

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 1263  
New Taxes and Fees

State and Local Government Revenue Limitations; Voter Approval of

SPONSOR(S): Flores

TIED BILLS:

IDEN./SIM. BILLS: SJR 1906

	REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1)	Military & Local Affairs Policy Committee	8 Y, 6 N	Noriega	Hoagland
2)	Finance & Tax Council			
3)	Rules & Calendar Council			
4)				
5)				

SUMMARY ANALYSIS

Article VII, section 1 of the Florida Constitution provides guidelines associated with taxation, appropriations, state expenses, and state revenue limitations.

This joint resolution proposes an amendment to Article VII, section 1, and creates Article VII, section 19, to provide the following:

- Replaces the existing state revenue limit based on Florida personal income growth with new state revenue limits, and creates a local government revenue limit;
- Limits property tax revenues based on changes in local growth and school enrollment changes;
- Requires excess revenues to be deposited into budget stabilization funds and provides for distribution of the excess funds;
- Authorizes voters to permit the collection of revenues in excess of the limit;
- Authorizes the Legislature and the local government governing body to approve emergency taxes by a supermajority vote;
- Prohibits state and local governments from imposing new taxes, fees, assessments, or charges for services without first obtaining approval by a supermajority vote of electors voting on the issue; and
- Prohibits the state and local governments from incurring multi-year debts or financial obligations without adequate cash reserves.

The proposed amendment will be submitted to the electors at the general election in November 2010 or at an earlier special election if specifically authorized by law enacted by the Legislature for that purpose. If approved by 60 percent of the voters at the 2010 general election, the proposed amendment will take effect on July 1, 2011.

The Department of State estimates that the cost of the proposed constitutional amendment is \$230,945. This cost is the result of placing the amendment on the ballot and publishing the notices as required by the Florida Constitution.

The Revenue Estimating Conference has not met to evaluate the effects of this proposed constitutional amendment. Therefore, the estimated fiscal impact to state and local governments is not known at this time.

**The joint resolution must be approved by a three-fifths vote of the membership of each house of the Legislature.**

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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DATE: 3/26/2009

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

#### **PRESENT SITUATION**

#### **Article VII, Section 1: Taxation; Appropriations; State Expenses; State Revenue Limitation**

In 1994, Florida's voters approved an amendment to the State Constitution to limit state revenue collections to the prior year's allowed revenue plus an adjustment for growth based on the growth rate of state personal income over the preceding five years. Beginning in fiscal year 1995-1996, excess collections are to be deposited in the budget stabilization fund<sup>1</sup> until it is fully funded, and any overage is to be refunded to taxpayers as provided by general law. Revenues may only be increased by a two-thirds vote of the membership of each house of the Legislature in a separate bill that contains no other subject, and that sets forth the dollar amount by which the state revenues are increased. Before taking a vote on the budget, the Legislature must wait 72 hours after the bill has been provided to each member of the Legislature, each member of the cabinet, the Governor, and the Chief Justice of the Supreme Court

"State revenues" are defined as taxes, fees, licenses, and charges for services imposed by the Legislature on individuals, businesses, or agencies outside state government.<sup>2</sup> "State revenues" do not include revenues necessary to meet bond requirements; revenues that provide matching funds for the federal Medicaid program (with the exception of revenues used to support the Public Medical Assistance Trust Fund); revenues used to fund elective expansions made after July 1, 1994; proceeds used to fund lottery prizes; receipts of the Florida Hurricane Catastrophe Trust fund; balances carried forward from prior fiscal years; or, taxes, licenses, fees and charges for services required to be imposed by an amendment or revision to the constitution after July 1, 1994. An adjustment to the limitation may be made by general law to reflect the fiscal impact of transfers of responsibility for the

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<sup>1</sup> The State Treasury consists of three types of funds in the custody of the Chief Financial Officer: the General Revenue Fund, Trust Funds, and the Budget Stabilization Fund.

<sup>2</sup> Examples of state revenue sources include auto title and lien fees, beverage licenses, cigarette and other tobacco products tax, corporation fees, documentary stamp taxes, estate tax, hotel and restaurant licenses and fees, hunting and fishing licenses, insurance premium tax, interest, motor fuel taxes, pari-mutuel tax, pollutant taxes, sales and use tax, severance taxes, and unemployment compensation tax. (See *2008 Florida Tax Handbook*, prepared by the staff of the Senate Committee on Finance and Tax, the House Policy and Budget Council, the Office of Economic & Demographic Research, and the Department of Revenue's Office of Resource Management).

funding of governmental functions between the state and other levels of government. The Legislature may enact laws that prescribe procedures for administration of the limitation.

