MEASURE 48

PROPOSED CONSTITUTIONAL SPENDING LIMIT

RESEARCH REPORT # 5-06

August 2006

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STATE OF OREGON

Research Report

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Introduction
Measure 48 will appear on the November 2006 general election ballot. It is a state constitutional amendment designed to limit the rate of growth in state government spending. The measure limits "total" state spending growth to the sum of the rate of increase in the state's population and the general inflation rate in the prior two-year period. Total spending is defined as "all disbursements" with a list of exceptions, the largest being expenditures from federal funds. The measure establishes an exception process in which the limit can be exceeded on a one-time basis with two-thirds approval from both chambers of the Legislature and a majority vote in a statewide general election.

Passage of Measure 48 is likely to lead to slower growth in state government spending in comparison both with what it has historically been and from what it would likely be in the absence of the limit. This is due to the nature of the population/inflation target, the broad definition of spending subject to the limit and the stringent requirements for exceeding the limit. However, the difficulty in precisely defining what is and what is not subject to the limit and the precise legal meaning of terms makes this conclusion less than certain.

This report discusses a framework for analyzing spending limit proposals, looks briefly at constitutional and statutory limits around the country and examines Oregon's history with spending limits, including the current statutory limit. This is followed by a detailed description of Measure 48 and a comparison of Measure 48 with Oregon's current law, Measure 8 (rejected by voters in 2000) and Colorado's well known TABOR constitutional limit. The report concludes with historical simulations and projections on how Measure 48 may affect the state budget and overall revenue policy if it is approved by Oregon voters in November.

Framework for Comparing Spending Limits

State tax and expenditure limitations (TELs) date back to a nationwide movement to limit growth in state and local government budgets initiated with the 1978 passage of Proposition 13 in California. These limits are based on the concept that the normal process of allocating resources to the government through representative democracy tends to produce more government than the majority of citizens want. This leads to the conclusion that some additional limit on spending or revenue above & beyond the legislative budget process needs to be in place. States have reacted with a wide variety of limits that vary greatly in their characteristics.

The National Conference of State Legislatures (NCSL) identifies 4 types of limits: expenditure limits, revenue limits, limits where spending is restricted to a certain portion of expected revenue and hybrids or combinations. Expenditure limits restrict state spending, usually a subset of total spending, to an external growth measure designed to reflect the size of the state economy or the cost of government services. Similarly revenue limits tie state revenue to an external target but also require the state government to return excess revenue above the limit to taxpayers in some way. All states (with one exception) are required to balance their operating budgets, however, a number of states restrict spending further by limiting general spending to some percentage (98% is commonly used) of their revenue forecast. Finally, a number of states have some combination of the three types of limits. Oregon currently fits into this fourth category. The state has a statutory spending limit (described shortly) and a revenue limit whereby General Fund revenue that exceeds the forecast by 2% or more triggers a refund/credit to taxpayers equal to the total amount of revenue above the forecast.

One way to look at the various limits is to consider key characteristics. These characteristics are:

- Method of codification (statutory or constitutional)
- Target: What limit is tied to
- Subject Spending or Revenue: What the limit applies to
- Treatment of Surplus: What happens when available revenue exceeds what can be spent under the limit
- Exception Process: Rules for going outside limit

Statutory or Constitutional Provision
By their nature, constitutional provisions are more restrictive and less flexible. Statutory limits can be amended with a simple majority of the Legislature while constitutional amendments require voter approval. Constitutional limits are usually accompanied by statutes guiding the details of implementation.

Targets
The target selected for the expenditure or revenue limit makes a major difference over time. Many states, including Oregon's current law, are tied to resident personal income. Since gross state product data is released with a long lag and available only on an annual basis, state personal income serves as the best measure available of a state's overall economy. This approach is based on the concept that state government spending or revenue should remain roughly the same proportion of overall spending in the state economy over time. Another important distinction is between those states with a fixed percentage of income target and those that restrict growth to the percentage change in personal income over the recent past. The former is generally less restrictive because it allows spending or revenue to catch up if it falls below the percentage target. Limiting spending to the change in personal income leads to the possibility of a ratcheting effect. This occurs when revenue growth is weak and resources are not sufficient to match the rate of growth in personal income during the previous time period. The limit is then rebased to the actual spending level and future growth is restricted to the rate of change in the prior period. In other words, the spending level has been permanently ratcheted down. This phenomenon usually occurs in a recession when revenue growth drops off and resources are not available to spend up to the limit. When economic recovery ensues, revenue growth generally exceeds the limit but cannot be used to restore the previous level relative to total personal income.

