

# **Report on the Property Tax Cap**

**Fiscal Year 2009**

**Division of Municipal Finance – Department of Revenue**

**December 31, 2008**

Chapter 253 of the Public Laws of 2006 (introduced as S-3050) entitled “Relating to Taxation – Property Taxes” modified the calculation of the property tax cap beginning in Fiscal Year 2008, changed the criteria for exemptions from the property tax cap, limited the increase that School Committees could request from municipal funds in their annual budget proposal, amended the definition of “state mandates”, and required the Office of Municipal Affairs within the Department of Administration to conduct a property tax study relating to tax treaties. Subsequent changes to the General Laws transferred the Office of Municipal Affairs to the Department of Revenue and renamed it the “Division of Property Valuation and Municipal Finance (DMF).

This report has been prepared to summarize compliance with the cap in its second year. The first part of the report will summarize aggregate and individual compliance with the cap. The second part of the report will review exemptions that were granted to nine cities and towns. The third part of this report responds to the statute governing the tax cap which requires a report by this division making recommendations “on the continuation or modification” of the cap every third year. Thus, the third part of the report will include limited recommendations for modification to the cap.

## **Part 1 – Property Tax Cap**

The following is the critical language governing calculation of the cap and reporting on the tax cap:

### **44-5-2. Maximum levy \*\*\***

(b) In its fiscal year 2008, a city or town may levy a tax in an amount not more than five and one-quarter percent (5.25%) in excess of the total amount levied and certified by that city or town for its fiscal year 2007. In its fiscal year 2009, a city or town may levy a tax in an amount not more than five percent (5%) in excess of the total amount levied and certified by that city or town for its fiscal year 2008. In its fiscal year 2010, a city or town may levy a tax in an amount not more than four and three-quarters percent (4.75%) in excess of the total amount levied and certified by that city or town in its fiscal year 2009. In its fiscal year 2011, a city or town may levy a tax in an amount not more than four and one-half percent (4.5%) in excess of the total amount levied and certified by that city or town in its fiscal year 2010. In its fiscal year 2012, a city or town may levy a tax in an amount not more than four and one-quarter percent (4.25%) in excess of the total amount levied and certified by that city or town in its fiscal year 2011. In its fiscal year 2013 and in each fiscal year thereafter, a city or town may levy a tax in an amount not more than four percent (4%) in excess of the total amount levied and certified by that city or town for its previous fiscal year.

(c) The division of property valuation and municipal finance in the department of revenue shall monitor city and town compliance with this levy cap, issue periodic reports to the general assembly on compliance, and make recommendations on the continuation or modification of the levy cap on or before December 31, 1987, December 31, 1990, and December 31, every third year thereafter. The chief elected official in each city and town shall provide to the division of property valuation and municipal finance within thirty (30) days of final action, in the form required, the adopted tax levy and rate and other pertinent information.

In October of 2007, the Division of Municipal Finance (DMF) communicated with all municipalities on the maximum tax levy available to support their FY 2009 budget. Beginning in April of 2008 and extending into July, the DMF reviewed tax levy proposals and budget disclosure information from each city and town. In accordance with Section 44-35 of the RI General Laws, each city and town is required to disclose its proposed tax rate and levy as well as a summary of its budget proposal in a newspaper of general circulation ten days before the first public hearing on the municipal budget.

Table 1 summarizes both the property tax levy proposal approved by DMF and the final enacted tax levy.

To summarize the results:

- The property tax cap applied statewide at a permitted 5% increase would have resulted in a property tax levy of \$1,982 billion to support FY 2009 municipal budgets.
- DMF received property tax levy proposals totaling \$1.967 billion to support FY 2009, an increase of just over \$80 million dollars or 4.26 % over the FY 2008 levy of \$1.887 billion.
- The final enacted statewide property tax levy was \$1.970 billion, a 4.42% increase over FY 2008 (with the estimation caveats noted below for Cumberland and East Providence).
- Seven municipalities enacted a tax levy precisely at the 5% cap. Another ten enacted levies which were over a 4.5% increase but below the 5% cap. Thirteen enacted tax levies which grew by less than 4.5%. Nine enacted levies which increased by more than 5%.

