

MAINE STATE LEGISLATURE

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OFFICE OF LEGISLATIVE ASSISTANTS
STATE HOUSE
AUGUSTA, MAINE 04333

July 7, 1978

To: Interim Education Finance Commission
From: Office of Legislative Assistants
Subject: Recent proposal to constitutionally limit state and local appropriations

A GUIDE TO THE MAINE TAX LIMITATION COMMITTEE'S
AMENDMENT TO THE MAINE CONSTITUTION

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1. SUMMARY DESCRIPTION OF THE PROPOSED CONSTITUTIONAL AMENDMENT	

A. Introduction

The proposed amendment would amend Article 1, §22 of the Constitution. It would need to be accompanied by a statute which defines key terms (e.g., "cost of living") and sets forth the exact mechanisms by which state and local appropriations would be limited. Until the accompanying statute is enacted, it will be impossible to judge exactly the effect of this proposed constitutional amendment.

B. Description

Subsection A, Control of appropriations

Each unit of government (the state, counties, school

districts, municipalities, "or any other political subdivision") will be limited in its yearly appropriation according to:

- (1) Its appropriation for the base year (e.g., fiscal year 1979);
- (2) plus changes in "cost of living";
- (3) plus an amount reflecting changes in the unit's population (e.g., average daily attendance in a school district).

If the unit, state or local, appropriates more than this amount, the appropriation must be approved by referendum or vote of the town meeting. Thus, this constitutional amendment will not greatly effect the way money is appropriated in municipalities with the town meeting form of government.

Subsection B, Refund of excess revenues

Excess revenues (including appropriated by unexpended balances) shall either be:

- (1) Placed in a special reserve fund (see subsection C); or
- (2) returned to the taxpayers.

Subsection C, Emergency, contingency and reserve funds

(1) Local & state governments may establish emergency funds (e.g., a reserve fund, or retirement fund). Money can be added to this fund if a unit has not spent up to its appropriation limit. The unit can spend these funds when it is reasonable for the management of the finances. These monies will be reflected in the next year's appropriations levels.

(2) The State may have an additional fund, a Special Reserve Fund to which may be appropriated annually, the least of:

- (a) Excess revenues;
- (b) Excess of 7.75% of personal incomes in Maine over the State's appropriation; or
- (c) amount required to increase the reserve fund at end of year to .775% of aggregate personal incomes.

This fund can be used to meet emergencies caused by "cyclical economic conditions", funding of pensions, or, "after meeting these priorities," for any other purpose, upon a 2/3 vote of Legislature. Expenditures

from this fund shall not be figured in the state's appropriation limit. This provision is meant to allow the state to share any growth of the state's economy.

Subsection D, Protection of local government for state-required costs

The State cannot reduce the proportion of its fiscal aid to local units of government. It cannot shift tax burdens. It cannot impose new programs on local units unless it provides full state funding.

Subsection E, Severability

Designed to allow the amendment to carry on even if parts of it are declared unconstitutional.

Subsection F, Legislative responsibilities

(1) Legislative design of mechanics. The Legislature must pass legislation which will provide the mechanics of this appropriations limit.

(2) Exemptions. Exemptions from the appropriations limit are:

- (a) Federal revenues;
- (b) Unemployment compensation fund revenues;
- (c) Inter-governmental transfers (except taxes imposed by the receiving unit but collected by another unit);
- (d) Monies to pay principal or interest on debts;
- (e) Proceeds of contracts or gifts;
- (f) "Use" charges for government services.

(3) Adjustments to the appropriations limits. The following adjustments shall be allowed to the appropriations limits:

- (a) Transfer of funding responsibility for a program from one unit of government to another (e.g., a school funding increase by the State);
- (b) Additions to the state and local emergency funds (see above Section 3);
- (c) Increases or decreases approved by voters (see above Subsection 1).

2. SUMMARY OF ARGUMENTS FOR AND AGAINST THE PROPOSED APPROPRIATION LIMITS

Arguments For

A. The proposed constitutional limit on appropriations will force the Governor and legislators to eliminate unnecessary programs.

B. This limit on appropriations will solve a basic flaw in our democracy: the fact that since the Governor and legislators cannot resist narrow special-interest lobbyists, there is no limit on government's power to tax and spend.

C. An appropriations limit will slow down the growth of government. Government growth must be limited because it has weakened institutions in the private sector (the family, the neighborhood, the church).

D. An appropriations limit will increase local control because the limit can be exceeded only by a referendum.

E. An appropriations limit will lessen the burden of ever-growing taxes.

F. This proposal must be a constitutional amendment. The Governor and Legislature could amend a statute, and thus nullify the proposal.

Arguments Against

A. Governor Longley and the 108th Legislature acted to ensure efficient government. They enacted several "sunset" review laws and reduced taxes by approximately \$19 million.

B. Our system of government is not basically flawed. Representative democracy is the accommodation of the interests of all citizens. Legislators must relate their constituents' interests to those of the constituents of other legislators. This is what the haggling in a democratic body is all about. An appropriations limit will mean that Maine's least influential citizens will have a smaller, less important voice. If you think the Governor and the Legislature are spending too much, you should support other candidates for public office.

C. This proposal will not necessarily slow down the growth of government.

Government has not weakened these institutions. Rather, government services are a response to public demand and are provided only where the private sector has not adequately furnished them.

D. This proposal might very well decrease local control. Citizens will not have as much reason to attend city council meetings and the State might have a larger say in how money is spent at the local level. Complicated issues such as the relative merits of competing programs should be debated at length in the Legislature and not decided by referendum.

E. An appropriations limit will not necessarily limit the tax burden. Under this proposal, expenditures are permitted to increase as the population and the cost of living increase, both of which could exceed the present growth rates.

What may be needed is reform of the tax structure itself (e.g., reduced property taxes) so that persons are taxed more in accordance with their ability to pay.

F. This measure is too complex and its effects are too unpredictable to be placed in the Constitution. Besides there are at least two statutory loopholes that can make this proposal completely ineffective (see below page 17). If you think your representatives are fiscally irresponsible, you should support other candidates for public office.

3. DETAILED ARGUMENTS FOR AND AGAINST THE PROPOSED APPROPRIATION LIMITS

Arguments For

A. Eliminates unnecessary programs. A constitutional limit on appropriations, with the right to exceed it by popular vote, will force state and local government to eliminate unnecessary programs and to set priorities.

Arguments Against

A. A constitutional amendment is not needed. At the State level, proper executive branch management and proper legislative "oversight" of the bureaucracy will ensure efficient government.^{1/} At the local level, with its smaller programs and more accessible government, efficiency is even more easily assured. Governor Longley and the 108th Legislature are dedicated to proving that efficient government is possible. During the past biennium the Legislature passed "sunset" measures designed to ensure that State programs are necessary and efficient, ^{2/} that all agency rules are necessary and accurate ^{3/} and that only justifiable tax exemptions are allowed.^{4/} Further, approximately \$19 million surplus revenues were returned to the people.

(A-1) Few programs actually represent the "will of the people." Rather, they reflect the narrow needs of "special-interest" lobbyists. This is a basic flaw in our form of democracy. This proposed appropriation limit will make government more accountable to the people by encouraging the setting of priorities. In order to fund new programs that exceed the appropriations limit, programs will have to be cut or else a referendum will be necessary.

(A-1) Our system of government is not basically flawed. Representative democracy is the accommodation of special interests. The Governor and Legislators must relate their own interests to those of other legislators. That is what the haggling in a democratic body is all about. If you think the Governor and the Legislature are spending too much money, you should elect people who pledge not to spend as much.

Arguments For

(A-2) There is a basic structural flaw in our democratic system. There is no real limit on government's power to tax and spend. Legislators are unable to resist the demands of the special interest lobbyists. The National Tax Limitation Committee has said: "The trouble is that lawmakers as a group, whether Democrat or Republican, are powerless to correct the basic flaw. Furthermore, the politicians as a group have no interest in correcting the basic flaw, because they have learned how to prosper with it. They gain political advantage by voting for economic programs with obvious benefits and costs. Being human beings, they see quite logically that their own political careers can rest very comfortably on this flawed system. They have no incentive to change it." 5/

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Arguments Against

(A-2) The Governor and the Legislature are not helpless. They have acted to meet the minimal needs of Maine citizens. Maine, as compared to the rest of the states, does not have opulent programs. For example, in 1976 Maine's cost per public school student was lowest in the N.E. states and 36th lowest in the country.

If a professional lobbyist occasionally acts against the general public interest, the solution is not to cut back on necessary services but rather to improve legislators' ability to handle lobbyists' influence (e.g., disclosure of lobbyists' activities; better information on which legislators can base their votes) and to encourage greater participation by the general public in local and state government. A constitutional appropriation limit might actually tend to discourage local participation (see below Argument C-1).

Finally, the proposed appropriation limit will not necessarily defeat a lobbyist who acts against the public interest. His program can still be enacted. The persons who might very well be harmed by this proposal are the least powerful of Maine's citizens. Their representatives will not be able to compete with the better funded, more articulate lobbyists of large businesses and large unions. Even if all programs are cut back services to the least influential of Maine citizens might be reduced the most.

Arguments For

(A-3) This appropriations limit will allow legislators to resist the inevitable government spending escalation of the "boom-bust" cycle. If there is a recession the demand for services increases; if there is economic prosperity there are surplus revenues to spend on new but not needed programs.

B. Improves the economy. When government taxes make up too great a percentage of personal income, the free market economy suffers. Consider Maine's 1976 per-capita tax burden: \$469.6. This was higher than any other N.E. state and \$52 higher than the National figure of \$417.1.

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Arguments Against

(A-3) This past session the Legislature returned surplus tax revenues of approximately \$19 million. It is apparently capable of resisting the "boom-bust" cycle.

Further, unlike the Federal government, the State of Maine must have a balanced budget. We cannot spend more than we receive in revenues.

B. The Maine tax burden is not too high. Maine is a rural state which requires many government services which have high fixed costs. Providing even minimal services causes substantial costs. What may be needed is reform of the tax structure itself (e.g., reduced property taxes) so that persons are taxed according to their ability to pay.

It could be premature to set spending limits if the Maine tax structure itself is regressive. If it is regressive then the benefits of a spending limit would go to the higher income people who already pay a lesser percentage of their income in taxes than lower income families.

The economic theories in support of a tax limitation are a matter of much debate. For every economist who supports a tax limit, there is an economist who opposes tax limits. The point is that the cure to our economic problems is a highly debatable issue and just one side of that debate should not be made a part of our basic constitutional principles. 7/ As Justice Holmes said in dissent when the Supreme Court refused to allow the State to restrict too long work days:

"A Constitution is not intended to embody a particular economic theory, whether of paternalism ... or of laissez faire. It is made for people of fundamentally differing views."
Lochner v. New York 198 US 45 (1905).

Arguments For

(B-1) High State taxes discourage the growth of business in Maine.

