



Bill Seitz

State Representative, 30th House District

Assistant Majority Whip

Committees

Civil & Commercial Law

Criminal Justice

Commerce & Labor

Ways & Means

Ohio Chamber Members

Dear Ohio Chamber Members:

I regret being unable to share my views personally with you today, having been invited to do so by the Coalition of Ohio's Future. However, I had a prior commitment to attend the National Federation of Independent Business's Southwest Region luncheon in Cincinnati.

I and the entire Ohio House delegation from Hamilton County (except Mr. Brinkman), Republican and Democrat, are firmly opposed to the proposed Tax Expenditure Limitation amendment ("TEL"). We believe it is unnecessary and potentially harmful constitutional gimmickry that emasculates the core legislative role of determining tax and budget policy.

It is misleading to say that 29 states have already adopted a TEL, because there are five main variables to any TEL that differ widely among the states that have chosen some variant of the idea. These five variables are:

1. Is it by constitutional amendment or statute?
2. Can the limits be overridden by the legislature, or only by popular vote?
3. Does it apply only to state government spending, or does it also purport to limit local government decisions?
4. Are there reasonable exceptions to the spending limits?
5. Does the formula used to determine the annual spending limit make rational sense?

Of the states that have adopted some form of TEL, only Colorado's TABOR (Taxpayers Bill of Rights) amendment is as rigorously anti-republican as the proposed Ohio TEL. The proposed Ohio TEL is constitutional (not statutory); only a vote of all the people can override its limits (the Legislature may only certify the issue to the ballot); it binds local governments to a straitjacket that guarantees that no local levy for any purpose could ever pass; its exemptions are few and unrealistic; and the formula limit is not rationally based on the realities of state budget policy.

A. The Amendment Is Wholly Unnecessary.

I believe the amendment is wholly unnecessary. The recently enacted State biennial budget for 2006-2007 contains the lowest rate of growth in state spending in 40 years. The growth rate (state spending and federal match) is .89% in 2006 and 2.57% in 2007 – far less than the 3.5% annual increase that the TEL would allow. The current Ohio Constitution requires a balanced budget. TEL proponents' claims of wild biennial budget spending increases in the past conveniently overlook that Ohio budgets on a two year cycle, and quote only the total two year increase without reducing it to the annual – percentage rate of increase. TEL proponents also conveniently overlook all of the following:

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425 Walnut Street, Suite 1800
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1. There are roughly 3,000 fewer State employees now than in fiscal year 2001.
2. About half of the State agencies are operating on less money now than they had in 2001.
3. The recently enacted budget contains a 21% personal income tax cut and an abolition of the corporate franchise tax and tangible personal property tax.
4. Existing law already mandates that budget surpluses be rebated to taxpayers through the Income Tax Reduction Fund (which provided billions of dollars of tax relief in the late 1990s and through 2001).

The amendment is also unnecessary because over 85% of the state's GRF (main budget) spending funds only six things, none of which could conceivably be considered frivolous and all of which involve, to a significant degree, a direct pass through of state revenues to local businesses, governments, institutions and people:

1. K-12 school spending;
2. Medicaid (health care for the poor, disabled, and poor elderly);
3. Higher education;
4. Prisons and the justice system;
5. Property tax relief to homeowners;
6. Debt service on bonds for capital improvements.¹

B. The Amendment Is Badly Drafted and Faultily Conceived.

The proposed TEL amendment has too many flaws to detail in a single letter. Foremost among them are these:

1. Whereas the amendment provides that the majority of state electors actually voting in an election may override the State level spending limits, a drafting error requires that a majority of all electors who are registered to vote must support an increase at the local level. Data from Anderson Township (a prosperous upper middle class Cincinnati suburb) shows that a majority of registered voters turned out only once in the last four elections. Therefore, it may safely be assumed that no local school, police or fire levy would likely ever pass except in a presidential election year where turnout exceeds 50% of registered voters.

¹ Artificial restrictions on state spending for these purposes will therefore not only affect children, the poor and the elderly, and local government and colleges. They will directly affect Ohio business: doctors, hospitals, road and bridge contractors, food service vendors, nursing homes, homeowners, and every business in Ohio that counts among its customers any unit of government or any of the foregoing.

2. The amendment limits annual state and local spending increases to the greater of 3.5% or the combined percentage increase in population growth and CPI inflation. Population growth is a poor measurement when state spending is disproportionately devoted to the elderly and children. Ohio's population is fairly flat, but elderly and children are disproportionately represented. CPI based inflation is a poor measurement when a disproportionate percentage of state spending is health-care related. The health care rate of inflation, as businesses throughout Ohio know, runs double to triple the regular CPI rate of inflation.
3. Of particular interest to business, local government entities may be losing population overall, but nonetheless be growing their employment base through commuting workers who live elsewhere. The proposed TEL makes no allowance for this factor. Indeed, cities may become more aggressive in their annexation policies simply to "grow" their population to "beat" the limits – to the eternal consternation of their suburban township neighbors.
4. While the State-level limits may be exceeded by the legislature for narrowly defined "emergencies", this still requires a gubernatorial declaration and a vote of the General Assembly; and at the local level, the limits may be exceeded only if the Governor declares the emergency. Mayor Giuliani would therefore have had to await Governor Pataki's invitation before reacting to an emergency such as 9/11.
5. Enshrining core legislative functions regarding budgets into the constitution is bad public policy. Colorado has realized this and its governor – once a strong TEL proponent – now advocates changing this rigid formula that leaves important issues to the determination of a largely mis-informed public, rather than to the representative democracy that is at the core of the notion that we are a republic, not a democracy. Government by ballot initiative is a disturbing trend, whether from half-baked ideas on school funding reform to partisan proposals to seize by ballot initiative redistricting objectives that cannot be won in fair elections. Business stands to lose the most from embracing this philosophy, particularly when it is pursued by those with ulterior political motives.
6. The amendment provides that any taxpayer who successfully sues to enforce any of its provisions against local or state government shall recover his attorney fees. Given the Ohio Chamber's passionate, successful advocacy for litigation reform and ending the "litigation lottery", any Ohio business that supports the Ohio TEL while claiming to share the Chamber's commitment to legal reforms would be committing rank hypocrisy.

In the last twelve months, Ohio's General Assembly has delivered:

1. Comprehensive tort reform,
2. Comprehensive tax reform,
3. A low growth budget, and
4. A ballot initiative representing Ohio's most ambitious job and infrastructure package in decades.

It would be a terrible miscarriage of justice to impede the orderly evaluation of the success of these measures by resort to constitutional gimmickry whose main purpose is to play at gubernatorial politics.

Sincerely,

William J. Seitz