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FISCAL IMPACT REPORT

ORIGINAL DATE 2/06/21

SPONSOR Pirtle LAST UPDATED _____ HB _____

SHORT TITLE Limit General Fund Appropriations, CA SJR 12

ANALYST Hanika-Ortiz/Gaussoin

APPROPRIATION (dollars in thousands)

| Appropriation | Recurring or Nonrecurring | Fund Affected |
|--------------------------------|------------------------------|------------------|
| FY24 and Beyond | | |
| Indeterminate but Substantial* | Recurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

* See "Fiscal Implications" and "Technical Issues".

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

| | FY21 | FY22 | FY23 | 3 Year Total Cost | Recurring or Nonrecurring | Fund Affected |
|-----|------|---------------------|------|----------------------|------------------------------|------------------|
| SOS | | \$150.0- \$200.0 | | \$150.0- \$200.0 | Nonrecurring | General Fund |

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Attorney General's Office (NMAG)

SUMMARY

Synopsis of Bill

Senate Joint Resolution 12 (SJR12) proposes to add a new section to Article IV of the constitution of New Mexico to limit the amount the Legislature can appropriate from the general fund to 5 percent of the average appropriations of the preceding 10 fiscal years. SJR12 also proposes to require a three-fourths vote from both houses to increase appropriations above that limitation.

If passed, the proposed constitutional amendment would be submitted to the voters of New Mexico for their approval or rejection at the next general election, or at any special election that may be called for this purpose.

FISCAL IMPLICATIONS

From FY11 to FY20, total general fund appropriations ranged from \$5.953 billion to \$7.850 billion, with an average total appropriation of \$6.273 billion. Because the proposed constitutional amendment limits *total* general fund appropriations (not *increases* to those appropriations), this would limit total general fund appropriations to only 5 percent of the preceding 10-year average. Using FY11-FY20 as an example, such a requirement would limit FY21 appropriations to \$313.6 million, and any general fund spending above \$313.6 million would require a three-fourths’ majority vote.

| General Fund Appropriations History (in billions of dollars) | | | | |
|------------------------------------------------------------------------|-----------------------------|------------------------------------|-------------------------|--------------------------------|
| | Recurring GF Appropriations | Recurring GF Appropriations Growth | Total GF Appropriations | Total GF Appropriations Growth |
| FY09 | 6,035.1 | 6.3% | 5,953.6 | -0.3% |
| FY10 | 5,357.9 | -11.2% | 5,451.2 | -8.4% |
| FY11 | 5,212.9 | -2.7% | 5,231.2 | -4.0% |
| FY12 | 5,431.4 | 4.2% | 5,514.1 | 5.4% |
| FY13 | 5,658.8 | 4.2% | 5,727.1 | 3.9% |
| FY14 | 5,899.0 | 4.2% | 5,936.0 | 3.6% |
| FY15 | 6,161.7 | 4.5% | 6,275.2 | 5.7% |
| FY16 | 6,210.5 | 0.8% | 6,303.3 | 0.4% |
| FY17 | 6,103.6 | -1.7% | 6,129.6 | -2.8% |
| FY18 | 6,078.8 | -0.4% | 6,200.9 | 1.2% |
| FY19 | 6,339.8 | 4.3% | 7,560.7 | 21.9% |
| FY20 | 7,092.1 | 11.9% | 7,850.4 | 3.8% |

Source: DFA General Fund Audits and LFC Post-Session Reports

If passed by voters, the limitation would go into effect for fiscal years starting with FY24. The appropriation limit would be for all purposes, whether for the general appropriation act or any special appropriation, unless three-fourths of each house of the Legislature vote otherwise.

Under Section 1-16-4 NMSA 1978 and the New Mexico Constitution, the Secretary of State (SoS) is required to print samples of the text of each constitutional amendment, in Spanish and English, and also required to publish them once a week for four weeks before the election in newspapers in every county in the state. The estimated cost per constitutional amendment is \$150 thousand to \$200 thousand depending on the size, number of ballots and if additional ballot stations are needed.

SIGNIFICANT ISSUES

New General Fund Appropriation Limit. In effect, the proposed amendment would prevent the Legislature from passing a budget in a regular legislative session through a simple majority vote. Because the state could not operate on a budget limited to 5 percent of the average of the 10 preceding fiscal years, the proposed constitutional amendment would effectively require a three-fourths’ majority vote for every fiscal years’ budget set during a regular legislative session. It is unclear whether this was the intent of the proposal, or if the proposal intended to limit Legislature’s ability to *increase* the budget by more than 5 percent of the previous 10-year average through a simple majority vote (see “Technical Issues”). (Of interest, the Legislature passed the budget with

an average of three-fourths of the House and Senate combined between 2007 and 2017.)

