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county and municipal expenditure and revenue limits

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County and Municipal Expenditure and Revenue Limits

This paper describes three methods by which the state imposes fiscal controls on counties and municipalities:

- Expenditure restraint program for municipalities
- Levy limit on counties and municipalities
- Levy rate limit on counties

School districts and technical colleges are also subject to revenue limits by the state. These are described in Legislative Fiscal Bureau Informational Papers #26 and #33.

In addition, the paper describes municipal general obligation debt limits under the state constitution and statutes.

Municipal Expenditure Restraint Program

Municipalities are not subject to a mandatory expenditure control. However, as a condition for receiving aid under the expenditure restraint program, municipalities must limit the year-to-year growth in their budgets to a percentage determined through a statutory formula. The Department of Revenue (DOR) administers the expenditure restraint program. To receive aid, they must also have a municipal purpose tax rate in excess of five mills. From 2003 through 2017, the program's annual distribution was set at \$58,145,700. However, beginning with payments for 2018, total funding for the program appropriation is increased by \$1,166,000 (for a total funding level of \$59,311,700) each year through 2022 to make separate, annual payments of \$583,000 to the Village of Maine in Marathon County and the City of Janesville in Rock County. These payments are in

addition to any amounts the two municipalities would otherwise receive under the formula, but are not included in the total funding distributed to all municipalities under the formula.

The statutes define "municipal budget" as the municipality's budget for its general fund exclusive of principal and interest payments on long-term debt. State law provides for the exclusion of several other types of expenditures: (a) amounts paid by municipalities under municipal revenue sharing agreements; (b) amounts paid by municipalities as state recycling tipping fees; (c) expenditures of state grant payments for municipal costs associated with development occurring in an electronics and information technology manufacturing zone; (d) unreimbursed expenses related to emergencies declared under an executive order of the Governor; (e) expenditures from moneys received pursuant to the federal American Recovery and Revitalization Act of 2009; (f) expenditures made pursuant to a purchasing agreement with a school district whereby the municipality makes purchases on behalf of the school district; and (g) the payment of premiums by a municipality for hospital, surgical, and other health insurance for an eligible surviving spouse and dependent children of a law enforcement officer, fire fighter, or medical services practitioner, who dies in the line of duty. Finally, adjustments are made for the cost of services transferred to or from the municipality seeking to qualify for a payment and to exclude the cost of providing a contracted service to another government.

The statutes prohibit municipalities from meeting the budget test by creating other funds, unless those funds conform to generally accepted accounting principles (GAAP). These principles have been adopted by the Governmental Accounting Standards Board to offer governments

guidelines on how to maintain their financial records.

For the year prior to the aid payment, the rate of budget growth cannot exceed the inflation rate plus an adjustment based on growth in municipal property values. The inflation rate is measured as the change that occurred in the Consumer Price Index (CPI) in the one-year period ending in September two years prior to the payment year, but not less than 0%. The property value adjustment is unique for each municipality and equals 60% of the percentage change in the municipality's equalized value due to new construction, net of any property removed or demolished, but not less than 0% nor more than 2%. The allowable increase is known at the time when municipal officials set their budgets.

To be eligible for a 2021 payment, municipalities had to limit their 2020 budget increases to 1.9% to 3.9%, depending on individual municipal adjustments due to property value increases. Out of the 463 municipalities that would otherwise have been eligible for a 2021 payment, only 323 met the budget test. The other 140 municipalities either did not meet the test or did not submit budget worksheets to DOR in a timely manner.

This program is described in greater detail in the Legislative Fiscal Bureau's informational paper entitled "Targeted Municipal Aid Programs."

County and Municipal Levy Limit

Since the 2005(06) property tax year, DOR has administered a levy limit program that restricts the year-to-year increases in county and municipal property tax levies. The limits for 2005(06) and 2006(07) were imposed under provisions created by 2005 Wisconsin Act 25, but those provisions were sunset on January 1, 2007. The limits were re-imposed for 2007(08) and 2008(09) by 2007

Wisconsin Act 20 and for 2009(10) and 2010(11) by 2009 Wisconsin Act 28. Both acts included provisions that repealed or sunset the limits after the specified years. Provisions in 2011 Wisconsin Act 32 extended the levy limit program on a permanent basis. Since then, the Legislature has made several modifications to the levy limit.

