-0. In the 2021–22 session of the NY State Assembly, it passed 149-0-1 as one member did not vote. The results were very similar for the 2023–24 session, when the vote in the Senate was 61-0-2, and in the Assembly was 146-0-4. Prior iterations of the extension have similarly been uncontroversial in the Legislature.

Previous extensions of the expiration of the sewage exclusion have had mixed levels of support at the polls. The most recent extension, Proposal 3 of 2013, passed with 62% of the vote and the 2003 extension passed with 52% of the vote. The extension barely squeaked by in 1993, however, with 50.50% in favor and 49.50% opposed.

Summary

Ultimately, ballot proposal 2 to “Exclude indebtedness for the construction or reconstruction of sewage facilities contracted prior to 2034” simply continues the current exclusion of sewage debt from the state constitutional limit on municipal debt for an additional decade.

The Government Law Center provides nonpartisan explainers of proposed amendments to the New York State Constitution in order to help voters understand the choices they are being asked to make. We neither endorse nor oppose the particular proposed amendments that our explainers discuss. Our role is to explain, not to advocate for a position or course of action.

⁷ N.Y. Assembly, Memorandum in Support of Legislation, N.Y. Assembly Bill A09958, N.Y. Leg. 2022–2023.