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Levy Limit for Counties and Municipalities
(Shared Revenue and Tax Relief -- Property Taxation)

Bill Agency

[LFB 2007-09 Budget Summary: Page 512, #1]

CURRENT LAW

For the 2005(06) and 2006(07) property tax years, 2005 Wisconsin Act 25 imposed a levy limit on counties and municipalities. The Act prohibited any county, city, village, or town from increasing its total levy in either of the two years 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 two percent. Increases above the limit could be approved through the passage of a referendum. Adjustments and exclusions to the limit were allowed in certain instances, including for debt service. If a county or municipality imposed a levy exceeding its limit, the local government's next county and municipal aid payment was reduced by the amount of the excess. These provisions were sunset on January 1, 2007.

Each county is subject to a tax rate limit on the general operations portion of its levy. For purposes of the control, each county's total tax levy and rate are separated into two components. The debt levy and debt levy rate are comprised of amounts for debt service on state trust fund loans, general obligation bonds, and long-term promissory notes, while the operating levy and operating rate are comprised of all other taxes. Each county's operating levy is limited to no more than an amount based on its prior year's allowable levy plus an adjustment equal to the percent change in the county's equalized value. For example, if a county's equalized value increases, or decreases, by 5%, its allowable levy will increase, or decrease, by 5%. Unless a county has claimed an adjustment to its levy, this mechanism has the effect of limiting each county's tax rate to the rate that was in effect in 1992(93), the year before the tax rate limit took effect.

Municipalities are not subject to a mandatory fiscal 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 statutes define municipal budget as the municipality's budget for its general fund exclusive of principal and interest payments on long-term debt. The percentage limitation on budgets equals the change in the consumer price index (CPI) plus an adjustment based on growth in the municipality's property value due to new construction.

GOVERNOR

Repeal the current law provision that sunset the levy limit on counties and municipalities on January 1, 2007, make technical and policy modifications to the limitation, and reauthorize the levy limit program to apply to taxes levied in 2007 and 2008. As modified, the levy limit for those two years would be structured as follows.

Imposition. Prohibit any city, village, town, or county from increasing its base municipal or county tax levy (defined as the local government's maximum allowable levy for the immediately preceding year) by more than a maximum allowable amount determined through formula. Provide that the maximum allowable increase be calculated by multiplying the base levy by a valuation factor. Define the valuation factor as the percentage equal to the greater of 4% or the percentage change in the local government's equalized value due to new construction, less improvements removed, as determined for January 1 equalized values in the year of the levy. [The prior law levy limit had a 2% floor for the allowable increase and based the limit on the actual levy for the prior year, rather than the maximum allowable levy.]

Exclusions. Exclude from the limitation any amounts levied: (a) as tax increments by a city, village, or town; (b) for the payment of any general obligation debt service on debt authorized on or after July 1, 2005, and secured by the full faith and credit of the city, village, town, or county; (c) for a county children with disabilities education board by a county; (d) for school purposes by a first class city; (e) for town bridge and culvert construction and repair by a county; (f) for payment by a county to an adjacent county for library services; (g) for any revenue shortfall for debt service on a revenue bond; (h) for the payment of debt service on appropriation bonds issued to fund a county's employee retirement system liability by a county having a population of 500,000 or more (removed from the bill as a non-fiscal policy item); or (i) for fire charges assessed by a joint fire department that would cause the municipality to exceed its allowable levy, provided that the joint fire department's total charges increase relative to the prior year by a rate less than or equal to 2% plus the percentage change in the consumer price index and the governing body of each municipality served by the joint fire department adopts a resolution in favor of the municipality exceeding its limit. Define joint fire department, by way of cross-reference to current law provisions, as a joint fire department created by a village with a population of 5,000 or more with a city or town or with another village, by a city with another city, or by a municipality with another governmental unit or Indian tribe through an intergovernmental cooperation contract. [The exclusions under (e), (f), (g), and (h) were not included under the prior law levy limit.]

