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FISCAL IMPACT REPORT

SPONSOR Brown ORIGINAL DATE 02/23/11
LAST UPDATED _____ HJR 17
SHORT TITLE Tax Changes Approval In The Legislature, CA SB _____
ANALYST Haug

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total		\$104.0	NFI	\$104.0	Non- Recurring	General Fund

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Taxation and Revenue Department (TRD)

Attorney General (AGO)

SUMMARY

Synopsis of Bill

House Joint Resolution 17 proposes to amend Article 8 of the New Mexico Constitution to add a new section that would require a vote of two-thirds of members in each house to approve a new tax or an increase to an existing tax.

FISCAL IMPLICATIONS

House Joint Resolution 17 contains no appropriation. The Secretary of State (SOS) has stated that although the county clerk includes the proposed amendments in his/her proclamation, it is the responsibility of the State to pay for the costs associated with the publication per Section 1-16-11 NMSA 1978. The approximate cost per constitutional amendment is \$104,000. That estimate is used in the table above.

SIGNIFICANT ISSUES

The TRD notes:

By increasing the votes required for the passage of new tax bills or bills increasing existing taxes, the proposed constitutional amendment could reduce the number of tax bills that pass. This may over time impact the adequacy of New Mexico's tax system or its ability to deal with change.

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Pursuant to Article IV, Section 29, “[n]o law authorizing indebtedness shall be enacted which does not provide for levying a tax sufficient to pay the interest, and for the payment at maturity of the principal.” Thus, laws authorizing indebtedness would also be affected by the stricter passage requirements.

The proposed constitutional amendment would impose stricter voting requirements on the imposition of new taxes that apply statewide or increases in statewide taxes. The legislature often provides authority to local governments statewide to impose local option taxes. It is arguable that such legislation provides for a new tax that applies statewide, at the option of the local governments. Thus, it might be unclear as to whether HJR-17 would apply to legislation permitting the local governments statewide to impose local option taxes.

According to the AGO:

The amendment is vulnerable to legal challenge on grounds of vagueness because it does not define the words: (a) new; (b) tax; (c) statewide; (d) increase and (e) existing.

What is the difference between a tax and a fee? What is the difference between a new tax or an expanded tax? What if a tax only impacts one industry in one region of the state? What is the difference between an increase or just allowing a tax deduction to sunset?

TECHNICAL ISSUES

According to the TRD, Article IV, Section 17 states, “no bill shall be passed except by a vote of a majority of the members present in each house.” Since the proposed constitutional amendment would affect this requirement, it could alternatively be effected as an amendment to Article IV.

GH/bym