



Legislative Fiscal Bureau

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TO: Members
Wisconsin Legislature

FROM: Bob Lang, Director

SUBJECT: Summary of Revenue Limits Under SJR 63/AJR 77

SJR 63 and AJR 77 are identical resolutions that would create a constitutional limitation on certain revenues of the state and local governments, effective with budgets adopted for either the 2009 calendar year (for those governments with calendar year budgets) or the 2009-10 fiscal year (for those governments with fiscal year budgets). In addition, SJR 63 and AJR 77 would create a constitutional restriction on unfunded mandates on local governments and would establish a procedure to amend the constitutional revenue limits by passing a resolution in only one session of the Legislature before submitting the proposed amendment to the electorate. Currently, all proposed constitutional amendments must be passed in identical form by two successive sessions of the Legislature before submitting the proposed amendment to the electorate.

Applicability of the Proposed Limit

The limit would apply to the state and to counties, municipalities, school districts, technical college districts, and special purpose districts (collectively referred to as "local governments"). The joint resolutions would define "special purpose district" as any entity other than the state, a county, a municipality, a school district, or a technical college district that is authorized to collect taxes or fees. This definition would include metropolitan sewerage districts, sanitary districts, public inland lake protection districts, local exposition districts, and local professional baseball park and football stadium districts, since these districts have been authorized to collect taxes. The definition would also include any entity that has been authorized to collect fees.

"Municipality" would be defined to include cities, villages, and towns. However, towns that have budgeted revenue (as defined for purposes of the limit) of less than \$1,000,000 for 2009 would not be subject to the limit in that year. The \$1,000,000 threshold would be increased in subsequent years based on increases in the consumer price index for the Milwaukee-Racine area

(the "Milwaukee-Racine CPI") from 2007 to the year two years before the year in question. For example, the threshold for 2011 would equal \$1,000,000 increased by the change in the Milwaukee-Racine CPI from 2007 to 2009.

The term "municipality" would include a district, utility, or other entity that receives money from taxes or fees and that is authorized, created, or established by a city, village, or town, regardless of whether the governing body of the city, village, or town retains any authority or control over the district, utility, or other entity. Revenue of the district, utility, or other entity would be included as revenue of the associated city, village, or town, unless the revenue is of a type that would not be treated as revenue if received by the city, village, or town. In addition, such revenue would not be included if doing so would result in double counting the revenue.

Revenue Subject to the Proposed Limit

The joint resolutions would create a definition of revenue that includes the following items: (a) moneys received from taxes, fees, licenses, permits, assessments, fines, and forfeitures imposed by the state or a local government; (b) lottery proceeds net of prizes; (c) tribal gaming proceeds; (d) all moneys received from bonds, except from municipal economic development bonds (defined as bonds issued to finance real property improvement that is directly related to economic developments, as defined by law), from the refinancing of bonds, or from short-term cash flow borrowing; (e) revenue transferred or spent from a state emergency reserve fund, except for moneys transferred or spent for refunds or relief from state taxes; and (f) for the state, the amount of any tax credit enacted after December 31, 2008, if the credit percentage exceeds the applicable highest marginal tax rate.

The definition of revenue created by the joint resolutions would specifically exclude excess revenue that the state must deposit into an emergency reserve fund and moneys used for debt service on a municipal economic development bond or to pay a damage award. In addition, moneys received from the following would be excluded from the definition of revenue: (a) the federal government; (b) the provision of governmental services by the state or a local government to governmental entities; (c) gifts; (d) damage awards; (e) real property sales to taxable entities; (f) the operation of a telephone, gas, electric, or water utility; (g) for medical care provided by hospitals, nursing homes, assisted living facilities, or other medical facilities operated by the state or a local government; (h) unemployment insurance taxes; (i) insurance assessments or premiums; (j) employee payments for fringe benefits; (k) governmental property insurance; (l) investment trusts; (m) private purpose trusts; (n) college savings programs; (o) fees imposed for airport or mass transportation systems; and (p) tuition or fees imposed on students to support university or technical college functions. Revenue for the base year for the limit (either calendar year 2008 or fiscal year 2008-09) would not include any moneys generated from bonds.

The joint resolutions would allow the Legislature to exclude, for local governments only, revenue from any source other than taxes. However, the Legislature could not exclude any money

generated from licenses that exceeds the cost of issuing the license or any money generated from a fee that exceeds the cost of providing the service associated with the fee.