The state's levy limit program prohibits any county, city, village, or town from increasing its "base" levy in any year by more than the percentage change in the local government's January 1 equalized value due to new construction, less improvements removed, between the previous year and the current year, but not less than zero percent. The base levy is defined as the prior year actual levy for the county or municipality, plus any tax exempt personal property aid payment made by the state to the jurisdiction.

Under the limit, state law provides for adjustments and exclusions to the limit. When the levy for a designated purpose is an adjustment to the limit, the allowable levy is increased or decreased by the amount of the levy for the designated purpose. The levy, including the adjusted amount, becomes the base levy from which the succeeding year's allowable levy is calculated. Exclusions to the levy limit are initially applied identically to an adjustment, in that the allowable levy is increased by the amount of the levy for the purpose designated by the exclusion. However, the levy for the designated purpose is not included in the base levy from which the succeeding year's allowable levy is calculated.

Adjustments can be expressed both as increases or decreases to the allowable levy. For example, the allowable levy may be increased to reflect increases in debt service for general obligation debt authorized by a resolution of the local government before July 1, 2005. If the debt service on general obligation debt issued before July 1, 2005, is less for the current year than for the previous year, the allowable levy is decreased by the amount of the debt service decrease.

Under a separate adjustment, if a local government's allowable levy in the preceding year exceeded its actual levy in the same year, the local government may claim an increase in its allowable levy in the current year equal to the unused levy authority in the preceding year. The increase under this adjustment is limited to not more than either 0.5% or 1.5% of the prior year levy, based on the size of the municipal or county governing body and the margin of approval. An increase of up to 0.5% requires a majority vote of the governing body. An increase of more than 0.5%, but not more than 1.5%, requires a three-quarters vote if the county, city, or village governing body has at least five members, a two-thirds vote if the county, city, or village governing body has fewer than five members, and a two-thirds vote by a town board for the resolution advancing the proposal to the town meeting, followed by a majority vote at that meeting.

A second "carryforward" adjustment was created in 2015 Wisconsin Act 55, effective with 2015 tax levies. Local governments claiming this adjustment cannot also claim the preceding adjustment. Under the second carryforward adjustment, a carryforward factor is calculated for each year equal to the difference between the local government's valuation factor and the actual percent increase in its levy attributable to the valuation factor. A local government's maximum carryforward adjustment equals the sum of the factors for the five preceding years, except the five-year period cannot include any year before 2014(15) and the sum of the five factors cannot exceed 5%. Claiming the adjustment requires a two-thirds vote of the local government's governing body, and a local government cannot claim this adjustment unless its level of outstanding general obligation debt in the current year is less or equal to its level of general obligation debt in the preceding year. Claiming the adjustment in one year offsets the carryforward factors in the five preceding years, thereby reducing the potential carryforward of this adjustment in future years.

Levy authority is also reduced when a local government imposes fees or payments in lieu of taxes for certain services that were funded with property tax revenues in 2013. The negative adjustment equals the amount of fees or payments in lieu of taxes that are received by the local government to pay for the service in an amount not to exceed the amount funded by the levy in 2013. Services subject to the adjustment include garbage collection, fire protection, snow plowing, street sweeping, and storm water management. Beginning with taxes levied for 2017(18), this adjustment does not apply to the production, storage, transmission, sale and delivery, or furnishing of water for public fire protection purposes. Also, this adjustment does not apply to fees or payments for garbage collection if the local government owned and operated a landfill on January 1, 2013. Any negative adjustment is waived if the local government's governing body adopts a resolution to that effect, and the resolution is approved at referendum.

Other adjustments to the levy limit include amounts levied:

- to fund services transferred from (positive) or to (negative) another governmental unit;
- on territory annexed by a city or village (the adjustment is equal to the tax levied by the town on that territory in the preceding year and is a positive adjustment for the annexing city or village and a negative adjustment for the town from which the territory was annexed);
- for any increase in lease payments related to a lease revenue bond issued before July 1, 2005;
- for the cost of consolidating an existing county service by extending the county service to a municipality that provided the same service previously;
- to make up any shortfall in a municipality's general fund due to the loss of revenue from the sale of water or another commodity to a

manufacturing facility that has discontinued operations; and

- to jointly provide a service under an intergovernmental cooperation agreement on a consolidated basis with another political subdivision (offsetting positive and negative adjustments).