The other frequently used target is inflation plus population growth. Measure 48 would move Oregon into this category along with Washington and a number of other states. This approach is based on the concept that state spending or revenue should be limited to some general measure of the costs of delivering public services. Inflation reflects the general price pressures while state population growth is a proxy for growth in demand for government services. Since the economy, as measured by personal income, grows faster than the sum of inflation and population growth over time, this target leads to a shrinking government share relative to the private sector over time. The one general exception is recessions. During recessions, state personal income growth often drops below the rate of population growth and inflation. Because revenue growth is more closely tied to personal income growth than to population and inflation this often leads to the ratchet effect with this target.

Table 1 shows how the two targets have performed over time. Oregon personal income has consistently grown faster than the rate of inflation as measured by the U.S. Consumer Price Index plus the growth in Oregon's population. The historical evidence clearly shows that a spending limit based on population and inflation is more restrictive that one based on personal income. Note that the annual growth rate of personal income and the sum of population growth and inflation are almost identical for the 2000-2005 period. This reflects the dampening effect of the 2001 recession on Oregon's personal income growth in the first half of this decade.

TABLE 1: HISTORIC GROWTH OF COMMONLY USED TARGETS

TIME PERIOD	OREGON POPULATION		U.S. CONSUMER PRICE INDEX		OR POP + U.S. CPI		OREGON PERSONAL INCOME	
	DECADE TOTAL	ANNUAL AVERAGE	DECADE TOTAL	ANNUAL AVERAGE	DECADE TOTAL	ANNUAL AVERAGE	DECADE TOTAL	ANNUAL AVERAGE
1960s	18.3%	1.7%	31.1%	2.8%	49.4%	4.5%	105.0%	7.5%
1970s	25.9%	2.3%	112.4%	7.8%	138.3%	10.1%	224.1%	12.5%
1980s	7.9%	.75%	58.6%	4.7%	66.5%	5.5%	92.9%	6.8%
1990s	20.4%	1.9%	31.7%	2.8%	52.1%	4.7%	87.1%	6.5%
2000s*	6.1%	1.2%	13.4%	2.6%	19.5%	3.8%	21.3%	3.9%

* Growth between 2000 and 2005. Population estimates compare April 1, 2000 with July 1, 2005.

A final type of target is a fixed percentage growth rate. The growth rate is typically based on some historical norm. For example, Colorado has a statutory limit (more on Colorado's constitutional limit to follow) where spending is limited to the lesser of 5% of personal income or 6% over the previous year's spending level.

Subject Spending/Revenue
One of the most difficult practical issues surrounding implementation of limits is the definition of what is inside the limit and what is not. This is particularly true for spending limits. Most states have a general fund that represents their operating or discretionary budget. General tax revenues such as income taxes or sales taxes are the largest revenue sources for state general funds. However, excise taxes may or may not be part of a state's general fund. This raises questions about how effective general fund revenue limits can be if new taxes can be imposed outside the limit if they are considered outside the general fund.

For spending limits this question of what to include and what to exclude becomes even more complicated. All states, including Oregon, distinguish between their general fund and other or special funds. These other funds (as they are called in Oregon) cover a wide variety of activities, some similar to general fund expenditures, others far removed from the provision of general public services. A final layer is made up of federal funds. Expenditures from federal revenue make up about 20% of Oregon's current total state budget. Federal dollars often come with state matching requirements. Spending limits that restrict only general fund spending run the risk of being ineffective because they create a clear path to go around the limit by spending on other fund programs that are similar to general fund services but outside the limit. If a limit is very broad it runs the risk of limiting expenditures that may be fiduciary in nature such as public employee retirement funds and bond repayments. Broadly defined limits may also prevent targeted expenditures financed through fees where those paying the costs are supportive of the expenditure. Finally, limiting expenditures of federal funds is often seen as counterproductive because they do not represent a direct burden on a state's citizens if federal resources are being used.

Treatment of Surplus

A key feature of revenue limits is the requirement to refund revenue above the limit to taxpayers in some manner. This means that the government is allowed to keep only a certain amount of revenue. If it has more than the set amount it must be returned. Spending limits can also have surplus revenue requirements such as debt repayment or set asides for reserve funds. However, spending limits are often silent on what happens to surplus revenue above the spending limit. This leaves the decision up to the Legislature. Oregon's current statutory spending limit fits into this category as does Measure 48.

Exception Process

Most limits, especially constitutional ones, have a process that the Legislature must go through to exceed the limit. The exception process usually involves a super-majority vote or some declaration of a financial emergency for the state. For example, to override Oregon's current constitutional revenue limit (the 2% surplus kicker), the Legislature must declare an emergency and vote with a 2/3 majority to change the "estimate" upon which the revenue limit is based. This has the effect of reducing or eliminating the tax refunds on a one-time basis.