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C. Government is growing too fast. Government growth must be limited. It intrudes too much into our every day lives. Because of overwhelming government the more traditional, voluntary sources of social services - the family, the neighborhood, the church - have been weakened and deprived of meaning. As Nobel Prize-winning economist Milton Friedman recently wrote: "The populace is coming to realize that throwing government money at problems has a way of making them worse, not better; that people are likely to get more out of spending their own money than out of turning it over to bureaucrats to spend it for them." 9/

Arguments Against

(B-1) Two responses to the argument that high State taxes destroy business incentives are:

(1) The 1977 Casco Bank study 8/ of our business climate showed that the chief reasons businesses decide against Maine are heat and energy costs and distance to markets. Indeed, our "reasonable tax structure" was identified as a favorable factor in business location decisions.

(2) If government does not provide proper state and local services (e.g., a good school system for the children of employees, sufficient recreation opportunities) businesses will not want to move here, despite the low taxes. Our current services are not opulent.

C. Two responses to this concern:

(1) Government services (roads, education, welfare) are provided only when the private sector has failed to satisfy the needs of Maine citizens. Maine is not the federal government, where deficit spending can lead to bloated, inefficient programs.

(2) The people who complain about the bigness of government are often people who are already self-sufficient. If an appropriations limit reduces services, it will be the services for those who are least articulate and least able to lobby in the Legislature for their needs. Surely the best financed, most effective lobbyists represent society's vested interests. 10/

Argument For

(C-1) There is no weight to the argument that if such a constitutional limit on appropriations is passed, legislators and other elected officials will have less important jobs. Indeed, their job will be even more challenging. As economist Milton Friedman has written concerning California's Proposition 13 (a "roll-back" of government spending unlike Maine's proposed lid on future expenditures): "Of course, the reallocation of revenues to finance the most essential services will take some doing - but what are elected representatives for."¹¹

The National Tax Limitation Committee elaborates further:

"The reasoning runs this way. When a special-interest group puts pressure on a legislator, thanks to the basic flaw that gives that group an undue influence, the legislator is faced with two choices: spend more money, or look like a heartless skinflint, and eventually be thrown out of office. You can't expect men to be saints. They'll crumble under pressure.

But the point is that they don't enjoy crumbling. It saps their self-respect. They would much prefer to be able to resist the special pressure without jeopardizing their careers, and without taking responsibility for their actions. They would like to be able to say: 'I understand your humane goals, and I do see that your proposed new program may do some real good. But it would take the budget beyond the limit imposed under the formulas written into the Constitution, and my hands are tied. If you, however will show me where we should cut the budget in some other program, I'll be happy to take the entire package to the floor and present it to my colleagues.'

Argument Against

(C-1) Legislators and municipal officials will be denied important responsibilities. While a referendum may seem to increase "local control" the opposite may be the case. Angry taxpayers may no longer need to crowd into local budget meetings, protesting increased spending. They can sit at home secure that their tax burden will not unduly rise. Further, this proposal which mandates that new Legislative programs be completely funded at the state level may decrease local input into the design of programs.

If elected representatives are deprived of meaningful duties men and women of ability and conviction may not continue to run for elected office.

And now the legislator is happy. He can appear to be sympathetic, while running an orderly financial ship. And the business of deciding who gets what is decided, as it should be, by the political process, while the taxpayers as a group have delivered the major decision as to how much of their wealth is to be spent by the political process." 12/

D. Protects right to private property. Citizens are overtaxed. Government levies are so great, and ever growing, that we are being deprived of our basic liberty to own and use our private property. Our constitutional amendment will slow the growth of government and if the majority thinks it should continue to grow, it will be so reflected in a referendum vote.

As evidence of this trend toward over-taxation, the National Tax Limitation Committee offered the following information for Maine, detailing the growth of state and local government expenditure and the growth of personal government: 13/

Fiscal Year	State & Local Expenditure (% growth)	Personal Income (% growth)
1964	2.5%	8.7%
1965	1.7%	7.9%
1966	9.4%	7.3%
1967	18.0%	5.0%
1968	13.0%	8.3%
1969	2.5%	7.9%
1970	17.0%	8.2%
1971	18.0%	4.4%
1972	8.6%	9.3%
1973	11.0%	12.0%
1974	10.0%	14.0%
1975	15.0%	6.2%

D. Three responses to this argument are:

(1) Arguments pertaining to the threat to private property resulting from government taxes are sheer rhetoric. Property rights are not at stake. Americans, compared to many other industrialized nations, are lightly taxed. "On an overall basis ... Americans spend less of their earnings for taxes than the citizens of any other advanced country. And the most recent U.S. trend is for reduced taxes, compared with escalations in France, Sweden, Greece and other industrial countries." 14/ The Organization for Economic Cooperation & Development in its study of tax patterns since 1965 concluded that in relation to its personal income the U.S. tax burden was the lowest of the 23 industrial countries. As measured by the Gross Domestic Product, America's taxes ranked in the middle of the 23 countries.

(2) The right to private property is not a pre-eminent right. It must be balanced against each citizen's constitutional right to due process and equal protection. Imagine the following situation under the proposed con-

Arguments For

E. Alternatives are worse. A constitutional limit to increase state or local appropriations is a modest approach. Fail to pass it and Maine may be forced by public pressure to accept a more radical approach, similar to Proposition 13's "roll back" of public spending in California.

F. Emergencies are provided for. Emergencies are well provided for. State and local government units can set aside funds for emergency situations. And, of course, there is always the opportunity to spend beyond the appropriation's limit if a referendum so approves.

G. The people will have the final word. Always remember, this constitutional amendment is not an absolute lid on spending. New programs can be initiated when old programs are no longer necessary or when the people, in a popular vote, approve increased spending. In the words of the National Tax Limitation Committee: "And the business of deciding who gets what is decided, as it should be, by the political process, while the taxpayers as a group has delivered the major decision as to how much of their wealth is spent by the political process." 16/ In short referendums on spending issues will allow the average citizen a direct voice in how his tax dollars are being spent.

Arguments Against

stitutional amendment. A severe winter empties a town's treasury. The General Assistance Fund is empty. In a referendum the town refuses to increase appropriations. The impoverished receive no more assistance from the town. This might very well be an unconstitutional violation of the 14th Amendment (see Goldberg v. Kelly 397 US 254 (1970); Dandridge v. Williams 397 US 471 (1970)).

E. In some ways this proposed amendment is more radical than Proposition 13. It makes a fundamental change in our system of Government. Perhaps there are better alternatives. For example, mechanisms for program review, a property tax circuit breaker, reform of the budget system. See Section 6 of this memo for a listing of tax limitation alternatives.

F. and G. Perhaps some objections to the proposed constitutional limit on appropriations can be defused by pointing to the proposed referendum provision: the people can always vote to exceed the limit. But is this desirable? Henry Fairlie in a recent article 15/ makes the following observations on the problems of such "direct democracy":

H. It is necessary to make this proposal a constitutional amendment because that is the only way to solve the basic flaw in our form of government: the Governor and the Legislature's inability to resist special interest lobbyists and thereby control government spending.

(1) "But to carry the dogma of popular sovereignty to the extent of saying that the power of the people can be exercised truly and effectively only when it is exercised by them directly [in a referendum] is to deprive the representative system of all justification and function. One might as well have an electronic referendum on every issue."

(2) "In the famous Model State Constitution that was drawn up a generation ago, it was provided that 'The initiative shall not be used as a means of making appropriations of funds.' Proposition 13 did not actually appropriate funds, but it in effect intruded in the appropriation process. If legislatures do not have the power of the purse - including the power of taxation - then their final erosion as representative bodies has begun."

H. This provision should not be a constitutional amendment for the following reasons:

(1) The Governor and the 108th Legislature can resist lobbyists whose programs are not in the public interest. If they can't, elect ones who can.

(2) This proposed amendment is too complex and its effects too unpredictable to be placed in the constitution. It will be difficult to amend. There are at least two statutory loopholes which could make it completely ineffective (see below page 17).

(3) This constitutional limit on appropriations would make possible a "freeze" of the current balance between State and local spending and personal income (absent referendum approval of higher spending). Who is to say that this is the right balance? All 22 other industrial countries feel the state should spend a greater percentage; and many argue that their "quality of life" is better than America's.

Arguments For

Arguments Against

To possibly freeze the current proportion of State benefits and private property by amending our Constitution is to significantly narrow the debate on this crucial issue.

FOOTNOTES

- 1/ Helen Ladd, "An Economic Evaluation of State Limitation on Local Taxing and Spending Power," National Tax Journal, vol. 31, no.1 (March,1978),p.6: "But even if controls were to have some impact on production efficiency, surely more effective means of achieving the goal are available. Direct measures such as management and accounting reforms and changes in the incentive structure now enshrined in the Civil Service are undoubtedly superior to the crudeness of tax and expenditures controls as a means of increasing production efficiency."
- 2/ P.L. 1977, c. 554.
- 3/ P.L. 1977, c. 566.
- 4/ P.L. 1977, c. 490.
- 5/ William F. Rickenbacker, Chairman and Lewis K. Uhler, President, The National Tax Limitation Committee, A Taxpayer's Guide to Survival: Constitutional Tax Limitation (1977), pp. 8-9.
- 6/ Michael C. Jensen, "The Principles of a Tax-Cut Guru," New York Times (June 17, 1978), p.30.
- 7/ Ladd, p. 10: "In summary, the potential gains from expenditure control are slight while the potential costs are significant. Only to the extent that service levels or that high or rising costs are the result of imperfections in the budgetary process rather than production or market considerations, is there leeway for controls to improve the situation. Even in these cases controls may not achieve the desired result or may not be the best means of achieving the goal. As has been shown, the costs in terms of service level distortions are potentially significant."
- 8/ Economic Research Institute for Casco Bank and Trust Company, Why Firms Decide For or Against a Maine Location (1977).
- 9/ Milton Friedman, "A Progress Report," Newsweek (June 19, 1978), p. 26.
- 10/ Ladd, p. 10: "We now turn briefly to the income distribution consequences of controls on local taxing and spending powers. Providing the controls succeed in reducing the rate of growth of our own financial local expenditures below what it would be in the absence of controls, households in their capacity of local taxpayers are made better off. At the same time, however, households in their capacity of public service recipients are made worse off by the reduced expenditures except where expenditure reduction is achieved through reduced inefficiency or lower public sector wages rather than reduced service levels."
- 11/ Friedman, "A Progress Report," Newsweek (April 10, 1978), p. 80.
- 12/ A Taxpayer's Guide to Survival, p. 16.
- 13/ Ibid., pp. 30-31.

14/ Boston Sunday Globe (June 25, 1978), p. 13.

15/ Fairlie, Henry, "The Unfiltered Voice, The Dangerous Revival of the Referendum", The New Republic, vol. 178, no. 25 (June 24, 1978), pp. 16-17.