We would note that the \$1.887 billion levy supporting FY 2008 was a 4.78 % increase over the levy of \$1.801 billion in support of FY 2007 municipal budgets.

There are some caveats in reviewing this information.

- East Providence is on a November to October fiscal year. They also levy their property tax in arrears so their final tax levy will not be known until June of 2009.
- Cumberland also levies its taxes in arrears so the DMF's numbers represent an estimate which will be finalized in May of 2009.
- The final levy can differ from the proposed tax levy for a number of reasons:
  - At the time of the tax proposal, property values have been estimated. Once the approved tax rate is actually applied to final assessed values, there is likely to be a difference. This difference is usually not material especially for those communities which act on their budget and tax levy late in the fiscal year.
  - The proposal is amended at the public hearing. Mayors, Managers, Administrators, Treasurers or Budget Boards make a budget proposal to the Council or Financial Town Meeting. The tax proposal may be changed at the public hearing. In most cases, final levies which exceeded 5.00 % (there were 8) had been approved by DMF based on debt service or loss in

non-property tax revenue exemptions. Certified levy information received from two municipalities (Bristol and Exeter) indicates that they slightly exceeded the tax cap as amended by exemption approvals.

## CURRENT vs PROPOSED and ACTUAL TAX LEVIES

Table 1

		Current (1)	Proposed (2)	Increase	Percent	Actual (3)	Increase	Percent
CITY/TOWN	Notes	FY 2008	FY 2009	(Decrease)	Change	FY 2009	(Decrease)	Change
BARRINGTON		47,347,311	49,527,805	2,180,494	4.61%	49,602,859	2,255,548	4.76%
BRISTOL		31,466,379	33,166,754	1,700,375	5.40	33,426,741	1,960,362	6.23
BURRILLVILLE		20,379,384	21,293,537	914,153	4.49	21,011,173	631,789	3.10
CENTRAL FALLS		10,075,041	10,465,479	390,438	3.88	10,495,379	420,338	4.17
CHARLESTOWN		18,780,800	19,704,766	923,966	4.92	19,708,925	928,125	4.94
COVENTRY		56,292,004	59,106,604	2,814,600	5.00	59,106,603	2,814,599	5.00
CRANSTON		151,718,441	153,023,678	1,305,237	0.86	153,150,874	1,432,433	0.94
CUMBERLAND	4	50,571,523	52,454,310	1,882,787	3.72	52,454,310	1,882,787	3.72
EAST GREENWICH		37,726,180	39,497,016	1,770,836	4.69	39,575,719	1,849,539	4.90
EAST PROVIDENCE	5	82,082,303	84,725,950	2,643,647	3.22	84,725,950	2,643,647	3.22
EXETER		11,108,972	12,034,052	925,080	8.33	11,672,749	563,777	5.07
FOSTER		8,657,612	9,738,276	1,080,664	12.48	9,879,531	1,221,919	14.11
GLOCESTER		18,134,554	19,692,581	1,558,027	8.59	19,541,335	1,406,781	7.76
HOPKINTON		15,091,660	15,732,406	640,746	4.25	15,651,281	559,621	3.71
JAMESTOWN		16,727,176	17,527,159	799,983	4.78	17,562,744	835,568	5.00
JOHNSTON		61,086,592	61,320,504	233,912	0.38	61,791,239	704,647	1.15
LINCOLN		47,459,085	48,638,298	1,179,213	2.48	49,267,068	1,807,983	3.81
LITTLE COMPTON		8,981,920	9,425,901	443,981	4.94	9,425,477	443,557	4.94
MIDDLETOWN		36,797,355	38,637,223	1,839,868	5.00	38,487,041	1,689,686	4.59
NARRAGANSETT		38,325,157	40,241,415	1,916,258	5.00	40,209,538	1,884,381	4.92
NEWPORT		56,490,825	58,712,851	2,222,026	3.93	58,945,707	2,454,882	4.35
NEW SHOREHAM		6,614,259	6,944,972	330,713	5.00	6,932,888	318,629	4.82
NORTH KINGSTOWN		59,586,154	62,565,462	2,979,308	5.00	62,565,154	2,979,000	5.00
NORTH PROVIDENCE		51,581,994	52,755,898	1,173,904	2.28	53,303,326	1,721,332	3.34
NORTH SMITHFIELD		21,370,406	24,188,176	2,817,770	13.19	24,190,127	2,819,721	13.19
PAWTUCKET		78,892,841	81,185,502	2,292,661	2.91	81,691,527	2,798,686	3.55
PORTSMOUTH		38,442,372	40,364,490	1,922,118	5.00	40,361,114	1,918,742	4.99
PROVIDENCE		275,329,161	285,654,005	10,324,844	3.75	287,211,711	11,882,550	4.32
RICHMOND		12,822,091	13,855,539	1,033,448	8.06	13,852,385	1,030,294	8.04
SCITUATE		22,342,551	23,460,230	1,117,679	5.00	23,459,585	1,117,034	5.00
SMITHFIELD		41,966,249	43,664,560	1,698,311	4.05	44,064,149	2,097,900	5.00
SOUTH KINGSTOWN		60,692,561	63,727,189	3,034,628	5.00	63,726,992	3,034,431	5.00