Structure of the Proposed Limit

The limit under the joint resolutions would first apply to the 2009 calendar year (for local governments with a calendar year budget) or to the 2009-10 fiscal year (for the state and local governments with a fiscal year budget). For the 2009 calendar year or 2009-10 fiscal year, the state and local governments would be prohibited from collecting and retaining (other than in a state emergency reserve fund) more in revenue than they did in the 2008 calendar year or 2008-09 fiscal year, plus their allowable percentage increase under the limit.

For each subsequent calendar year or fiscal year, the state and local governments would be prohibited from collecting and retaining (other than in a state emergency reserve fund) more in revenues than they were allowed to collect and retain under the limit in the previous calendar year or fiscal year, plus their allowable percentage increase under the limit. Since this provision uses the allowable revenue from the previous year rather than the actual revenue, the state and local governments would be allowed to carry forward 100% of their unused revenue limit authority.

Allowable Revenue Growth Under the Proposed Limit

The joint resolutions would allow two types of growth under the revenue limit, one that applies to all affected governments and a second that varies both by type of government and between governments of the same type. All affected governments would be allowed to increase their revenues by the lesser of the following two percentages: (a) the average of the annual percentage increases, if any, in the Milwaukee-Racine CPI (or a successor index) for each of the three years preceding the previous year (calendar years would be used for those governments with calendar year budgets and fiscal years would be used for those governments with fiscal year budgets); and (b) the annual percentage increase, if any, in state personal income from the third preceding calendar year to the second preceding calendar year (for those governments with fiscal year budgets, this would be counted from the calendar year in which their fiscal year ends). Therefore, for determining allowable growth for 2009-10 fiscal year budgets, the lesser of the average of the 2005-06, 2006-07, and 2007-08 fiscal year increases in the Milwaukee-Racine CPI and the 2007 to 2008 calendar year increase in state personal income would be used. For 2009 calendar year budgets, the lesser of the average of the 2005, 2006, and 2007 calendar year increases in the Milwaukee-Racine CPI and the 2006 to 2007 calendar year increase in state personal income would be used.

In addition to the growth based on either the Milwaukee-Racine CPI or state personal income, each type of government would be allowed additional revenue growth as follows:

1. State government, counties, technical college districts, and special purpose districts would be allowed a percentage increase equal to the percentage increase in their respective

populations from the first to the second of the two years preceding the previous year. Therefore, for budgets for calendar year 2009 or fiscal year 2009-10, the change in population between 2006 and 2007 would be used. Population would be defined as annual population estimates adjusted by the most recent federal, decennial census, as determined by the state.

2. School districts would be allowed a percentage increase equal to the average of the annual percentage increases, if any, in their five-year-old kindergarten through 12th grade enrollment for each of the three years preceding the previous year. Therefore, for school districts' 2009-10 budgets, the average of enrollment growth, if any, for the 2005-06, 2006-07, and 2007-08 school years would be used.

3. Municipalities would be allowed a percentage increase equal to 60% of the percentage increase in their property values attributable to new construction (net of the value of any property removed or demolished) from the first to the second of the two previous years. Therefore, for municipalities' 2009 budgets, growth in values due to net new construction from 2007 to 2008 would be used.

Adjustments to the Proposed Limit

The joint resolutions would create the following adjustments to the revenue limit:

1. Transfer of Services. The Legislature would be allowed, by law, to adjust the revenue limit for the state or local governments to accommodate the transfer of services from any affected government to any other affected government. The authority would include the transfer of services resulting from an annexation. An increase to one government's revenue limit due to this provision would have to be offset by a corresponding decrease to the revenue limit of other governments affected by the transfer of services.

2. Reduction in Total State Aid. The state's revenue limit for a fiscal year would be reduced by the amount of any reduction in the aggregate amount of state aid provided to local governments, as compared to the previous fiscal year. This reduction would not apply if a program or function for which the state aid is provided is either eliminated or commensurately reduced in scope or applicability, as determined by the Legislature. The joint resolutions would define "state aid" to mean all of the following, as defined by the Legislature by law, but not to include a one-time grant: (a) shared revenue; (b) equalization aids; (c) community aids that are used to provide social services; (d) general transportation aids; (e) categorical school aids; and (f) aid to technical college districts.