16/ A Taxpayer's Guide to Survival, p. 16.

4. ANALYSIS OF EACH SECTION OF THE PROPOSED CONSTITUTIONAL
AMENDMENT (5TH DRAFT)

Constitution, Art. I §22 is amended by adding after the first paragraph, the following:

- 1- (A) Control of appropriations.
- 2- Notwithstanding any other provision of the
- 3- Constitution, commencing with any fiscal year after
- 4- the annual appropriations of a
- 5- unit of government during any fiscal year shall not
- 6- exceed the appropriations, as adjusted, for the prior

Subsection A, Control of appropriations

Line 1. This language would be meaningless if the proposed amendment violated any fundamental rights guaranteed by the federal or state constitution (see below, Subsection C, lines 24-37).

Line 3. The fiscal year this amendment would take effect is crucial. If it were June 30, 1978 (assuming passage in this November's general election) the state and municipalities could not adjust their appropriations in anticipation of the effect of this amendment (e.g., at the state level appropriate money for a contingency fund, see below, Subsection C, lines 24-37; at the local level, increase appropriations for the General Assistance account to guard against an unexpectedly harsh winter).

Line 6. The phrase "as adjusted" refers to the computations allowed in Subsection F (e.g., Federal revenue sharing is not to be considered in figuring each year's appropriation limit.

7- year, except for cost-of-living and population changes,

Line 7. There are two key phrases which must be defined by the Legislature in the legislation that should accompany this proposed amendment:

- A. "Cost of living:" Should this be defined by the consumer price index or by growth in personal income? Should it be replaced by a "growth of the economy" index?
- B. "Population changes:" How will such information be gathered? How will it be measured: by simple growth; by changes within a stable population (e.g., greater number of elderly)? Will it be able to reflect a trend happening in many urban areas today: the young, affluent moving to the suburbs, leaving behind the elderly and poor people and while the city's total population may have shrunk, the need for services might have increased. Will the annual monitoring of population lead to a larger bureaucracy?

Depending on how the legislation is drafted, these factors could be monstrous "loopholes." For example, assume "cost of living" is to be measured by personal income. The statute could read "the appropriations limit will double every time income increases by 1%." An absurd example but apparently entirely possible.

8- unless the electors of such unit of government approve a
9- different amount. Any amount appropriated above this
10- limitation shall not be effective until ratified by the
11- electors of such unit of government in accordance with
12- law.

13- (B) Refund of Excess Revenues.

14- Should excess revenues including appropriated but
15- unexpended balances accrue to a unit, such excess shall

Lines 9-12. A question the Legislature must decide: Would the electors' vote be on the entire budget; just on new or expanded programs; or on whatever programs the elected town leaders wished to put out to referendum (e.g., pass a budget with an increased recreation budget and put out to referendum the cost of police protection)? Would a referendum on just new or expanded programs increase or decrease the influence of "special-interest" lobbyists?

Another point: a referendum in a city such as Portland or Bangor can be quite expensive. And remember, for municipalities with the town meeting form of government this amendment won't make much of a difference.

Another question: is a referendum a good way to debate often complex policy issues? Rather than a referendum would a requirement of a 3/4 or 4/5 vote of the Legislature be preferable? See Section 3, Arguments Against F and G.

Line 15. Should the word "unexpended" be replaced by "unencumbered"? This would protect unspent dollars in the reserve funds allowed in Subsection C and money committed to pay for already contracted for services.

16- be refunded or credited to the taxpayers after any

Line 16. In addition to the refunding or crediting of excess tax revenues, would it be a good idea to also allow debt retirement or allocations to next year's budget (thereby avoiding the expense of refunding taxes)? Another consideration; what if a municipality chooses to fund all or part of its utilities from General Fund charges rather than user fees? Because user fees are exempted from the appropriations limit would such a move result in an over-appropriation and the resulting referendum? Assuming the expenditures of a Special District are a good reflection of consumer need, should Special Districts be exempted from this proposed amendment?

Another important consideration is that the logical way to return tax surpluses is through a state income tax credit. Yet many low-income persons do not earn enough to pay state income taxes, yet they contributed to the surplus by paying sales or property taxes.

17- appropriation to special reserve funds as provided in
18- Subsection (C) in such manner as shall be determined by
19- the governing body of the unit. From year to year, the
20- governing body of each unit of government shall adjust
21- tax rates to reasonably minimize the collection of
22- revenues in excess of those which may be appropriated
23- pursuant to paragraph (A).

24- (C) Emergency, Contingency and Reserve Funds.

25- (1) Each unit of government is authorized to
26- establish an emergency fund, and such other contingency,
27- reserves, sinking, investment, retirement or similar
28- fund or funds as are reasonable and appropriate for the
29- management of its finances. When appropriations of the
30- unit are less than the appropriations which may be made
31- that year, the difference may be designated by the
32- legislative body of that unit as an addition to the
33- balances of one or more such funds. An appropriation of
34- fund balances to meet emergencies and other needs for
35- which such funds may have been established shall be
36- deemed to have been made in the fiscal year of the
37- transfer of monies to such funds.

Subsection C, Emergency, Contingency and reserve funds

Paragraph 1

Lines 24-37. This paragraph allows any state or local government to create emergency funds. They would be funded by excess revenues or left-over dollars when a unit

has spent less than it appropriated. A possible problem with these emergency funds is that they might not have any money in them. However, this raises a possible "loophole" in the amendment. Is there a provision which would prevent a unit from establishing a normal contingency fund and then making an appropriation to it? At the end of the fiscal year when unexpended funds had to be returned to the taxpayers or placed in an emergency fund created under this subsection, the unit could simply transfer the contingency funds to one of the emergency funds. This raises again the importance of the base fiscal year that must be chosen in line 4. If it is the current fiscal year this strategy would seem foreclosed.

Paragraph 1 also raises a possible constitutional problem with this proposed amendment. Imagine an empty emergency fund, a severe winter, a depleted General Assistance fund. The impoverished people of the unit need food, heating oil, etc.. Funds can only be raised by referendum and the unit votes not to raise extra dollars. An argument could be made that the people eligible for aid had been unconstitutionally denied General Assistance (see Goldberg v. Kelly 397 US 254 (1970); Dandridge v. Williams 397 US 471 (1970)). One possible way of avoiding this problem would be to allow municipal officials to shift revenues between the various funds of the budget.

In line 29 is "expenditures" a better word than "appropriations"?

38- (2) In addition, the State is authorized to estab-
39- lish a Special Reserve Fund to which may be appropriated
40- annually after the fiscal year has ended an amount equal
41- to the lesser of (i) the total of excess revenues col-
42- lected, (ii) the excess of 7.75%* of aggregate personal
43- incomes in the State over the appropriation of State
44- government as defined in paragraph (A), or (iii) the
45- amount required to increase the Special Reserve Fund
46- balance at the end of the year to .775% of aggregate
*to be adjusted to most recent estimates of growth in personal incomes

Lines 38-39. The State (but not other units) can establish a Special Reserve Fund (SRF) for specific emergencies (funding of pensions, economic recessions, or for any program upon 2/3 vote of Legislature).

Lines 40-46. The least dollar amount of the three computations listed here can be put in the SRF. Apparently the multiplication factor (7.75% or .775%) is supposed to reflect the growth of personal income that year.

In line 41 does "aggregate personal income" refer to personal income or real personal income (adjusted for inflation)? How will the state determine it?

One possible problem: if personal income is low (or even declines in a depression or a time of high inflation (assuming real personal income is used) there might not be much to put into the S.R.F.. In any case, this paragraph is designed to allow the state to share in any growth in the State's economy. Municipalities will share in such growth through the state revenue sharing program (these revenues are exempted from the appropriations limit, see subsection F, ¶1, sub-¶iii).

47- personal incomes. An appropriation of Special Reserve
48- Fund balances may be made to meet emergencies caused by
49- cyclical economic conditions as determined by the Legis-
50- lature upon the request of the Governor; to provide
51- reasonable funding for the pensions of State employees,

Line 49. Is "cyclical" necessary? What if foreign competition causes an economic downturn in Maine? What is determined by the Legislature: "emergencies" or "economic conditions" It is important to know in light of the possible law suits that might arise under this subsection.

Line 50. Should the Legislature have to wait for the Governor to request the use of the SRF fund?

Line 51. Does the priority position afforded the funding of public employee pensions commit the State to 100% funding of the pension plan? "State employees" should be changed to include municipal members of the state pension system.

Who is to interpret what "reasonable" means? It is possible to imagine state employees bringing a lawsuit and claiming the pension system funding was not "reasonable."

On the other hand, such protection might be justified. In a fiscal scrape, it is politically easy to put off funding the pension system.

52- or, after meeting these priorities, upon a two-thirds
53- vote of the legislative body, for any other purpose.
54- Appropriations to or from the Special Reserve Fund shall
55- be excluded from the calculation in determining the
56- appropriations limit for the subsequent year under
57- Subsection (A).

58- (D) Protection of Local Government for State-Required
59- Costs.

60- The State is prohibited from requiring that local
61- units of government provide any new or expanded programs
62- or services without full State financing; from reducing

Line 52. Again, with such vague language, it is easy to imagine a lawsuit claiming the emergencies have not been met. For example, in a recession interest groups might claim greater welfare or unemployment benefits than the Legislature is willing to give.

Subsection D, Protection of local government for state required costs

Lines 60-62. The fact that any new or expanded State programs must be funded at the state level would seem to lessen "local control." If the state pays the fiddler it will also call the tune. This prohibition is absolute and its ramifications might be far-reaching. For example, could a state court force municipalities to provide special education services if the court read the State Constitution to require such services?

63- the proportion of appropriations in the form of aid to
64- the local units of government, or from shifting the tax
65- burden to the local units. The proportion of total

Lines 62-64. One way around this prohibition from reducing the proportion of state aid might be to institute "matching fund" programs. This would be unfair to low valuation municipalities who would be sorely pressed to raise the matching funds. However, lines 60-62 might prohibit matching fund programs.

Lines 62-64 are somewhat ambiguous: apparently the phrase "local units" refer to all local units taken as a group. Does "appropriations in the form of aid" include the state revenue sharing program?

If a sudden state emergency arose which required a large expenditure (e.g., a plague of spruce bud worms) could the State finance it without also increasing its local aid? If it did not increase local aid would the "proportion of appropriations" to local units be unconstitutionally reduced?

Lines 64-65. Had this provision been in effect last year could the Uniform Property Tax have been repealed? This problem might be solved by stating that the "aggregate" tax burden could not be shifted. Then the UPT could have been repealed as long as the State assumed the full cost of the "pay-in" towns.

An important point: doesn't this proposed constitutional amendment conflict with the one scheduled to be on this November's ballot which would require the State to reimburse municipalities for 50% of any future local tax exemptions it orders (e.g., Veterans' property tax exemptions)?

