

## 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	15 Y, 6 N	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, authorized, or raised by the legislature, or authorized by the legislature to be 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, authorization 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 the state Constitution, and does not apply to any tax or fee imposed by, or authorized to be 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>

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<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

### Constitutional Amendments Approving New State Taxes or Fees

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.

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, authorized, or raised by the legislature, or authorized by the legislature to be 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 or authorize an increase in the rate of a state tax or fee imposed on a percentage or per mill basis;
  - To increase or authorize an increase in 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, authorization 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, or authorized to be 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:**

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

<sup>21</sup> Id.

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 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**

On November 7, 2017, the Ways & Means committee adopted a strike-all amendment and reported the bill favorably. The amendment clarifies that the supermajority vote requirement in the proposed constitutional amendment applies to legislation where the legislature authorizes the imposition or raising of a state tax or

fee. The amendment also clarifies that the supermajority vote requirement in the proposed constitutional amendment does not apply to any tax or fee imposed by, or authorized to be imposed by, a county, municipality, school board, or special district. Finally, the amendment added a lengthier, more detailed supplemental ballot summary should the 75 words or less summary be rejected by the Florida Supreme Court.

The analysis is drafted to reflect the bill as amended.