



South Dakota Legislative Research Council

Issue Memorandum 96-03

CONSTITUTIONAL AMENDMENT B

HJR 1003: REQUIRING A TWO-THIRDS VOTE TO IMPOSE OR INCREASE TAXES

Introduction

The South Dakota Legislature adopted House Joint Resolution (HJR) 1003 during the 1996 legislative session with bipartisan support. The Joint Resolution submits to the electors of the state an amendment to Article XI of the South Dakota Constitution, which reads “14. *The rate of taxation imposed by the State of South Dakota in regard to any tax may not be increased and no new tax may be imposed by the State of South Dakota unless by consent of the people by exercise of their right of initiative or by two-thirds vote of all the members elect of each branch of the Legislature.*”

Provisions of HJR 1003

The imposition and increase of taxes have long been a focus of taxpayers across the country whether the tax is national, state, or local. Eight initiated measures and constitutional amendments addressing taxation, primarily property taxes, have been submitted to the South Dakota electors in the last twenty years. A ballot issue was approved by the people in 1978, specifically restricting the ability of the Legislature to increase the rate of taxation on income, sales, and services or the maximum levies

for property taxes (Article XI, section 13), which reads “*The rate of taxation imposed by the state of South Dakota on personal or corporate income or on sales or services, or the allowable levies or the percentage basis for determining valuation as fixed by law for purposes of taxation on real or personal property, shall not be increased unless by consent of the people by exercise of their right of initiative or by two-thirds vote of all the members elect of each branch of the Legislature.*”

Pursuant to Article XI, section 13, a two-thirds affirmative vote of each legislative branch is required before any income tax schedule may be increased; however, a two-thirds affirmative vote is not required to implement an income tax or other new taxes. Nor does Article XI, section 13, apply to increasing severance and excise taxes or other new forms of taxation. If Article XI, section 14, is passed, it would require all tax increases and the creation of new taxes to be approved by the consent of the people or a two-thirds vote of each legislative branch.

The rate of taxation for sales and use taxes has been decreased once and increased twice

since 1978. In 1979, the Legislature repealed an increase of the sales tax rate passed in 1978 raising it from four to five percent. In 1980 and 1987 the sales tax rate was temporarily increased by one percent to provide revenue for rail transportation facilities and economic development, respectively. Each of these temporary increases required a two-thirds vote of each house of the Legislature.

One area of taxation covered by Article XI, section 13, but not by the proposed amendment is “. . . the allowable levies or the percentage basis for determining valuation as fixed by law for purposes of taxation on real and personal property” One interpretation of this phrase presented in Attorney General Opinion No. 79-15 is that it refers to the level of assessment that is considered as the taxable value from sixty percent as then defined in SDCL 10-6-33 to a higher percent. In 1989 the Legislature enacted Session Law 1989, Chapter 87, section 1, increasing the percentage of assessed value that shall be considered as taxable value from sixty percent to one hundred percent of the true and full value. Though the vote to change this percentage was unanimous, it was only required to be passed by a majority of the Legislature. This raises the question of whether the language found in Article XI, section 13, may refer to the potential property taxes which may be levied by the state pursuant to SDCL 10-12. However, this argument may be negated by the language found in Article XI, section 1, which specifically limits the state’s authority to levy property taxes.

In 1995 the Legislature passed the Property Tax Reduction Program reducing the maximum property tax levies that may be assessed by school districts. In 1996, the

Legislature further reduced these maximum levies; however, the school districts may opt out of these tax limitations pursuant to SDCL 10-12-43. While these reductions were done by a majority vote, any future legislation to increase these maximum property tax levies for education will require a two-thirds vote of each legislative branch.

Right of Initiative

The proposed amendment identifies the right of initiative that may be exercised by the people. However, this amendment does not further restrict or define the right of initiative that already exists for people to increase or decrease the rate of taxation or to impose a new tax. It is stated in Article III, section 1, that “. . . *the people expressly reserve to themselves the right to propose measures, which shall be submitted to a vote of the electors of the state, and also the right to require that any laws which the Legislature may have enacted shall be submitted to a vote of the electors of the state before going into effect, except such laws as may be necessary for the immediate preservation of the public peace, health or safety, support of the state government and its existing public institutions.*” Taxes are often viewed as being necessary for the support of state government and its public institutions, raising the question as to whether the people may exercise the right of initiative when it concerns decreasing taxes or the right of referral on tax increases. The inclusion of the phrase “*consent of the people by the right of initiative*” in Article XI, section 14, relates to increasing or imposing new taxes, possibly avoiding any conflicting interpretation with Article III, section 1. The inclusion of the people’s right of initiative may be redundant in the proposed amendment, but it serves as reminder that

this right exists.

