SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SJR 938

SPONSOR: Finance and Taxation Committee, Senator Pruitt and others

SUBJECT: Sales and Use Tax

DATE: January 25, 2002 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Keating	Johansen	FT	Fav/CS
2.			RC	
3.				
4.				
5.				
6.				

I. Summary:

The Committee Substitute for Senate Joint Resolution 938 (SJR) creates Section 19 of Article VII of the State Constitution, reducing the general sales and use tax rate to 4.5 percent and broadening the state sales tax base.

This resolution creates Section 19 of Article VII of the State Constitution.

II. Present Situation:

Constitutional Amendments

Article XI, section 1 of the Florida Constitution provides that the Legislature may propose to amend the constitution by adopting a joint resolution agreed to by three-fifths of the membership of each house of the Legislature. The wording of the substance of the amendment and the ballot title must be embodied in the joint resolution under s. 101.161(1), F.S. The Department of State must furnish to each supervisor of elections printed copies of the amendment and the supervisor must conspicuously post such notices at each precinct on the day of the election under s. 101.171, F.S.

A legislatively proposed constitutional amendment is to be submitted to the vote of the electorate in clear and unambiguous language on the voting ballot under s. 101.161(1), F.S.[1] The ballot title and summary must advise the electorate of the true meaning of the proposal and give the voter fair notice of the decision he or she must make.[2] When petitioned to review a legislatively

[1] *Armstrong v. Harris*, 25 Fla.L.Weekly S656 (Fla.2000).

[2] *Kainen v. Harris*, 25 Fla.L.Weekly S735 (Fla.2000); *Miami Dolphins, Ltd. v. Metropolitan Dade County*, 394 So.2d 981, 986 (Fla.1981); *Askew v. Firestone*, 421 So.2d 151, 156-57 (Fla.1982).

proposed constitutional amendment for propriety, the courts traditionally have accorded a measure of deference to the Legislature.[3] Unless ballot language is clearly and conclusively defective, it will typically be upheld upon judicial review.[4]

Sales and Use Tax

Florida's six percent sales and use tax as provided in chapter 212, F.S., is not a single levy, but is composed of a number of different levies on a variety of transactions. A "use" tax is imposed on items not sold, but used in Florida. The various levies of sales and use tax are:

- **Transient rental** (s. 212.03, F.S.): Establishes a taxable privilege for lease or rental of hotels, motels, and apartments for periods of less than six months.

- **Lease or rental of or license in real property** (s. 212.031, F.S.): Establishes a taxable privilege for engaging in the business of renting, leasing, letting, or granting a license for the use of any real commercial property.

- **Admissions** (s. 212.04, F.S.): Establishes a taxable privilege for selling or receiving anything of value by way of admissions.

- **Sale of tangible personal property** (s. 212.05(1)(a), F.S.): Establishes a taxable privilege for the sale of items or articles of tangible personal property.

- **Use of tangible personal property** (s. 212.05(1)(b), F.S.): Establishes a taxable privilege on items or articles of tangible personal property which are not sold but are used, consumed, distributed, or stored for use or consumption in Florida. The tax is based on the "cost price" of the article, which is a calculation of the cost of an item including materials, labor, service costs, transportation and any other expenses.

- **Lease or rental of tangible personal property** (s. 212.05(1)(c), F.S.): Establishes a taxable privilege for the lease or rental of tangible personal property.

- **Prepaid calling arrangements, installation of telecommunication and telegraphic equipment and electricity** (s. 212.05(1)(e), F.S.): Establishes a taxable privilege for the sale at retail of prepaid calling arrangements and charges for the installation of telecommunication and telegraphic equipment and charges for electrical power or energy. The rate for electrical power or energy is 7 percent. (Effective October 1, 2001, telecommunications were no longer taxable under chapter 212, but became taxable under chapter 202, as the "Communications Services Tax" at a rate of 6.8%)

- **Coin-operated amusement machines** (s. 2312.05(1)(i), F.S.): Establishes a taxable privilege for coin-operated amusement machine charges at the rate of 4 percent.