Adjustments. Specify that the levy limit shall be adjusted, as determined by the Department of Revenue (DOR), as follows: (a) if a municipality or county transfers to another governmental unit responsibility for providing any service that it provided in the preceding year, the levy increase limit otherwise applicable to the municipality or county is decreased to reflect the cost that the municipality or county would have incurred to provide the service; (b) if a municipality or county increases the services that it provides by adding responsibility for providing a service transferred to it from another governmental unit, the levy increase limit otherwise applicable to the municipality or county is increased to reflect the cost of providing that service; (c) if a service has been provided in part of the county by the county and in part of the county by a separate governmental unit and the provision of the service is consolidated at the county level, the levy increase limit otherwise applicable to the county is increased to reflect the total cost of providing the service; (d) if a city or village annexes property from a town, the annexing municipality's levy increase limit is increased by an amount equal to the town levy on the annexed territory in the preceding year and the levy increase limit for the town from which the property was annexed is decreased by the same amount; and (e) if the amount of debt service in the preceding year is less than the amount of debt service needed in the current year, as the result of the city, village, town, or county adopting a resolution before July 1, 2005, authorizing the issuance of debt, the levy increase limit is increased by the difference between the two amounts. Specify that debt service includes debt service on debt issued or reissued to fund or refund outstanding obligations, interest on outstanding obligations, or the payment of related issuance costs or redemption premiums secured by the full faith and credit of the municipality or county. [All of these adjustments were included under the prior law levy limit.]

Referendum. Create a procedure under which a city, village, town, or county may exceed its levy increase limit if the local government's governing body adopts a resolution to that effect and the electors of the municipality or county approve the resolution in a referendum. Require the resolution and referendum to specify the proposed amount of the levy increase above the limit and whether the amount of the proposed increase is for a single year only or is ongoing. Authorize the local government to hold a special referendum, with regard to a referendum relating to the levy in 2005 or in another odd-numbered year. Require the local government to hold a referendum at the same time as the next spring primary or election or September primary or general election, with regard to a referendum relating to the levy in 2006 or in another even-numbered year. Require the referendum to be held in accordance with current law provisions enumerated in chapters 5 to 12 of the state statutes.

Require the referendum question to be submitted to the electors as follows: "Under state law, the increase in the levy of the …. (name of county or municipality) for the tax to be imposed for the next fiscal year, …. (year), is limited to ….%, which results in a levy of $…. Shall the …. (name of the county or municipality) be allowed to exceed this limit and increase the levy for the next fiscal year, …. (year), by a total of ….%, which results in a levy of $….?". Specify that a town with a population below 2,000 may exceed its levy increase limit if the annual town meeting or a special town meeting adopts a resolution to that effect, if the town board has adopted a resolution supporting the increase and placing the question on the meeting's agenda. Require the clerk of the municipality or county to publish notices regarding the referendum or town meeting prior to the time it is held and to certify the results of the referendum or town resolution to DOR within 14 days of the referendum or meeting. [The referendum provisions are the same as those under the prior law levy limit.]

Penalty. Require DOR to reduce the county and municipal aid payment of any municipality or county that imposes a tax levy in excess of the amount allowed under these provisions. Establish the reduction as the amount equal to the excess tax levy, but exclude levies that exceed the allowable levy by less than $500 from the penalty. Provide that the aid reduction be imposed in the year after the excess amount is levied, but specify that the amount of any penalty exceeding a local government's succeeding aid payment be applied to aid payments in subsequent years until the total penalty is subtracted. Provide that any withheld state aid amounts be lapsed to the general fund. Authorize DOR to waive penalties if it determines that a penalized excess is caused by a clerical error. Define clerical error as a penalized excess caused by DOR, through mistake or inadvertence, assessing to a county or a municipality in the current or previous year a greater or lesser valuation than should have been assessed or by a county or municipal clerk, through mistake or inadvertence, in preparing or delivering the tax roll. [The $500 threshold, carryover of the penalty to subsequent years, and waiver for clerical errors were not included under the prior law levy limit.]

DISCUSSION POINTS

Background

1. The Legislature adopted a levy limit proposal for counties and municipalities in each of the two preceding legislative sessions. In the 2003-05 biennial budget bill, the Legislature included provisions that would have limited the rate of increase in the tax levy of each county and municipality to the jurisdiction's percentage change in tax base due to new construction, less improvements removed, as determined for equalized values as of January 1 in the year of the levy. The control would have applied for three years. The Governor removed those provisions from the bill through partial veto. In the 2005-07 biennial budget bill, the Legislature included provisions imposing a levy limit for counties and municipalities that were almost identical to those adopted in the 2003-05 legislative session. Through partial veto, the Governor modified the Legislature's proposal to provide a 2% minimum increase for each county and municipality and to shorten the limitation's application from three years to two years.