In addition, a county or municipality containing a tax increment district (TID) that has terminated may adjust its allowable levy in the first year that DOR does not certify a tax increment. Under the adjustment, the county or municipality's allowable levy is increased by a percentage equal to 50% of the incremental value of the terminated district in the prior year divided by the county or municipality's prior year TID-out equalized value. A separate adjustment was created in 2017 to allow a county or municipality to increase its levy in the first year in which DOR does not certify an area subtracted from a TID as part of the value increment. This adjustment is calculated in the same manner as the adjustment for a terminated tax increment district.

Beginning with the 2019 property tax levy, a municipality may increase its levy limit by \$1,000 for each new single-family residential dwelling unit occupancy permit issued in the prior year that meets the following criteria: (a) the single-family unit is located on a parcel of no more than 0.25 acre in a city or village, or on a parcel of no more than one acre in a town; and (b) the unit was sold in the prior year for not more than 80% of the median price of a new residential dwelling unit in that municipality in the prior year. The amounts levied under this provision may only be used for police protective services, fire protective services, or emergency medical services. Any municipality that levies an amount under this provision may not decrease the amount that it spends on these services below the amount spent in the prior year.

Amounts levied for certain purposes are not subject to the levy limit. These exclusions to the levy limit include amounts levied:

- for debt service on general obligation debt authorized on or after July 1, 2005;

- by a county or municipality to make up for a revenue shortfall for debt service on a revenue bond issued by that local government;

- by a county or municipality to make up for a revenue shortfall for debt service on a revenue bond issued by the county or municipality or a joint fire department that is used by a joint fire department to pay for a fire station;

- by the City of Milwaukee or Milwaukee County for debt service on appropriation bonds (for payment of employee retirement system liability);

- by a county or municipality to make up any revenue shortfall for debt service on certain bonds designed to be repaid with the proceeds from special assessments;

- by a municipality as a tax increment;

- by a county for a county children with disabilities education board;

- by a first class city (Milwaukee) for school purposes;

- by a county for town bridge and culvert construction and repair;

- by a county to make payments for public libraries if the county does not maintain a consolidated library system and contains residents who are not residents of a municipality that maintains a public library;

- by a county for a countywide emergency medical services system;

- by a village to pay for police protection services, but only in the year immediately after the village's incorporation and only if the town which preceded the village did not have a police force;

- for unreimbursed expenses related to declared emergencies (may be used to replenish cash reserves and must be claimed either in the year the emergency is declared or in the following year);

- for refunded or rescinded taxes;

- for charges assessed by a joint fire department or joint emergency services department if the charges would cause a municipality to exceed its levy limit, if the other municipalities served by the joint department adopt resolutions supporting the municipality exceeding its limit, and if the total charges assessed by the joint department increase on a year-to-year basis by a percentage less than or equal to the percentage change in the consumer price index plus 2%; and

- by a county or municipality to replace revenues associated with a reduced utility aid payment due to a decommissioned or closed power plant.

Increases above the limit can be approved through the passage of a referendum. The local government's governing body that wishes to exceed its limit must adopt a resolution specifying the amount and purpose of the increase and whether the increase is to be extended on a one-time or ongoing basis. The statutes provide specific wording for the ballot question, which must include the allowable levy and percentage increase without a referendum, the amount of the levy and percentage increase under the referendum, and the purpose for which the increase would be used. If the actual amount that the levy will increase is not known, governments may use an estimate for the purposes of the ballot question.

Certain towns can bypass the referendum procedure. Towns with populations under 3,000 may exceed their levy limits by a vote at the annual town meeting or at a special town meeting, provided the town board previously adopts a resolution supporting the increase and includes the increase on the agenda for the town meeting.

If a county or municipality imposes a levy exceeding its limit, DOR must impose a penalty by reducing the local government's next county and municipal aid payment by the amount of the excess. Penalties are not imposed when the excess is less than \$500, and DOR can waive the penalty if it finds that a county or municipality exceeded its limit due to a clerical error resulting from a mistake in the local government's equalized value or in the preparation of the tax roll. If the penalty exceeds a local government's county and municipal aid amount, the remaining penalty is carried forward and applied against future aid payments.

