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A LOCAL GOVERNMENT VIEW OF TABOR

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I want to describe what TABOR or the so-called Taxpayers Bill of Rights means to local governments. I will also discuss state spending versus local government spending—specifically spending by the City of Milwaukee and State of Wisconsin—and, finally, whether TABOR is needed and whether it is workable.

We have something approaching a tax revolt, or so it seems from reading the newspaper. It is fueled, in my opinion, by two things: (1) legislators who are genuinely seeking tax relief, and (2) the upcoming election. These two things are probably driving the push for TABOR as well.

State Senator Mike Ellis (R) suggested, “We don’t need a taxpayers bill of rights to regulate spending by local, county or school officials, because they are responsive to the people who elect them. . . . We do need to control the spending of state legislators”¹ That is the camp that most of us in local government would join. By way of illustration, from 1996 to 2000, City of Milwaukee spending increased by 2.9% annually—slightly under the 3% annual inflation rate. State of Wisconsin spending, on the other hand, increased during this period by almost 7% annually—over twice the rate of inflation.

Local government operations and spending are very labor intensive. The City of Milwaukee cut over 700 full-time equivalent employees from 1988 to 2002 to reduce spending. The state, in stark contrast, has increased the number of state employees by roughly 10,000 during that same time period. So the question is whether local governments are really the problem or is it state government spending?

As Secretary of the Wisconsin Department of Administration Marc Marotta said yesterday, the legislature and Governor Jim Doyle did begin to rein in state spending in last year’s state budget, and they did that without a constitutional amendment.² Also, local governments responded to Governor Doyle’s leadership when he asked local governments to freeze property taxes.

* Budget Director, City of Milwaukee, 2003–04. Presentation at the Wisconsin Tax Policy Colloquium, Marquette University Law School, April 15–16, 2004.

1. Roger Pitt, *Ellis: Guts, Not Amendment, Needed to Reduce Spending*, APPLETON POST-CRESCENT, Apr. 5, 2004, available at http://www.wisinfo.com/postcrest/news/archive/local_15529468.shtml.

2. Marc J. Marotta, *Taxing Thoughts*, 88 MARQ. L. REV. 5 (2004).

The City of Milwaukee froze property taxes. Milwaukee County froze property taxes in direct response to Governor Doyle's request.

As Jim Haney of Wisconsin Manufacturers & Commerce pointed out, many governments do budget by putting together a "wish list" that says this is what we want to spend, and we will apply the tax rate to the value of our property to meet our spending needs.³ Milwaukee has not done this in the last decade. In Milwaukee, every city department is given a budget allocation from the Mayor, and each department must find a way to meet its strategic objectives within that budget. Last year, the Mayor said we are freezing the 2004 property tax levy at \$199 million, and that is how much we are going to spend.

We saw this carry through in the recent mayoral election when both candidates for Mayor of Milwaukee said they would submit a 2005 budget that would freeze the property tax levy. Local governments are moving away from the wish-list approach to budgeting. I do not know that they have done that yet on the state level.

A constitutional amendment is not a proper vehicle for implementing TABOR's tax and spending controls. It is more appropriate, if we are going to do something like TABOR, to do it in the state statutes, not in the fundamental law of the state constitution. TABOR would impact thousands of local governments around the state. If there are implementation problems, a constitutional amendment does not permit much flexibility in solving those problems. A constitutional amendment is neither necessary nor proper to bring about the changes that the advocates of TABOR are proposing. It strips local control and implements formulas in a "one-size-fits-all" framework for all local governments.

Let me talk briefly about some of the differences in how TABOR treats state government versus local governments. One difference is the definition of a tax freeze. The current proposal freezes the state's income and sales tax rates but not the amount of taxes collected by the state. In other words, TABOR does not say to the state, "You collected this level of income and sales taxes last year; you can collect no more than that." Rather, it simply freezes the tax rate. But for local governments, it freezes the amount of taxes collected; it freezes the tax levy—not the rate. Thus, the current proposal allows state revenues to grow anywhere from 3% to 6%, but it does not allow local revenues to grow. Any freeze should apply equally to state and local governments, or the state should take a portion of the growth in state income and sales taxes and distribute it to local governments through state-shared revenue payments. If the state is going to freeze only local tax levies, both

3. James S. Haney, *Comments on Taxpayer Bill of Rights*, 88 MARQ. L. REV. 173 (2004).

the state and local governments should share in increased revenues that are generated through state taxes.

TABOR is based on a faulty premise: that local governments are providing inefficient or unnecessary services. TABOR assumes that local government services will automatically become cheaper if we just place artificial limits on spending. Well, that is not the case. We go through budget cuts every year at the local level, and people complain just as loudly about service reductions as they do about the level of taxation. That is the challenge that local government faces every day. Local government provides the services directly to the people. The Milwaukee Police Department budget is \$147 million. We could make cuts there, but walk right out here on Wisconsin Avenue, stop the first person you see, and ask her, "Do you want fewer police officers in your neighborhood?" Her response is going to be, "No." This is the challenge that local governments have to face—balancing demand for services with demand for lower taxes. That is something that TABOR simply does not address.

Three-quarters of local government spending is for the wages, salaries, and fringe benefits of the employees who deliver services directly to citizens. Employee health care costs are increasing exponentially. State laws restrict local governments when it comes to collective bargaining and binding arbitration. If the state is going to impose limits on local government spending, then the state ought to provide some relief to local governments for some of these costs for which the state mandates that local governments bargain.

Let us look at the record. From 1988 to 2004, spending by the City of Milwaukee increased by 2.8% annually and actually decreased by a fraction in real dollar terms. Property taxes increased only 2% annually over that period. In real dollar terms, from 1988 to 2004, property taxes in the City of Milwaukee decreased by \$18.8 million or about 1% annually. So, spending and taxing on the local level is not out of control. In fact, the City of Milwaukee property tax rate fell from \$13.09 in 1988 to \$9.73 in 2004—a decrease of over \$3.00 per \$1000 of assessed value. At least in the City of Milwaukee, taxes and spending have not been out of control. Milwaukee's expenditures since the mid-nineties have grown at less than the rate of inflation and less than half the rate of state spending. At the same time, state-shared revenue for local governments increased less than the rate of inflation.

The issues which TABOR seeks to address are real. Local governments want to control spending and taxes but must also maintain essential services such as police and fire protection. TABOR's failure is that it does not recognize the dilemma local governments face when attempting to achieve these two important and often conflicting public policy goals.

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