## CURRENT vs PROPOSED and ACTUAL TAX LEVIES

Table 1 (Continued)

		Current (1)	Proposed (2)	Increase	Percent	Actual (3)	Increase	Percent
CITY/TOWN	Notes	FY 2008	FY 2009	(Decrease)	Change	FY 2009	(Decrease)	Change
TIVERTON		28,131,165	31,562,578	3,431,413	12.20	31,230,364	3,099,199	11.02
WARREN		18,580,185	19,456,489	876,304	4.72	19,508,191	928,006	4.99
WARWICK		187,228,328	196,530,000	9,301,672	4.97	195,989,706	8,761,378	4.68
WESTERLY		56,058,965	58,948,608	2,889,643	5.15	58,931,924	2,872,959	5.12
WEST GREENWICH		14,048,611	16,022,045	1,973,434	14.05	16,092,264	2,043,653	14.55
WEST WARWICK		47,044,147	49,376,058	2,331,911	4.96	49,395,487	2,351,340	5.00
WOONSOCKET		40,868,441	42,262,210	1,393,769	3.41	42,128,184	1,259,743	3.08
<b>TOTAL ACTUAL</b>		<b>1,886,900,755</b>	<b>1,967,190,576</b>	<b>80,289,821</b>	<b>4.26%</b>	<b>1,970,327,321</b>	<b>83,426,566</b>	<b>4.42%</b>

1. The current column records the actual certified tax levy supporting FY 2008.
2. The proposed column records the disclosure notice tax levy proposal for FY 2009. Each municipality is required to advertise (10 days before the first public hearing) their proposed tax levy.
3. The actual column records the certified tax levy DMF received from the municipal tax assessor.
4. Cumberland actual amount is an estimate reported by the town. Final levy will be set in May 2009.
5. East Providence has proposed a tax levy for FY 2009. Final levy will be set in June 2009.

### Part 2 – Exemptions

The maximum levy statute also provides for exemptions from the property tax cap as follows:

#### 44-5-2. Maximum levy \*\*\*

(d) The amount levied by a city or town may exceed the percentage increase as specified in subsection (a) or (b) of this section if the city or town qualifies under one or more of the following provisions:

(1) The city or town forecasts or experiences a loss in total non-property tax revenues and the loss is certified by the department of revenue.

(2) The city or town experiences or anticipates an emergency situation, which causes or will cause the levy to exceed the percentage increase as specified in subsection (a) or (b) of this section. In the event of an emergency or an anticipated emergency, the city or town shall notify the auditor general who shall certify the existence or anticipated existence of the emergency. Without limiting the generality of the foregoing, an emergency shall be deemed to exist when the city or town experiences or anticipates health insurance costs, retirement contributions or utility expenditures which exceed the prior fiscal year's health insurance costs, retirement contributions or utility expenditures by a percentage greater than three (3) times the percentage increase as specified in subsection (a) or (b) of this section.

