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Jim Bennett
City Administrator
City of Lewiston
27 Pine Street
Lewiston, Maine 04240

RE: TABOR

Dear Jim:

You have asked me to provide an overview of the Taxpayer Bill of Rights ("TABOR") as it affects the City of Lewiston, as well as to focus on five questions. As you know, TABOR, if approved, would place restrictions on both state and local governments. This memo will address only the restrictions on local government.

Summary

TABOR provides restrictions and limitations on both revenue and expenditures for local governments, including municipalities such as the City of Lewiston and separate school districts.[1] In particular, proposed Section 2041[2] provides that any "increase in revenue" may only be implemented if the procedures set forth in proposed Section 2043 are followed. Section 2043 provides that adoption of any "increase in revenue" requires, with certain limited exceptions, both (i) a two-thirds vote of the City Council; and (ii) a majority vote of the voters at the next special or general election. An increase in revenue is defined broadly to include any "net gain in revenue" combined with an increase in the rate of an existing tax or fee, the adoption of a new tax or fee, or the elimination of a tax credit or exemption. Thus, any mill rate increase that caused total City revenues to increase from one year to the next is arguably an "increase in revenue."

[1] It does not appear that TABOR would apply separately to the Lewiston School Department, but I have not researched that issue in depth.

[2] TABOR is contained in initiated Bill 1, L.D. 2075, which would amend Sections 2041 through 2049 of Title 5 of M.R.S.A. References in this memo to Sections are to the proposed Sections of Title 5, M.R.S.A.

On the expenditure side, Section 2044(2) prohibits any expenditures, again with certain limitations, that exceed the lower of: (i) the amount of City revenue for the prior fiscal year "adjusted by the change in the assessed value of taxable real and personal property in the City"; or (ii) the amount of City revenue for the prior fiscal year adjusted by two factors: the "inflation adjustment factor" and "the population adjustment factor." The inflation adjustment factor is defined as the increase in the Consumer Price Index ("CPI") published by the Department of Labor, Bureau of Labor Statistics, for the most recently available calendar year.[3] The population adjustment factor is the increase or decrease in the population from the preceding calendar year as compared to the year prior to the preceding calendar year.[4]

Specific Questions

1. If the Consumer Price Index increases, will the limits on the City's expenditures be automatically increased as a result of such price increase?

Answer: No. If the City experiences increases in its costs, even assuming that the CPI is a correct measure of the City's costs, the clear meaning of Section 2044(2) limits any percentage change in fiscal year spending to the "lower" of the change in the assessed value of taxable real and personal property or the CPI increase plus the population adjustment factor. Thus, if the assessed value of taxable real and personal property in the City does not increase as much as the CPI, the City's expenditures would not be able to be increased as much.

Moreover, even if there is an increase in the assessed value of real and personal property in the City, which is equal to or greater than the CPI increase, if the population were to decrease in the City in any year, then the change in the City's expenditures would be limited to the CPI increase less the population decrease.

2. Is there a possibility that City expenditures would be required to be reduced from the prior year's budget if TABOR were enacted?

Answer: Yes. As discussed above, Section 2044(2) provides for a "maximum annual percentage change" in fiscal year spending. The word change, of course, can mean either increase or decrease. The effect of the formula described above (lower of the change in assessed values of taxable real and personal property or the inflation adjustment factor plus the change in the population) could be a negative number because either of the two factors—change in assessed value or inflation adjustment factor plus the change in the

[3] The Bureau of Labor Statistics CPI is commonly provided for different regions of the country. TABOR does not specify the region of the country that is the measuring rod for the CPI. In addition, since a municipality is on a fiscal year, there will be some lag between the applicable CPI index and the budget.
[4] Again, this is somewhat unclear as TABOR provides limitations on "fiscal year" expenditures, so that the immediate preceding calendar year when adopting the fiscal year budget adds a source of confusion.

population—could be negative. Absent a tax increase pursuant to Section 2043 described above, if either of the Section 2044(2) factors is negative, the City would be required to decrease expenditures from the prior year. This would also be the case even if the CPI increased.

3. Are there any provisions in TABOR that permit a municipality in the case of unusual or unforeseen circumstances to avoid the expenditure limitations of TABOR?

Answer: No. Although Section 2044(3) provides for certain exceptions to the expenditure limitations, there is no exception for unforeseen or emergency situations. Current law, 36 M.R.S.A. § 208-A, does provide for an adjustment for a sudden and severe decrease in valuation. This provision of current law may be trumped by TABOR, if adopted. Thus, as a result of a decrease in valuation, the City would be forced to cut expenditures even though its costs are rising, in the absence of a supermajority vote of the City Council and a favorable referendum vote. Of course, the timing and expense of a referendum vote may make it difficult if not impossible to affect a particular year's budget and expenditures.

4. If expenditures are permitted to be increased under Section 2044(2), is a majority vote of the City Council sufficient to adopt increases in revenue in order to satisfy increased expenditures?

Answer: No. The expenditure limitations are separate from the restrictions on increases in revenues, so that satisfying one standard does not automatically satisfy the other standard. Thus, even though under Section 2044(2) increases in expenditures are justified for a particular fiscal year, the requirements of Section 2043 must be separately satisfied. This, in turn, means that in order for the City to fund such increases in expenditures, the City Council would be required to approve such increases by a 2/3 affirmative vote **and** Lewiston citizens either at the next general election or at a special election must approve of the same. As a practical matter, since the City's fiscal year begins on July 1, absent an emergency tax, the City would not be able to wait until the next general election in November but must hold a special election. Of course, such special election is at the City's expense.

5. If State funding to the City is reduced as a result of the limitations imposed by TABOR, is a majority vote of the City Council sufficient to adopt increases in revenue in order to meet the City's budget?

Answer: No. Section 2043 requires a supra-majority vote of the City Council and a favorable referendum vote. There is no exception to this requirement for reduced funding by the State, even if the City must fund State or federal mandated programs. Although there is an exception to this requirement in the case of an emergency, Section 2043 specifies that "emergency does not include economic conditions, revenue shortfalls . . ." Thus, a revenue shortfall from the State may not constitute an emergency.

Very truly yours,

BRANN & ISAACSON

Martin I. Eisenstein/emv

Martin I. Eisenstein

MIE/emv