66- State appropriations paid to all local units of govern-
67- ment, taken as a group, shall not be reduced below (?)
68- percent.

Lines 65-68. These lines are in conflict with lines 62-64. Possibly it is best to just delete lines 62-64. There could be problems of significant industrial development if one municipality increased its state valuation and thus its state aid was reduced. Not only would the municipality have to go to referendum (new developments mean costly new services) but the state might have to increase its aggregate state aid in order to prevent the state-local proportion falling below the percentage figure in line 67.

Perhaps another troublesome situation would be where a unit experiences only slight economic growth. Every year the budget would be squeezed a little tighter.

What if, by referendum, the state increased its level of spending on state programs? Would this mean its spending on local aid would also have to increase or else the percentage of appropriations would fall below the required level?

Does this foreclose the possibility of using denial of state funds to require local compliance with state laws (e.g., the enforcement of general assistance laws)?

The ramifications of this section are very complex and they need to be analyzed in depth.

69- (E) Severability.
70- If any expenditure category or revenue source shall
71- be judged exempt or excluded from the restrictions of
72- this section, pursuant to final judgment of any court of
73- competent jurisdiction and any appeal therefrom, the
74- process for computing the appropriations for that and
75- subsequent fiscal years shall be adjusted accordingly.
76- If any section, part, clause or phrase in this amendment
77- is for any reason held invalid or unconstitutional the
78- remaining section shall not be affected but will remain
79- in full force and effect.

Subsection (E) Severability

Lines 70-75. This is an appropriate place to discuss possible exemptions from this proposed amendment. For example, should federally-mandated expenditures (e.g., the requirement that municipalities end open dump burning) be exempted; or should court-ordered expenditures (e.g., recent Pineland right-to-treatment suit) be exempted? Further, an argument could be made that welfare costs (see comments to lines 24-37) should be exempted. On the other hand, if specific programs are exempted think of the book-keeping problems!

Lines 76-79. If the constitutional infirmity is central to the scheme of the entire amendment, this language might not save it.

80- (F) Legislative Responsibilities.
81- The Legislature shall enact statutes consistent
82- with the purposes and intent of this section, to imple-
83- ment the provisions of this section, including, but not
84- limited to, procedures for: Computing the annual appro-
85- priation limit for units of government, selecting a
86- method to calculate cost of living and population
87- changes, adjudicating questions and controversies
88- arising hereunder, and resolving special circumstances.

Subsection F, Legislative responsibilities

Lines 81-88. This subsection offers a glimpse at the complicated decisions the Legislature should make before putting this out to a referendum vote. Unless these ques-
tions are answered statutorily before the election,
no one will be able to tell the exact effect of the amen-
ment's passage. One aspect that must be considered:
many of the terms used in the amendment must be
statutorily defined.

89- For the purposes of implementing by statute this
90- section, the following shall apply:

91- (1) Appropriations or expenditures of the
92- following revenues or monies, shall not be
93- considered appropriations subject to the
94- control of paragraph (A) of this section:

95- (i) Monies received from the United States
96- of America;

97- (ii) Monies paid to and from the unemploy-
98- ment insurance compensation fund;

99- (iii) Inter-governmental transfers meaning,
100- that is, monies transferred from one
101- unit of government to another, except
102- the proceeds of taxes, fees or penal-
103- ties imposed by the receiving unit yet
104- collected by another unit of
105- government;

Lines 95-96. Should federal funds be exempted from the appropria-
tions limit? For example, in Augusta a great per-
centage of Lithgow Public Library's funds are Federal
revenue-sharing money. If these dollars are stopped
a referendum might be necessary.

Lines 99-105. Refers to state revenue sharing funds.

106- (iv) Monies derived from the issuance of, or
107- to pay interest on, or to repay the
108- principal of indebtedness authorized
109- and issued in accordance with law;
110- (v) The proceeds of contracts, grants,
111- gifts, donations and bequests made to
112- the unit of government for a purpose as
113- specified by the contractor or donor;
114- (vi) Use charges derived by the unit of
115- government from the sale of a product
116- or service for which the quantity of
117- the product or the level of service
118- provided to a user is at the discretion
119- of a user, and the total user charge
120- collected is no greater than the cost
121- reasonably ascertained to have been
122- borne by the unit of government in
123- providing the product for its service
124- to the user;

Lines 106-109. This would seem to encourage increased financing of programs by issuance of bonds. However, this might be prevented statutorily.

Lines 114-124. It is not clear whether the exempted user fees would include fees a person is compelled to pay (e.g., a hook-up with a sewer line that is required by State law). Without this limitation user fees could become a popular way of delivering services without exceeding the expenditure ceiling. Further, this amendment does not end the dedication of highway revenues. Why shouldn't the many millions set aside for state-funded highways have to compete as a "priority" program with all other programs?

140- the balances of emergency and other funds
141- established pursuant to Subsection (C); (iii)
142- for increases or decreases approved by the
143- electors. For special districts, adjustment
144- methods unrelated to cost-of-living and popu-
145- lation changes may be authorized by statute
146- and utilized if approved by the electors of
147- such unit of government.

148- (4) For the purposes of this section: (i) "Unit
149- of government" is the State of Maine, any
150- county, any city, any town, any plantation,
151- any school district, or any other political
152- subdivision created by the Legislature; (ii)
153- a "local unit of government" is any political
154- subdivision of the State but is not the State
155- or any of its departments, agencies, bureaus,
156- boards or commissions; if there be no electors
157- of a unit of government, the Legislature shall
158- prescribe the methods by which issues
159- requiring approval of the electors shall be
160- decided; (iii) "cost of living" means the
161- increase in the cost of living experienced by
162- the people of Maine as measured by any
163- reasonable method in accordance with law;

Lines 143-147. Is this restriction on the powers of special districts justified (see line 16)?

164- (iv) the "population" of an entity other than
165- a school district shall be measured by a
166- method prescribed by the Legislature; the
167- population of a school district shall be
168- measured by average daily attendance, as
169- defined by law; (v) "aggregate personal
170- incomes" shall be measured by the total gross
171- personal income (?) reported to Bureau of
172- Taxation for the immediately preceding
173- calendar year.

174- (G) Any group of one hundred persons who are electors
175- and taxpayers of this State shall have standing to
176- bring an action in the Supreme Judicial Court to
177- enforce the provisions of Subsections A through F
178- of this section.

Lines 171-173.

This definition of personal income would measure only the income of persons who owe income taxes. Many persons earn income yet often declare no taxable income because of various tax laws (e.g., credits, exemptions and deductions).

5. HISTORICAL TRENDS IN POPULATION, ECONOMIC INDICATORS AND GOVERNMENT SPENDING IN MAINE

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GENERAL COMMENTS

If you decrease general fund expenditures in 1975 by \$45M and allow for subsequent normal growth of this amount in later years the annual growth rate for general funds decreases to around 9%. This allowance is justified as an adjustment for the state's assumption of hitherto local school costs in 1975. This would be offset by an increase in local tax efforts, but note that the annual rate of increase of local revenues has only been around 6%. If the \$45M and growth is added to local tax expenditures the local annual increase would run to around 10%.

Note that the annual increase in the rate of growth of Maine Personal Income (Exhibit 3) has been around 11%, right in line with the rate of increase of total state expenditures.

Because the definitions of "cost of living" and "population changes" are crucial to determining the effects of this proposed amendment, agreed upon statistics are a necessity. Note that the Tax Limitation Committee's figures in Exhibit 12 differ from those in Exhibit 3. Such differences must be resolved before we can begin to determine the effect of this proposed limit on appropriations.

MAINE POPULATION*
1970-77

<u>1977</u>	<u>1976</u>	<u>1975</u>	<u>1974</u>	<u>1973</u>	<u>1972</u>	<u>1971</u>	<u>1970</u>
1,084,900 (Provisional)	1,071,380	1,058,000	1,049,400	1,038,600	1,025,900	1,012,200	993,700

Compounded annual rate of increase 1.3%

*Source: U.S. Bureau of Census

CONSUMER PRICE INDEX (NATIONAL) *

1972-77

<u>1977</u>	<u>1976</u>	<u>1975</u>	<u>1974</u>	<u>1973</u>	<u>1972</u>
181.5	170.5	161.2	147.7	133.1	125.3
6.45%	5.77%	9.14%	10.97%	6.23%	

TOTAL INCREASE

1972-77

44.85%

Annual increase 7.7%

* Source: U.S. Department of Labor

MAINE PERSONAL INCOME *
 (BILLIONS OF DOLLARS)
 1972-77

<u>1977</u>	<u>1976</u>	<u>1975</u>	<u>1974</u>	<u>1973</u>	<u>1972</u>
\$6.366	\$5.761	\$5.070	\$4.759	\$4.320	\$3.789
10.50%	13.63%	6.54%	10.16%	14.01%	

TOTAL INCREASE
1972-77
 68.01%

Annual increase 11%

*Source: Survey of Current Business, U.S. Department of Commerce

MAINE REAL PERSONAL INCOME *

(BILLIONS OF DOLLARS)

1972-77

<u>1977</u>	<u>1976</u>	<u>1975</u>	<u>1974</u>	<u>1973</u>	<u>1972</u>
\$4.528	\$4.326	\$4.008	\$4.070	\$4.094	\$3.789

Annual increase 3.63%

*Source: Survey of Current Business, U.S. Department of Commerce

MAINE STATE GENERAL FUND EXPENDITURES *
 (THOUSANDS OF DOLLARS)
 1972-77

<u>1978(est.) #</u>	<u>1977</u>	<u>1976</u>	<u>1975</u>	<u>1974</u>	<u>1973</u>	<u>1972</u>
\$417,484	\$373,370	\$336,149	\$332,902	\$245,376	\$229,972	\$213,109
11.8%	11.1%	.90%	35.7%	6.7%	7.9%	

Annual increase 11.86%

*Source: Legislative Finance Office, Compendium of State Fiscal Information, Pub. #9, 1977

#Source: Ronald H. Lord, Legislative Finance Officer

MAINE STATE GENERAL FUND REVENUES *
 (THOUSANDS OF DOLLARS)
 1972-77

<u>1978(est.)#</u>	<u>1977</u>	<u>1976</u>	<u>1975</u>	<u>1974</u>	<u>1973</u>	<u>1972</u>
\$421,683	\$383,447	\$334,208	\$294,987	\$254,824	\$241,996	\$218,150
10%	14.7%	13.2%	15.8%	5.3%	10.9%	

Annual increase 11.6%

*Source: Legislative Finance Office, Pub. #9, 1977
 #Source: Ronald H. Lord, Legislative Finance Officer

MAINE STATE OPERATING EXPENDITURES *
(THOUSANDS OF DOLLARS)

1972-77
All Funds

<u>1977</u>	<u>1976</u>	<u>1975</u>	<u>1974</u>	<u>1973</u>	<u>1972</u>
\$822,561	\$762,481	\$715,376	\$569,402	\$506,030	\$482,706
7.9%	6.6%	25.6%	12.5%	4.8%	