[3] *Armstrong v. Harris, supra*; *Gray v. Golden*, 89 So.2d 785, 790 (Fla.1956).
[4] *Kainen v. Harris, supra*; *Florida League of Cities v. Smith*, 607 So.2d 397, 399 (Fla.1992).

- **Certain services** (s 212.05(1)(j), F.S.): Establishes a taxable privilege for the sale of detective, burglar protection, and other protective services and for the sale of nonresidential cleaning and nonresidential pest control services.

- **Service Warranties** (s. 212.0506, F.S.) Establishes a taxable privilege on every person who engages in the business of soliciting, offering, providing, entering into, issuing, or delivering any service warranty. "Service warranty" means any contract or agreement which indemnifies the holder of the contract or agreement for the cost of maintaining, repairing, or replacing tangible personal property.

Aside from the services mentioned above, services are not directly subject to Florida's sales and use tax. This lack of tax on most services is not due solely to exemptions from the tax, but from the fact that the services are not specified as taxable. In addition, s. 212.08(7)(v), F.S., exempts personal, professional, and financial services when provision of such services involves inconsequential elements of tangible personal property such as documents representing the service provided. Numerous other services, however, are taxed such as repair and maintenance services that also involve the sale of tangible personal property.

Section 212.08, F.S., provides for specific exemptions from the sales and use tax imposed by this chapter. The statutes currently provide more than 200 non-service exemptions. Exemptions generally take the form of identifying specifically exempt items, exempting items when used for particular purposes, and exempting purchases or sales by certain types of organizations, such as the government, churches, and charitable organizations. Section 212.08(7), F.S., provides for over 50 miscellaneous exemptions.

Local Discretionary Sales Surtaxes

Local governments are authorized to levy numerous types of local discretionary sales surtaxes pursuant to s. 212.055, F.S. Under the provisions of s. 212.054, F.S., the local discretionary sales surtaxes apply to all transactions "subject to the state tax imposed on sales, use, services, rentals, admissions, and other transactions" by chapter 212, F.S. and on communications services by chapter 202, F.S. The surtax is computed by multiplying the rate imposed by the county where the sale occurs by the amount of the taxable sale. The sales amount is not subject to tax if the property or service is delivered within a county that does not impose a surtax. In addition, the surtax does not apply to any sales amount above $5,000 on any item of tangible personal property. This $5,000 cap does not apply to the sale of any service. As of January 2002, 51 counties levied at least one discretionary sales surtax with 6 counties levying two.

Health Care Assessment

Part IV of chapter 395, F.S., relates to the Public Medical Assistance Trust Fund (PMATF) which is created in s. 409.918, F.S. Revenues collected from assessments on the specified health care providers under Part IV of chapter 395, F.S., are used to fund Medicaid-reimbursed hospital inpatient services.

Section 395.701, F.S., was originally enacted in 1984 to impose an assessment of 1.5 percent against the annual net operating revenue of each state-licensed hospital. Section 395.7015, F.S., was originally enacted in 1991 to impose an annual assessment of 1.5 percent on the net operating revenues of ambulatory surgical centers and mobile surgical facilities, certain clinical laboratories, freestanding radiation therapy centers, and certain diagnostic imaging centers.

In 1998, the Legislature exempted hospital outpatient radiation therapy services from the assessment and repealed the assessment on freestanding radiation therapy centers.

Chapter 2000-256, Laws of Florida, changed the structure of the PMATF assessment on hospitals. For hospitals, inpatient and outpatient services were made subject to different assessment rates. Inpatient hospital services were continued at the assessed rate of 1.5 percent of net operating revenue. Outpatient hospital services were made subject to an assessed rate of 1 percent of net operating revenue. Chapter 2000-256, Laws of Florida, also reduced the assessment rate on the other health care entities from 1.5 percent to 1 percent.