Arguments for a Fiscal Control

2. Fiscal controls have been proposed as a mechanism to address Wisconsin's property tax level, which ranks above-average relative to other states. In terms of state and local property taxes measured per $1,000 of personal income and per capita, Wisconsin maintained similar

interstate rankings in 1995-96 and in 2003-04, although the rankings fluctuated somewhat on a year-to-year basis. Even though Wisconsin's position relative to the national average declined from 1995-96 to 1997-98, Wisconsin's property tax amounts under each measure have exceeded the national average by increasing amounts since 1997-98. Table 1 is based on data compiled by the U.S. Department of Commerce and is reproduced from the Legislative Fiscal Bureau informational paper entitled "State and Local Government Revenue and Expenditure Rankings" (#69).

TABLE 1

Wisconsin State and Local Property Taxes Per $1,000 of Personal Income and Per Capita

Year	Amount Per $1,000 of Pers. Inc.	Rank	% Above the U.S. Average	Amount Per Capita	Rank	% Above the U.S. Average
1995-96	$47.22	7	38.5%	$1,039.87	11	33.8%
1997-98	40.66	11	22.0	990.79	14	18.8
1999-00	39.32	10	23.0	1,058.60	12	19.9
2001-02	40.70	8	27.1	1,188.63	13	22.7
2003-04	44.15	8	26.9	1,349.86	12	24.6

3. Although statistics have not been compiled on a 50-state basis, data indicates that Wisconsin's property tax level may have increased since 2003-04 under both measures. The Department of Commerce reports property taxes net of state property tax credits. Since 2003(04), net property tax levies (for all classes of property) on a statewide basis have increased by 12.2%. Over a comparable period, in Wisconsin, personal income has increased 14.7% and population has grown by 1.6%. Consequently, Wisconsin's measure of property taxes per $1,000 may decline slightly, while its measure of property taxes per capita may increase. On a national basis, both personal income (18.7%) and population (3.0%) have increased by larger percentages relative to Wisconsin. Therefore, Wisconsin's state rankings relative to other states are not likely to improve.

4. Nonetheless, there is some evidence that the "ability to pay" property taxes has not declined in recent years. Since 2001(02), the estimated tax bill on a median-valued home taxed at the statewide average tax rate has increased by 12.6%, or at an average annual rate of 2.4%. In comparison, Wisconsin personal income increased by 21.4% and the consumer price index for all urban consumers, U.S. city average (CPI), increased by 13.9% over a comparable period. Table 2 reports these changes and displays the changes on a year-to-year basis. From 2001 to 2004, tax bill changes either exceeded or were comparable to the percentage changes in personal income and the CPI. However, since 2004, percentage increases in personal income and the CPI have outpaced the percentage increase in tax bills by noticeable margins. While 2005 Act 25 contained several property tax relief initiatives, the levy limit on counties and municipalities likely had some impact on the percentage differences displayed in Table 2 for 2005 and 2006.

TABLE 2

Comparison of Change in Estimated Tax Bills on a Median-Valued Home Taxed at the Statewide Average Rate, Personal Income Growth, and the Inflation Rate

Year	Estimated Tax Bill	Percent Change	State Personal Income (Billions)	Percent Change	Consumer Price Index, 12-Month Average	Percent Change
2001(02)	$2,428		$158.89		177.07	
2002(03)	2,517	3.7%	163.31	2.8%	179.88	1.6%
2003(04)	2,587	2.8	168.12	2.9	183.96	2.3
2004(05)	2,706	4.6	176.48	5.0	188.88	2.7
2005(06)	2,730	0.9	183.95	4.2	195.29	3.4
2006(07)	2,734	0.1	192.82	4.8	201.59	3.2
Total Change		12.6%		21.4%		13.9%
Avg. Annual Rate of Change		2.4		3.9		2.6

5. The change in statewide gross property tax levies since 2001(02) has equaled 23.6% and averaged 4.3% annually. Statewide increases totaled 21.4% for counties and 22.6% for municipalities over the six-year period, although increases among school districts (23.3%) and technical college districts (27.2%) were higher. Among local governments, the highest rate of increase occurred for tax increment districts (46.4%), which reflects the substantial increases in taxable values that have occurred in those districts. Table 3 reports the year-to-year, total, and average rates of change in tax levies by type of jurisdiction for the 2001(02) to 2006(07) period. Tax levies for 2006(07) are based on preliminary data that may change slightly due to DOR audits.