### **Article III, Section 19: State Budgeting, Planning and Appropriations Processes**

In 1992, Florida's voters approved an amendment to create Article III, section 19 of the State Constitution. This amendment, which took effect on November 4, 1992, created a 72-hour cooling off period before either house of the Legislature may vote on the final passage of the General Appropriations Act. Also, this amendment provided that detail reflecting the annualized costs of the state budget and the nonrecurring costs of budget requests accompany all agency and department legislative budget requests, the Governor's recommended budget, and the appropriation bills.

The amendment provided that the major program areas in the state budget include education enhancement "lottery" trust fund items; all other education funds; human service; criminal justice and corrections; natural resources, environment growth management, and transportation; general government; and, the judicial branch. Each program area must include an itemization of expenditures for state operations, state capital outlay, aid to local governments and nonprofit organizations operations, aid to local governments and nonprofit organization capital outlay, federal funds and the associated state matching funds, spending authorizations for operations, and spending authorizations for capital outlay. All expenditures exceeding \$1 million must be itemized.

In addition, this amendment provided for the creation of the budget stabilization fund beginning in fiscal year 1994-1995. At least 1 percent of an amount equal to the last completed fiscal year's net revenue collections for the general revenue fund are to be retained in the stabilization fund. Tiered increases to the fund were provided and, beginning in 1998, at least 5 percent of the last completed fiscal year's net revenue collections for the general revenue fund are to be retained. The fund's principal balance may not exceed 10 percent of the last completed fiscal year's net revenue collections for the general revenue fund, and withdrawals from the fund must be provided in a single-subject bill and only for the purpose of covering shortfalls of the general revenue fund or for the purpose of providing funding for an emergency as defined by general law.

In 2006, Florida voters approved an additional amendment to Article III, section 19 of the State Constitution, which provided, in part, that the Legislature could prescribe conditions under which limited adjustments to the state budget, as recommended by the Governor, or the Chief Justice of the Florida Supreme Court, could be approved by general law without the concurrent of the full Legislature.

### **Constitutional Taxes**

#### **Ad valorem taxes**

Article VII, section 9 of the State Constitution provides that counties, cities, and special districts may levy ad valorem taxes as provided by law and subject to the following millage limitations:

- Ten mills for county purposes;
- Ten mills for municipal purposes;
- Ten mills for school purposes;
- A millage rate fixed by law for a county furnishing municipal services;
- A millage authorized by law and approved by the voters for special districts; and
- A millage of not more than 1 mill for water management purposes in all areas of the state except the northwest portion of the state which is limited to 1/20th of 1 mill (.05).<sup>3</sup>

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<sup>3</sup> A rate of one mill may be expressed as follows: 1 mill = 0.1 cent or \$0.001; \$1 per \$1,000; or 0.1%.

The statutory authority for local governments and schools to assess millage is provided in s. 200.001, F.S., and the statutory authority and the maximum rate at which water management districts may assess millage is provided in s. 373.503, F.S.

#### Gross Receipts Tax on Utilities/Motor Vehicle License Tax

Article XII, sections 9(a) and (d) of the State Constitution provide two additional sources of revenue for the benefit of school districts. The first is a 2.5 percent tax imposed on the gross receipts from utility services that are delivered to a retail consumer within the state, and a 2.37 percent tax imposed on the gross receipts of sellers of telecommunications services. These tax proceeds go into the Public Education Capital Outlay and Debt Service Trust Fund (PECO), and are used for capital outlay projects of the state system of public education including universities, community colleges, vocational technical schools, and public schools.

The second source is a portion of the revenues derived from the licensing of motor vehicles and mobile homes. The first proceeds of such revenues are placed in the District Capital Outlay and Debt Service Trust Fund and used for capital outlay projects of school districts and community colleges. These revenues are distributed based on a constitutional formula.

#### Motor Vehicle Fuel Taxes

Article XII, section 9(c) of the State Constitution provides a state tax of 2 cents per gallon on motor fuel and other like products of petroleum and an equivalent tax upon other sources of energy used to propel motor vehicles, in addition to an allocation formula for distribution of the taxes collected. The tax proceeds may be used for debt service requirements, if any, on local bond issues backed by the tax proceeds, and then for the acquisition, construction, and maintenance of roads. The allocation formula has three components: a geographic area component, a population component, and a collection component. These taxes are collected by the Department of Revenue and transmitted to the State Board of Administration for distribution. A distribution factor, based on the three allocation components, is calculated annually for each county in the form of weighted county-to-state ratios. To determine each county's monthly distribution, the monthly statewide tax receipts are multiplied by each county's distribution factor.