Summary of Limit Characteristics

The impact of limits on state fiscal policy varies greatly with the characteristics of the various limits. NCSL has identified the characteristics most likely to restrict legislative fiscal policy decisions. The most restrictive limits have the following characteristics:

- Constitutional—especially if they are voter initiatives
- Revenue limits with surplus revenue refund required
- Based on the percent change in population plus inflation
- Broad definition of subject spending
- Require public vote to exceed the limit

Based on the NCSL findings, Colorado currently has the most restrictive limit in the country.

Limits around the Country

According to an NCSL update published in February of 2006, 30 states have some type of spending or revenue limit. Many of these limits that are still on the books date back to the nationwide response to California's Proposition 13 in 1978. A number were enacted in the early 1990s, including Colorado's TABOR (Taxpayer Bill of Rights) constitutional measure. In the current decade, limits have been enacted in Indiana, Maine and Wisconsin. Oregon has taken steps to modify its limits in recent years.

Table 2 provides a breakdown of current limits around the country.

TABLE 2: TAX & EXPENDTURE LIMITS AROUND THE COUNTRY

STATE	TYPE	CODIFICATION	TARGET	YEAR ENACTED
ALASKA	SPENDING	CONSTITUTIONAL	POPULATION + INFLATION	1982
ARIZONA	SPENDING	CONSTITUTIONAL	% OF PERSONAL INCOME	1978
CALIFORNIA	SPENDING	CONSTITUTIONAL	PER CAP PERSONAL INCOME	1979
COLORADO (1)	SPENDING	STATUTUTORY	< OF 5% OF PERSONAL INCOME OR 6% ABOVE PRIOR YEAR	1991
COLORADO (2)	REVENUE	CONSTITUTIONAL	POPULATION + INFLATION	1992
CONNECTICUT	SPENDING	STATUTORY	> OF CHANGE IN PERSONAL INCOME OR INFLATION	1991
DELAWARE	SPENDING	CONSTITUTIONAL	% of REVENUE FORECAST	1978
FLORIDA	REVENUE	CONSTITUTION	% CHANGE IN PERSONAL INCOME	1994
HAWAII	SPENDING	CONSTITUTION	% CHANGE IN PERSONAL INCOME	1978
IDAHO	SPENDING	STATUTE	% OF PERSONAL INCOME	1980
INDIANA	SPENDING	STATUTORY	% OF REVENUE FORECAST	2002
IOWA	SPENDING	STATUTORY	% OF REVENUE FORECAST	1992
LOUISIANA	SPENDING	CONSTITUTIONAL	% CHANGE IN PER CAPITA PERSONAL INCOME	1993
MAINE	SPENDING	STATUTORY	% CHANGE IN PERSONAL INCOME OR 2.75% DEPENDING ON STATE TAX RANKING	2005
MASSACHUSETTS	REVENUE	STATUTORY	% CHANGE IN WAGE AND SALARY INCOME	1986
MICHIGAN	REVENUE	CONSTITUTIONAL	% OF PERSONAL INCOME	1978
MISSISSIPPI	SPENDING	STATUTORY	% OF REVENUE FORECAST	1982
MISSOURI (1)	REVENUE	CONSTITUTIONAL	% OF PERSONAL INCOME	1980
MISSOURI (2)	REVENUE	CONSTITUTIONAL	REVENUE INCREASES > 1% REQUIRE VOTER APPROVAL	1996
MONTANA	SPENDING	STATUTORY	% CHANGE IN PERSONAL INCOME	1981
NEVADA	SPENDING	STATUTORY	POPULATION + INFLATION	1979
NEW JERSEY	SPENDING	STATUTORY	% CHANGE IN PERSONAL INCOME	1990
NORTH CAROLINA	SPENDING	STATUTORY	% OF PERSONAL INCOME	1991
OKLAHOMA (1)	SPENDING	CONSTITUTIONAL	12% ANNUAL GROWTH ADJUSTED FOR INFLATION	1985
OKLAHOMA (2)	SPENDING	CONSTITUTIONAL	% OF REVENUE FORECAST	1985
OREGON (1)	REVENUE	CONSTITUTIONAL	IF REVENUE EXCEEDS FORECAST BY 2% OR	2000

			MORE/AMOUNT ABOVE FORECAST REFUNDED	
OREGON (2)	SPENDING	STATUTORY	PERCENT OF PERSONAL INCOME	2001
RHODE ISLAND	SPENDING	CONSTITUTIONAL	% OF REVENUE FORECAST	1992
SOUTH CAROLINA	SPENDING	CONSTITUTIONAL	> OF % CHANGE IN PERSONAL OR 9.5% OF PERSONAL INCOME	1984
TENNESSEE	SPENDING	CONSTITUTIONAL	% CHANGE IN PERSONAL INCOME	1978
TEXAS	SPENDING	CONSTITUTIONAL	% CHANGE IN PERSONAL INCOME	1978
UTAH	SPENDING	STATUTORY	POPULATION GROWTH + INFLATION	1989
WASHINGTON	SPENDING	STATUTORY	POPULATION GROWTH + INFLATION	1993
WISCONSIN	SPENDING	STATUTORY	% CHANGE IN PERSONAL INCOME	2001

To summarize Table 2:

- 24 states have spending limits only, 4 states have revenue limits and 2 states (Colorado & Oregon) have both a spending limit and a revenue limit.
- 14 states have a constitutional limit, 14 states have a statutory limit and 2 states (Oregon & Colorado) have both a statutory limit and a constitutional limit.
- 20 states have a target tied to personal income, 7 states are tied to a percentage of projected revenue and 5 states are limited by the sum of population growth and inflation.