Annual increase 11.25%

*Source: Legislative Finance Office, Pub. #9, 1977

MAINE STATE OPERATING REVENUES *

(THOUSANDS OF DOLLARS)

1972-77
All Funds

<u>1977</u>	<u>1976</u>	<u>1975</u>	<u>1974</u>	<u>1973</u>	<u>1972</u>
\$823,362	\$743,366	\$657,590	\$572,811	\$529,479	\$478,265
10.8%	13.0%	14.8%	8.2%	10.7%	

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Annual increase 11.48%

*Source:: Legislative Finance Office, Pub. #9, 1977

MAINE STATE OPERATING REVENUES*
 ALL FUNDS EXCEPT FEDERAL
 (THOUSANDS OF DOLLARS)
 1972-77

<u>1977</u>	<u>1976</u>	<u>1975</u>	<u>1974</u>	<u>1973</u>	<u>1972</u>
\$549,437	\$482,578	\$432,066	\$389,367	\$360,864	\$322,535
13.9%	11.7%	11.0%	7.9%	11.9%	

Annual increase 11.24%

*Source: Legislative Finance Office, Pub. #9, 1977

MAINE LOCAL PROPERTY TAX REVENUES *
(THOUSAND OF DOLLARS)

1972-77					
<u>1977</u>	<u>1976*</u>	<u>1975*</u>	<u>1974*</u>	<u>1973</u>	<u>1972</u>
\$295,528	\$286,658	\$259,630	\$239,560	\$232,420	\$221,095
3.1%	10.4%	8.4%	3.1%	5.1%	

Notes:

Included in each year's total is the prior year's excise tax

*Inventory tax included.

Annual increase 5.98%

*Source: Bureau of Taxation, Property Tax Division

PER CAPITA STATE TAX COLLECTIONS a/
 Fiscal Years
 (Dollars)

	1976P	1970	1964	1959
United States <u>b/</u>	417.1	236.8	126.7	91.7
New England	433.8	236.6	119.8	93.9
Maine	496.3	209.2	111.8	85.3
New Hampshire	223.8	128.7	75.9	64.8
Vermont	430.7	303.4	140.4	104.5
Massachusetts	469.6	245.0	119.5	98.7
Rhode Island	419.6	241.0	124.4	90.4
Connecticut	405.5	244.7	128.9	94.5

P Preliminary

a/ Based on estimated population, excluding Armed Forces overseas, as of July 1 of each fiscal year except 1970 when April 1 figures were used.

b/ Does not include data for the District of Columbia.

SOURCES: U.S. Bureau of the Census, State Tax Collections
 U.S. Bureau of the Census, Statistical Abstract of the United States
 U.S. Bureau of the Census, Current Population Reports, Series P-25, No.642, December 1976

COMPARISON OF GROWTH OF MAINE
STATE AND LOCAL GOVERNMENT EXPENDITURE
AND GROWTH OF MAINE PERSONAL INCOME*

<u>Fiscal Year</u>	<u>State & Local Expenditure (% growth)</u>	<u>Personal Income (% growth)</u>
1964	2.5%	8.7%
1965	1.7%	7.9%
1966	9.4%	7.3%
1967	18.0%	5.0%
1968	13.0%	8.3%
1969	2.5%	7.9%
1970	17.0%	8.2%
1971	18.0%	4.4%
1972	8.6%	9.3%
1973	11.0%	12.0%
1974	10.0%	14.0%
1975	15.0%	6.2%

*Source: National Tax Limitation Committee, A Taxpayer's Guide to Survival (1977), pp. 30-31

6. DESCRIPTION OF TAX LIMITATION METHODS IN USE OR PROPOSED IN OTHER STATES

A. Recent developments. The June 19, 1978 issue of Time Magazine summarized the most recent tax limitation movements. In many other states initiatives are in initial planning stages:

OHIO. Twice in the space of 60 days Cleveland voters rejected a hike in property taxes that would have rescued its 113,000-student public school system from bankruptcy. The margin last Tuesday was 3 to 1, an increase over the 2 to 1 April vote against the levy, which would have increased the average homeowner's tax by \$86.63. As a result, there may be no money to reopen Cleveland's schools after the summer recess. The vote also reflected opposition to court-ordered busing, scheduled to go into effect next fall to correct racial imbalances, and the high-handed manner in which Federal Judge Frank J. Battisti has, in effect, taken over management of the school system. Paul Briggs, Cleveland's respected veteran school superintendent, was so stripped of power by the court that he resigned his post.

OREGON. A virtual carbon copy of Jarvis-Gann has been picking up initiative signatures and now has a good chance to make the ballot in November. It would limit the property tax to 1 1/2% of market value, which would decrease the average homeowner's tax tab by one-third. "The measure could be very difficult to defeat," warns Robert Ridgley, recently retired chairman of the Portland public school board. He fears that the "effect on schools would be devastating." Supporters of the proposal blame the state legislature for its failure to curtail the property tax long ago. Says State Representative Al Shaw: "The legislature's attitude has been to sit tight and wait for things to blow over. Things won't blow over this time."

COLORADO. Two petition drives are under way for the November ballot. One proposal would limit increases in state and local government spending to the growth in living costs. The other would limit taxes on owner-occupied homes to either 2.5% of market value or 5% of family income, whichever is lower—giving half the homeowners in Colorado a tax cut of up to 30%. Public officials in the state scoff at the Jarvis-Gann approach. "Most screwball ideas seem to start in California," said one. But another was secretly delighted at the passage of Proposition 13. "California will be in one hell of a mess," he predicts, "and maybe some of our legislators will take notice and cut back on spending here."

ARIZONA. Partly to prevent a Proposition 13-style proposal from getting onto the November ballot, the Arizona legislature has called for a special session to over-

haul its state tax structure. **Contends State:** Representative Stan Akers, chairman of the House Ways and Means Committee: "There is a general feeling of 'I've had too damned much' among people who want high taxes to come to a screeching halt. I wouldn't blame them if they wanted something like the Jarvis amendment here." The legislature may freeze property assessments at 1977 levels and re-examine assessing and taxing procedures.

MICHIGAN. A move to limit state spending won a respectable 43% vote in 1976, and is given a good chance of approval this year. State and local taxes now consume 9.7% of total personal income in Michigan, compared with 6.7% ten years ago. Viewing California's action as too drastic, Petition Leader Richard Headlee, a former director of the U.S. Chamber of

LOU GRANT—LOS ANGELES TIMES SYND.



"The taxpayers are coming! The taxpayers are coming!"

Commerce, says his goal is to seek "progressive, responsible, accountable government, which can only grow as the economy in the state grows."

MASSACHUSETTS. The plight of the average Massachusetts taxpayer is even worse than that of his California counterpart. So great is the burden that protesters call the state "Taxachusetts." The property tax averages 4.7% of market value for a variety of historic reasons. Slow to adopt modern sales and income taxes, the state has relied too heavily on the property tax. Moreover, its charitable attitude toward churches and higher education produced an unusually high proportion of tax-exempt property, especially in Boston. At the same time, liberal Massachusetts provides more services for victims of poverty and disease than do most other states. More recently, its industrial base has been declining. Massachusetts thus is in a tax

~~situation, with several states pursuing so-~~
~~lutions locked in conflict.~~

Nor is that all. In Delaware, Republican Governor Pierre S. duPont and his Democratic Lieutenant Governor two weeks ago proposed an amendment to the state constitution requiring a three-fifths vote by the legislature to raise any taxes; their goal is to prevent "midnight raids" on taxpayers by politicians trying to make fiscal ends meet. Maryland last month put through what one lawmaker calls "the most far-reaching program of property tax relief in 200 years." Three Florida state senators have announced that they will try to get a Jarvis-type proposal on the ballot for November. In Texas, Republican Gubernatorial Nominee Bill Clements is calling for an "iron-clad limitation on taxation and the growth of government spending."

B. An analysis of the different tax limitation options by Jack Suyderhoud of the Department of Economics, Purdue University (January, 1978):

INTRODUCTION

On November 6, 1973, California voters rejected initiative Proposition #1 (popularly known as "The Reagan Tax Limitation Initiative") which would have placed a ceiling on California state tax collections. Since that day numerous tax and/or expenditure limitation proposals have been discussed, voted upon, and in the case of New Jersey, enacted. Tax-expenditure limits (TEL's) are laws which by statute or constitutional amendment would place a lid on the amount of taxes a state can collect, or alternatively, but equivalently, constrain the expenditures of the state. The limit can be expressed as a percentage of state personal income, as an absolute dollar amount, or as a freeze on tax rates. In addition to restricting state fiscal decisions, some proposals have included provisions to limit local government spending. TEL proposals generally include provisions for the exemptions of certain revenues and expenditures, e.g., debt servicing, user charges and fees, and intergovernmental aid, and for emergency legislative override of the ceiling.

Paul W. McCracken termed efforts to directly constrain state taxes and expenditures as "more than a troglodytic spasm." He sees them rather as a "movement" in the "direction that public sentiment and government procedures have been moving for some time." Indeed, although no tax-expenditure limitation proposal placed before the voters has ever been accepted, proponents of TEL's are continuing with their attempts to enact these caps asserting that there is broad popular support for such proposals. This essay will present a summary of recent and on-going TEL activity in the states as well as the argumentation for and against such proposals. Before that, however, it is useful to briefly examine the history of fiscal constraints imposed on governments in the U.S. federal system.

A BRIEF HISTORY OF FISCAL LIMITATIONS

Efforts to restrict government powers to tax and spend have been made at all three levels in our federal system. Local government fiscal flexibility has been most circumscribed while attempts to limit state and Federal financial latitude have met with only a modicum of success. Tax-expenditure limitations directly control revenues and outlays but since a jurisdiction's tax yield is dependent on the tax rates and bases to which the rates are applied control of the yield can also be achieved by placing limits on rates and bases. All three of these variables have been subject to restrictions in the U.S.

Local governments as "wards" of the states have had numerous constraints placed on their financial activities. States have, with increasingly frequent exceptions, confined local own-source revenue to that arising out of taxable property and miscellaneous fees and charges. The extent of property subject to taxation has been well defined by state legislatures. State-mandated erosion of this base has occurred for various reasons with concurrent increased usage of local sales and income taxes. In all cases state statutes strictly define the bases for local taxation. Additionally, many states have constitutional and statutory provisions which place limits on property tax rates and yields. In 1976 twenty-three states imposed rate limits on their local governments, sixteen had yield limits, and only eleven no limits at all. [ACIR, State Limitations on Local Taxes and Expenditures, A-64, 1977]

Efforts to limit the powers and extent of Federal taxation centered around constitutional issues. Because the U.S. Constitution limits Federal government taxation to proportional levies on the population, it was not until the ratification of the Sixteenth Amendment in 1913 that Congress had access to the income base. The enactment of the progressive tax on individual incomes

prompted taxpayer groups to seek amendment of the Constitution so that individual income tax liabilities would be limited to 25 percent of annual income. Failure by Congress to endorse these proposals in 1938 and 1939 caused proponents of the limit to call for a Constitutional Convention to address the issue. Between 1939 and 1960 thirty-one state legislatures had enacted resolutions which in some way concerned Federal tax limitation but the Convention was never called.

