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JOHN ASHLEY, EXECUTIVE DIRECTOR

TO: Senate Select Committee on TABOR
Assembly Ways and Means Committee

FROM: Jeff Pertl, WASB Legislative Services Coordinator
Bob Borch, Assistant Superintendent for Finance and Operations, Elmbrook School District

DATE: February 15, 2006

RE: New TABOR Proposal (Taxpayer Protection Amendment)

The Wisconsin Association of School Boards (WASB) strongly opposes the proposed "Taxpayer Protection" constitutional amendment, commonly referred to as TABOR, or any similar proposal to constitutionally limit state and local government revenue authority.

- TABOR would jeopardize Wisconsin's long tradition of providing a high quality public K-12 education system and threaten student achievement.
- TABOR would put rigid revenue controls in the state Constitution, making it extremely difficult to make adjustments or correct the inequities in the current school funding system.
- TABOR would undermine the authority of elected officials, diminish the role of citizens in the local decision-making process, and hinder the ability of school boards to address the changing needs of Wisconsin public schools.

OUTLINE FOR COMMENTS:

Conflicting revenue limit systems

Enrollment

- 4-year-old kindergarten
- Special education (3-21-year-old students)
- Declining enrollment

School Finance

- Two-thirds funding
- Delayed state aid payment
- School levy credit
- Categorical aid
- Insurance
- Employee benefits
- Common school fund
- Fund balance

Unfunded mandates

Shared services

Standing for suit

Future changes

MEMORANDUM

TO: SENATE SPECIAL COMMITTEE & ASSEMBLY WAYS AND MEANS COMMITTEE
FROM: JEFF PERTL, WASB LEGISLATIVE SERVICES COORDINATOR
SUBJECT: TABOR (TPA) AMENDMENT QUESTIONS
DATE: 2/16/2006
CC:

These are some questions related to public schools that came from a preliminary analysis of the new TABOR proposal. Doubtlessly, more questions will arise as the proposal is analyzed more fully by school officials and administrators.

SCHOOL FINANCE SYSTEM

1. **Conflicting revenue limit systems:** The TABOR proposal Sec. 1(2)(a) [p.6] bases a district's revenue limit on the previous year's total taxing authority increased by the consumer price index, while the statutory revenue limit is a per-pupil level adjusted for inflation. Sen. Grothman stated that TABOR will not repeal the statutory revenue limits, though future legislators could make adjustments.
 - a. Is there a conflict between a constitutional revenue limit system based on general taxing authority and a statutory revenue system tied to per-pupil funding?
 - b. What happens if the statutory per-pupil revenue limits, which are tied to CPI-U, exceed the adjusted personal income growth cap in TABOR?
2. **Constitutionality of statutory revenue limits:** Sec. 1(6) [p.9] of the TABOR proposal indicates that the state or a local government unit may reduce its own revenue limit.
 - a. Does the state have the authority under TABOR to further reduce a local government's revenue authority?
 - b. A unit of government may reduce its own revenue limit authority by a majority vote. Can it restore its revenue limit authority the same way, or does it need to hold a referendum to restore, as well as, increase its revenue authority? Does this create a self-imposed ratcheting effect?
3. **Enrollment:** Sec. 1(2)(a)2 of the TABOR proposal states "for a school district, the percentage that is the average of the annual percentage increases, if any, for each of the 3 years preceding the previous year in enrollment of students in 5-year-old kindergarten through 12th grade."
 - a. Would this penalize increasing enrollment districts since the current year and immediately preceding years are not accounted for in the revenue limit formula?
 - b. While this would seem to benefit declining enrollment districts, wouldn't they still be subject to the declining enrollment penalties under the statutory per-pupil revenue limit?
 - c. The federal Individuals with Disabilities Education Act (IDEA) requires school districts to serve eligible three through twenty-one year olds. How does TABOR for these students outside 5-year-old kindergarten through 12th grade categories?