Oregon's History with Limits

Oregon's modern experience with limits began with the approval of HB 2540 by the 1979 Legislature. This historic legislation was worked out by a conference committee that included both the Speaker of the House and the Senate President. At the time, its most notable feature was a substantial property tax relief program. However, the bill also included two limits. The first was a statutory version of the 2% surplus kicker revenue limit. The second was the appropriations growth limit. The appropriations growth limit was statutory linking growth in general fund spending with the previous percentage change in personal income. The entire package was approved by the Legislature for one-year with a referral to voters in the May 1980 primary election for extension beyond the first year. The measure was approved overwhelmingly by voters.

Ironically the state economy entered a deep recession shortly after voter approval of the fiscal package. The recession had the effect of negating both the revenue limit and the appropriation growth limit in the first two biennia. However, the recession meant that the appropriation growth limit ratcheted down subject spending. Because the limit was based on the percentage change in personal income and revenue growth trailed personal income growth in the recession, spending was rebased to a lower level by the time economic recovery stimulated faster revenue growth in the mid-1980s. The first two percent surplus kicker credits were allocated following the 1983-85 biennium.

Revenue and spending growth caught up with the limit in the 1987-89 biennium. The 1987 Legislature voted to exclude $141 million from the statutory limit on a one-time basis. The 1989 Legislature upped the amount of General Fund spending excluded from the limit to $394 million including the basic school support program.

Oregon's budget situation changed dramatically with the passage of Measure 5 in 1990. Measure 5 reduced property tax rates and required the Legislature to backfill reduced local school revenue with General Fund dollars. The appropriations growth limit excluded expenditures for "property tax relief" from the limit. General Fund spending for property tax relief exploded with the implementation of Measure 5 as the state moved to replace local school revenue. Property tax relief jumped from $37 million in 1989-91 to $2.2 billion in 1995-97. In addition the state increasingly turned to the Lottery as a revenue source in the 1990s with the introduction of video poker in 1991. Lottery revenue is not General Fund therefore it was not subject to the appropriations growth limit.

By 1996, the Legislative Revenue Office (Research Report #1-96) concluded that the appropriations growth limit was largely ineffective for the following reasons:

- The huge jump in property tax relief and the rise in Lottery revenue to fund general or discretionary spending meant that non-subject spending accounted for a significant portion (40%) of general spending.
- The shift mechanism designed to account for movement into and out of the General Fund was easy to manipulate in order to avoid the limit. This was particularly true of shifts between General Fund and Lottery.
- The complexity of the calculation obscured the meaning of legislative votes involving the limit.

The Legislature considered modifications to the appropriations growth limit in both 1997 and 1999 but public discussion intensified with the appearance of Measure 8 on the 2000 ballot. Measure 8 was a constitutional spending limit that restricted all spending with the exception of proceeds from bond sales to 15% of personal income. In a feature more typical of revenue limits, Measure 8 required all revenue in excess of 15% of personal income be returned to income taxpayers as a refund. The limit could be exceeded on a one-time basis with a ¾ majority vote in both chambers of the Legislature. Placement of the 2 % surplus kicker into the constitution was also on the November 2000 ballot in the form of Measure 86. Only Measure 86 was approved by voters.

The public debate on Measure 8 centered around its inclusion of federal funds within the limit and the estimated reduction in spending ($5.0 billion in 2001-03) to get within the 15% limit. However, by limiting spending and revenue to a fixed percentage of personal income, Measure 8 allowed for significant growth over time once the budget had been cut to fit within the 15% limit.

Although Measure 8 received only 43.5 % yes vote in the November 2000 election it further fueled legislative discussion on the characteristics of spending and revenue limits. The 2001 Legislature responded by repealing the appropriations growth limit and replacing it with a new statutory spending limit. Unlike Measure 8, the new limit has no excess revenue refund requirement. However, it does contain some elements of Measure 8. First it uses a fixed percentage of personal income target. This negates the ratchet effect following recessions by allowing spending to catch up to a certain percentage of income. Secondly, the new limit broadened the definition of subject spending well beyond the General Fund though not nearly as encompassing as Measure 8.