Although generally regarded as sovereigns unto themselves, the states have seen fit to impose restrictions on their own financial activities. Only eleven states have no constitutional limitations on legislative borrowing and of these, only four permit the legislature to enter into debt by simple majority vote. Twenty-six states also impose statutory interest rate ceilings on their bond issues. Some states have as well restricted their access to and extent of usage of certain taxes: three states specifically prohibit taxes on individual income and of the 41 states that do tax income, 35 have constitutional provisions as to the manner in which these taxes are to be levied. Although the imposition of a tax-expenditure limitation would be a restriction of greater generality for states, the principle of constitutional or statutory constraints on state fiscal activities are clearly established.

THE PRO AND CON ARGUMENTS

The primary purpose of tax-expenditure limits is to control government spending and taxes. Proponents of such legislation argue that the growth of government expenditures in general (and the resulting increase in tax burdens) has been in excess of what is optimal. The reason for such undesirable growth are basic faults with the structure in which representative government decisions as to the scope of government are made. First, it is asserted that since benefits tends to be specific and costs are spread over the entire population citizens

and their representatives favor ever-increasing government outlays. Second, legislative decisions are biased toward excessive spending due to intense pressure created by special-interest groups who seek more public spending and vote-trading strategies which favor larger budgets. Additionally, the separation of tax and expenditure decisions in most legislative settings favors high spending since the hard choices about financing programs are not faced by program advocates. Third, at the executive level, the governor who might provide a countervailing force may be powerless to do anything about it or worse may be contributing to excessive growth of spending by proposing programs whose costs linger after the political benefits and tenure of his office have expired. The bureaucracy also comes under attack as a source of excessive spending since each agency is said to promote its interests and that of its clientele groups.

Proponents of tax-expenditure limitations regard such legislation as a means to offset some of the above mentioned biases in the system of representative government. The TEL it is argued, would take the overall spending decision-making authority from the legislature and return it to the people thereby increasing citizen involvement in that important element of the governmental process. The decision as to the proper size of expenditures would be made once when the TEL is enacted and again when the voters decide that such a limit may need to be adjusted. Upon enactment of the TEL, the growth of spending will be checked and given this situation legislative decisions will be more effective as priorities are weighed in light of a fixed budget ceiling. From the point of view of the legislature, special-interest group pressures can more readily be resisted and popular confidence in the legislature as a fiscally responsible body may be restored. The proponents of TEL's (primarily the National Tax-Limitation Committee) seek to impose these constraints in terms of constitutional changes so to "limit firmly and certainly the power of government."

Opponents to tax-expenditure limitations have been successful in defeating all such initiatives in statewide elections. Arguments against TEL proposals fall generally into two categories. The first set is characterized by criticism of the TEL's on the basis of technical problems associated with implementing TEL legislation. For example, state personal income as a base on which to compare revenues or expenditures is subject to discussion from both the definitional and time frame aspects. (See the New Jersey Case Study.) Beyond technical problems however, the conceptual arguments against TEL's are numerous. Opponents contend that the lid, whether in absolute terms, as a freeze on tax rates, or as a percentage of state personal income is arbitrary and will allow public sector decisionmakers no discretion as to how much should be spent. If current expenditure levels are not optimal then freezing them in place will not permit adjustments to optimality.

Opponents have predicted several undesirable outcomes that would result from the implementation of TEL's. They suggest that a limit on one level of government will merely cause a shift of functional and financial responsibilities to a level not so limited, e.g., from the state to local governments. TEL's would also prevent desirable shifts of responsibilities to the limited jurisdiction, as in the case of educational finance. Since most TEL proposals exempt certain sources of revenue and areas of expenditures, there would be an inclination on the part of the limited jurisdiction to utilize these exclusions more intensively than is proper. Thus the opponents assert that greater reliance would be placed on debt finance and fees and charges which may be neither fiscally prudent nor equitable. For governments which correspond to areas with cyclically sensitive economies, a TEL would force public service cutbacks due to declining state incomes at a time when this is least desirable. Even without cyclical influences a TEL may force long-run cutbacks in government services since productivity gains

in the public sector have historically lagged and can be expected to lag private sector increases. Opponents of TEL proposals also fear that once implemented a TEL would damage newly formed minority-interest groups because these groups have usually been granted slices out of a growing fiscal pie; once this growth is restricted these groups will have to compete to their disadvantage with established interests.

Some opponents of TEL's suggest that they are not necessary and would be ineffective. It is felt that expenditure growth has been overstated and that at the state level this growth has been due to the reallocation of functional responsibilities (e.g., education) and mandated costs (e.g., medicaid). The former is viewed as desirable and the latter unavoidable. Even without the TEL, voters have effective control over government expenditures since they decide which representatives to elect. Since legislators who advocate spending levels in excess of voter desires would be voted out of office, the TEL would represent a redundant control mechanism which is also unusually restrictive. It is doubtful, the argument continues, that the voters in general can make better decisions about the overall level of spending than their representatives. The average elector is not knowledgeable about the subtle aspects of most tax-expenditure issues and would have little chance of making an informed decision. The issues would be simplified and appeals would be made to the emotions rather than reason. Finally, opponents of TEL's deny that expenditures decisions are currently made in the framework of unlimited budgets. The combination of revenue projections and constitutional requirements for balanced budgets force subnational governments to make decisions and order priorities in the light of effective budget constraints. Adding another constraint on total spending would only increase inflexibility and would not materially improve the quality of expenditure decisions.

The argumentation for and against tax-expenditure limitations therefore seems to center around two issues: what should be the proper scope of government in a mixed economy, and how should that question be answered. The basic relationships among voters, elected officials, the bureaucracy, and special-interest groups is questioned when those who advocate TEL's are expressing a distrust of the system in which current public finance decisions are made. They are obviously not satisfied with the results of the decisionmaking process and seek to alter its framework. Those who oppose the TEL proposals either place greater trust in the efficacy of the present constitutional rules of representative democracy or view TEL's as an unsatisfactory means of dealing with the shortcomings of the system perhaps preferring alternatives such as zero-based budgeting, legislative budget reform, sunset laws, etc.

RECENT TAX-EXPENDITURE LIMITATION ACTIVITIES

Speaking before a 1974 gathering of Arizona Republicans Ronald Reagan stated that the California TEL was defeated because the proponents "...didn't have the muscle to combat lies and distortions. Everyone who had a place at the trough lined up against [the proposal]." Such was the emotion generated by the debate on TEL proposals in the various states. The 1970's has seen a flurry of such proposition in all parts of the country. Nine states have faced a total of eleven serious TEL options and Florida made a decision on a less direct control on spending. In addition, attempts are currently being made to put TEL's on the ballot in several states. The purpose of this section is to review the actions through 1976 indicating their origins, natures and results. Current activities are reviewed in the next section.

As is to be expected, there is great diversity as to the technicalities of the proposals in the various states. This variety plus the differing contexts

in which these proposals were put forward makes generalization and comparisons of outcomes difficult. Because the 1973 California initiative generated the most publicity and was the inspiration and technical precursor of several other state TEL efforts, it will be reviewed first even though voters in Washington State cast ballots on a tax limit referendum in 1970. The other states will follow in alphabetical order.

California. In February, 1973, at the suggestion of his Tax Reduction Task Force, then-governor Ronald Reagan proposed a constitutional limit on state tax collections so as to control the increase in public sector expenditures. The Governor felt that the time was right for such an idea: a previously enacted tax increase would leave the state with a large surplus, and the Governor had succeeded the previous year in having the Legislature pass a lid on local property taxes. The Democratically controlled legislature rejected the proposed amendment and the Governor personally led a petition campaign which accumulated enough signatures so that a special election was called for November 1973. The lid proposal had become Proposition 1.

Complexity was the most outstanding feature of the Proposition. It filled six pages on the ballot and provided for the first tax limit tied by formula to state personal income. (See table.) It called for an initial limit of approximately 8.3% for state tax collections declining eventually to 7%. Revenues from intergovernmental aid, trust funds, fees, and charges were to be excluded. In addition, the proposal included numerous other elements: a freeze on local property tax rates and restrictions on the use of local income taxes; adjustments of the limits in event of shifts in functional of financial responsibilities among the levels of government; the establishment of an Emergency Fund from which the Governor, upon a 2/3 vote of concurrence by the Legislature, could make

SUMMARY TABLE

State	Name and Date	Nature of the Limit	Exemptions	Local Government	Adjustments for Shifts of Functions	Override of Limit	Other Features	Outcome
California	Proposition 1 Nov. '73	Tax revenues not to exceed 9.3% of state personal income to decrease to 7%.	Revenues from intergovernmental aid, trust funds, user fees, and charges.	Property tax rates frozen to FY72 or FY73 levels. No local can impose income tax without 2/3 approval of Legislature.	Yes	Emergency: 2/3 vote of Legislature Regular: Referendum approved by voters.	Economic Estimates Commission. Emergency fund = .2% of state personal income. Surplus distributed by income tax credits and reductions. Freeze income tax rates 2/3 legislative approval of all tax changes.	Defeated 54% - 46%
Arizona	Proposition 106 Nov. '74 S.B. 1278 May '74	State expenditures not to exceed 8.4% of state personal income.	Expenditures from Federal aid, fees and charges, trust and agency funds, taxes collected by state for disbursement to locals.	No provisions.	Yes	2/3 vote of each house.	Economic Estimates Commission	Defeated 51% - 49%
Colorado	Amendment No. 10 Nov. '76	Freeze all tax rates and no new taxes or tax increases without approval of majority of electors.	No provisions.	Same as state.	No provisions.	Majority vote of electors (could be interpreted as requiring majority approval of all registered voters)	None	Defeated 75% - 25%
Florida	Constitutional Amendment No. 6 Nov. '76	Full-time employees of the state not to exceed 1% of state population. Part-time not to exceed 10% of full-time.	Elected officials	No provisions.	No provisions.	Emergency: Governor's declaration and concurrence of 3 cabinet members.	None	Defeated 52% - 48%
Michigan	Proposal C Nov. '76	All state revenues not to exceed 8.3% of state personal income	Federal aid and taxes to services debt.	No new taxes or tax increases without voter approval	No reduction in aid to locals "as a group"	Emergency: Legislatively declared by 2/3 vote.	Pro rata income tax refunds of surplus revenues.	Defeated 57% - 43%
Montana	Initiative Amendment No. 7 Nov. '76	State appropriations not to exceed \$375 million for each two-year fiscal period until 1983.	None	No provisions.	No provisions.	No provisions.	15% annual phase-out of Federal aid with no Federal aid accepted after 1984.	Defeated 69% - 31%