### **Statutory Taxes---Local Government**

#### Non-ad valorem taxes<sup>4</sup>

A tax is an enforced burden imposed by sovereign right for the support of government, the administration of law, and the exercise of various functions the sovereign is called on to perform.<sup>5</sup> Examples of taxes that may be imposed by local governments pursuant to legislative authority include tourist development taxes, local discretionary sales taxes, the voter-approved indigent care surtax, and local option food and beverage taxes.

Pursuant to the Florida Constitution, taxes may not be levied by a county, municipality, special district, or school district unless specific statutory authority is provided by the Legislature.<sup>6</sup> Also, the Legislature may not create a special taxing district with general taxing authority; but rather, a special district may be empowered only to levy those taxes bearing a substantial relation to the special purpose of the taxing district.<sup>7</sup>

The Legislature has authorized certain counties or cities to levy the following taxes, subject to statutory restrictions regarding the manner in which the taxes are imposed, the use of the tax proceeds, and the amount of taxes that may be levied:

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<sup>4</sup> See House of Representatives Staff Analysis for HB 715, prepared by staff of the Committee on State Affairs, March 26, 2008.

<sup>5</sup> *City of Boca Raton v. State*, 595 So.2d 25 (Fla. 1992).

<sup>6</sup> Article VII, s. 9(a), Florida Constitution, *Collier Count v. State*, 733 So.2d 1012, 1014 (Fla. 1999).

<sup>7</sup> *State ex rel. City of Gainesville v. St. Johns River Water Management Dist.*, 408 So.2d 1067 (Fla. 1st DCA 1982).

- Tourism-related local option taxes;<sup>8</sup>
- Local Option Fuel Taxes (up to 12 cents per county composed of three separate taxes);<sup>9</sup>
- Local Option Discretionary Sales Surtaxes;<sup>10</sup>
- Local Option Food and Beverage Taxes;
- Discretionary Surtax on Documents;
- Insurance Premium Tax;
- Municipal Pari-mutuel Tax; and
- Public Service Tax.

Some of these taxes may be levied by a majority vote of the governing body wishing to impose the tax. Other taxes may be levied by an ordinance adopted by an extraordinary vote of the governing body of the county or municipality levying the tax, and a number of taxes must be approved by a majority vote of the affected electors voting in a referendum.

### **Home Rule Revenue Sources**<sup>11</sup>

Under the Florida Constitution, local governments possess strong home rule powers, and may utilize a variety of revenue sources for funding services and improvements without express statutory authority. Franchise fees, impact fees, special assessments, and user fees are examples of these home rule revenue sources. In implementing fee programs and special assessments, a local government's goal is to create an assessment or fee that avoids being classified as a tax by the courts. If an assessment or fee does not meet the case law requirements and is classified as a tax, then the local government must have authorization by general law.

### **Special Assessments**

As established in Florida case law, two requirements exist for the imposition of a valid special assessment. First, the property assessed must derive a special benefit from the improvement or service provided; and second, the assessment must be fairly and reasonably apportioned among the beneficiaries of the service. Examples of special assessments include garbage disposal, sewer improvements, fire protection, fire and rescue services, and stormwater management services.

### **Proprietary Fees**

Proprietary fees are imposed under the assertion that local governments have the exclusive legal right to impose such fees. The imposed fee is reasonable in relation to the privilege or service provided by the local government, or the fee payer receives a special benefit from the local government. Proprietary fees include franchise fees, user fees, and utility fees.

<sup>8</sup> These taxes include the Municipal Resort Tax, Tourist Development Taxes, 1 or 2 Percent Tax On Transient Rental Transactions. Additional 1 Percent Tax On Transient Rental Transactions, Professional Sports Franchise Facility Tax, Additional Professional Sports Franchise Facility Tax, Tourist Impact Taxes Within Areas Of Critical State Concern, Convention Development Taxes, Consolidated County Convention Development Tax, And Charter County Convention Development Tax.

<sup>9</sup> These taxes include Ninth-Cent Fuel Tax, 1 to 6 Cents Local Option Fuel Tax, and 1 to 5 Cents Local Option Fuel Tax.

