SESSION OF 2004

SUPPLEMENTAL NOTE ON HOUSE CONCURRENT RESOLUTION NO. 5034

As Recommended by House Committee on Appropriations

Brief*

HCR 5034 contains a constitutional amendment that would impose a revenue and a spending limitation on the state. The resolution provides the following:

1. Unless a special election is called, the proposed constitutional amendment would be submitted to the electors at the general election on November 2, 2004.

2. Individuals or class actions could be filed in court to ensure the limitations are enforced. Successful plaintiffs would be allowed costs and reasonable attorney fees unless any such action filed against the state is found by the courts to be frivolous.

3. The provisions of this amendment would control if there would be any conflicts with any other provision of the state constitution.

HCR 5034 contains the following major provisions:

A. Prior Approval by Voters of Tax and Multi-Year Debt Increases

Beginning in FY 2006 (July 1, 2005), the state must have prior voter approval for any of the following:

- A new state tax;
- A tax rate increase;
- An extension of any expiring tax;
- Any tax policy change which would directly cause a net tax revenue gain; or

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*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at http://www.kslegislature.org

- Any new bonds issued, except for refinancing existing bonds.

B. State Revenue Limitation

A total state revenue limitation would be imposed beginning in FY 2006. In calculating the revenue limitation, a determination would first be made whether the fiscal year occurs during a period of economic growth or economic downturn by comparing the total state revenues for each of the two preceding fiscal years. For example, the total state revenue limitation for FY 2006 would be determined as follows:

1. If the total state revenue for the preceding fiscal year (FY 2005) EXCEEDS the total state revenue for the second preceding fiscal year (FY 2004), then the total revenue limitation for FY 2006 is equal to either the total state revenue limitation or the actual amount of revenue for FY 2005, whichever is less, increased by the sum of:

    a. the percentage change in inflation over calendar year 2004, plus
    b. any positive percentage change in state population during calendar year 2004.

2. If the total state revenue for the preceding fiscal year (FY 2005) is LESS than the total state revenue for the second preceding state fiscal year (FY 2004), then the total state revenue limitation for FY 2006 is the lesser of:

    a. the amount of total state revenue for FY 2006, or
    b. the amount of the total state revenue limitation for the most recent state fiscal year for which the total state revenue exceeded the total state revenue for the preceding state fiscal year.

C. State Spending Limitation

The state spending limitation would also be imposed beginning in FY 2006 and would contain the following:

1. State expenditures (all funds) for FY 2006 would be limited to FY 2005 expenditures, plus a percentage increase calculated using the rate of inflation (consumer price index for the Kansas City metropolitan area) and positive percentage change in state population during the calendar year.

2. Total state expenditures are defined to include <u>all state funds</u> expended or encumbered in a fiscal year <u>EXCEPT</u> the following:

   a. federal funds;
   b. designated gifts, grants, or donations;
   c. employee pension contributions and pension fund earnings;
   d. funds collected for another government (*i.e.*, local sales tax receipts);
   e. refunds; or
   f. two funds established by this amendment – Emergency Reserve Fund and the Budget Stabilization Fund.

D. Adjustments for Changes of the Governmental Unit Responsible

The Legislature would be required to provide a mechanism (by law) to adjust the amount of the spending or revenue limitation to reflect any transfer of the cost of providing a government function. However, any adjustment in the amount of the limitation could not result in the increase of total costs because of any such transfer or change.

E. Emergency Reserve Fund

The state would be required to maintain an Emergency Reserve Fund by transferring part of any total state revenue that is in excess of the total state revenue limitation, but excluding any funds necessary for a State General Fund ending balance. The Emergency Fund would have no more than three percent of the total state revenue limitation for the next fiscal year. Expenditures from the Emergency Fund could only be made for emergencies declared by law and passed with the affirmative votes of two-thirds of the members of the House and Senate. An “emergency” is defined as an extraordinary event or occurrence that requires immediate expenditures to preserve the public health, safety, and general welfare, but it does not mean a revenue or budgetary shortfall.

F. Budget Stabilization Reserve Fund

The state would be required, after establishing and financing the Emergency Reserve Fund (at three percent), to maintain a Budget Stabilization Reserve Fund by transferring part of any remaining total revenue that is above the total revenue limitation, excluding any funds necessary for the required State General Fund ending balance.

The amount transferred to the Budget Stabilization Fund would be the **lesser** of (1) the amount necessary to ensure the balance in the Stabilization Fund at the end of the fiscal year is an amount equal to 10 percent of the total state revenue limitation for the next fiscal year, or (2) the amount equal to 50 percent of any remaining excess amount of total revenue. No transfer to the Stabilization Fund would be made if the balance in the fund is equal to ten percent of the total revenue limitation for the next fiscal year.

If the total revenue of the state is less than the total revenue for the prior fiscal year, funds would be transferred from the Stabilization Fund to the State General Fund in an amount equal to the difference between the two total revenue amounts for the two fiscal years.

G. Refunds to Taxpayers

Any excess amount of total state revenue for a fiscal year that remains after any required transfers to the Emergency Reserve Fund or the Budget Stabilization Fund, and excluding any amount necessary for the required State General Fund ending balance, would be designated to be refunded (as prescribed by law) the next fiscal year to the taxpayers who paid the taxes, in a manner that would be proportional, on a pro rata basis, in which the taxes were collected from the taxpayer.

If the amount to be refunded is determined by law to be impractical for such refund (*i.e.*, a small amount), then the funds shall be held in reserve until the refund amount is of sufficient size to warrant refunding to the taxpayer.

H. Temporary Borrowing

The amendment would permit the state to continue the practice of issuing Certificates of Indebtedness, which must be repaid by the end of the same fiscal year. Other temporary borrowing or transfers would be limited, by requiring repayment during the same fiscal year that the transfer or borrowing occurred.

I. State General Revenue Fund Supplanting

The amendment would prohibit the state from making appropriations from other funds that would supplant or replace State General Fund appropriations. This limitation would not apply to appropriations of funds received for fees or charges for goods or services that do not exceed the cost of the goods or services provided.

J. State Mandates on Local Governments

A state mandate on a local government could not be required to be fulfilled, except to the extent that funding is provided to the local government by the state to carry out the mandate. Or if no claim is made by a local government for funding a state mandate for a period of two years after the effective date of the mandate, then no state funding of the mandate is required.

Background

Representative Brenda Landwehr; the Kansas Chamber; Dr. Barry Poulson, Professor of Economics, University of Colorado; and Mr. Chris Atkins, Director of Tax and Fiscal Policy, American Legislative Exchange Council, all testified in favor of the concurrent resolution.

The Kansas Association of School Boards, Wichita Unified School District No. 259, and Blue Valley Unified School District No. 229, all testified in opposition to the concurrent resolution.