New Jersey	Ch. 67, P.L. 1976 Aug. '76 Amended by Ch. 22, P.L. 1977 Feb. '77	Growth of state appropriations limited to growth of state percapita personal income. Expires June 1980:	Expenditures from Federal aid and for debt service and aid to local governments.	By separate legislation (Ch. 68, P.L. 1976, and Ch. 212, P.L. 1975) budget growth not to exceed 5% per year.	Yes	If approved by majority of voters.	The Governor must present a budget consistent with the limit.	Enacted by the Legislature.
North Dakota	Initiated Statute No. 1 Sept. '76	General fund appropriations not to exceed \$332 for each of the fiscal biennia '77 and '79.	Any expenditures not from the general fund.	No provisions.	No provisions.	Legislative majority.	None	Defeated 58% - 42%
Utah	Proposal C Nov. '76	Budget ceiling of \$915 million per year.	Expenditures for unemployment compensation and job training and non-appropriated funds.	No provisions.	No provisions.	Consent of the voters at a regularly scheduled general election.	Expenditures from Federal aid not to exceed 30% of budget and 20% annual phase-out of Federal aid.	Defeated
Washington	1. Initiated Measure 251 Nov. '70	Freeze on state tax rates and no new state taxes.	Non-tax revenues.	No provisions.	No provisions.	Legislative majority.	None	Defeated
	2. Initiated Measure 306 1974	State tax revenue not to exceed 9% of state personal income.	State-collected property taxes for disbursement to locals, Federal aid, trust funds, revenues, proceeds from bonds, and fees.	No provisions.	Yes, and no reductions in aid to locals as a group.	Emergency: declaration by Governor and 2/3 vote by Legislature; Regular: 60% of electors voting on referendum.	Special reserve fund not to exceed .2% of state personal income. Return of surpluses as determined by Legislature.	Failed to achieve ballot status.
	3. Initiated Measure 320 1976	Freeze on tax rates and no new taxes.	Unclear.	Included in tax freeze.	No reduction in state aid to locals and no mandated costs on locals without funds provided	Majority of voters.	None	Failed to reach ballot.

appropriations; the creation of a Tax Surplus Fund to finance a one-time 20% income tax credit and exemption of certain low-income taxpayers; the creation of an Economic Estimates Commission to make the relevant limit-related calculations; and required future state tax changes be approved by 2/3 of the Legislature.

The campaign both for and against Proposition 1 was particularly active. Led by Governor Reagan, the proponents cited the need for citizens to reassert control over government spending. Opposition arose not unexpectedly from the Democratic Legislature which enacted substitute legislation refunding the anticipated 1973 surplus thus removing a considerable incentive to vote for the Amendment. Opponents also charged the entire package would be regressive by forcing increased usage of local property and sales taxes, user fees, and charges to replace an estimated \$620 million revenue efficiency. This argument would be repeated in other states. Ultimately, the Proposition's complexity proved to be a source of voter uncertainty and resistance. In a tight turnout it was defeated.

Arizona. Proposition 106 appearing on the November 1974 ballot was greatly influenced by the nature and experience of the California TEL. It was introduced in the Republican controlled State Senate a few months after the defeat of the Reagan Plan and called for a 7.9 percent lid on state expenditures. Resistance in the Arizona House resulted in a compromise 8.4 percent lid, well above the then-existing level of spending. In order to minimize voter misunderstanding the Amendment was kept very simple. In addition to the expenditure cap it would have required adjustment of the limit in event of shifting functions and permitted overriding the limit by a 2/3 vote of the Legislature. As in California, Proposition 106 would have created an Economic Estimates Commission with responsibilities to calculate the budget limits and promulgate the figures. Some of the details which are required of a TEL proposal were provided by separate

conditional legislation as enacted in SB 1278. It would have exempted expenditures arising out of Federal grants, fees and charges, trust funds, bond funds, and taxes collected by the state for disbursement to local governments.

Most of the debate on the Arizona TEL was centered in the Legislature. Republicans generally endorsed it while Democrats were almost uniformly opposed. The pro and con arguments echoed those in California but attracted much less attention. When placed on the ballot Proposition 106 received the support of the Phoenix newspapers as well as both gubernatorial candidates, but the Proposition was defeated.

Colorado. Amendment No. 10 was intended to require voter approval of all government acts which would have resulted in new or increased taxes. It was placed on the November 1976 election ballot only after the State Supreme Court overturned a lower court ruling which had removed the Amendment from the ballot because it had been restructured.

Although only five sentences long, Amendment No. 10 created much controversy. It would have required "an affirmative vote...of a majority of the registered electors" before any tax could be "instituted, implemented, imposed, restored, or increased." Any tax which was in existence would have been "valid only to the extent and rates at which it [was] actually being imposed." A tax was defined as any device by which wealth was transferred from persons to government, and the freeze would have applied to local governments as well as the state. The wording "majority of registered electors" would have made voter approval of tax changes almost impossible and opponents of the Amendment attacked this feature. The vague definition of what qualified as a tax also contributed to voter uncertainty and the Amendment was overwhelmingly rejected.

Florida. Unlike the attempts in other states, Florida's budget cap would have worked indirectly by placing a ceiling on the number of state employees. According to Amendment No. 6, full-time employees were to be limited to 1 percent of the state's population and part-time employment to 10 percent of full-time levels. The proposal originated in the Florida Senate and received broad-based support but little scrutiny. A resolution placing it on the November 1976 ballot passed the House 91-13 after a debate lasting fewer than two minutes.

Legislative supporters of the Amendment contended that the employment ceiling was reasonable since several other states operated well below the proposed limit (an assertion which was subsequently found to be false). Citing arguments heard in other states where TEL's were debated, the proponents saw the Amendment as a way to control the legislative bias toward higher spending. Opponents charged that if enacted the Amendment would result in the lay-off of 4,200 to 7,000 full-time state employees and thus shifting burdens to local governments and forcing increased property taxation. The Amendment was defeated 52% to 48%.

Michigan. Of six states that held 1976 referenda on TEL-like proposals, only Michigan's resembled that of California. It was also the first state where the National Tax-Limitation Committee was influential in the construction and promotion of the TEL. The TEL proposal grew out of resolutions enacted by the State Senate and House in 1974 but it failed to receive enough support to appear on the ballot in that year. Subsequent efforts succeeded in placing it on the 1976 general elections ballot as Proposal C.

Although less complicated than California's Proposition 1, Proposal C was quite similar, calling for taxes and all other revenues of the state not to exceed 8.3% of state personal income. Estimates indicated that such a limit would have

reduced 1976 budget outlays by 6%. Federal aid and revenues to service debt were exempted. Local governments would have been prohibited from increasing tax rates or bases or levying new taxes without voter approval. The restriction on bases caused some confusion since it could have been interpreted as prohibiting property tax assessment increases. Proposal C would also have prohibited the state from requiring new or increased local expenditure programs without providing state funds to finance such actions. The Amendment protected locals from reduced state aid by maintaining the "proportion of state revenue paid tounits of local government...., taken as a group." Override of the limit was possible if a declared emergency, requiring 2/3 approval by each house, existed. Surplus funds were to be refunded pro rata on the basis of income taxes paid.

The proponents argued that Proposal C was necessary for much the same reasons as previously discussed but added that local governments were safeguarded from reduction in state aid. Opponents, who included the Republican governor and Democratic legislative leaders, argued that there could be significant shifts in aid to local governments and that popular programs such as local property tax relief and aid to education were endangered by the limit. Both major Detroit papers editorially opposed the Amendment, and it was subsequently defeated due largely to an extensive media campaign financed by the Michigan Education Association and the Michigan AFSCME union.

Montana. Constitutional Initiative Amendment No. 7 was placed on the November 1976 ballot by petition and was controversial in several respects. First of all, it called for maximum state appropriations of \$375 million for any "biannum" commencing prior to July 1983. Since the word "biannum" is not defined in any dictionary there was naturally some confusion. The state's Attorney General ruled that it would mean a budget cap for each two-year fiscal period until 1983 and

noted that state spending, including Federal aid, amounted to \$1.1 billion for fiscal 1975-77. The second controversial aspect of Amendment No. 7 was a requirement that the use of Federal aid be phased out at an annual rate of 15% so that by 1984 no such aid would be accepted. This was apparently justified on the grounds that Federal grants provide leverage through which the U.S. could interfere in Montana affairs. Beyond these provisions, Amendment No. 7 contained nothing.

Opponents to the Amendment naturally brought forth the spectre of higher local taxes and reduced quality of services. The required phase-out of Federal aid would have been equivalent to turning away Federal tax dollars collected in Montana. Not surprisingly, the amendment was soundly defeated.

New Jersey. In 1976 New Jersey became the first state to enact an overall tax-expenditure limitation. Entitled the "State Expenditure Limitation Act" (Ch. 67, P.L. 1976) and subsequently amended by SB 1688 (Ch. 22, P.L. 1977) it ties state expenditure growth to increases in state personal income. The Act was part of the tax reform package passed in 1976 and has its origins in the New Jersey Senate. At no time did the public vote on the proposal though it is commonly regarded that the lid's enactment was necessary for the adoption of the state income tax.

The limit provided for in the Act allows annual budget expenditures to grow by the amount of growth the previous year's growth of state per capita personal income. Expenditures from Federal aid and for debt services and aid to localities are specifically exempted from the limit. Local governments were not subject to limits by the Act, however, other legislation (Ch. 68, P.L. 1976) did limit local budget growth to 5% per year. Shifts of financial burdens among the levels of government will result in adjustment of the limit. The state may exceed the

maximum growth only if voters have previously approved such action in a general election. The laws provide no mechanism for disposal of any surpluses which may accumulate and places the burden of complying with the limit on the Governor and his budget proposals.

As indicated earlier, the lid is an attempt to assure taxpayers that the overall tax reform program will not result in higher tax liabilities. Estimates indicate that for fiscal 1978 the budget cap provided a leeway of \$75 million equivalent to about 5% of appropriations. Opponents of the bills are concerned over the incentives to borrowing provided by the exclusion of such revenues from the limit. The cap is scheduled to expire in 1980.

North Dakota. The attempt to limit North Dakota state expenditures appeared as Initiative Statute No. 1 on the September 1976 primary elections ballot. Placed there through a petition drive led by a well-known state conservative politician it called for a limit of \$332 million on state general fund appropriations for the two biennial fiscal periods '77 and '79. This would have meant reductions in outlays but only from the general fund since others were excluded. Since the limit would have been statutory a normal legislative override was possible. Beyond the limit the Initiative contained no other features.

Opposition to the Initiative was widespread and the cap was labeled as arbitrary and inflexible. Reduced aid to local governments and education and increased local property taxes were also forecast. The statute was rejected by the voters.