The key characteristics of Oregon's current spending limit (ORS 291.357) are:

- Codification: Statutory
- Target: 8% of projected personal income
- Subject spending: Appropriations for governmental activities excluding business and fiduciary activities and spending from federal funds, donations, bond proceeds and tuition remission programs.

- Exceptions: Emergencies with 3/5 votes, spending required by passage of ballot measures.
- Surplus revenue: No provision

Reacting to criticism that the previous appropriation growth limit was too narrow and therefore easy to manipulate, Legislators used a broader definition of subject spending based on Governmental Accounting Standards Board (GASB) definitions. GASB defines governmental activities. Governmental activities reflect public services to a broad segment of the population. Governmental activities exclude business and fiduciary activities. Business activities include self sustaining programs such as dormitories in higher education or home loan programs administered by the Veterans Department. Fiduciary activities involve trust obligations such as the Public Employee Retirement Fund.

Similar to the 1979 appropriations growth limit, passage of the new state spending limit was immediately followed by a sharp recession which reduced revenue well below the limit. However, the impact of recessions on the new limit is considerably different because it includes spending from non-General Fund revenue sources, many of which are not sensitive to the business cycle. General Fund revenue, with over 90% coming from highly volatile personal and corporate income taxes, is much more sensitive to economic cycles.

The new limit was first operational in the 2001-03 biennium. Spending subject to the limit was 7.73% of projected personal income or $576.6 million below the limit. Due to a sharp drop off of non-General Fund revenue and stronger personal income growth brought on by economic recovery, subject spending is even further below the limit in the current 2005-07 budget. It is $1,860 million below the 8% cap.

Legislative Fiscal Office recently conducted a historical simulation to determine how the current law would have affected spending in the period prior to its passage. Spending was 6.86% of personal income in the 1989-91 biennium—the start of the simulation. It gradually rose to a peak of 8.08% of personal income in 1999-2001. This would have been $158.1 million above the limit. 1999-2001 was the only biennium since 1989-91 that the limit would have been exceeded.

Description of Measure 48

Measure 48 amends the Oregon constitution by creating a new section containing a limit on state spending. The growth in "total spending" is limited to the sum of the change in the state population and inflation for the two calendar years preceding the start of the state's biennial budget.

In general terms, Measure 48 is a spending limit (not a revenue limit), that uses inflation and population growth as its target, uses a broad definition of spending for subject expenditures and requires a 2/3 vote of the Legislature followed by a vote of the public to exceed the limit. Like most spending limits, Measure 48 is silent on what to do with surplus revenue above what can be spent under the limit.

"Total spending" subject to the limit is defined in the measure to be "all disbusements pursuant to all acts by the Legislative Assembly authorizing the expenditure of public funds" except the following:

- Money placed in rainy day funds
- Federal funds
- Kicker refunds and credits
- Tax refunds in general
- Donations
- Proceeds from bond sales specifically approved by voters

- Proceeds from the sale of government property

The state currently has a constitutional rainy day fund—the Education Stability Fund--- that receives 18% of net Lottery earnings. Revenue placed into the fund would clearly not be subject to the limit but withdrawals from the fund for purposes of allocating to state agencies or school districts would fall under the limit. Direct expenditures of federal funds would be outside the limit but federal matching requirements would be under the limit. Tax refunds, the 2% surplus kicker refunds and income tax refunds in general, have always been considered a negative revenue item rather than an expenditure by the state. It is unlikely they would have been considered disbursements even without the specific exclusion contained in the measure. Though a minor source of revenue to the state overall, donations are an important source of revenue for higher education institutions around the state. The state uses bonds extensively to fund various activities. Only rarely has prior voter approval been obtained on specific issues. Under the terms of Measure 48, spending from bond proceeds would be under the limit unless prior voter approval is obtained. Regardless of voter approval, repayment of debt incurred through bonding would be counted as an expenditure under the limit. The measure specifies that expenditures from revenue obtained through the sale of property at market value are not subject to the limit. The state has received only negligible revenue from such sales in recent years.

The remaining budget subject to the limit covers a broad array of spending. The percentage breakdown of subject spending from the current 2005-07 budget is:

- 32%-- Education including K-12, higher education and community colleges
- 17%--Public employee retirement system
- 14%--Economic development, employment services, housing & veterans
- 11%--Human services
- 7%--Transportation
- 6%--Public safety including state police, corrections and the state military department
- 4%--Administration including revenue collection, the Treasury, the Secretary of State's office and the Governor's office
- 3%--Natural resources
- 3%--Consumer and business services and regulation
- 2%--Court system
- 1%--Other including Legislature