4. **Two-thirds funding:** The state's statutory commitment to two-thirds funding was eliminated in the 2003-05 state budget. However, the discussion over two-thirds state funding for public education remains a vital part of the school finance debate. How would the state measure a two-thirds funding commitment under TABOR?
5. **Delayed state aid payment:** Under s.121.15(a), school districts receive four state aid payments: Sept. (15%), Dec. (25%), March (25%) and June (35%). Additionally, under s. 121.15(1m)3, a fifth delayed payment of \$75 million is made outside the fiscal year in July, and "school districts shall treat the payments made in July... as if they had been received in the previous school year." Essentially, the state accounts for the money in one fiscal year and the school districts in another.
 - a. How is the delayed state aid payment accounted for under the TABOR proposal Sec. 1(i)2(a) [p.6] revenue limits?
 - b. Is the state penalized for delayed state aid payments under TABOR?
 - c. The delayed state aid payment along with other accounting practices has created a General Accounting Principles (GAP) deficit in Wisconsin. Could this deficit be eliminated under TABOR?
6. **School levy credit:** Sec.1(1)(g) [p.5] revenue does not include "moneys transferred or spent for refunds or relief from taxes imposed by the state."
 - a. How is the school levy credit accounted for under TABOR?
 - b. Does it count as revenue to a local district?
 - c. Does it count as revenue returned to the taxpayers under Sec. 1(5)(a) [p. 9] of the TABOR proposal?
 - d. If it does count as returned revenue, is the state or the school district credited with the returned revenue?
7. **Categorical aid:** Categorical aid is outside the statutory revenue limits, but Sec. 1(g) [p.4] of the TABOR proposal appears to include it as revenue. Categorical aids support students who strain operational costs, particularly English language learners and high-cost, low-incidence special education students. Additionally, categorical aids offset much of the cost of these students and ensure quality instruction for all students.
 - a. In practice, will this limit increase in categorical aid to the difference between the statutory revenue limit and the constitutional revenue limit?
 - b. For example, could receipt of categorical aids, which are outside the statutory revenue limits, cause a school district to exceed the constitutional revenue limit? This might be especially true for smaller districts receiving aid for low-incidence, high-cost special education services.
8. **4-year-old kindergarten:** The Wisconsin Constitution states, "The legislature shall provide by law for the establishment of district schools, which shall be nearly uniform as practicable; and such schools shall be free and without charge for tuition to all children between the ages of 4 and 20 years...."

During the 2005-06 school year, over half of the 426 school districts participated in the 4-year-old kindergarten. The following table shows the growth in the 4-year-old kindergarten program over the last five years.

<u>School Year</u>	<u>Number of Districts</u>	<u>Number of Students</u>
2001-02	166	14,483
2002-03	180	16,051
2003-04	189	16,957

2004-05	208	18,652
2005-06	234	20,959

- a. Why is 4-year-old kindergarten not included in the enrollment adjustment factor Sec. 1(2)(a)2 [p. 7] of the TABOR proposal?
- b. Does TABOR's exclusion of 4-year-old kindergarten impact or prohibit statutory funding at the state or local level?

REVENUE & EXEMPTIONS

9. **Unfunded mandates:** The TABOR proposal, Sec. 1(i)3(9) [p.10] addresses unfunded mandates. It prohibits the state from imposing mandates unless the state "provides payment... that is equal to the reasonable costs incurred." However, it also states, "the legislature shall be the sole determiner of reasonable costs incurred." (emphasis added)
 - a. Since TABOR defines a mandate as "A state law or administrative rule that requires the expenditure of money by a local governmental unit," do all legislative bills with a fiscal note constitute a mandate?
 - b. How does this provision impact instructional content bills such as: AB 309, which requires instruction in marriage; AB 314, which requires instruction in Hmong history; AB 589, which requires district to provide information on meningococcal disease; AB 647, which requires school districts to adopt policies on school bullying; etc.?
 - c. Does defining the legislature as the "sole determiner of reasonable costs" prohibit litigation over this issue? Note: All other references to legislative authority, which includes: Secs. 1(1)(i), 1(4), 1(7), and 1(8) omit modifier "sole."
 - d. How would this proposal impact the Joint Committee on Mandates created under AB 173?
 - e. Since federal mandates are exempt from this provision, how are school districts expected to meet future mandates such as expanding No Child Left Behind (NCLB) to high school?
 - f. How are districts expected to cope with declining federal support for mandated programs such as the Individuals with Disabilities Education Act (IDEA)?
10. **Shared services:** How are services shared between two local government units accounted for? Sec. 1(g) [p.5] of the TABOR proposal states, "Revenue does not include... moneys received... from the state or a local governmental unit providing government services to governmental entities."
 - a. How do we distinguish between transferring services and contracting for services between units of government under TABOR? PI 14.02 currently governs contracts between two or more school districts under s. 66.0301.
 - b. For example, does that mean the state (CESAs, Dept. of Corrections, Dept. of Health and Family Services, etc.) or counties would not count direct payments from school districts for special education services as revenue?
 - c. How does open enrollment function under TABOR? Are open enrollment students outside the constitutional revenue limit for the district of attendance? Tuition payments by school districts is governed by s.121.78 and open enrollment is governed by s.118.51
 - d. How is the chapter 220 integration program accounted for under TABOR?