Utah. Proposal C was placed on the 1976 general election ballot by petition in order to "reduce taxes, inflation, indebtedness, and federal control of State government." It would have amended state laws to place a "five-year budget

ceiling of \$915,300,000 beginning fiscal year 1977-78." It was generally regarded that this limit would have applied to budget appropriations, and thus certain non-appropriated funds, some Federal aid, and auxiliary enterprise funds were implicitly excluded from the limit. Specifically excluded by the Proposal were unemployment compensation and job training funds. By way of reference, the fiscal 1977 state appropriations were \$915 million hence the limit could be regarded as a budget freeze. Like Montana's Amendment No. 7, Proposal C called for the phase-out of Federal aid, but at a rate of 20% annually. Additionally, Federal aid was at no time to exceed 30% of the budget appropriations.

In addition to the standard arguments cited in favor of TEL's, advocates of the Utah proposal asserted that a fixed budget would provide the necessary incentive for state officials to exert pressure on the Federal government to stop inflation. The phase-out of Federal aid usage was justified on grounds that such assistance acted merely to provide leverage for Federal interference in state-local affairs. Opponents to the Proposal argued that it would deny the Legislature the necessary flexibility to meet the needs of the people and result in higher local taxes. The Salt Lake Tribune editorialized that "if the implications weren't so serious, the whole thing could be laughed off as a huge practical joke." Proposal C did not pass.

Washington. The 1970's has seen three TEL-like proposals actively debated in Washington State, only one of which reached the ballot. That was Initiative Measure 251 which, much like the 1976 Colorado proposal, would by statute have constrained the state from increasing then-extant tax rates or bases and from levying new taxes. This tax freeze was to apply only to the state, and the Initiative made no provisions for emergency situations. The Measure was narrowly defeated in the November 1970 general election.

Following the 1973 defeat of the Reagan Plan in California several Washington groups investigated the possibilities of enacting a similar proposal in their state. Initiative Measure 306 was the result. It would have limited state tax revenue to 9% of state personal income, a ratio roughly equivalent to the actual one for the fiscal period 1975-77. Excluded from the limit were state collected property taxes for disbursement to local governments, Federal aid, bond sales revenues, and fees and charges. State aid to local governments was to have been maintained at the same aggregate levels. Shifts of financial responsibilities among the levels of government would have resulted in adjustments to the limit. In an emergency, the Governor could cause the limit to be exceeded if 2/3 of the Legislature concurred and a 60% majority of people voting in an election would have been required to permanently change the limit. A special reserve fund tied to state personal income would have been created to meet emergency situations. Although Measure 306 was simpler than its parent California proposal and thus would perhaps have had some greater voter appeal, it failed to attract enough support to reach the 1974 ballot.

Similarly, Initiative Measure 320 did not achieve ballot status in 1976. Like Colorado's 1976 tax-freeze proposal, Measure 320 would have constrained all state and local government "exactions" from being increased beyond their 1975 levels. A prohibition against reductions in state aid to local units was included, and the Legislature and courts would have been prevented from mandating local programs without providing funding.

CURRENT TAX-EXPENDITURE LIMITATION ACTIVITY

The results of the 1976 elections could not have been encouraging to the advocates of tax-expenditure limitations, yet the proponents of TEL's have not stopped trying. They are continuing with their attempts to enact these caps

asserting that there is broad popular support for limiting taxes and spending. Several organizations are actively promoting tax-expenditure limitations in the states. The most prominent group is the National Tax-Limitation Committee which seeks to "provide economic, political, and legal counsel on tax limitation through constitutional amendment; to provide advice and help in actual statewide campaigns...; to serve as a clearinghouse for information and experience gained in statewide campaigns; to provide publicity...; and to make nationally known speakers available." Joining the National Tax-Limitation Committee's efforts is the American Conservative Union which recently budgeted \$100,000 to promote TEL's and established its own task force to push for the enactment of limitations. Currently efforts are being concentrated in Michigan, Massachusetts and Illinois. In the latter state a tax-expenditure limit proposal has been introduced as House Joint Resolution Constitutional Amendment No. 22 (known as "The Taxpayers Rights Amendment") and has been approved by the House Revenue Committee. Enough signatures have been collected in Massachusetts to place a California-style TEL on the 1980 ballot. The effort in Michigan is still in its early stages of development and centers on organizing initiative petition drives. Petition drives are also underway in Ohio and Colorado, and in Tennessee the state's 1978 Constitutional convention will consider a TEL amendment which will limit the growth of state appropriations to the growth of the state's economy. Efforts to enact TEL's through initial legislative actions are being undertaken in several states: constitutional amendments have been introduced in the legislatures of California, Florida, Washington, Texas, Arizona, and Maryland.

CONCLUSION

Based on the experiences in the various states outlined above, an analysis of the factors influencing the outcomes of TEL elections is inherently difficult

and speculative. The difficulty in drawing conclusions arises out of the diversity of the TEL proposals. The speculative nature of the conclusions is due to the fact that no formal analysis has been attempted herein. Nevertheless, some tentative conclusions are suggested and worth enumerating.

One characteristic which all TEL's shared was controversy. Where the TEL proposals were reasonably well thought out and structured (this would thus exclude Colorado and Montana, where the TEL was very poorly worded, and Utah, where the cap was quite severe) the debates preceding the voting (and sometimes lingering beyond) were vocal and emotional. In some states the pro and con sides were split along partisan lines with Republicans tending to favor the budget caps and Democrats opposed. In other states, however, support and opposition transcended party delineations. In general, organizational support for TEL proposals came from the traditionally more conservative groups such as state chambers of commerce, real estate lobbies, and homeowner associations. Opposition came from groups whose members expected to lose the most from restricted state spendings: state employee groups, public employee unions, boards of education, minority organizations and general labor councils.

TEL's would seem, upon initial voter examination, a very attractive option since they offer the prospect of state tax reductions or at least no increased taxes. Voters would turn against them only if they perceive themselves being made worse off by offsetting program cutbacks and local tax increases. The experiences in the states indicate that voter confusion was the element which opponents of the budget caps were most able to exploit. The confusion arose out of two sources. First of all, there was substantial debate in most states as to how much state taxes and expenditures had in fact grown. Differing interpretations of data presented conflicting pictures as to the need for TEL's

A second source of confusion was uncertainty as to the impact of the TEL's. One of the most influential arguments against TEL's was the possibility that a state budget cap would result in state program cuts and local (property) tax increases. Proponents were not able to convince sufficient numbers of voters that these would not occur.

The results of the TEL elections could as well indicate that most voters favor the current framework in which budget decisions are made relative to one in which a TEL is operative. This may be due to several factors. Either the current public-private sector balance is within the acceptable range, or if not; TEL's are not the means by which to restructure the decision process. The inflexibility of TEL's, especially if they are constitutionally imposed, contributed to voter resistance.

CASE STUDY: THE NEW JERSEY BUDGET CAP

New Jersey's "State Expenditure Limitation Act" (Chapter 67, Public Laws 1976) was signed into law in August of 1976 and has tied state expenditure growth to increases in state personal income. In so doing, New Jersey became the only state which has an overall tax-expenditure limitation and its experience is of interest to those concerned with TEL's.

The New Jersey TEL is part of a 1976 tax reform package enacted by the Legislature in response to a New Jersey Supreme Court ruling that the state's school finance system violated the state constitution. In order to fund increased aid to school districts the Legislature reluctantly adopted a broad-based income tax, something which it had failed to do in 1974 and 1975 in spite of court-imposed deadlines. The budget limitation itself originated in 1975 as Senate Concurrent Resolution 3028, introduced by Senator John F. Russo. It proposed amending the New Jersey Constitution so as to require the Legislature to enact laws limiting expenditures by the state and local governments. The limit was to be related to state personal income but SCR 3028 did not specify a particular formula. The resolution had twenty-four co-sponsors in the Senate and was an attempt to make the then debated income tax more acceptable: Senator Russo commented that "the most common complaint we all received...from our constituents has been, if you give [the Legislature] a new tax [they] are only going to spend it, no matter how much it is."

No action was taken on SCR 3028 in the 1975 legislative session, but a hearing on the Resolution revealed that a more specific formula for the limit was necessary. Such a formula was provided in the 1976 session when Senator Russo introduced Senate Bill 887 which proposed to statutorily cap the growth of state expenditures by the rate of growth of state per capita personal income.

A similar bill was introduced in the Assembly (AB 1745), but it would have limited the growth of expenditures to 5% annually. The Senate version of the law prevailed and was passed by both houses and signed by the Governor in August of 1976 to become effective with the fiscal year 1978 budget.

The law stipulated that maximum expenditures for any fiscal year will be dependent on the appropriations for a "base" period and the extent to which per capita personal income increased over a base period. The formula involved lags since budget data and personal income data is not immediately available. Thus, for example,

$$\text{Maximum expenditures, FY78} = (\text{base year appropriations, FY76}) \times$$

$$\frac{(\text{77 state per capita personal income})}{(\text{76 state per capita personal income})}$$

The budget ceiling was thus computed from a two-year lagged base budget. Initial estimates indicated that had this been in effect for FY77, appropriations would have been reduced by \$60 million (or approximately 2%). State expenditures from Federal aid and for aid to local governments and debt servicing are excluded from the cap. Separate legislation (Ch. 68, P.L. 1976) limits local budget growth to 5% per year. In the event of shifts of functions among the levels of government, the "base year appropriations" are to be adjusted so as to keep the cap effective. Only a concurring majority vote of the people may allow the Legislature to exceed the limit.

The budget cap was criticized both before and after enactment on conceptual and technical grounds. The need for technical adjustments became immediately apparent. The two-year lag for the base budget was thought unacceptable and the use of Federal per capita income data was not possible since they are not available. In response to these issues Senate Bill 1688 (Ch. 22, P.L. 1977)

was passed in February, 1977. It removes the two-year lag and redefines the income data to be used so that

$$\text{Maximum expenditures, FY78} = (\text{base year appropriations, FY77}) \times \frac{(\text{76 state personal income/76 population})}{(\text{75 state personal income/75 population})}$$

SB 1688 puts the compliance burden on the Governor who must now present an annual budget message consistent with the lid. In addition, an expiration date of June 30, 1980 was added.

According to the New Jersey Taxpayers Association, the budget cap has not proved restrictive for FY78 appropriations. The growth factor was computed at 9.55% and a budgeting maneuver placed \$54 million in previously escrowed Commuter Tax revenues into the base year (FY77) appropriations. This permitted an increase in the budget cap of \$60 million (3.5% of appropriations). At the start of the budget period, the fiscal 1978 state budget was still \$74.7 million below the cap.

Efforts to repeal the lid law have eased since the inclusion of the 1980 expiration date. In addition, local government associations who would be expected to resist state budget limits because of possible aid reductions have been pre-occupied with attempting to rescind the laws which cap their own budgets. Only further experience will determine the success of the New Jersey expenditure limit.