

SCAC Technical Bulletin

June 8, 2007

Millage Rate Limitation - S.C. Code §6-1-320

Overview of Legislation

Act 388 amended S.C. Code §6-1-320 effective January 1, 2007. [S. 367, R. 89](#), which has been signed by the Governor, additionally amends S.C. Code §6-1-320 (There are also two other bills pending which amend S.C. Code §6-1-320).

S.C. Code §6-1-320 was amended in two ways. First, Act 388 deleted the existing subsection C which provided a general override mechanism for the millage limitation. There is no override vote by a positive majority of council after a public hearing.

Second, Act 388 changed the existing millage limitation for operating purposes from the Consumer Price Index (CPI) to CPI *plus* the increase in the population of the entity. The specific exceptions to the millage rate limitation were revised, and they were made temporary exceptions which do not become part of the base millage upon which an increase could be applied. To utilize one of the exceptions, a super-majority two-thirds vote of council was added to the code section as well.

1. What constitutes "general operating purposes" for purposes of the millage rate limitation?

A. General Definition

S.C. Code §6-1-320(A) reads in part, "...a local governing body may increase the millage rate imposed for general operating purposes...." There is no definition of "general operating purposes" in Act 388. However, S.C. Code §6-1-320(D) states that "[t]he restriction contained in this section does not affect millage that is levied to pay bonded indebtedness or payments for real property purchased using a lease-purchase agreement or used to maintain a reserve account."

B. Exclusions from "General Operating Purposes"

Subsection 6-1-320(D) clearly states that the millage rate cap does not apply to three specific millages which are levied by local governments. There is no language which says that the exclusion from the operation of the millage rate cap "includes, but is not limited to" or other words to that effect. Therefore the inference is that the cap applies to all other millages levied. This would include millage to pay a capital lease, a lease-purchase agreement for *personal* property such as equipment which is paid out of the operating budget. It would seem advisable for a county to find any capital expenses, or any bonded debt service, currently being paid out of the operations side of the budget and move these

to the non-operating budget. This would free up room for general operating purposes.

C. "Millage Agencies"

Some counties designate certain offices or programs as "millage agencies" and their funding is whatever amount of revenue the earmarked or set millage raises. For example the county recreation department, might be termed a "millage agency" for county budgeting purposes, and two mills may be set aside for them each year for operations. In this instance, the recreation program would most likely need to be counted as part of the county general operating millage. There is no requirement that the "millage agency" be given all or any of the allowable increase in millage and that millage capacity may also be dedicated to other purposes. If the recreation department were actually a special tax district or special purpose district, that operating millage would be kept separate from the county limitation and would be treated as a separate entity as outlined below.

D. Other Revenue

S.C. Code §6-1-320(C) specifically excludes revenue raised or received from other sources, including fees, grants or state funds not derived from property taxes.

2. How is the millage rate limitation calculated?

S.C. Code §6-1-320(A) allows the millage rate for general operating purposes to be increased over that imposed the previous year by the "increase in the average of the 12 monthly consumer price indexes for the most recent 12-month period consisting of January through December of the preceding calendar year, plus, beginning in 2007, the percentage increase in the previous year in the population of the entity as determined by the Office of Research and Statistics of the State Budget and Control Board."

A. CPI Increase Calculation

The "inflation" portion of the formula to determine the allowable millage rate increase is the average of the 12 monthly CPI's for the previous calendar year. This is a relatively straight forward calculation and will be provided by the Office of Research and Statistics (ORS).

B. Population Increase Calculation

The Office of Research and Statistics (ORS) is to determine the increase in the entity's population from the previous year. For counties and cities, ORS has said they will adopt the population increase estimate put forth by the US Census Bureau.

For school districts, special purpose districts, and special tax districts which are other than the entire county area, there is no annual growth rate US Census Bureau estimate which is district specific. ORS has indicated that they would use population growth estimates for school districts which are extrapolated from the decennial census figures and apply then at a uniform rate until the next decennial census.

There is no final word on what ORS will do for special purpose districts and special tax districts. ORS has indicated that they do not have the ability to estimate populations for

these less than countywide entities and will use annual county growth estimates for these districts.

ORS is not obligated to follow the US Census Bureau estimates for counties and cities. However, a county or city would be in a much better position to appeal a population growth estimate if the county or city successfully appeals the estimate made by the US Census Bureau.

Should a county disagree with the US Census Bureau estimates they should submit a challenge of those estimates to the US Census Bureau by first, submitting a letter to the Bureau within 180 days of the estimate's release indicating the county's intent to challenge the estimates. US Census Bureau challenge worksheets should be filled out by the county and included with the letter. You can obtain these worksheets on the US Census Bureau's website at <http://www.census.gov/popest/archives/challenges.html>.

C. Negative Population or CPI

The language of S.C. Code §6-1-320(A) was clarified by [S. 367, R. 89](#) during the 2007 session. Now the statute clearly states that a negative CPI is deemed to be a zero for purposes of the millage limitation formula. A loss of population for an entity is also deemed to be a zero for purposes of the millage limitation formula.

However, there are two other bills still being considered by the General Assembly which both contain the clarification on population loss, but do not contain the clarification for a negative CPI. It is not certain that these bills will become law or how the differences on the negative CPI would be interpreted if the other bills became law.

3. Can the millage rate limitation be exceeded?

The millage rate limitation may be exceeded only when specific conditions exist. The general override by positive majority vote after a specially called public hearing was struck from S.C. Code §6-1-320(C). The four conditions in S.C. Code §6-1-320(B) allowing an override on a majority vote of council were replaced with five conditions which are similar, but not identical to the previous conditions.