11. **Fund Balance Expenditures:** TABOR Sec. 1(1)(g) [p.4-5] does not specifically address school district fund balances.
 - a. Does money allocated to a school district fund balance count as revenue?
 - b. Does money expended from a fund balance count as revenue?
 - c. If school districts are required to return all excess revenue, then how are school districts supposed to maintain their fund balances?
12. **Other funds outside the revenue limits:** The TABOR revenue exceptions under Sec. 1(1)(g) [p.5] does not clearly address fees and funds, such as Fund 80 and Fund 50, which are outside the statutory revenue limit.
 - a. Is Fund 80, the community service fund, and Fund 50, the food service fund, under the constitutional revenue limit?
 - b. Sen. Grothman indicated some local fees would be exempt. Would fees such as athletics, music, lunch, milk, field trip, book and driver's education fees be exempt?
 - c. How would exemptions be determined, and where in the TABOR proposal does the legislature derive the power to make exemptions?
13. **Fines and forfeitures:** Sec. 1 (1)(g) of the TABOR proposal includes "fines and forfeitures" as revenue. The Common School Fund, which is the primary source of revenue for library services, is funded through a percentage of fines and forfeitures collected by other local units of government.
 - a. Is the common school fund accounted for under school district revenue?
 - b. The state Legislature is considering a number of bills that provide incentives for local government to aggressively collect fines and forfeitures. How does this provision affect the following bills: AB 40, 130, 152, 211?
 - c. Will counting fines and forfeitures as revenue be a disincentive to local government to spend additional resources aggressively collecting these moneys?
14. **Insurance:** Sec. 1(1)(g) of the TABOR proposal exempts "governmental property insurance" from the constitutional revenue limit.
 - a. Does "governmental property insurance" mean insurance payments collected on governmental property that is insured; or,
 - b. Does "governmental property insurance" mean insurance payments collected from the state supported Local Government Property Insurance Fund?
15. **Refunds:** Sec. 1(5)(c) [p.9] of the TABOR proposal requires local governments to refund excess revenue. There is no provision for a refund mechanism and no "as determined by the legislature" clause. Thus, is the refund mechanism subject to local control?
16. **Federal funds:** Sec. 1(1)(g) [p.5] of the TABOR proposal exempts federal funds from the revenue limits. Are matching funds and indirect costs required to receive or maintain federal funding also exempt?
17. **State aid penalty:** Sec. 1(8) [p.10] penalizes the state revenue limit if there is a reduction in the aggregate amount of state aid to local government units. However, there is no ongoing commitment of state resources to education.
 - a. Without the statutory commitment to two-thirds funding, could the state, under TABOR, theoretically provide no increase in state aid and shift the cost to the local property tax without penalty?
 - b. Realistically, it is unlikely the state will reduce the real dollar amount of state aids to schools. However, state aids do not necessarily keep pace with either inflation or fixed costs. The fundamental challenge is to maintain the state's share of costs under revenue limits, which this proposal does not address.

- c. The costs for transportation, special education, state and federal mandates, energy and health care already exceed the statutory revenue limits. Since school districts are required to maintain balanced budgets, this means cost increases in mandated activities translate into reductions in maintenance and instructional budgets.
18. **Bonding:** Sec. 1(g) [p.4] counts “all moneys received from bonds, but not including moneys generated from municipal economic development bonds, from the refinancing of bonds, or from short-term cash flow borrowing.”
- a. Do bonds issued under local government statutory authority count toward the constitutional revenue limit?
 - b. If a local government unit bonds for a project, is all the revenue accounted for in that fiscal year or spread out over the life of the bonding? Are interest payments accounted for differently than the principal?
 - c. Are two referenda required for each large local government project? One referendum to exceed the revenue limit and one referendum to authorize the borrowing?
 - d. Does TABOR effectively repeal the promissory note and “aging school” borrowing authority school districts have under statutes?
19. **Consolidation & financial distress:** Sec. 1(7) [p.9] of the TABOR proposal governs the transfer of services.
- a. Does TABOR put school districts under financial duress in greater jeopardy of dissolution? What happens if a school district is unable to meeting its constitutional, statutory or legal obligations under TABOR?
 - b. What are the consequences if voters do not pass a referendum and a local unit of government is unable to meet all of its state and federal mandates?
 - c. What happens if a district is required by court order or an arbitrator’s decision (and therefore cannot be waived by state government) to provide a service it cannot afford, and the local citizens do not pass a referendum?
 - d. What happens if a school district dissolves or consolidates under TABOR?