TABLE 3

Change in Statewide Gross Property Tax Levies by Type of Taxing Jurisdiction, 2001(02) to 2006(07)

	2001(02) to 2002(03)	2002(03) to 2003(04)	2003(04) to 2004(05)	2004(05) to 2005(06)	2005(06) to 2006(07)	Total Change	Average Annual Change
Schools	3.9%	5.5%	7.2%	-0.5%	5.4%	23.3%	4.3%
Municipalities	4.8	3.1	5.2	4.1	3.6	22.6	4.2
Counties	5.0	3.6	4.6	3.5	3.2	21.4	4.0
Tech. Colleges	5.9	4.3	4.5	5.3	4.6	27.2	4.9
Special Districts	5.6	-0.7	4.4	2.3	2.3	14.6	2.8
Tax Inc. Districts	4.0	4.9	9.0	10.9	11.2	46.4	7.9
State Forestry Tax	7.3	7.6	8.4	2.6	2.6	31.8	5.7
Statewide Total	4.5%	4.4%	6.0%	2.2%	4.6%	23.6%	4.3%
Consumer Price Index	1.6	2.3	2.7	3.4	3.2	13.9	2.6

6. For the two most recent years, when county and municipal levy limits were imposed, the percentage changes in county and municipal levies were less than their respective average annual rates of change for 2001(02) through 2006(07) and were less than the percentage changes in each of the prior years, with one exception. Further, the average levy increase during the last two years was below the average levy increase during the preceding four years for 79% of counties and 60% of municipalities.

7. Table 3 also repeats (from Table 2) the change in the CPI. Over the six-year period, the index increased by 13.9%, and increases in county (21.4%) and municipal (22.6%) levies substantially exceeded the inflation rate. During the period, statewide levy increases averaged 4.0% per year for counties and 4.2% per year for municipalities. When the Act 25 levy limit was in effect in 2005(06) and 2006(07), statewide municipal levy increases exceeded the inflation rate by less than they did during the prior three years, and statewide county levy increases were comparable to the inflation rate.

Arguments Against a Fiscal Control

8. The consumer price index is the most commonly used measure of inflation, but it may not accurately reflect the cost increases experienced by local governments. The CPI is intended to reflect the cost of a "market basket" of goods purchased by typical households and is heavily weighted toward the purchase of housing, transportation, and food and beverages. On the other hand, labor costs account for more than half of all local government spending and are not included as an expenditure category in the CPI. Thus, local government cost increases should not be expected to mirror changes in the CPI. Since 2001, increases in employment costs have exceeded increases in the CPI in three of the last five years. Over the entire period, employment costs have increased 18.4%, while the CPI increased 13.9%.

9. Another reason that it may be unrealistic to expect county and municipal levies to increase at a rate no greater than the inflation rate is that the consumer price index does not reflect real growth. Economic growth has occurred over the six-year period that has required local services to be extended to new properties. Since 2001(02), new construction has added 14.1% to the statewide property tax base. Due to the distinction between fixed costs and variable costs, it has been suggested that local government service costs might be expected to increase at approximately 60% of the new construction rate, so economic growth may have cost increases totaling 8.3% over the period. By combining the adjusted new construction and inflation percentages, some may argue that statewide tax levy increases of 23.0% were warranted over the six-year period. This would have resulted in 2006(07) statewide tax levies that were higher than actual amounts by $23.4 million (1.4%) for counties and $7.3 million (0.3%) for municipalities.

10. Over the same period, shared revenue and related aid payments to counties and municipalities have decreased. If these aid payments had increased at the same rate as inflation plus 60% of new construction, 2007 payments would be higher by $59.2 million for counties and $251.5 million for municipalities. If these amounts are combined with the inflation and new construction adjustments described above, some may further argue that statewide tax levy increases of 27.2% for

counties and 37.7% for municipalities were warranted over the six-year period. This would have resulted in 2006(07) statewide tax levies that were higher than actual amounts by $82.6 million (4.8%) for counties and $258.8 million (12.3%) for municipalities.

11. A portion of county and municipal tax increases are attributable to state and federal mandates. Local officials argue that they have little discretion in complying with some mandates. A levy limit program may be characterized as a mandate since it replaces local officials' discretion with a statewide policy that limits how much can be raised within each county and municipality. Local officials are elected to make decisions to establish spending priorities and to determine appropriate taxation levels within their communities.

12. Levy limitations may have unintended effects. For example, local officials may supplant tax amounts with cash reserves or incur debt to fund expenditures that normally would be paid from current revenues. As a result, local officials may be unable to address emergencies or deal with unforeseen contingencies in a timely and efficient manner. Also, local officials may defer maintenance projects or capital expenditures. Such actions may reduce tax levies temporarily, but may be more costly to taxpayers over time.

