
POLICY MATTERS OHIO

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New report reveals large problems and ambiguities in Blackwell's tax proposal Constitutional amendment would result in substantial litigation

The proposed tax and expenditure limitation for which signatures are currently being gathered will radically change the way government operates, has many ambiguous provisions, and will result in substantial litigation, according to a new report from Policy Matters Ohio. The proposal, spearheaded by Secretary of State J. Kenneth Blackwell's Citizens for Tax Reform, will limit spending growth for the state and its subdivisions including local government, school districts and other local taxing districts.

The proposal contains a supremacy clause, so that it prevails over other sections of the constitution. "Ohio voters will not know exactly what they are getting if they approve this amendment," said Policy Matters Research Analyst and report author Jon Honeck, "but they can be assured that the amendment will override any other section of the constitution in case of conflict." Findings of the report include:

- The TEL imposes an overall spending cap on state spending and a separate spending cap for each local government. The spending cap applies not just to tax revenue, but also to revenues raised from certain voluntary transactions, such as lottery ticket sales.
- Large portions of public university spending may be subject to the spending cap, including tuition, fees, and sales of tickets to sports and entertainment events.
- The TEL contains a supremacy clause that ensures that it will prevail in case of conflict with any other constitutional section. The mandatory year-end collection of unencumbered funds potentially conflicts with constitutional sections that restrict use of fuel taxes and workers' compensation funds.
- The requirement that the state pay for mandates on subdivisions fails to define "mandate." This is an invitation to litigation. If given an expansive interpretation by the courts, this provision will overturn the established relationship between the state and its subdivisions. Political subdivisions may be able to object to state laws passed in order to comply with federal mandates.
- The mechanism to refund part of a budgetary surplus gives refunds based on state income tax payments, even though taxes will have been collected from multiple sources. This will shift refunds disproportionately to higher-income taxpayers (who pay more income tax), when some of the revenue comes from sales and other taxes (paid disproportionately by middle- and low-income households).

- The amendment does not specify how to implement the spending cap formula in school districts and other taxing districts that cross political boundaries.
- The TEL makes no exception for the municipal home rule sections of the Ohio Constitution. Requiring voter approval before levying any tax conflicts with the authority of a charter municipality to levy a property tax for outside millage without voter approval.
- Both the state and local spending limits cover capital expenditures, which have previously been viewed as long-term investments. Even if voters have previously authorized bonds through local levies or state initiatives, the limit will apply.
- When it is necessary to exceed the cap, the mandatory referendum will delay the state budget by at least three months, giving a new legislature just three months to produce a budget. This restricts public input into the budget process, and raises the likelihood that a budget will not be passed before the end of a fiscal year.

“The only certain thing about this amendment is that important concepts and procedures are unclear and will generate a flood of lawsuits before they are sorted out,” Honeck said. “The amendment is poorly conceived and would not serve the interests of Ohioans. It deserves to be rejected.”

Policy Matters Ohio is a non-profit, non-partisan policy research institute with offices in Cleveland and Columbus. This report, and other research from the institute, will be available at <http://www.policymattersohio.org>