(3) A city or town forecasts or experiences debt services expenditures which exceed the prior year's debt service expenditures by an amount greater than the percentage increase as specified in subsection (a) or (b) of this section and which are the result of bonded debt issued in a manner consistent with general law or a special act. In the event of the debt service increase, the city or town shall notify the department of revenue which shall certify the debt service increase above the percentage increase as specified in subsection (a) or (b) of this section the prior year's debt service. No action approving or disapproving exceeding a levy cap under the provisions of this section affects the requirement to pay obligations as described in subsection (d) of this section.

(4) The city or town experiences substantial growth in its tax base as the result of major new construction which necessitates either significant infrastructure or school housing expenditures by the city or town or a significant increase in the need for essential municipal services and such increase in expenditures or demand for services is certified by the department of revenue.

(e) Any levy pursuant to subsection (d) of this section in excess of percentage increase specified in subsection (a) of this section shall be approved by the affirmative vote of at least four-fifths (4/5) of the full membership of the governing body of the city or town or in the case of a city or town having a financial town meeting, the majority of the electors present and voting at the town financial meeting shall also approve the excess levy.

(f) Nothing contained in this section constrains the payment of present or future obligations as prescribed by section 45-12-1, and all taxable property in each city or town is subject to taxation without limitation as to rate or amount to pay general obligation bonds or notes of the city or town except as otherwise specifically provided by law or charter.

You will note that the Office of the Auditor General is responsible for reviewing and approving exemptions relating to emergencies under 44-5-2(d)(2) above. It is DMF's understanding that two emergency exemptions were approved by the Auditor General. DMF is responsible for approving "substantial growth" exemptions under (4) above. No final requests for exemptions under this category were received.

Table 2 summarizes the exemptions granted and approved. Over 51% of the exemptions approved or approximately \$4.1 million related to debt service increasing by an amount greater than the cap, or an increase exceeding 5.00 %. Debt service exemptions were granted to six communities. Exemptions totaling \$3.8 million based upon loss in non-property tax revenues were granted to five municipalities. An additional exemption of under \$100,000 qualifying as an emergency was granted to one community. We would also note that the Town of Exeter also received an emergency exemption to fund state police services; however, voters at the financial town meeting rejected the use of this tax cap exemption.

Because of the rescission in state aid to municipalities, we believe many more municipalities would have qualified for an exemption to the tax cap based upon a loss in non property tax revenues. However, it is us up to each municipality to determine whether to request an exemption and only five chose to make a final request.

## REQUESTED EXEMPTIONS TO TAX CAP

Table 2

FY 2009						
		Revenue	Debt	Auditor	Substantial	
CITY/TOWN		Loss	Service	General	Growth	TOTAL
BRISTOL		374,970				374,970
EXETER				373,000		373,000
FOSTER		530,375	334,390			864,765
GLOCESTER			651,261			651,261
NORTH SMITHFIELD			1,901,892			1,901,892
RICHMOND		392,510				392,510
TIVERTON		1,130,038	894,816			2,024,854
WESTERLY			86,696			86,696
WEST GREENWICH		1,455,188	184,566	101,843		1,741,597
<b>TOTAL</b>		<b>3,883,081</b>	<b>4,053,621</b>	<b>474,843</b>	<b>0</b>	<b>8,411,545</b>

In each case, the municipality notified DMF during or before the disclosure process that they would be requesting an exemption to the cap. Their disclosure notice advised taxpayers that a request to exceed the cap was pending. Following review of the documentation provided on loss in non-property revenues or debt service exceeding the cap, the Division advised the city or town in writing of the approved exemption amount.