Duration of the Fiscal Control

13. The levy limit proposed in SB 40 would apply for two years. In a partial veto of 2005 Act 25, the Governor shortened the three-year limitation in the enrolled bill to two years. At that time, the Governor maintained that a two-year control is appropriate because the limitation should not extend beyond the state's aid commitment, which is budgeted biennially.

14. Alternately, a levy limit could be imposed on a permanent basis. If the limitation's primary objective is property tax relief, a temporary control relies on local political pressure to limit tax increases after the control expires. At that time, deferred expenditure commitments and pent-up demands may result in tax increases that offset some or all of the tax relief that was achieved while the control was in effect.

15. On the other hand, permanent controls may lose their efficacy over time. That was Wisconsin's experience between 1975 and 1982, when the state imposed a levy limit on counties and municipalities. The effect of that control was diminished over time as it was modified to address situations and events that were not initially anticipated. That experience may suggest that more tax relief might be achieved if a more restrictive control is enacted on a temporary basis. When the control expires, experience in the preceding years could be used to decide whether the limitation should be renewed, modified, or allowed to lapse. Conversely, if a permanent control is desired, it may be advisable to establish it at a level that is viewed to be sustainable, so that it does not need to be regularly loosened in the future.

Base Levy for Fiscal Control

16. Under SB 40, the base for calculating future levy increases would be the local

government's maximum allowable levy in the immediately preceding year. This treatment differs from the levy limit created under 2005 Act 25, which established the prior year actual levy as the base for calculating future levy increases. The Act 25 treatment is subject to the criticism that local governments that do not levy the full amount allowable under the limit are penalized for their restraint. Meanwhile, local governments that levy to their allowable limit are allowed a higher base year levy in the succeeding year. The treatment under SB 40 would allow local governments to levy below the limit without being penalized in the succeeding year.

17. Both the SB 40 and 2005 Act 25 treatments can be argued to produce higher property tax levies. This criticism could be addressed by permitting local governments to carry forward a portion of their unused allowable increase to the next year. This modification may be more necessary if a limit is proposed on a permanent basis.

18. If the levy limit is extended for a multi-year period, as opposed to the two years proposed in SB 40, and if local governments consistently levy below their allowable amounts, the SB 40 treatment would allow large levy increases in future years. For example, if a local government is allowed 3% annual increases, but imposes actual increases of only 2% per year, it would be able to increase its levy by 7.1% in the fifth year or by 12.5% in the tenth year. Increases of this magnitude could be prevented by limiting increases relative to the actual levy in the prior year to a maximum percentage. The percentage could be set at the greater of the change in tax base due to new construction or one of the following: (a) a specific percentage, such as 5%; or (b) at a percentage determined through formula, such as twice the inflation rate.

Index for Limiting Tax Levies

19. The SB 40 proposal would allow each county and municipality to increase its levy by a percentage equal to the greater of 4% or the percentage change in its tax base due to net new construction for the year preceding the levy. This is similar to the control imposed by 2005 Act 25, except each county and municipality was guaranteed an allowable increase of at least 2%, rather than 4%.

20. Using the percentage of tax base change due to new construction as a basis for allowing levy increases would target tax levy increases to areas experiencing economic expansion. Considerable variation exists in the distribution of new construction activity throughout the state. Table 4 reports the distribution of counties and municipalities by quintile relative to new construction activity that occurred in 2004 and 2005 and contributed to equalized values for 2005 and 2006. Of 72 counties, only two in 2005 and five in 2006 had new construction percentages over 4.0%. Of 1,851 municipalities, new construction exceeded 4.0% for 272 in 2005 and 303 in 2006. Based on current economic forecasts, less new construction is expected in 2006 and 2007 than occurred in 2004 or 2005. Therefore, fewer counties and municipalities may have new construction percentages above 4.0% in 2007 and 2008 than in 2005 or 2006, and the proposed 4.0% minimum increase is expected to apply to most counties and municipalities.