<sup>10</sup> These taxes include Charter County Transit System Surtax, Local Government Infrastructure Surtax, Small County Surtax, Indigent Care and Trauma Center Surtax, County Public Hospital Surtax, School Capital Outlay Surtax, and Voter-Approved Indigent Care Surtax.

<sup>11</sup> 2008 Local Government Financial Information Handbook, Part Two, pp. 19-32.

### Regulatory Fees

Regulatory fees are imposed under the local government's exercise of police powers in the exercise of its sovereign functions. Two principles guide the use and application of such fees:

- The imposed fee cannot exceed the cost of the regulatory activity; and
- The fee is generally required to be applied solely to pay the cost of the regulatory activity for which it is imposed.

### Local Government Revenue Sharing<sup>12</sup>

State-shared revenue programs allocate a portion of a state-collected tax to specified local governments based on eligibility requirements. A formula is usually developed for the allocation of funds between units of local government. While general law restricts the use of several shared revenues, proceeds from other shared revenues may be used for the general revenue needs of local governments. A number of revenue sharing programs require as a prerequisite that the county or municipality meet eligibility criteria.<sup>13</sup> State-shared revenue sources include the following:

- Alcoholic Beverage License Tax;
- County Fuel Tax;
- County Revenue Sharing Program;
- Distribution of Sales and Use Taxes to Counties;
- Emergency Management Assistance;
- Fuel Tax Refunds and Credits;
- Insurance License Tax;
- Local Government Half-Cent Sales Tax Program;
- Mobile Home License Tax;
- Municipal Revenue Sharing Program;
- Oil, Gas, and Sulfur Production Tax;
- Phosphate Rock Severance Tax;
- Emergency 911 Fee; and
- State Housing Initiatives Partnership Program.

### PROPOSED CHANGES

This joint resolution proposes to provide limits to a number of constitutional, statutory, and home rule revenue sources for state, regional, and local government. The joint resolution would repeal the current state revenue limitation in Article VII, section 1 of the Florida Constitution.

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<sup>12</sup> Id., at page 33.

<sup>13</sup> Section 218.23, F.S. (2008), provides criteria for participation in revenue sharing based on the ability of the local government to collect certain types of revenue or levy ad valorem taxes that raise a specified amount of money.

In addition, this joint resolution creates Article VII, section 19 of the Florida Constitution. Subsection (a) of this new section creates the following "DEFINITIONS:"

- "Fiscal year" means the applicable fiscal year for the state or a local government;
- "Growth" means an amount equal to government revenues collected in the 2010-2011 fiscal year multiplied for each subsequent fiscal year by the combined rate of inflation and rate of population change. School districts may use enrollment changes in lieu of population changes;
- "Local government" means a county, municipality, school district, or special district with the authority to impose ad valorem taxes. Municipal service taxing units or benefit units, and special dependent districts of a county are included in county government. Municipal service taxing units or benefit units, and special dependent districts of a municipality are included in the municipality. Community development districts are excluded from the proposed amendment;
- "Local government revenues" means taxes, fees, assessments, licenses, fines, and charges for services imposed by a local government. The term does not include bond proceeds, gifts, federal funds, collections for another government, pension contributions, emergency reserve transfers, damage awards, and property sales;
- "Rate of enrollment change" means the percentage change in each school district's student enrollment as reported by the district;
- "Rate of inflation" means the percentage change in the Consumer Price Index for all urban wage earners and clerical workers for the south region, or a successor index, for the preceding year as calculated by the U. S. Department of Labor, Bureau of Labor Statistics;
- "Rate of population change" means the percentage change in population within the boundaries of the state or a local government as estimated by the U.S. Census Bureau; and
- "State revenues" means taxes, fees, assessments, licenses, fines, and charges for services imposed by the legislature or the executive branch agencies. The term does not include bond proceeds, state lottery prize proceeds, receipts of the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation or their successor entities, community college and university tuition and fees, gifts, federal funds, collections for another government, pension fund contributions and earnings, budget stabilization fund transfers, damage awards, and property sales.

Paragraph (b), which creates "STATE AND LOCAL REVENUE LIMIT," provides that:

- State revenues collected by the state and local government, and revenues collected by each local government for any fiscal year are limited to the revenues collected in the 2010-2011 fiscal year plus an annual adjustment for growth, subject to the exceptions provided in the proposed amendment.

Paragraph (c), which creates "PROPERTY TAX REVENUE LIMIT," provides that:

- The annual percentage change in each local government's property tax revenue may not exceed property tax revenue in the prior calendar year plus annual local growth, adjusted for property tax revenue changes approved by vote of the electors of the respective local governments.

