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## **Ways and Means Committee**

Tuesday, November 7, 2017

4:00 p.m. – 6:00 p.m.

Morris Hall

**MEETING PACKET**

# The Florida House of Representatives

## Ways and Means Committee



**Richard Corcoran**  
Speaker

**Paul Renner**  
Chair

### AGENDA

November 7, 2017  
4:00 p.m. – 6:00 p.m.  
Morris Hall

- I. Call to Order/Roll Call
- II. Chair's Opening Remarks
- III. Consideration of the following proposed committee bill:  
PCB WMC 18-01 – Supermajority Vote for State Taxes or Fees
- IV. Closing Remarks and Adjournment





## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** PCB WMC 18-01 Supermajority Vote for State Taxes or Fees

**SPONSOR(S):** Ways & Means Committee

**TIED BILLS:**           **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Ways & Means Committee		Aldridge 	Langston 

### SUMMARY ANALYSIS

This joint resolution proposes an amendment to the state Constitution that would provide that no state tax or fee may be imposed or raised except through legislation approved by two-thirds of the membership of each house of the legislature.

The joint resolution requires that any proposed state tax or fee imposition or increase must be contained in a separate bill that contains no other subject. The joint resolution also specifies that the proposed amendment does not authorize the imposition of any state tax or fee otherwise prohibited by this Constitution, and does not apply to any tax or fee imposed by a county, municipality, school board, or special district.

The amendment proposed in the joint resolution will take effect on January 8, 2019, if approved by sixty percent of the voters during the 2018 general election or earlier special election. The joint resolution is not subject to the governor's veto powers.

The Revenue Estimating Conference (REC) has not adopted an official estimate of the joint resolution's impact. However, based on past REC decisions, staff concludes that the state revenue impact will be either zero, if voters disapprove, or negative indeterminate if approved. The proposed amendment would create a new constraint on the Legislature's ability to impose or raise state taxes or fees. The timing and magnitude of the negative revenue impact cannot be determined. To the extent that state taxes or fees shared with local governments are affected, there may also be negative indeterminate impacts on local government revenues.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Current Situation**

###### Background

Under current law the Legislature has broad power to enact and modify the state's tax policy through legislation, subject to state and federal constitutional constraints. Such legislation is subject to the normal constitutional requirements for the enactment of general law. Passage of a bill requires a majority vote in each house of the Legislature,<sup>1</sup> and presentation to the Governor for approval.<sup>2</sup> The bill becomes a law if the Governor approves it, or fails to veto it within the timeframes prescribed in the state Constitution.<sup>3</sup> Vetoes can be overcome by a two-thirds vote of each house of the Legislature.<sup>4</sup>

###### Corporate Income Tax

Florida's constitution requires three-fifths approval of the membership of each house of the legislature for increases in the corporate income tax rate above 5%.<sup>5</sup>

###### Other Types of Bills Requiring a Supermajority Vote

There are several other types of bills that require something greater than a majority vote to become law. These include:

- Bills that would authorize the conveyance of property taken by eminent domain to a natural person or private entity require a three-fifths vote of each house of the Legislature.<sup>6</sup>
- Bills that would appropriate nonrecurring general revenue funds for recurring purposes cannot exceed three percent of the total general revenue funds estimated to be available unless approved by a three-fifths vote of the membership of each house of the Legislature.<sup>7</sup>
- Bills that would repeal court rules of practice or procedure require a two-thirds vote of the membership of each house of the Legislature.<sup>8</sup>
- Bills that would increase or decrease judicial offices by a number different than that certified by the Supreme Court to the Legislature.<sup>9</sup>
- Bills that would create special laws or general laws of local application that are prohibited by general law (but not by the constitution), or bills that would amend or repeal such a prohibition require a three-fifths vote of the membership of each house of the Legislature.<sup>10</sup>

<sup>1</sup> Fla. Const. Art. III, s. 7.

<sup>2</sup> Fla. Const. Art. III, s. 8(a).

<sup>3</sup> The Governor has seven days after presentation to act on a bill if the seven day period occurs during a legislative session, or fifteen days otherwise. Fla. Const. Art. III, s. 8(a).

<sup>4</sup> Fla. Const. Art. III, s. 8(c).

<sup>5</sup> Fla. Const. Art. VII, s. 5(a).

<sup>6</sup> Fla. Const. Art. X, s. 6(c).

<sup>7</sup> Fla. Const. Art. III, s. 19(3).