Types of Revenue Increases

The first phrase of Article XI, section 14, refers to the rate of taxation and its application to taxes which the Legislature or the people intend to increase, not decrease. For example, increasing the state sales and use tax rate from four percent to five percent or the motor fuel tax rate from eighteen cents a gallon to nineteen cents a gallon would require a two-thirds affirmative vote from the House and Senate to approve any such legislation.

The language in the amendment only addresses taxes imposed by the state of South Dakota and does not apply to local governments which may continue to raise or lower taxes within the limits established by the Legislature. Again, the maximum property tax levies are subject to the requirements of Article XI, section 13. When the 1995 Property Tax Reduction Program was passed, it set limitations on the total revenue payable from taxes on real property within a taxing district as defined in SDCL 10-13-35. The removal of the budget growth constraints adopted under the Property Tax Reduction Program may be changed by a simple majority.

The proposed amendment also specifies that any new tax, such as an income tax, will require a two-thirds vote of each legislative chamber. Article XI, section 13, of the Constitution only restricts the ability of the Legislature to increase the rate of taxation for income, sales, and services. The proposed amendment, however, will expand the coverage to new taxes, including severance, excise, bank franchise, and other forms of taxation. For example, the

contractor's excise tax which was passed in 1979 required a majority vote to be enacted, and if Article XI, section 14 had been in force at that time, it would have required a two-thirds' vote to enact or increase this tax.

The creation or elimination of exemptions is not referred to in the proposed amendment. Sales and use taxes have been the focus of recent legislation, repealing several sales and use tax exemptions. The proposed amendment does not address this issue; therefore, this will remain unchanged from current practice and require a majority vote of the Legislature to change exemptions for various taxes. It is important to note that all goods and services are subject to sales and use tax unless specifically exempted by the Legislature.

The Legislature may continue to increase or implement new licenses and fees with a majority vote of the Legislature. Licences and fees are not defined as a tax and the Legislature's capability to increase licenses or fee to generate revenue is not hindered or restricted by this amendment.

Analysis

Article XII, section 2, requires all appropriations to be approved by a two-thirds vote of all members of each legislative chamber. Article XI, section 13, requires certain tax increases to be subject to a two-thirds' vote. The passage of the Article XI, section 14, would expand the classification to include more sources of revenue and finance for the state.

The South Dakota Retailers' Association drafted the initial language for HJR 1003. As proponents for this legislation, they sought and received bipartisan support from

the Legislature. The prime sponsors in the House and Senate were Representative Ron Volesky and Senator Randy Frederick, respectively.

It was asserted that the proposed amendment may eliminate some confusion concerning when a two-thirds vote is required. The amendment would provide for the same legislative thresholds for all tax increases or for the imposition of new taxes. Another consideration is that it would require a greater consensus among legislators to increase or impose taxes.

The opponents argue that the passage of this amendment may allow the minority to control the tax structure of the state. Some opponents may contend that this amendment does not go far enough to address the recent debate over the removal of certain sales and use tax exemptions. And others may say the Article XI, section 13, covers the primary forms of taxation that may affect the broadest group of people and this amendment makes it easier for special interest groups to effectively lobby against other tax increases or new taxes.

In 1994, HJR 1004 was submitted to the Legislature proposing to amend Article XI,

section 13 to read similarly to the language now proposed for the Article XI, section 14. This resolution may have failed to pass both legislative chambers because it was unclear how the amendment may have changed the existing requirements. The proposed amendment used broader language defining when tax increases and new taxes would require a two-thirds vote. Others may have objected to the proposed deletion of the references in Article XI, section 13, of the allowable levies or the percentage basis for determining valuation or real or personal property.

Conclusion

The language for Article XI, section 14, of the Constitution of South Dakota expands certain restrictions imposed by Article XI, section 13. The Legislature's ability to generate revenue through increased rates of taxation or new taxes will require a super majority to raise additional revenue. The proposed amendment does not affect the ability of the people to exercise their right of initiative. The decision voters must make is whether to further restrict the Legislature's authority and ability to address and change the tax system.

This issue memorandum was written by Fred Baatz, Research Analyst for the Legislative Research Council. It is designed to supply background information on the subject and is not a policy statement made by the Legislative Research Council.