Over the last three years, eight counties (Milwaukee (2017), Lincoln (2018), Rock (2018), Trempealeau (2018), Washburn (2018), Winnebago (2018), Green Lake (2019), and Iron (2019)) have incurred a levy limit penalty, while the number of municipalities with levy limit violations has increased slightly from 42 for 2017(18) to 50 in 2018(19) and 2019(20). Levy amounts exceeding limits totaled \$734,305 for 2017(18), \$1,551,748 for 2018(19), and \$1,617,601 for 2019(20). Statewide, there were 1,853 municipalities levying taxes of just over \$3.0 billion in 2019(20), so the number of violators and the amount of excess levies is relatively minor. This may be attributable to the structure of the penalty -- a dollar for dollar reduction in state aid.

County Tax Rate Limits

2011 Wisconsin Act 32 suspended the county tax rate limit program for property tax years 2011(12) and 2012(13). The suspension may have been related to other provisions in Act 32 making the levy limit program permanent. Since the suspension applied only for two years, the tax rate limit was scheduled to take effect again for the 2013(14) property tax year. However, 2013 Wisconsin Act 20 sunset the tax rate limit, making the suspension permanent.

Prior to these acts, state law imposed a tax rate limit on the general operations portion of each county's levy, beginning with the 1993 tax levy (payable in 1994). For purposes of the control, each county's total tax levy and rate were separated into two components. The debt levy and debt levy rate were comprised of amounts for debt service on state trust fund loans, general obligation bonds, appropriation bonds (for payment of employee retirement system liability by Milwaukee County), and long-term promissory notes, while the operating levy and operating rate were comprised of all other taxes. Under the tax rate limit, each county's operating levy was limited to no more than an amount based on its prior year allowable levy plus an adjustment equal to the percent change in the county's equalized value.

Although the focus of the control was the operating levy, the debt levy was indirectly controlled, and the statutory provisions pertaining to the debt levy remain in effect. Under those provisions, each county is prohibited from issuing new debt that would be repaid from the county's debt levy, unless one of the following conditions is met:

- the debt does not cause the county's debt levy rate to exceed the prior year's allowable debt levy rate, which is derived from the county's actual 1992(93) tax rate, based on the "reasonable expectation" of the county board;
- the debt is approved through referendum;
- the debt was authorized prior to August 12, 1993;
- the debt is used to refund existing debt;
- the debt is authorized by a 75% vote of the county board;
- the debt is issued for acquiring, developing, remodeling, constructing, and equipping land, buildings, and facilities for regional projects;

- the debt is issued for acquiring or installing energy efficient equipment; or
- the debt is issued by Milwaukee County to pay unfunded prior service liability with respect to an employee retirement system.

The preceding provisions are not administered by a state agency. Instead, the bond market ensures that any newly-issued county debt conforms to the enumerated provisions.

Municipal General Obligation Debt Limits

Municipalities may borrow money and issue general obligation debt for purposes specified in statute. In issuing such debt, municipalities must adopt an initial resolution authorizing the issuance of bonds. Unless specified by a separate resolution of the governing body, such resolutions, if adopted for the purpose of acquiring, developing, remodeling, constructing and equipping land, buildings and facilities for regional projects, either alone or acting jointly under an intergovernmental agreement, are not subject to a referendum vote of the electors.

Article XI, Section 3 of the state Constitution specifies that municipalities (as well as other local tax jurisdictions), in incurring any indebtedness, must provide for the collection of a direct annual tax sufficient to pay the interest due on such debt and to pay the principal due within 20 years from the time of contracting the debt. Further, the state Constitution and state statute limit the aggregate amount of indebtedness, including existing indebtedness, of any municipality. No municipality's indebtedness may exceed 5% of the equalized value of the taxable property located in the municipality. The limitation on aggregate indebtedness does not include the amount of refunded municipal obligations if provision is made for the payment of the refunded obligation. The

constitutional requirement and statutory debt limit apply only to debt supported by general property taxes levied on taxable property within the jurisdiction of government issuing the debt.

DOR reports the municipal debt limit each year

based on the latest equalized value and the outstanding municipal general obligation debt amounts reported by each municipality on its annual municipal financial report form submitted to DOR.