<sup>8</sup> Fla. Const. Art. V, s. 2(a).

<sup>9</sup> Fla. Const. Art. V, s. 9.

<sup>10</sup> Fla. Const. Art. III, s. 11(a)(21). The following for prohibited subject matters have been added under the authority of this constitutional provision: s. 112.67, F.S. (Pertaining to protection of public employee retirement benefits); s. 121.191, F.S. (Pertaining to state-administered or supported retirement systems); s. 145.16, F.S. (Pertaining to compensation of designated county officials); s. 189.031(2), F.S. (Pertaining to independent special districts); s. 190.049, F.S. (Pertaining to the creation of independent special districts having the powers enumerated in two or more of the paragraphs of s. 190.012, F.S.); s. 215.845, F.S. (Pertaining to the maximum rate of interest on bonds); s. 298.76(1), F.S. (Pertaining to the grant of authority, power, rights, or privileges to a water control district formed pursuant to ch. 298, F.S.); s. 373.503(2)(b), F.S. (Pertaining to allocation of millage for water management



- Bills that would create certain local mandates that would require counties or municipalities to expend funds<sup>11</sup>, reduce their authority to raise revenues<sup>12</sup>, or reduce the percentage of a state shared tax<sup>13</sup>, require a two-thirds voter of the membership of each house of the Legislature.
- Bills that would create or recreate a trust fund require a vote of three-fifths of the membership of each house of the Legislature.<sup>14</sup>
- Bills that would raise revenue above certain constitutionally prescribed caps require a two-thirds vote of the membership of each house of the Legislature.<sup>15</sup>
- Bills that would exempt public access from certain public records or meetings require a two-thirds vote of the membership of each house of the Legislature.<sup>16</sup>
- Joint resolutions proposing an amendment of the state Constitution require a three-fifths vote of the membership of each house of the Legislature.<sup>17</sup>
- Bills creating a special election for voter approval of a constitutional amendment proposed by joint resolution, a report of a revision commission, a constitutional convention or the taxation and budget reform commission, require a three-fourths vote of the membership of each house of the Legislature.<sup>18</sup>

### Other States with a Supermajority Vote Requirement for Tax Increases

Currently, 15 states have some type of supermajority vote requirement for tax increases.<sup>19</sup>

State	Year Adopted	Legislative Supermajority Vote Required	Applies To...
Arizona	1992	2/3	All taxes
Arkansas	1934	3/4	All taxes except sales and alcohol
California	1979	2/3	All taxes
Delaware	1980	3/5	All taxes
Florida	1971	3/5	Corporate income tax
Kentucky	2000	3/5	All taxes
Louisiana	1966	2/3	All taxes
Michigan	1994	3/4	State property tax
Mississippi	1970	3/5	All taxes
Missouri	1996	2/3	All taxes
Nevada	1996	2/3	All taxes
Oklahoma	1992	3/4	All taxes
Oregon	1996	3/5	All taxes
South Dakota	1996	2/3	All taxes
Wisconsin	2011	2/3	Sales, income and franchise tax

purposes); s. 1011.77, F.S. (Pertaining to taxation for school purposes and the Florida Education Finance Program); s. 1013.37(5), F.S. (Pertaining to the "State Uniform Building Code for Public Educational Facilities Construction").

<sup>11</sup> Fla. Const. Art. VII, s. 18(a)

<sup>12</sup> Fla. Const. Art. VII, s. 18(b)

<sup>13</sup> Fla. Const. Art. VII, s. 18(c)

<sup>14</sup> Fla. Const. Art. III, s. 19(f)(1).

<sup>15</sup> Fla. Const. Art. VII, s. (1)(e).

<sup>16</sup> Fla. Const. Art. I, s. 24(c).

<sup>17</sup> Fla. Const. Art. XI, s. 1.

<sup>18</sup> Fla. Const. Art. XI, s. 5(a)

<sup>19</sup> See <http://www.ncsl.org/research/fiscal-policy/supermajority-vote-requirements-to-pass-the-budget635542510.aspx>, last visited 10/31/2017.

