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## FISCAL IMPACT REPORT

<b>SPONSOR</b> <u>Pirtle</u>	<b>LAST UPDATED</b> _____
	<b>ORIGINAL DATE</b> <u>2/5/24</u>
<b>SHORT TITLE</b> <u>Property Tax &amp; Foreign Nations, CA</u>	<b>BILL</b> <u>Senate Joint</u>
	<b>NUMBER</b> <u>Resolutions 18</u>
	<b>ANALYST</b> <u>Graeser</u>

### REVENUE\* (dollars in thousands)

Type	FY24	FY25	FY26	FY27	FY28	Recurring or Nonrecurring	Fund Affected
Property Tax		No fiscal impact because discriminatory tax would be repealed by federal judiciary. See Policy Discussion.					County & Muni Property Tax Beneficiaries
Property Tax							State GOBs

Parentheses ( ) indicate revenue decreases.

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT\* (dollars in thousands)

Agency/Program	FY24	FY25	FY26	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Election Costs (SoS)			\$75.0 - \$85.0		Nonrecurring	General Fund

Parentheses ( ) indicate expenditure decreases.

\*Amounts reflect most recent analysis of this legislation.

### Sources of Information

LFC Files

#### Agency Analysis Received From

Taxation & Revenue Department (TRD)

#### Agency Analysis was Solicited but Not Received From

Department of Justice (DoJ)

## SUMMARY

### Synopsis of Senate Joint Resolution 18

Senate Joint Resolution 18 proposes an amendment to Article 8, Section 1 of the Constitution of New Mexico to provide that agricultural real property owned by a foreign nation may be taxed for property tax purposes at a higher rate.

This bill does not contain an effective date and, as a result, would go into effect 90 days after the Legislature adjourns, or May 15, 2024, if enacted. The amendment proposed by this resolution shall be submitted for approval or rejection at the next general election or at any special election prior to that date.

## FISCAL IMPLICATIONS

TRD expects that this proposal will have no impact, even if approved by the voters.

Estimated Revenue Impact*					R NR**	or Fund(s) Affected
FY2024	FY2025	FY2026	FY2027	FY2028		
No impact					R	Counties, Municipalities, Property Taxing Districts
No impact					R	State General Obligation Bond Fund

\* In thousands of dollars. Parentheses ( ) indicate a revenue loss. \*\* Recurring (R) or Non-Recurring (NR).

No fiscal impact as based on federal law would be retracted if implemented.

It is highly likely that the federal government would conform to long-standing international law that has long recognized that when a foreign state owns real property outside its jurisdiction, it “must follow the same rules as everyone else.” *City of New York v. Permanent Mission of India*, 446 F.3d 365, 374 (2d Cir. 2006), *aff’d*, 551 U.S. 193 (2007); *accord* Restatement (Third) of Foreign Relations Law of the United States § 455(1)(c) (1987). In this case that would mean taxing foreign government-owned property at the same rate as all other property.

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 both Spanish and English in an amount equal to 10 percent of the registered voters in the state. SOS is required to publish the samples once a week for four weeks preceding the election in newspapers in every county in the state. Further, the number of constitutional amendments on the ballot may impact the ballot page size or cause the ballot to be more than one page, also increasing costs. The estimated cost per constitutional amendment is \$75 thousand to \$85 thousand, depending on the size and number of ballots and if additional ballot stations are needed.

## SIGNIFICANT ISSUES

TRD notes federal preemption:

Under the New Mexico Constitution, all similar property must be taxed uniformly. N.M. Const. art. VIII, § 1. This Joint Resolution proposes to amend the New Mexico Constitution to allow real property owned by a foreign nation to be taxed at a higher rate.

Though a higher tax rate may be permitted on real property owned by a foreign nation if the New Mexico Constitution is amended, any higher tax rate would almost certainly be struck down under federal law. The tax discrimination based on nationality contained in this amendment is not allowed under the U.S. Constitution. The U.S. constitution grants the U.S. Congress the power “to regulate commerce with foreign nations, and among the several states, and with the Indian tribes.” The “dormant commerce clause” refers to the prohibition

against states passing legislation that discriminates against or excessively burdens both interstate and foreign commerce outside of the boundaries of the state. The federal courts scrutinize laws that discriminate against foreign commerce very closely, due to the pre-eminence of the federal government over the states in foreign affairs. Of particular importance is the prevention of protectionist state policies that favor state citizens or businesses at the expense of non-citizens conducting business within that state. Taxing property owned by a foreign nation at a higher rate than property owned domestically is also contrary to the tax policy principle of equity.

The Supremacy Clause of the United States Constitution provides that federal statutes and treaties are “the supreme Law of the Land.” U.S. Const. art. VI, cl. 2. This clause grants Congress the power to preempt the application or exercise of state law in particular areas and under particular circumstances. *State v. Prieto-Lozoya*, 2021-NMCA-019, ¶ 10, 488 P.3d 715, 722, *cert. denied* (Mar. 31, 2021). This includes granting foreign nations exemption from state property tax. *See City of New York v. Permanent Mission of India to United Nations*, 618 F.3d 172, 175 (2d Cir. 2010) (finding the U.S. State Department has authority under the Foreign Missions Act, 22 U.S.C. § 4301 et seq. to grant an exemption from real property taxes on property owned by foreign governments pursuant to its authority).

## **ADMINISTRATIVE IMPLICATIONS**

This bill presents no impact for Tax & Rev. If implemented and not struck down for violation of the U.S. Constitution, it could present implementation challenges for county assessors.

## **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

Similar to SJR-8 (2023)

LG/al/cf