To use one of the override conditions, council must vote by a two-thirds majority of the entire council and the millage imposed above the CPI plus population limitation, is a temporary surcharge which must be billed as a separate line with an explanation of the reason on the tax bill. The last sentence of S.C. Code §6-1-320(B) reads, "[t]he surcharge must be continued only for the years necessary to pay for the deficiency, for the catastrophic event, or for compliance with the court order or decree." This sentence only lists three of the five override conditions listed earlier in that subsection and raises a question about subsequent years for the other two conditions. The safer practice as to the three listed conditions would be to vote on the surcharge each year and to include a legislative finding that the condition still exists in the ordinance to readopt the surcharge.

The specific conditions for which a surcharge above the millage limitation may be imposed are:

A. Deficiency of the Preceding Year. S.C. Code §6-1-320(B)(1)

This exception rewords the previous language which specifically referenced §7 of Article X in the South Carolina Constitution and tracks the language of Article X, §7(b) without specific reference to the Constitution. Presumably, there is no material difference.

**B. Catastrophic Event Outside the Control of the Governing Body.
S.C. Code §6-1-320(B)(2)**

This is similar to a previous exception but materially different. The exception is any catastrophic event beyond the control of the governing body. There is no longer a requirement that the condition be declared by the Governor. The catastrophic event is also no longer restricted to a natural disaster, but includes act of God, act of terrorism, fire, war, or riot. It appears that the clarifying list of catastrophic events is not exhaustive.

**C. Compliance with a Court Order or Decree.
S.C. Code §6-1-320(B)(3)**

This exception rephrases the previous provision and expands it to cover all governmental entities subject to the millage limitation, not just to counties and cities.

D. Taxpayer Closure. S.C. Code §6-1-320(B)(4)

This provision allows a millage surcharge when there is a "taxpayer closure due to circumstance outside the control of the governing body that decreases by 10% or more

the amount of revenue payable to the taxing jurisdiction in the preceding year." This exception only comes into play when there is a large manufacturer which closes or is destroyed. The provision does not clearly state that the revenue decrease is only the property tax revenue payable to the taxing entity, so there is some question there. This is also one of the two provisions not specifically mentioned in the last sentence of subsection (B) which allows the surcharge to continue while the condition exists.

E. Federal or State Regulation or Statute. S.C. Code §6-1-320(B)(4)

This condition reads, "compliance with a regulation promulgated or statute enacted by the federal or state government after the ratification date of this section for which an appropriation or a method for obtaining an appropriation is not provided by the federal or state government." The ratification date of the provision was June 6, 2006. This translates into an unfunded mandates solution so that complying with a new federal or state mandate for which funding or a funding mechanism is not provided can be funded without displacing existing programs. This exception was also not specifically mentioned in the last sentence of subsection (B), which allows the surcharge to continue while the condition exists.

4. Are the school maintenance of local effort and EFA inflation factor permissible overrides?

S.C. Code §6-1-320(B)(4) was deleted from the list of permissible override conditions. This is the override to meet the EFA inflation factor and the per pupil maintenance of effort in S.C. Code §59-21-1030. This deletion of the specific exception from the list of override conditions would indicate intent by the General Assembly to have the statewide millage rate limitation take precedence over the pre-existing statutory requirements to meet the inflation factor and the per pupil maintenance of local effort.

There was a provision in S.C. Code §6-1-320(B)(E) which some interpreted to mean that any local act setting a millage limitation specific to a school district, which was either more or less restrictive than the general millage rate limitation in S.C. Code §6-1-320(A), would take precedence over the statewide millage rate limitation. However, [S. 367, R. 89](#), amended S.C. Code §6-1-320(E) to clarify that the statewide millage limitation did not supercede those local acts of the General Assembly which "are more restrictive than" the general millage limitation in S.C. Code §6-1-320(A).

There is also one other provision in the Code which states that the auditor is to levy sufficient millage to meet the maintenance of local effort requirement. S.C. Code §59-21-1030. A court would most likely determine that this provision was repealed by implication given the initial adoption of a millage rate limitation and the subsequent clarification.

5. Are special tax districts subject to the millage rate limitation?

The millage rate increase limitation in S.C. Code §6-1-320 does include operating property taxes imposed within special tax districts. However, it does not include millage rates necessary to fund repayment of indebtedness for debt specifically used for the

special tax district. Special tax districts created pursuant to S.C. Code §4-9-30(5) are an entity of the county government and would therefore be subject to the cap.

In applying the cap to special tax districts which include less than the entire county area, the CPI plus population growth over the previous year is applied to the operating millage of the special tax district. This millage capacity does not carry over to the county millage in general. Care should also be taken to be sure that any restriction or limitation on millage in the creating petition or ordinance is observed.

6. Do local millage rate or spending limitation ordinances still apply?

Act 388 would supercede to the extent that S.C. Code §6-1-320 is more restrictive than any local limitation ordinance. The local ordinance would still be operative to the extent that it is more restrictive than the limitation in S.C. Code §6-1-320.

7. What are the consequences if a County does not take the maximum millage rate allowable by the statute?

The Act does not require an entity to enact an increase in the millage rate to equal the maximum allowed under the millage cap formula. The millage rate established for one fiscal year will be used as the base rate from which the county must use in determining the allowable maximum millage rate increase the next year. There is no "lookback" provision to allow the entity to use millage rate capacity which was allowed but not imposed in the previous year.

8. Are there any limitations on reserve accounts?

Section 6-1-320(D) specifically states that the limitations outlined do not affect millage used to maintain a reserve account. There is no statutory limitation on the size or use of a reserve account. It is always advisable to maintain a reserve account large enough to avoid the need to issue tax anticipation notes. The maintenance of a reserve account that is too large, or inadvisable uses of a reserve account, could potentially affect a local governments bond rating.