TABLE 4

Distribution of Tax Base Change Due to Net New Construction for Two Years

	County Range in Tax Base Change		Municipal Range in Tax Base Change	
	2004 to 2005	2005 to 2006	2004 to 2005	2005 to 2006
First 20%	1.2% to 1.7%	1.0% to 1.7%	-2.3% to 1.1%	-6.7% to 1.1%
Second 20%	1.8 to 2.2	1.8 to 2.2	1.2 to 1.7	1.2 to 1.7
Third 20%	2.3 to 2.5	2.3 to 2.5	1.8 to 2.4	1.8 to 2.4
Fourth 20%	2.6 to 3.1	2.6 to 3.3	2.5 to 3.4	2.5 to 3.6
Fifth 20%	3.2 to 6.4	3.4 to 5.7	3.5 to 147.0	3.7 to 64.9

21. A guaranteed allowable percentage increase serves to allow local governments to finance inflationary cost increases, even if the county or municipality had little or no tax base growth due to new construction. The CPI-U is the most common measure of inflation and is based on changes in the price of food, clothing, shelter and fuels, transportation fares, charges for doctors' and dentists' services, drugs, and other goods and services that people routinely buy for personal use. The index is updated monthly. Global Insight, Inc., forecasts the consumer price index to increase by 2.1% in 2008 and 1.9% in 2009, considerably less than 4.0%.

22. One way to balance the needs of local governments experiencing growth against the needs of local governments not experiencing growth would be to calculate allowable levy increases under a formula that has both inflation and growth components. Such a formula is used under the expenditure restraint program to limit year-to-year increases in municipal spending. Under expenditure restraint, inflation is measured as the change that occurred in the CPI in the one-year period ending in September of the year prior to the budgeted spending. Also for the year prior to the municipality's budgeted expenditures, the program's property value adjustment 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 budget test under the expenditure restraint program has been based on 60% of the new construction percentage since 1994. The rationale for using 60%, as opposed to 100%, is to distinguish between fixed and variable costs, since not all public service costs are impacted by new development.

23. On a statewide basis, Table 5 compares the new construction percentages with the percentages used under the expenditure restraint program for the preceding five years. Because lower levels of new construction are expected relative to the 2007 and 2008 equalized values, the table includes this office's estimates of statewide new construction percentages and Global Insight, Inc.'s, estimated change in the CPI for the next two years.

TABLE 5

Statewide Percentage Increases Under Two Measures, 2002 - 2008

	New Construction	Expenditure Restraint Program's Two-Factor Formula: Growth (60%)	Inflation	Combined
2002	2.5%	1.5%	1.5%	3.0%
2003	2.5	1.5	2.3	3.8
2004	2.6	1.6	2.3	3.9
2005	2.8	1.7	3.3	5.0
2006	2.9	1.7	3.7	5.4
2007 Estimated	2.0	1.2	2.1	3.3
2008 Estimated	2.0	1.2	1.9	3.1

24. Tax increases could also be tied to other measures. For example, if the measure is intended to reflect the change in taxpayers' ability to pay for government services, the year-to-year change in Wisconsin personal income could be used. Under that measure, the share of income used to support county and municipal levies would be held constant in future years (if set at 100% of personal income growth) or could be forced to decrease (if set at less than 100% of personal income growth). In addition to inflation, the percent change in Wisconsin personal income also reflects growth due to higher productivity and population increases. The measure is published quarterly and is subject to retroactive revisions. Statistics for each quarter are released near the end of the succeeding quarter. Over the last six years, Wisconsin's personal income has increased by 2.8% (2001-02), 2.9% (2002-03), 5.0% (2003-04), 4.2% (2004-05), and 4.8% (2005-06). A drawback in using personal income growth for a levy limit may relate to accessing that data on a timely basis. Although personal income for the state as a whole is known shortly after the close of each year, amounts for individual counties are not known for more than 12 months after the year's close, and amounts are not tabulated for individual municipalities.

Exclusions and Adjustments

25. Fiscal controls typically contain provisions regarding special treatment of debt and debt service. This reflects that local governments pledge an irrepealable tax, backed by their full faith and credit, to repay general obligation debt. Without some form of exclusion or adjustment, the control could constrain local governments' ability to fulfill this pledge. Bond lawyers and rating agencies may respond negatively, resulting in lower credit ratings and higher borrowing costs. SB 40 would continue two 2005 Act 25 provisions related to debt service. One provision excludes from the limit any amounts needed to pay debt service on general obligation debt authorized on or after July 1, 2005. The other provision provides an adjustment that would increase the limit of any county or municipality by an amount equal to the increase in debt service relative to the prior year on any general obligation debt authorized by a resolution adopted before July 1, 2005.