Paragraph (d), which creates "REVENUE RELATING TO BONDS," provides that:

- Although bond proceeds are excluded as state and local government revenues, state and local government revenue limits must be decreased by the amount of the annual debt service on such bonds.

Paragraph (e), which creates “VOTER APPROVAL TO EXCEED REVENUE LIMITS,” provides that:

- State and local governments may not impose taxes, fees, licenses, fines, or charges for services expected to exceed the revenue limit projected by state and local governments at the adoption of their respective budgets for the fiscal year;
  - Revenues collected in excess of the revenue limit may not be spent without approval of the majority of electors residing within the applicable government’s boundaries;
- Excess state revenues collected each year must be transferred to the budget stabilization fund specified in Article III, section 19(g) of the Florida Constitution until the fund reaches the constitutionally specified maximum amount;
  - Additional excess revenue must be held in a separate cash reserve; and
  - Additional excess revenue and investment income from that revenue must be treated as revenue in the first or second fiscal year after collection, as prescribed by general law;
- Excess revenues collected by a local government must be transferred to the budget stabilization fund, if a local government has such a fund, until the fund reaches a maximum amount of 3 percent of the last completed fiscal year’s revenue collection;
  - Additional excess revenue must be held in a separate cash reserve; and
  - Additional excess revenue and investment income from that revenue must be treated as revenue in the first or second fiscal year after collection, as prescribed by general law;
- The Legislature must provide, by general law, criteria by which a local government may withdraw revenues from the budget stabilization fund;
  - Withdrawals are limited to the purposes of covering revenue shortfalls of the general revenue fund or for providing funding in an emergency in which substantial harm occurs to the population or property within the local government’s boundaries; and
  - Expenditures for emergency purposes require a declaration of a state of emergency by the Governor and a two-thirds majority vote of the members of the Legislature or the local governing body by a recorded roll call vote.

Paragraph (f), which creates “EMERGENCY TAXES,” provides that:

- Emergency taxes may be assessed only under the following conditions:
  - Emergency reserves must be depleted before emergency tax revenues can be spent;
  - Emergency tax revenues must be refunded within 180 days after the emergency terminates if the tax revenues have not been spent;
  - Emergency property taxes are prohibited; and
  - No new taxing power is granted;
- Emergency taxes may not be levied unless the Governor declares a state of emergency and the taxes are approved by a two-thirds vote of the membership of each house of the



Legislature or local government governing body. The vote of each member of the Legislature or local government governing body must be recorded;

- Emergency taxes that are not approved by a vote of the electors of a local government on the next election date occurring 60 days or more after the declaration of a state emergency must terminate on or before the last day of the month in which the election is held; and
- The term “emergency” does not include economic conditions, revenue shortfalls, or salary and fringe benefit increases.

Paragraph (g), which creates “REVENUE LIMITS FOR NEW LOCAL GOVERNMENT,” provides that:

- Local governments created after November 2, 2010, must be subject to the requirements of the proposed amendment as prescribed by general law.

Paragraph (h), which creates “BALLOT ISSUE TO EXCEED A REVENUE LIMIT,” provides that:

- A ballot issue for authorization to exceed a revenue limit must state the amount by which the state or local government proposes to exceed the limit in each fiscal year; and
- A ballot issue must also state the date on which the authority to exceed a revenue limit expires. This date must be the last day of the fiscal year.

Paragraph (i), which creates “REVENUE LIMIT ADJUSTMENT,” provides that:

- The Legislature may, by general law, provide for adjustments to the revenue limits to reflect the fiscal impact of the following events occurring after January 4, 2011:
  - A change in federal or state law which increases or decreases state or local government responsibility for the funding of governmental functions; or
  - A transfer of responsibility to fund a government function to the state or a local government.

Paragraph (j), which creates “VOTER APPROVAL OF NEW REVENUE SOURCES,” provides that:

- The state and local governments must receive advance approval by a two-thirds vote of the electors voting on a measure in the state or local government to:
  - Impose a new tax, fee, assessment, or charge for services; or
  - Incur multiple-year direct or indirect debt or other financial obligations without having adequate present cash reserves pledged irrevocably and held for all future payments;
    - An exception is provided for refinancing bond debt at a lower interest rate or to add new employees to a pension plan.

Paragraph (k), which creates “CONSTRUCTION,” provides that:

- Article VII, section 19 of the Florida Constitution must be interpreted in a manner that reasonably restrains most of the growth of state and local governments. This section supersedes any conflicting provisions of the State Constitution in effect prior to the effective date of this section.