## ALLOWED EXEMPTIONS TO TAX CAP

Table 3

FY 2009							Approved	
	Revenue	Debt	Auditor		MAXIMUM	%	or	
CITY/TOWN	Loss	Service	General	TOTAL	LEVY	Increase	Denied	
BRISTOL	374,970			374,970	33,414,668	6.19%	4/29/2008	
EXETER			0	0				FTM
FOSTER	530,375	334,458		864,833	9,955,326	14.99%	5/2/2008	FTM
GLOCESTER		651,261		651,261	19,692,543	8.59%	4/21/2008	FTM
NORTH SMITHFIELD		1,968,135		1,968,135	24,407,061	14.21%	5/22/2008	
RICHMOND	392,510			392,510	13,855,706	8.06%	5/21/08	FTM
TIVERTON	1,014,689	894,816		1,909,505	31,447,228	11.79%	05/01/08	FTM
WESTERLY		86,696		86,696	58,948,609	5.15%	03/05/08	
WEST GREENWICH	1,455,188	148,153	88,677	1,692,018	16,443,060	17.04%	06/06/08	FTM
<b>TOTAL</b>	<b>3,767,732</b>	<b>4,083,519</b>	<b>88,677</b>	<b>7,939,928</b>				

### Part 3 – Tax Cap Modification

This final section of the report provides recommendations relating to continuation or modification of the property tax cap as required by 44-5-2 (c).

1. **Net Debt Service Increase:** Municipalities are now eligible to receive an exemption from the tax cap to the extent that total debt service increases by more than the cap. It is typical with school (and sometimes library) debt that simultaneous with an increase in cost there is also an increase in state school housing (or library construction) aid. The law does not currently allow the state to net the increase in state aid against the increase in debt service cost. We believe it would be more reasonable to offset any increases in state aid attributable to the debt against the allowable tax cap exemption. A modification to the law would be required.
2. **Compliance with the Cap:** There is currently no compliance enforcement mechanism by the state to assure that municipalities comply with the cap. As noted earlier in this report, two communities minimally exceeded the cap in their final tax certification for FY 2009. The enforcement remedy available to a taxpayer is to file a complaint in Superior Court as an aggrieved taxpayer. We recommend that the law be amended to enable the Department of Revenue with approval of the Auditor General to reduce General Revenue Sharing by an amount equal to any tax levy exceeding the maximum approved levy.
3. **Super Majority Council Approval:** Subsection e of 44-5-2 reads as follow: (e) Any levy pursuant to subsection (d) of this section in excess of percentage increase specified in subsection (a) of this section shall be approved by the affirmative vote of at least four-fifths (4/5) of the full membership of the governing body of the city or town or in the case of a city or town having a financial town meeting, the majority of the electors present and voting at the town financial meeting shall also approve the excess levy.

This section has been unclear to many towns which have a financial town meeting (FTM) for purposes of approving the budget and tax levy. Some interpret it to mean that a simple majority at a FTM is required to levy a tax in excess of the cap which includes state approved exemptions. Others interpret it to mean that even if the town has a FTM, a four fifths council vote is also necessary to exceed the cap. This Division has advised towns that the four fifths Council vote is also necessary for FTM towns. Nevertheless, we believe clarification language could be helpful especially for those towns where the Council does not play a roll in budget or tax levy approval (Lincoln, Tiverton). It would be the Division's recommendation that the language be changed to allow budget boards to meet the test of the four fifths vote.

4. **Exclusive Focus on Tax Cap:** The focus of the Department of Revenue's responsibilities during the disclosure and tax cap certification review (as provided for in 44-5-2 and 44-35 of the RI General Laws) is to assure that the property tax levy does not exceed the tax cap plus any approved exemptions. A separate section of Title 45 of the RI General Laws (45-12) deals with municipal deficits. This division and the Auditor General's office interact with municipalities on actual and projected deficits. During this

most recent budget and tax approval cycle, there were two communities with actual or projected deficits who were proposing tax levy increases well below the tax cap. It would be this Division's recommendation that any municipality that is projecting a deficit (through the quarterly reporting process) or has incurred a cumulative deficit fund balance in the prior year, be required to document for DMF and the Auditor General how the deficit could be eliminated with a tax levy increase below the tax cap.