3. Reduction in State Aid to an Individual Local Government. A local government would be allowed to collect additional revenue in the current year (calendar year or fiscal year, as applicable) if it receives less state aid (as defined above) in that year than it received in any previous year beginning with either the 2008 calendar year or 2008-09 fiscal year, as applicable. The amount of additional revenue would be limited to an amount equal to the highest level of state aid received

in any year beginning with either the 2008 calendar year or 2008-09 fiscal year, as applicable, minus the current year's state aid. The additional revenue would not be included in determining the local government's revenue limit. Therefore, this would be an allowable adjustment that would be recalculated each year, based on that year's aid levels, and would not be added to the revenue limit base. A local government could not use this adjustment for a state aid reduction if a program or function for which the state aid is provided is either eliminated or commensurately reduced in scope or applicability, as determined by the Legislature.

4. Reduction in the Limit by a Governing Body. The revenue limit for the state could be reduced by a majority vote of the members of each house of the Legislature. Similarly, the revenue limit for a local government could be reduced by a majority vote of the local government's governing body. Since the limit for subsequent years is based on the allowable revenues for the prior year, a reduction under this authority would permanently lower allowable revenues.

5. Increase in the Limit by Referendum. The revenue limit for the state or a local government could be exceeded only with the approval of the electors of the state or local government at a referendum. The referendum would have to be held in such manner and at such time as the Legislature prescribes. The referendum question would have to specify whether the increase in the revenue limit is on a recurring or nonrecurring basis. Recurring increases in any one year would be limited to the greater of \$50,000 or 15% of the revenue limit that is in effect prior to the increase.

Disposition of Excess Revenue

The joint resolutions would specify that any revenue received by the state in excess of the state's revenue limit must be deposited into an emergency reserve fund. However, the total amount in the emergency reserve fund could not exceed 8% of the state's total revenue in the previous fiscal year. Any excess revenue that is not deposited into the emergency reserve fund would have to be returned to the taxpayers in the fiscal year following the fiscal year in which the state has the excess revenue. Expenditures from the emergency reserve fund could only be made by a majority vote of the members of each house of the Legislature. Such expenditures could only be made for relief from taxes imposed by the state or to substitute for current revenues in a fiscal year in which the state's current revenues are less than the state's allowable revenues.

If a local government receives revenue in a year (calendar year or fiscal year, as applicable) that exceeds its revenue limit for that year, the local government would have to return the excess revenue to its taxpayers in the following year.

Prohibition on Unfunded State Mandates

The joint resolutions would specify that a state law or administrative rule that requires the expenditure of funds by a local government could not be enacted or adopted after the resolutions are ratified unless the state provides for the payment to the local government of an amount equal to the

reasonable costs that the local government incurs to comply with the law or rule. This prohibition would not apply to a state law or administrative rule enacted or adopted to comply with a requirement of federal law, including a requirement related to the receipt of federal aid. The Legislature would be the sole determiner of "reasonable costs" under this provision.

Standing to Sue to Enforce These Provisions

The joint resolutions would specify that any individual or class of individuals residing in the state would have standing to bring a suit to enforce the new constitutional provisions as they relate to the state or to the local government in which the individual or class of individuals resides or pays property taxes. A court would be required to award a successful plaintiff costs and reasonable attorney fees, but could not allow the state or a local government to recover costs and reasonable attorney fees unless a suit against it is ruled frivolous.

Modification to Constitutional Amendment Process

The joint resolutions would create a new, shorter process to amend the constitutional revenue limits that the resolutions would establish. Currently, either house of the Legislature may initiate a proposed constitutional amendment. If both houses of the Legislature agree to the proposal by majority votes, the proposal is to be referred to the next Legislature and is to be published for three months prior to the time of the election of that Legislature. If a majority of the members of each house of the next Legislature agree to the proposed amendment in the same form, the Legislature must submit the proposed amendment to the people in such manner and at such time as the Legislature provides. If a majority of the people voting on the question approve the proposed amendment, the constitution is amended.

Under the joint resolutions, a proposed amendment to the newly-created constitutional section that directly relates to the revenue limits created by that section would only have to pass each house of the Legislature once, rather than twice, before being submitted to a vote of the people. This would allow the revenue limit provision to be amended without an intervening vote by the people for a second Legislature, which would accelerate the amendment process. However, an affirmative vote of the people would still be required.