26. SB 40 would also continue the 2005 Act 25 exclusions for amounts levied: (a) as tax increments by a city, village, or town; (b) for a county children with disabilities education board by a county; and (c) for school purposes by a first class city. In addition, SB 40 would continue an exclusion added by 2005 Wisconsin Act 484 for taxes levied for fire charges assessed by a joint fire department. Finally, SB 40 would add exclusions for amounts levied: (a) for town bridge and culvert construction and repair by a county; (b) for payment by a county to an adjacent county for library services; (c) for any revenue shortfall for debt service on a revenue bond; and (d) for the payment of debt service on appropriation bonds issued to fund a county's employee retirement system liability by a county having a population of 500,000 or more.

27. Adjustments to fiscal controls are generally included as mechanisms for providing additional flexibility to local governments experiencing specific sets of circumstances. SB 40 would continue the following adjustments created by 2005 Act 25: (a) if a municipality or county transfers to another governmental unit responsibility for providing any service that it provided in the preceding year, the levy increase limit otherwise applicable to the municipality or county is decreased to reflect the cost that the municipality or county would have incurred to provide the service; (b) if a municipality or county increases the services that it provides by adding responsibility for providing a service transferred to it from another governmental unit, the levy increase limit otherwise applicable to the municipality or county is increased to reflect the cost of providing that service; (c) if a service has been provided in part of the county by the county and in part of the county by a separate governmental unit and the provision of the service is consolidated at the county level, the levy increase limit otherwise applicable to the county is increased to reflect the total cost of providing the service; and (d) if a city or village annexes property from a town, the annexing municipality's levy increase limit is increased by an amount equal to the town levy on the annexed territory in the preceding year and the levy increase limit for the town from which the property was annexed is decreased by the same amount.

28. Some of the adjustments created under 2005 Act 25 would extend only to events where a negative adjustment would offset each positive adjustment. Otherwise, exclusions and adjustments can erode the effectiveness of fiscal controls over time. Unique circumstances may lead to requests for other adjustments to reflect events such as natural disasters, court orders, emergencies, collective bargaining agreements, federal or state mandates, or population changes. Although each individual adjustment may have merit, their cumulative effect could allow levy increases well above the overall target percentage increase. The Act 25 adjustments had a greater impact on 2005(06) levies than on 2006(07) levies, as displayed in Table 6. This may have been due to the debt service adjustment for debt incurred before July 1, 2005, and to the higher new construction percentages that occurred for 2006 equalized values.

TABLE 6

Comparison of Actual and Allowable Percentages Under Act 25 Levy Limit

	2005(06) Tax Levies			2006(07) Tax Levies		
	Allowable	Actual	Difference	Allowable	Actual	Difference
Counties	2.8%	3.5%	0.7%	2.9%	3.2%	0.3%
Municipalities	3.0	4.1	1.1	3.2	3.6	0.4

29. SB 40 would permit counties and municipalities to exceed their allowable limit if approved through referendum. In towns with populations below 2,000, higher levies could be approved at the annual town meeting or at a special town meeting, provided the town board has approved the submittal of the question to the meeting. Levy limitations are often characterized as undermining local autonomy because levies are determined through a state-mandated formula rather than by locally-elected officials. By allowing the limitation to be overridden through referendum or by a town meeting, local autonomy would be retained, although through a vote of the electorate rather than a vote of the elected. If there is a desire for a greater level of control by locally-elected officials, additional levy increases could be allowed if adopted by either two-thirds or three-fourths of the members-elect of the local governing body.

Penalty

30. SB 40 would continue the 2005 Act 25 provision imposing penalties on local governments that exceed their limit. For 2005(06), DOR imposed 97 penalties on five counties and 92 municipalities. Based on preliminary data for 2006(07), 70 penalties will be imposed on four counties and 66 municipalities. SB 40 would modify the levy limit penalty in three ways.

31. First, the bill would waive the penalty for local governments that exceed their limit by less than $500. This threshold could be increased or decreased. In 2006, 48 penalties imposed on four counties and 44 municipalities were for less than $500. Among those local governments, the penalties represented 0.0017% of the counties' levies and 0.0090% of the municipalities' levies. For 2007, two counties and 24 municipalities will likely incur penalties of less than $500. Among those local governments, the penalties represent 0.0005% of the counties' levies and 0.0158% of the municipalities' levies.

32. Second, the bill would require penalties that exceed a local government's county and municipal aid payment to be carried forward, and any penalty amount not applied would be imposed on the succeeding year's aid payment. Relative to the 2005(06) tax levy, five municipalities and no counties had penalties exceeding aid payments, and DOR was unable to withhold $178,731 in penalties from aid payments. Based on a preliminary review of 2006(07) levies, eight municipalities and no counties will have penalties exceeding their estimated 2007 state aid payment, and DOR will be unable to withhold an estimated $287,500 in penalties.