BARGAINING & EMPLOYEE BENEFITS

20. **Employee fringe benefits:** Sec. 1(1)(g) [p.5] of the TABOR proposal does not count “employee payments for fringe benefits” as revenue.
- a. Are employee contributions exempted to avoid penalizing local government units for employee benefit contributions?
 - b. Would negotiated increases in employee fringe benefit contributions (thus reducing a revenue expenditure by a local government unit) free up an equal amount of revenue authority?
 - c. How would this affect:
 - 1. AB 268, which modifies the mandatory and permissive subjects of collective bargaining under the Municipal Employment Relations Act?
 - 2. AB 518, which modifies the factors considered in rendering a collective bargaining arbitration decision under the Municipal Employment Relations Act?
 - 3. AB 515, which allows municipal employers to provide a comparable health care coverage plan without negotiation?
21. **Post-Employment Benefits:** Under new federal Government Accounting Standards Board (GASB) 45 rules, school districts will have to account for post-employment benefit

liability. This is important for maintaining a district's bond ratings. Districts can establish Fund 73 accounts for this purpose.

- a. Do TABOR's financial restrictions create a disincentive for school districts to make long-term, financially prudent investments (Fund 73)?
- b. How does this provision affect:
 1. AB 167, which provides authority for school districts to invest funds held in trust to provide post-employment benefits?
 2. AB 361, which modifies the minimum age for qualifying for a retirement annuity under the Wisconsin Retirement System?

STATE ISSUE

22. **Standing for suit:** The TABOR proposal grants any individual or class of individuals the right to bring suit under Sec. 1(1)(10) [p.10]. This is an unprecedented constitutionalization of legal action.
 - a. School districts already expend significant resources litigating mandates, school finance, student civil rights, special education, and employment issues. Does this provision encourage additional litigation by automatically establishing standing related to TABOR issues?
 - b. Why does this provision automatically extend standing to non-resident, out-of-state landowners?
 - c. Which taxpayer does this provision protect? While individual taxpayers will have unprecedented standing for legal action, other citizens' tax support for education will increasingly be spent on litigation rather than instruction.
 - d. Why does this provision only apply to TABOR? This constitutional provision significantly alters the checks and balances in the legal system, but only for TABOR. Litigants seeking redress for civil rights violations, special education issues and employment disputes do not have this special standing.
 - e. What is the fiscal impact of the additional court costs and the potential damages?
23. **Future changes:** Sec. 1(11) [p.11] of the TABOR proposal allows future sessions of the Legislature to amend the TABOR section in one session by a majority vote in both houses followed by a referendum.
 - a. If the legislature is confident in TABOR, why create a special mechanism to make it easier to undo or change?
 - b. Additionally, why only apply this special amendment section to TABOR and not the rest of the constitution?
 - c. Will making the Wisconsin Constitution easier to amend negatively impact judicial decisions and undermine public confidence?
 - d. If TABOR is supposed to establish constitutional protections against the legislature's excessive spending and meddling, then why does so much of the bill, notably Secs. 1(1)(i), 1(4), 1(7), 1(8) and 1(9), give the legislature broad authority to interpret and implement TABOR?
24. **Emergency reserve:** Sec. 1(1)(g) of the TABOR proposal indicates that "revenue includes revenue transferred or spent from the fund under sub. (3)," which is the emergency reserve fund.
 - a. Money deposited in the emergency reserve is defined as "any excess revenue in a fiscal year." Therefore, excess money deposited in the emergency fund is outside

- the revenue limit, but does expending funds from the emergency reserve in a given fiscal year counts toward the revenue limit?
- b. Are all revenue or donations to the emergency fund outside the constitutional revenue limits, or only revenue in excess of the limit?
 - c. Can the legislature appropriate money to the emergency reserve fund without first exhausting the constitutional spending limit?
25. **Tuition:** Sec. 1(1)(g) [p.5] of the TABOR proposal exempts “tuition and fees imposed on students to support university or technical college functions.”
- a. What is the estimated fiscal impact of this provision?
 - b. Unrestrained tuition growth would have a negative impact on the youth options program and the families of college-bound students.