## Constitutional Amendments Approving New State Taxes or Fees

No new State tax or fee may be imposed on or after November 8, 1994 by any amendment to the State Constitution unless the proposed amendment is approved by not fewer than two-thirds of the voters voting in the election in which such proposed amendment is considered.<sup>20</sup> For purposes of this constitutional provision, the phrase "new State tax or fee" means any tax or fee which would produce revenue subject to lump sum or other appropriation by the Legislature, either for the State general revenue fund or any trust fund, which tax or fee is not in effect on November 7, 1994 including without limitation such taxes and fees as are the subject of proposed constitutional amendments appearing on the ballot on November 8, 1994.<sup>21</sup>

### **Effect of Proposed Changes**

This joint resolution proposes an amendment to the state Constitution that would provide that no state tax or fee may be imposed or raised except through legislation approved by two-thirds of the membership of each house of the legislature. The joint resolution defines the following terms:

- "Fee" means any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.
- "Raise" means:
  - To increase the rate of a state tax or fee imposed on a percentage or per mill basis;
  - To increase the amount of a state tax or fee imposed on a flat or fixed amount basis; or
  - To decrease or eliminate a state tax or fee exemption or credit.

The joint resolution requires that any proposed state tax or fee imposition or increase must be contained in a separate bill that contains no other subject. The joint resolution also specifies that the proposed amendment does not authorize the imposition of any state tax or fee otherwise prohibited by this Constitution, and does not apply to any tax or fee imposed by a county, municipality, school board, or special district.

The amendment proposed by the joint resolution does not contain an effective date. Therefore, pursuant to Art. XI, Fla. Const., s. 5(e), it shall be effective on the first Tuesday after the first Monday in January following the election, which in 2019 is January 8.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

The Revenue Estimating Conference (REC) has not adopted an official estimate of the joint resolution's impact. However, based on past REC decisions, staff concludes that the state revenue impact will be either zero, if voters disapprove, or negative indeterminate if approved. The proposed amendment would create a new constraint on the Legislature's ability to impose or raise state taxes or fees. The timing and magnitude of the negative revenue impact cannot be determined.

#### **2. Expenditures:**

Article XI, Section 5(d) of the Florida Constitution requires proposed amendments or constitutional revisions to be published in a newspaper of general circulation in each county where a newspaper is published. The amendment or revision must be published once in the 10<sup>th</sup> week and again in the

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<sup>20</sup> Fla. Const. Art. XI, s. 7.

<sup>21</sup> Id.

sixth week immediately preceding the week the election is held. The division of Elections within the Department of State has not estimated the publication costs for advertising the joint resolution.

However, based on 2016 advertising costs, staff estimates full publication costs for advertising the proposed constitutional amendment to be approximately \$43,732. This would likely be paid from non-recurring General Revenue funds.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

The Revenue Estimating Conference has not adopted an official estimate of the joint resolution's impact. However, because the proposed amendment requires voter approval, the revenue impact will be either zero, if voters disapprove, or negative indeterminate to local governments if approved. The negative indeterminate revenue impact on local governments would result from the negative indeterminate impact on state revenues that are shared with local governments.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

To the extent the new constraint on the Legislature's ability to impose or raise state taxes or fees prevents such enactments, the private sector would avoid such state tax or fee impositions or increases.

**D. FISCAL COMMENTS:**

None.

### **III. COMMENTS**

**A. CONSTITUTIONAL ISSUES:**

1. Applicability of Municipality/County Mandates Provision:

Not applicable to joint resolutions.

2. Other:

None.

**B. RULE-MAKING AUTHORITY:**

None.

**C. DRAFTING ISSUES OR OTHER COMMENTS:**

None.

### **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**



House Joint Resolution

A joint resolution proposing the creation of section 19 of Article VII of the State Constitution to provide that no state tax or fee may be imposed or raised except through legislation approved by two-thirds of the membership of each house of the legislature and presented to the Governor for approval; providing for applicability; providing definitions; requiring any tax or fee imposed or raised under this section to be contained in a separate bill that contains no other subject.

Be It Resolved by the Legislature of the State of Florida:

That the following creation of Section 19 of Article VII of the State Constitution is agreed to and shall be submitted to the electors of this state for approval or rejection at the next general election or at an earlier special election specifically authorized by law for that purpose:

ARTICLE VII

FINANCE AND TAXATION

SECTION 19. Supermajority vote required to impose or raise state taxes or fees.-

(a) SUPERMAJORITY VOTE REQUIRED TO IMPOSE NEW STATE TAX OR FEE. No new state tax or fee may be imposed by the legislature

26 except through legislation approved by two-thirds of the  
 27 membership of each house of the legislature and presented to the  
 28 Governor for approval pursuant to Article III, Section 8.