Measure 48 also makes specific reference to the sources of information to be used for calculating the inflation and population targets. The measure defines inflation to be the percentage change in the Portland-Salem consumer price index for all urban consumers tabulated by the U.S. Bureau of Labor Statistics. The BLS tracks a market basket of consumer goods on a monthly basis and publishes a U.S. city average each month. The Portland-Salem area is reported on a semi-annual basis. The BLS releases a report in August of each year with an estimate of consumer prices in the Portland –Salem market for the first 6 months of the year. It releases a similar report in February of the following year for the final 6 months of the year. The combination of these two reports would serve as the calendar measure of inflation required by Measure 48. Measure 48 also defines state population as "annual federal census estimates". The Center for Population Research and Census at Portland State University produces the official state Census estimates for Oregon. These estimates are for July 1 of each year. These estimates are reviewed by local governments and certified by December 15 of each year. Every 10 years, a complete Census count is conducted by the U.S. Census bureau. The count uses April 1 as its reference date. Following the decennial census count, the annual estimates are revised to be consistent with the actual count.

One way to consider Measure 48 is through comparison with other limits. Table 3 shows the key characteristics of Measure 48 in comparison with Oregon's current spending limit, Measure 8 from the 2000 election and Colorado's TABOR limit.

TABLE 3: MEASURE 48 COMPARED TO OTHER LIMITS

	MEASURE 48	**CURRENT OREGON SPENDING LIMIT**	**MEASURE 8 FROM 2000**	**COLORADO'S TABOR**
TYPE	SPENDING	SPENDING	SPENDING	REVENUE
CODIFICATION: C=CONSITUTION S=STATUTE	C	S	C	C
TARGET	PRIOR CHANGE IN POPULATION PLUS INFLATION	8% OF PROJECTED PERSONAL INCOME	15% OF PRIOR PERIOD PERSONAL INCOME	PRIOR CHANGE IN POPULATION PLUS INFLATION
SUBJECT SPENDING OR REVENUE	ALL "DISBURSEMENTS" EXCEPT SPENDING FROM FEDERAL FUNDS, VOTER APPROVED BOND PROCEEDS, DONATIONS,SALE OF GOVERNMENTMENT PROPERTY	GOVERNMENTAL ACTIVITIES EXCLUDING BUSINESS & FIDUCIARY ACTIVITIES, SPENDING FROM FEDERAL FUNDS, BOND PROCEEDS, & TUITION REMISSION PROGRAMS	ALL STATE APPROPRIATIONS EXCEPT SPENDING FROM BOND PROCEEDS	MOST STATE REVENUE SOURCES INCLUDING SALES TAX, PERSONAL INCOME TAX, UNEMPLOYMENT TAXES, HIGHER ED & TRANSPORTATION TAXES & FEES. ALSO LIMITS LOCAL GOVERNMENT REVENUE.
TREATMENT OF SURPLUS	NO PROVISION	NO PROVISION	EXCESS REVENUE RETURNED TO STATE INCOME TAXPAYERS	EXCESS REVENUE RETURNED TO TAXPAYERS
EXCEPTIONS	2/3 LEGISLATIVE VOTE, APPROVAL BY VOTERS IN GENERAL ELECTION	3/5 LEGISLATIVE VOTE, SPENDING DUE TO VOTER APPROVED INITIATIVES	¾ LEGISLATIVE VOTE	VOTER APPROVAL

Measure 48 is often compared to Colorado's TABOR. There are a number of similarities but there are key differences as well. The biggest difference is that Colorado's TABOR is a revenue limit and Measure 48 is a spending limit. Measure 48 has no provision for what to do with surplus revenue above the limit while TABOR requires a refund to taxpayers. However, Oregon does have a separate revenue limit that does require General Fund revenue (calculated separately as corporate and non-corporate) above the forecast to be returned if the 2% trigger is met. The key similarities between Measure 48 and TABOR are that they are both constitutional, both use the more restrictive inflation/population growth measure and both require voter approval to exceed the limit. A majority of Colorado voters agreed to suspend the TABOR limit for a 5-year period in the November 2005 elections.

Measure 48 is more restrictive than Measure 8 in some ways but less restrictive in others. First Measure 48 uses a more restrictive target (population/inflation vs. percent of personal income) and it has a more stringent exception process by requiring voter approval. However, Measure 8 contained several more restrictive elements such as a broader definition of subject expenditures (including federal funds) and a surplus revenue refund requirement.

In nearly all the characteristics listed above, Measure 48 is more restrictive than the current statutory spending limit. Measure 48 is constitutional, uses a broader definition of subject spending, links to a more restrictive target and has a more stringent exception process. Measure 48's definition of subject spending is considerably broader because it includes fiduciary responsibilities such as insurance trust funds (for example the unemployment compensation fund) and spending from the public employee retirement fund. This type of expenditure is outside the current spending limit. The only similarity is the lack of a provision for what to do with surplus revenue.