III. Effect of Proposed Changes:

The Committee Substitute for Senate Joint Resolution 938 (SJR) creates Section 19 of Article VII of the State Constitution, reducing the general sales and use tax rate to 4.5 percent and broadening the state sales tax base. If approved by the voters at the next general election on November 5, 2002, the amendment would take effect on January 7, 2003.

Effective July 1, 2004, the SJR provides that:

1. The general state sales and use tax rate shall be 4.5 percent until changed by general law. Any increase in the rate above 4.5 percent must be enacted by a three-fifths vote of the membership of each house of the Legislature. However, the sales and use tax rate for transient rentals, admissions, and rental cars, as defined by general law, shall be subject to tax at the rate prescribed by general law.
2. All sales of goods and services, as defined by general law, are subject to the general state sales and use tax and no exemptions shall exist except for:
    a. Sales of groceries, health services, prescription drugs, and residential rent, as defined by general law;
    b. Exemptions enacted by the Legislature on or after January 1, 2002, and before July 1, 2004; and
    c. Exemptions enacted by the Legislature on or after July 1, 2004, by a three-fifths vote of the membership of each house of the legislature in a general law that embraces no subject other than the singular exemption granted.

Unless provided otherwise by general law, the term “sales of goods and services” does not include sales of tangible personal property purchased for resale or imported, produced, or manufactured in Florida for export; sales of real property; sales of intangible personal property; payment of employee salaries and benefits; and sales of communications services.

To ensure revenue neutrality, the SJR requires that general state sales and use tax revenues generated for state fiscal year 2004-2005, as estimated by the Revenue Estimating Conference, must be no more than the amount of general state sales and use tax revenues collected during the prior state fiscal year, adjusted by the average rate of growth in general state sales and use tax revenues over the past five state fiscal years. The Legislature is required to enact general law, to be effective July 1, 2004, to implement the provisions of the SJR and to ensure revenue neutrality.

Increased local government sales surtaxes realized as a result of legislative changes necessary to implement this act shall be used to reduce ad valorem taxes or other local taxes or fees as provided by general law.

Effective July 1, 2005, the SJR provides for the repeal of the health care assessments imposed under ss. 395.701 and 395.7015, F.S.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

Total state sales tax revenues for FY 2002-03 are estimated at $16.7 billion. Reducing the general sales tax rate from 6% to 4.5% would provide a tax reduction of $4.2 billion, which will benefit the purchasers of goods and services that are taxed today. An additional $40 million tax reduction will take place because of the current sales tax rate on electrical power of 7%. Maintaining the tax rate on transient rentals, rental cars, and admissions at 6% offsets approximately $286 million of the reduction. Also, the SJR mandates the repeal of the health care assessments effective July 1, 2005, which requires a tax reduction of approximately $244 million. The net tax reduction mandated by the SJR is approximately $4.2 billion based on FY 2002-03 estimates.

Current exemptions from the state sales tax total approximately $23 billion when evaluated at 6%. At 4.5%, these exemptions total $17.2 billion. In order to insure revenue neutrality, total exemptions cannot exceed $13 billion; $4.2 billion must be raised from goods and services that are currently exempt from the sales tax.

The SJR is expressly written to be revenue neutral for fiscal year 2004-05. Future revenue growth could be faster or slower than under current law, depending on the mix of goods and services, which are taxed under the SJR that are not subject to tax today. Over the last thirty years, the current sales tax base has, on average, grown only 90% as fast as the economy as a whole. If the expanded tax base mandated by the SJR more closely mirrors total economic activity, sales tax growth after FY 2004-05 will exceed that of the current sales tax.

Local sales surtaxes imposed by the 51 levying counties are estimated at approximately $1.3 billion for FY 2002-03. Without sales surtax rate reductions or other tax relief, local sales surtaxes would increase by approximately $325 million. Under the local government revenue neutrality provisions of the SJR, the Legislature will have to provide for local tax reductions sufficient to offset the increase in local sales surtaxes that would otherwise occur.

B. Private Sector Impact:

See A. above

C. Government Sector Impact:

The state will incur administrative costs due to restructuring the state sales tax and the addition of significant numbers of new sales tax dealers.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.