

**LEGISLATIVE EDUCATION STUDY COMMITTEE  
BILL ANALYSIS**

**Bill Number:** HJR 17

**50th Legislature, 1st Session, 2011**

**Tracking Number:** .184420.1

**Short Title:** Tax Changes Approval in the Legislature, CA

**Sponsor(s):** Representative Cathrynn N. Brown and Others

**Analyst:** Kevin Force

**Date:** March 30, 2011

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**Bill Summary:**

HJR 17 proposes to amend Article 8 of the Constitution of New Mexico by adding a new section to require that any new statewide tax or increase in the rate of an existing statewide tax must be approved by a two-thirds majority in both houses of the Legislature.

**Fiscal Impact:**

HJR 17 does not contain an appropriation. It has no direct fiscal impact, as constitutional amendments must be submitted to the people for approval in order to become effective.

**Fiscal Issues:**

- According to the analysis by the Taxation and Revenue Department (TRD):
  - passage and approval of a constitutional amendment that raises the number of votes required to pass laws creating new taxes or raising existing ones might reduce the number of proposed tax bills that actually succeed in passing; and
  - over time, this requirement might impact the adequacy of New Mexico's tax system, its flexibility and its ability to address change.

**Technical Issues:**

- According to the TRD analysis:
  - Article 4, Section 17 of the Constitution of New Mexico states, "no bill shall be passed except by a vote of a majority of the members present in each house [emphasis added]"; and
  - since the proposed amendment affects this requirement, that section may also require amending to avoid conflicting sections.

**Substantive Issues:**

- According to TRD's analysis:
  - the Legislature often provides authority to local governments, statewide, to impose local option taxes;

- it is arguable that such legislation would be, in fact, a statewide taxation law, imposed at the option of local and municipal governments; and
  - thus, it is unclear if the proposed amendment would affect the ability of local government to adopt local option taxes.
- According to the analysis from the Attorney General’s Office (AGO):
    - The amendment is vulnerable to legal challenge for vagueness, because it fails to define important terms, such as “new,” “tax,” “statewide,” “increase,” and “existing.”
    - For example, AGO poses several potential questions regarding the applicability and meaning of the proposed amendment:
      1. What is the difference between a “tax” and a “fee?”
      2. What is the difference between a “new” tax and an expanded tax?
      3. What if a tax affects only one industry in only one region of the state?
      4. What is the difference between an “increase” and simply allowing a tax deduction to sunset?

**Related Bills:**

HB 61 *“Net Income” Definition for Income Taxes*  
HB 265 *Military Retirement Income Tax Exemption*  
HB 516 *Adjust Income Tax Rates*  
HB 572 *Restore Progressivity to the Income Tax Rates*  
HB 581 *Self-Employed Gross Receipts Tax Deduction*  
SB 7 *Add Certain Deductions Back To Taxable Income*  
SB 170 *Tax Itemization & Return Filing*  
SB 217 *Military Retirement Pay Tax Exemption*  
SB 472 *High-Income Taxpayer Surtax*  
SB 560 *Headquarters Corporate Income Tax Credit*