Language in Article IV currently states “...the people reserve the power to disapprove, suspend and annul any law enacted by the Legislature, except general appropriation laws; laws providing for the preservation of the public peace, health or safety; for the payment of the public debt or interest thereon, or the creation or funding of the same, except as in this constitution otherwise provided; for the maintenance of the public schools or state institutions, and local or special laws.”

It is unclear how the constitutional amendment, if passed, would affect the ability of the Legislature and governor to respond to a public health or other emergency declaration with urgency.

TECHNICAL ISSUES

Section 1A, page 2, lines 1-3, of the proposed constitutional amendment states, “*The general fund appropriation limit shall not be set higher than five percent of the average of the preceding ten years of general fund appropriations.*” In this same section, page 1, lines 23-25 state, “*the legislature shall set the general fund appropriation limit for all purposes, whether appropriated in a general appropriation act or any special appropriation.*” In effect, this sets a limit on the total general fund budget amount that can be appropriated through a simple majority vote.

Section B further states, “*The legislature may exceed the general fund appropriation limit provided in Subsection A of this section only by a three-fourths' majority vote of each house of the legislature.*” Because the state cannot operate at the proposed budget limit, the proposed amendment would have the effect of eliminating the Legislature’s ability to pass a general fund budget during a regular legislative session with a simple majority vote.

If the intent of the proposal was to limit the *growth* in appropriations to 5 percent of the preceding 10-year average, the proposal would need to be amended to insert the word “*growth*” on page 1, lines 24, between the words “*appropriation*” and “*limit*”. It would also need to insert the word “*growth*” on page 2, line 1, between the words “*appropriation*” and “*limit*”. Alternatively, Section A of the proposal could be amended to read, “*Except as provided in Subsection B of this section, for fiscal year 2024 and each fiscal year thereafter, the Legislature shall set general appropriations for all purposes, whether appropriated in a general appropriation act or any special appropriation, at no more than 5 percent above the average of the preceding ten years of general fund appropriations.*”

Notably, however, if this change were made, the limit would require budget cuts in the year the limitation is enacted, or a three-fourth’s majority vote to keep budgets whole. Using FY11-FY20 as an example, the 10-year average of total general fund appropriations was \$6.273 billion. Five percent above this average would be \$6.585 billion, which is below the FY21 recurring general fund budget level of \$7.092 billion. If this proposal were in effect for FY21, the Legislature would have to either cut budgets to pass a general appropriation act with a simple majority vote or seek a three-fourth’s majority vote to keep budgets flat or provide budget growth. Even assuming FY21 recurring budgets were held flat between FY21-FY23, the effect would be the same for FY24, the proposed fiscal year to which the limitation would apply.

OTHER SUBSTANTIVE ISSUES

SJR12 does not appear to include language for limiting general fund appropriations made during

special legislative sessions or for other appropriations from nongeneral fund revenue sources.

General Fund Appropriation Growth. From FY11 to FY20, total appropriations increased in total 31.5 percent, on average, 2.5 percent per year. The primary exceptions were FY19 and FY20. In FY19, general fund appropriations increased 21.9 percent, following an influx of oil and gas related revenues due to a boom in production – most of the growth was in nonrecurring appropriations, as recurring budgets in FY19 increased 4.3 percent. In terms of general fund dollars, state operations that benefited the most from recurring budget increases were health, hospitals, and human services, including Medicaid, and public education. Nonrecurring spending increases in FY19 included a large general fund package for construction and infrastructure projects. In FY20, recurring budgets were increased 11.9 percent following two years of large recurring revenue growth, largely from oil and gas related activity.

For the general appropriation act separately, from FY11 to FY20, recurring annual appropriations from the general fund increased on average 1.1 percent for legislative, 6.9 percent for judicial, 2.5 percent for health and human services, and 3.6 percent for public education appropriations. According to a January 2021 U.S. Bureau of Labor Statistics report, the all-items consumer price index for urban consumers (CPI-U) rose at a 1.7 percent average annual rate over the last 10 years.

AHO/sb/rl