29 (b) SUPERMAJORITY VOTE REQUIRED TO RAISE STATE TAXES OR  
 30 FEES. No state tax or fee may be raised by the legislature  
 31 except through legislation approved by two-thirds of the  
 32 membership of each house of the legislature and presented to the  
 33 Governor for approval pursuant to Article III, Section 8.

34 (c) APPLICABILITY. This section does not authorize the  
 35 imposition of any state tax or fee otherwise prohibited by this  
 36 Constitution, and does not apply to any tax or fee imposed by a  
 37 county, municipality, school board, or special district.

38 (d) DEFINITIONS. As used in this section, the following  
 39 terms shall have the following meanings:

40 (1) "Fee" means any charge or payment required by law,  
 41 including any fee for service, fee or cost for licenses, and  
 42 charge for service.

43 (2) "Raise" means:

44 a. To increase the rate of a state tax or fee imposed on a  
 45 percentage or per mill basis;

46 b. To increase the amount of a state tax or fee imposed on  
 47 a flat or fixed amount basis; or

48 c. To decrease or eliminate a state tax or fee exemption  
 49 or credit.

50       (e) SINGLE-SUBJECT. A state tax or fee imposed or raised  
 51 under this section must be contained in a separate bill that  
 52 contains no other subject.

53  
 54       BE IT FURTHER RESOLVED that the following statement be  
 55 placed on the ballot:

56                               CONSTITUTIONAL AMENDMENT

57                               ARTICLE VII, SECTION 19

58       SUPERMAJORITY VOTE REQUIRED TO IMPOSE OR RAISE STATE TAXES  
 59 OR FEES.—Prohibits the legislature from imposing or raising a  
 60 state tax or fee except through legislation approved by a two-  
 61 thirds vote of each house of the legislature in a bill  
 62 containing no other subject. This proposal does not authorize a  
 63 state tax or fee otherwise prohibited by the Constitution and  
 64 does not apply to fees or taxes imposed by a county,  
 65 municipality, school board, or special district.



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB WMC 18-01 (2018)

Amendment No. 1

COMMITTEE/SUBCOMMITTEE ACTION

ADOPTED                                    \_\_\_ (Y/N)  
ADOPTED AS AMENDED                    \_\_\_ (Y/N)  
ADOPTED W/O OBJECTION                \_\_\_ (Y/N)  
FAILED TO ADOPT                        \_\_\_ (Y/N)  
WITHDRAWN                               \_\_\_ (Y/N)  
OTHER                                     \_\_\_

1 Committee/Subcommittee hearing bill: Ways & Means Committee  
2 Representative Leek offered the following:

3  
4       **Amendment (with ballot and title amendments)**

5       Remove everything after the enacting clause and insert:

6       That the following creation of Section 19 of Article VII of  
7 the State Constitution is agreed to and shall be submitted to  
8 the electors of this state for approval or rejection at the next  
9 general election or at an earlier special election specifically  
10 authorized by law for that purpose:

11   ARTICLE VII

12   FINANCE AND TAXATION

13       SECTION 19. Supermajority vote required to impose,  
14 authorize, or raise state taxes or fees.-

15       (a) SUPERMAJORITY VOTE REQUIRED TO IMPOSE OR AUTHORIZE NEW  
16 STATE TAX OR FEE. No new state tax or fee may be imposed or  
17 authorized by the legislature except through legislation

PCB WMC 18-01 Strikel

Published On: 11/6/2017 4:50:07 PM



COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB WMC 18-01 (2018)

Amendment No. 1

18 approved by two-thirds of the membership of each house of the  
19 legislature and presented to the Governor for approval pursuant  
20 to Article III, Section 8.

21 (b) SUPERMAJORITY VOTE REQUIRED TO RAISE STATE TAXES OR  
22 FEES. No state tax or fee may be raised by the legislature  
23 except through legislation approved by two-thirds of the  
24 membership of each house of the legislature and presented to the  
25 Governor for approval pursuant to Article III, Section 8.

26 (c) APPLICABILITY. This section does not authorize the  
27 imposition of any state tax or fee otherwise prohibited by this  
28 Constitution, and does not apply to any tax or fee imposed by,  
29 or authorized to be imposed by, a county, municipality, school  
30 board, or special district.

31 (d) DEFINITIONS. As used in this section, the following  
32 terms shall have the following meanings:

33 (1) "Fee" means any charge or payment required by law,  
34 including any fee for service, fee or cost for licenses, and  
35 charge for service.