33. Third, the bill would authorize DOR to waive penalties resulting from certain clerical errors made by DOR or by county or municipal clerks. Errors in equalized values do not cause counties or municipalities to increase their levies beyond amounts they would otherwise impose. Instead, errors in equalized values cause taxes to be apportioned incorrectly, thereby raising the tax bills for some taxpayers and lowering the tax bills for other taxpayers by a corresponding amount. However, DOR indicates that local clerks make clerical errors on the tax roll that cause too much (or too little) tax to be levied. This provision would put DOR in the position of determining what actions constitute clerical errors and what actions constitute levy limit violations.

34. The property tax provisions proposed in SB 40 have secondary fiscal effects on other state programs. These programs include computer aid payments, the homestead tax credit, the farmland preservation credit, and the property tax/rent credit, which is administered through the state income tax. Modifications to the levy limit provisions in SB 40 may result in reestimates of the costs of these programs.

ALTERNATIVES TO BILL

The following material offers an outline for structuring a levy limitation based on the issues discussed in the preceding material.

Duration of the Fiscal Control

The limitation would apply:

- for two years;
- for three years;
- on an ongoing basis.

Base for Calculating the Limitation

The base for calculating the limitation would be:

- the local government's maximum allowable levy in the preceding year

  - but no more than the preceding year's actual levy increased by the greater of the local government's percentage change in tax base due to new construction or 5%.
  - but no more than the preceding year's actual levy increased by the greater of the local government's percentage change in tax base due to new construction or twice the inflation rate over the two preceding years.

- the local government's actual tax levy in the preceding year:

  - plus the difference between the allowable levy in the preceding year and the actual levy in the preceding year multiplied by 50%.

- plus the difference between the allowable levy in the preceding year and the actual levy in the preceding year multiplied by 33%.

Index for Limitation

Index allowable increases in the limitation to:

- 100% of the percentage change in tax base due to net new construction;
- 60% of the percentage change in tax base due to net new construction;
- the percentage change in the consumer price index for all urban consumers;
- a specified percentage of the percentage change in the state's personal income;
- 4%;
- 2%; or
- a combination of the preceding factors.

Exclusions from the Levy Limitation

Exclude from the limitation any amounts levied:

- as tax increments by a city, village, or town;
- for the payment of any general obligation debt service on debt authorized on or after July 1, 2005, and secured by the full faith and credit of the city, village, town, or county;
- for a county children with disabilities education board by a county;
- for school purposes by a first class city;
- for town bridge and culvert construction and repair by a county;
- for payment by a county to an adjacent county for library services;
- for any revenue shortfall for debt service on a revenue bond;
- for the payment of debt service on appropriation bonds issued to fund a county's employee retirement system liability by a county having a population of 500,000 or more;
- for fire charges assessed by a joint fire department that would cause the municipality to exceed its allowable levy, provided that the joint fire department's total charges increase relative to the prior year by a rate less than or equal to 2% plus the percentage change in the consumer price index and the governing body of each municipality served by the joint fire department adopts a resolution in favor of the municipality exceeding its limit.

Adjustments to the Limitation

Provide the following adjustments to the limitation:

- service transfers;
- service consolidations;
- annexations;
- debt service increases related to debt authorized before July 1, 2005; and/or
- amounts approved through referendum.

Referenda

Allow referenda to override the limitation if approved through:

• a special election in odd-numbered years and spring primaries or elections or September primaries or general elections in even-numbered years; and/or

• at the annual town meeting or at a special town meeting, provided the town's population is less than 2,000 and the town board has adopted a resolution supporting the increase and placing the question on the meeting's agenda.

Penalty

Require DOR to enforce the limitation by reducing the county and municipal aid payment for any county or municipality exceeding the limitation by the amount of the excess; specify that any aid reduction would lapse to the state's general fund. Include the following in the penalty provision:

• exclude levies that exceed the allowable levy by less than $500 from the penalty;

• specify that the amount of any penalty exceeding a local government's succeeding aid payment be applied to aid payments in subsequent years until the total penalty is subtracted;

• authorize DOR to waive penalties if it determines that a penalized excess is caused by a clerical error made by DOR, through mistake or inadvertence, assessing to a county or a municipality in the current or previous year a greater or lesser valuation than should have been assessed; and/or

• authorize DOR to waive penalties if it determines that a penalized excess is caused by a clerical error made by a county or municipal clerk, through mistake or inadvertence, in preparing or delivering the tax roll.

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