In summary Measure 48 contains a number of the most restrictive characteristics identified by NCSL and reflected in Colorado's TABOR but not all. Measure 48 is constitutional, uses the more restrictive target, has a broad definition of subject expenditures and requires voter approval for exceptions. However, Measure 48 is a spending limit, not a revenue limit. It leaves the decision of what to do with revenue above the limit up to the Legislature.

A constitutional measure as broad as Measure 48 generates legal questions concerning actual implementation. This is particularly true of what constitutes subject expenditures. The measure refers to "disbursements", which is assumed to mean all money that is expended by the state; however this is not a term heretofore used in Oregon budget law. Measure 48 also refers to expenditure of "public funds" which is assumed to include payments made to retirees through PERS. However, a case could be made that these are private funds administered by the state for the individual retirees. Finally there is even some question about when the limit first takes effect. The Measure itself is silent but constitutional amendments take effect 30 days after passage. This could conceivably mean it would apply to the current 2005-07 budget already more than ½ of the way through. However, current legal opinion indicates the measure does not apply until the 2007-09 biennium.

Impact of Measure 48 on the State Budget: Historical Simulations and Projections

There are generally two ways to simulate the impact of spending limits on the state budget. The first is using historical data and imposing the limit on actual data to see where actual subject spending exceeded the limit. This approach has the advantage of using actual data rather than projections. However, it is also subject to the events of the past, many of which (such as the transition in school spending caused by Measure 5) are very unlikely to be repeated in the near future. The second approach is to use unbiased projections for revenue and spending to show how the limit would affect the budget. This approach has merit in the sense that it uses the best information available as to what is likely to happen to the key elements of the state budget. However, projections are always off, sometimes by a large magnitude, as unanticipated events often occur. The approach here is to use both historical simulations—starting at different points in time and trend projections to consider the potential budgetary effects of Measure 48. A key limitation of both the historical simulations and projections is that decisions makers (the Legislature in this case) are held constant. There are a number of possible fiscal policy responses, each with different implications for the future. The second issue is the legal interpretation of the measure. The legal issues raised in the previous section could have a major bearing on how Measure 48 ultimately affects state fiscal policy.

Historical Simulations

Because Measure 48 uses the percent change in the state population and the inflation rate—two rate of change variables, the starting point for a historical analysis has a major impact on the conclusions. Table 4 is based on the assumption that Measure 48 starts at two different points in time. The first simulation uses the 1989-91 biennium as the base year. A period followed by relatively strong economic growth as well as the beginning of the Measure 5 era in the state's public finance system. The second starting point is 1999-2001. This biennium marked the peak of the state's long cyclical expansion. It was followed by the 2001 recession and an extended period of economic weakness.

TABLE 4: HISTORICAL SIMULATIONS OF MEASURE 48 IMPACT			
	SUBJECT SPENDING AT STARTING POINT (in millions)	**AVERAGE BIENNIAL CHANGE**	**2005-07 SUBJECT SPENDING (in millions)**
1989-91 STARTING POINT			
1989-91 ACTUAL	$11,004	14.0%	$31,403
1989-91 SIMULATION	11,004	10.0%	23,545
DIFFERENCE	0	-4.0%	-7,858
1999-01 STARTING POINT			
1999-01 ACTUAL	$21,482	13.6%	$31,403
1999-01 SIMULATION	21,482	6.8%	26,177
DIFFERENCE	0	-6.8%	-5,226

The historical simulations reveal a considerable gap between actual subject spending and what would have been allowed under Measure 48. A 4.0 % biennial growth gap between actual spending and simulated spending over the 1989-91 to 2005-07 period results in a difference of $7.9 billion or 25.0% in subject expenditures at the end of the period. Much of the difference can be traced to the last three biennia. Actual spending growth slowed slightly over the past three biennia to 13.6% per biennia. However, the Measure 48 inflation/population target slowed much more relative to the 1990s. The three biennium average growth for the Measure 48 target was 6.8%--exactly half the actual growth for spending over the period. This means that actual spending exceeds the 3-biennia simulated level by a total of $5.2 billion.

Projected Impact

The state only makes formal longer term projections of General Fund and Lottery revenue. It does not prepare formal estimates of expenditures or many of the non-General Fund revenue sources beyond the upcoming 2-year budget. This leaves open the question of what subject spending growth would be in the absence of Measure 48. However, the Department of Administrative Services (DAS) does prepare formal forecasts each quarter for Oregon's population and the Portland-Salem Consumer Price Index. DAS also forecasts overall state personal income. This can be used as a basis for projecting subject spending under current law because revenue and spending tend to track the size of the economy over time.