36 (2) "Raise" means:

37 a. To increase or authorize an increase in the rate of a  
38 state tax or fee imposed on a percentage or per mill basis;

39 b. To increase or authorize an increase in the amount of a  
40 state tax or fee imposed on a flat or fixed amount basis; or

41 c. To decrease or eliminate a state tax or fee exemption  
42 or credit.

PCB WMC 18-01 Strikel

Published On: 11/6/2017 4:50:07 PM

COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB WMC 18-01 (2018)

Amendment No. 1

43       (e) SINGLE-SUBJECT. A state tax or fee imposed,  
44 authorized, or raised under this section must be contained in a  
45 separate bill that contains no other subject.  
46

47       -----

48                               B A L L O T   A M E N D M E N T

49       Remove lines 58-65 and insert:

50       SUPERMAJORITY VOTE REQUIRED TO IMPOSE, AUTHORIZE, OR RAISE  
51 STATE TAXES OR FEES.—Prohibits the legislature from imposing,  
52 authorizing, or raising a state tax or fee except through  
53 legislation approved by a two-thirds vote of each house of the  
54 legislature in a bill containing no other subject. This proposal  
55 does not authorize a state tax or fee otherwise prohibited by  
56 the Constitution and does not apply to fees or taxes imposed or  
57 authorized to be imposed by a county, municipality, school  
58 board, or special district.

59       BE IT FURTHER RESOLVED that the following statement be  
60 placed on the ballot if a court declares the preceding statement  
61 defective and the decision of the court is not reversed:

62                               CONSTITUTIONAL AMENDMENT

63                               ARTICLE VII, SECTION 19

64       SUPERMAJORITY VOTE REQUIRED TO IMPOSE, AUTHORIZE, OR RAISE  
65 STATE TAXES OR FEES.—Proposing the following amendment to the  
66 State Constitution:

67   ARTICLE VII

68   FINANCE AND TAXATION

PCB WMC 18-01 Strikel

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB WMC 18-01 (2018)

Amendment No. 1

69 SECTION 19. Supermajority vote required to impose,  
70 authorize, or raise state taxes or fees.—

71 (a) SUPERMAJORITY VOTE REQUIRED TO IMPOSE OR AUTHORIZE NEW  
72 STATE TAX OR FEE. No new state tax or fee may be imposed or  
73 authorized by the legislature except through legislation  
74 approved by two-thirds of the membership of each house of the  
75 legislature and presented to the Governor for approval pursuant  
76 to Article III, Section 8.

77 (b) SUPERMAJORITY VOTE REQUIRED TO RAISE STATE TAXES OR  
78 FEES. No state tax or fee may be raised by the legislature  
79 except through legislation approved by two-thirds of the  
80 membership of each house of the legislature and presented to the  
81 Governor for approval pursuant to Article III, Section 8.

82 (c) APPLICABILITY. This section does not authorize the  
83 imposition of any state tax or fee otherwise prohibited by this  
84 Constitution, and does not apply to any tax or fee imposed by,  
85 or authorized to be imposed by, a county, municipality, school  
86 board, or special district.

87 (d) DEFINITIONS. As used in this section, the following  
88 terms shall have the following meanings:

89 (1) "Fee" means any charge or payment required by law,  
90 including any fee for service, fee or cost for licenses, and  
91 charge for service.

92 (2) "Raise" means:

93 a. To increase or authorize an increase in the rate of a  
94 state tax or fee imposed on a percentage or per mill basis;

PCB WMC 18-01 Strikel

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COMMITTEE/SUBCOMMITTEE AMENDMENT

Bill No. PCB WMC 18-01 (2018)

Amendment No. 1

95 b. To increase or authorize an increase in the amount of a  
96 state tax or fee imposed on a flat or fixed amount basis; or

97 c. To decrease or eliminate a state tax or fee exemption  
98 or credit.

99 (e) SINGLE-SUBJECT. A state tax or fee imposed,  
100 authorized, or raised under this section must be contained in a  
101 separate bill that contains no other subject.

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103

104

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T I T L E A M E N D M E N T

105

Remove everything before the enacting clause and insert:

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A joint resolution proposing the creation of section 19 of

107

Article VII of the State Constitution to provide that no state

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tax or fee may be imposed, authorized, or raised by the

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legislature except through legislation approved by two-thirds of

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the membership of each house of the legislature and presented to

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the Governor for approval; providing for applicability;

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providing definitions; requiring any tax or fee imposed or

113

raised under this section to be contained in a separate bill

114

that contains no other subject.