Paragraph (l), which creates “EFFECTIVE DATE,” provides that:

- Article VII, section 19 of the State Constitution is effective upon approval by the electors; and
- During the 2011 Regular Session of the Legislature, the Legislature must adopt implementing legislation with an effective date of July 1, 2011.

**B. SECTION DIRECTORY:**

Not applicable to a joint resolution.

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

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

**1. Revenues:**

The Revenue Estimating Conference has not met to evaluate the effects of the proposed constitutional amendment. Therefore, the estimated fiscal impact to state government is not known at this time.

**2. Expenditures:**

The state constitution requires publication of a proposed amendment or revision to the constitution in one newspaper of general circulation in each county in which a newspaper is published, once in the tenth week and once in the sixth week immediately preceding the week in which the election is held.<sup>14</sup>

Based on the 2008 election costs to advertise a proposed constitutional amendment, the Department of State, Division of Elections, estimates that the total non-recurring cost to advertise the proposed constitutional amendment is \$230,945. This cost is determined by multiplying the total number of words in the proposed amendment (approximately 2,510) by the per word cost of \$92.01.<sup>15</sup> The Department of State notes that there is no appropriation associated with the proposed joint resolution at this time.

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

**1. Revenues:**

The Revenue Estimating Conference has not met to evaluate the effects of the proposed constitutional amendment. Therefore, the estimated fiscal impact to local governments is not known at this time. However, it appears that the provisions of this joint resolution will make it more difficult for counties, municipalities, special districts, and school districts to increase taxes, special assessments, and other home rule revenue sources by requiring voter approval to exceed revenue limits and to spend excess revenues when limits are exceeded.

**2. Expenditures:**

Local governments may incur costs to implement the provisions of this joint resolution.

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

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<sup>14</sup> Article XI, sec. 5(d), Florida Constitution.

<sup>15</sup> Based on information and methodology received from staff of the Department of State.

To the extent that voter approval is required in order for state and local governments to exceed the revenue and spending limits contained in the proposed resolution, members of the public may see a reduction in the growth of taxes, assessments, and fees.

#### D. FISCAL COMMENTS:

This proposed joint resolution provides that the revenue limitations contained in the proposal will supersede all conflicting provisions in the Florida Constitution in effect prior to its effective date. Both the State Constitution and Florida law provide counties, municipalities, and school districts with the authority to levy ad valorem taxes not exceeding 10 mills each. The proposed joint resolution provides that the annual percentage change in each local government's property tax revenue may not exceed property tax revenue in the prior calendar year, plus annual local growth. To the extent that these provisions could be in conflict with each other, it is possible that the constitutional provisions regarding millage caps may no longer apply.

Pursuant to the provisions of the State Constitution, school districts receive a percentage distribution from the gross receipts tax on utilities and communication services, and a portion of the revenues derived from motor vehicles and motor home licenses. Because this proposed joint resolution states that any provisions of the State Constitution in conflict with the revenue limitations in the resolution are superseded on its effective date, revenue distributions to schools that exceed the revenue limits of the proposal may be affected.

In the property tax reform measures enacted by the Legislature in 2007 and the provisions amended into the State Constitution in January 2008, school districts were held harmless from the statutory rolled back rate<sup>16</sup> requirements and the constitutional provisions relating to the additional homestead benefit, the limitations on non-residential property, and the portability of the Save Our Homes benefit.

In addition, because of the definition of "state revenues," it appears that the proposed amendment will require the voters to approve every bill enacted by Legislature that proposes the creation of a new program, or amends an existing program and requires the imposition of a fee or assessment, to pay for the cost of the program.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

The mandates provisions of Article VII, section 18 of the Florida Constitution do not apply to House Joint Resolutions.

##### 2. Other:

Article XI, section 1 of the Florida Constitution authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by three-fifths of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office or at a special election held for that purpose.

Article XI, section 5(e) of the Florida Constitution requires 60 percent voter approval for a constitutional amendment to pass.

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<sup>16</sup> The "rolled back rate" is the tax rate that will produce the same amount of tax revenue for the current year that was produced the previous year, after making allowances for some tax base changes. See s. 200.065(1), F.S.

**B. RULE-MAKING AUTHORITY:**

The joint resolution would not require any agency to adopt administrative rules; however, it may be necessary for the Legislature to authorize rulemaking in future implementing legislation.

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

At the end of subsection(j)(2) on line 253, staff suggests replacing the word “plans” with “plan.”

**IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

None.