Over the past 9 biennia, spending subject to the Measure 48 limit has varied between 11 and 13% of personal income. The trend has been up, with the peak 13% portion occurring in the current 2005-07 biennium. However, spending has tended to drop as a share of income during periods of strong growth such as the 1995-97 biennium and 1999-2001 biennium. In periods of weaker growth, such as the 1991-93 biennium and the 2001-03 biennium, spending has risen as a share of income. Over the past 8 biennia, subject spending has gained 0.2%

per biennium relative to personal income on average. Over the past two biennia, growth has accelerated relative to personal income, gaining .3% compared to personal income in both the 2003-05 biennium and the 2005-07 biennium.

Table 5 shows the projected impact of Measure 48 on spending under two assumptions. The first projection is based on the assumption that spending gains .2% relative to personal income, equal to the average gain over the past 8 biennia. The second assumption is based on a gain of .3% relative to personal income reflective of the previous and current biennial budgets.

TABLE 5: PROJECTED IMPACT OF MEASURE 48 (IN MILLIONS OF $)			
	2007-09	2009-11	2011-13
SPENDING UNDER MEASURE 48	33,894	36,233	38,697
GROWTH RATE UNDER MEASURE 48	8.2%	6.9%	6.8%
CURRENT LAW PROJECTIONS			
SPENDING GROWTH EQUALS LONG TERM RELATIONSHIP WITH PERSONAL INCOME*	35,719	40,589	45,873
GROWTH RATE UNDER LONG TERM RELATIONSHIP	14.1%	13.6%	13.0%
DIFFERENCE FROM MEASURE 48 PROJECTION	1,825	4,356	7,176
SPENDING GROWTH EQUALS SHORT TERM RELATIONSHIP WITH PERSONAL INCOME**	35,990	41,194	46,885
GROWTH RATE UNDER SHORT TERM RELATIONSHIP	12.3%	11.9%	11.4%
DIFFERENCE FROM MEASURE 48 PROJECTION	2,096	4,962	8,188

* based on assumption that subject spending increases from 13.0% of income in 2005-07 to 13.6% in 2011-13 in .2 increments.
** based on assumption that subject spending increases from 13% of personal income in 2005-07 to 13.9% in 2011-13 in .3 increments.

The projections confirm the conclusion from the historical simulations that spending growth is almost certain to be less under the Measure 48 limit than it would otherwise be. Under the long term growth share assumption, Measure 48 spending would be $1.8 billion less than current law. Under the short term growing share assumption the difference with current law is $2.1 billion. However, this $300 million difference accumulates each biennium so that there is a $1.0 billion difference between the two current law assumptions after 3 biennia. It is interesting to note that relatively small changes in the assumed growth rate causes fairly large dollar differences in the estimated impact.

Conclusions

Passage of Measure 48 is likely to lead to slower growth in state government spending in comparison both with what it has historically been and from what it would likely be in the absence of the limit. This is due to the nature of the population/inflation target, the broad definition of spending subject to the limit and the stringent requirements for exceeding the limit. However, the difficulty in precisely defining what is and what is not subject to the limit and the precise legal meaning of terms makes this conclusion less than certain.

Assuming the legal assumptions behind the analysis in this report turn out to be substantially correct, Measure 48 will create a system where revenue growth will exceed the spending limit by a large amount. The Legislature will determine how to respond. There will clearly be some pressure to build reserves to help stabilize Oregon’s volatile General Fund; however, there will also be strong pressure to reduce Oregon’s taxes and other revenue sources in order to avoid weakening overall demand in the state economy. On the spending side, it is very difficult to speculate where slower growth or actual reductions will occur. The most flexible part of the budget is General Fund and Lottery expenditures which are dominated by education, human services and public safety programs. Other portions of the state budget such as the highway fund, the unemployment compensation fund and payments to public sector retirees have legal constraints restricting short-term budgetary flexibility.

In the longer term, Measure 48 could well prompt significant institutional changes in Oregon's public finance system. Since Measure 48 limits state government spending there could be some shift toward local government provision of services. Many basic services such as education (K-12 and community colleges); human services (especially mental health) and public safety (for example community corrections) are delivered and financed through a combination of state and local resources. The proportions could shift toward local government under a strict state limit. Secondly, privatization of some government enterprises such as the Oregon Liquor Control Commission could be considered to help bring state spending under the limit on a one-time basis. Finally, if state policy-makers view "total" state spending as truly limited they may search for ways to increase the fungibility of various state funds subject to the limit in order to bring about greater flexibility.

Additional Reading

Oregon Legislative Fiscal Office:
Budget Information Brief 2006-5: IP#6--Spending Limit,
Budget Information Brief 2004-4: Oregon's Statutory Spending Limit

Oregon Legislative Revenue Office:
Research Report #8-00: Measure 8: State Spending Limit

Legislative Council, Colorado General Assembly:
Study required by House Joint Resolution 03-1033

National Conference of State Legislatures:
State Tax and Expenditure Limits--2005