The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Appropriations Subcommittee on Finance and Tax

BILL: SJR 1742

INTRODUCER: Senator Stargel

SUBJECT: Supermajority Vote Required to Increase State Tax Revenues by Increasing Taxes

DATE: January 26, 2018 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fournier	Diez-Arguelles	AFT	**Pre-meeting**
2.			AP	

I. Summary:

SJR 1742 proposes an amendment to the State Constitution to require a law that imposes a new tax, increases the rate or amount of a tax, or expands a tax base, and that results in a net increase in state revenues, to be approved by three-fifths of the membership of each house of the Legislature.

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 specifically authorized by law for that purpose.

The Revenue Estimating Conference (REC) has not reviewed this proposed amendment. Based on the impact adopted by the REC for HJR 7001, staff estimates a zero impact on state revenues because the amendment does not directly impact current baseline revenue forecasts since they are based on current law and current administration and do not contain assumptions regarding future legislative changes.

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. Based on 2016 advertising costs, staff estimates full publication costs for advertising the proposed constitutional amendment to be approximately $43,732, which will likely be funded by appropriations from the General Revenue Fund.

II. Present Situation:

The State Constitution grants the Legislature authority (with some specific exceptions) to enact legislation by a majority vote in each house.[1] Every bill passed by the Legislature must be

[1] Fla. const. art. III, s. 7.

presented to the Governor for approval, and it becomes law if the Governor approves and signs it or fails to veto it.[2] Vetoes can be overcome by a two-thirds vote of each house of the Legislature.[3]

Exceptions to Legislation by Majority Vote for Bills Relating to Taxation and Revenues

The State Constitution provides for exceptions to majority-vote passage of certain laws related to taxes.

- The corporate income tax rate is limited to 5 percent of net income unless a higher rate is authorized by a three-fifths vote of the membership of each house of the Legislature.[4] (The tax is currently levied at a rate of 5.5 percent.[5])
- Bills that would create certain local mandates requiring counties or municipalities to expend funds,[6] reduce their authority to raise revenue,[7] or reduce the percentage of a state tax shared with counties and municipalities[8] must be approved by two-thirds of the membership of each house of the Legislature.
- Bills that would cause state revenue collections to exceed the limit set forth in the State Constitution[9] must be passed by a two-thirds vote of the membership of each house of the Legislature in a separate bill that contains no other subject.[10]

Constitutional Amendments Relating to Taxation

While the general requirement is that a proposed amendment to the State Constitution must be approved by a vote of at least sixty percent of the electors voting on the measure,[11] constitutional amendments that impose new state taxes or fees must be approved by at least two-thirds of the voters voting in the election in which the proposed amendment is considered.[12] For purposes of such an amendment, 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 general revenue fund or any trust fund, which was not in effect November 7, 1994.

Taxes and Fees

Taxes and fees are both imposed by government and raise revenue, but they have been recognized as being fundamentally different by statute and case law in nearly every state, the United States, and internationally as part of the Vienna Convention on Diplomatic Relations of 1961.[13]

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[2] Fla. const. art. III, s. 8 (a).
[3] Fla. const. art. III, s. 8(c).
[4] Fla. const. art. VII, s. 5(b).
[5] Section 220.11(2), F.S.
[6] Fla. const. art VII, s. 18(a).
[7] Fla. const. art VII, s. 18(b).
[8] Fla. const. art VII, s. 18(c).
[9] Fla. const. art VII, s. 1(e).
[10] *Id.*
[11] Fla. const. art. XI, s. 5(e).
[12] Fla. const. art. XI, s. 7.
[13] Henchman, Joseph, *How is the Money Used: Federal and State Cases Distinguishing Taxes and Fees*, 5-9 (2013).

- **Taxes** are compulsory exactions imposed for the primary purpose of raising revenue, with the resultant funds spent on general government services. Examples are corporate income tax, gross receipts tax, sales and use tax, cigarette and alcoholic beverage excise taxes, motor fuel tax, property tax, and utility taxes.
- **Fees** are imposed for the primary purpose of covering the cost of providing a service, with the funds raised directly from those benefitting from, or creating a need for, a particular provided service. "User fees" are assessed for goods and services provided by government such as tolls, parks and recreation fees, and solid waste management charges. "Regulatory fees" are assessed to those obtaining a license, permit, or other privilege under regulatory laws enacted to protect public health, welfare, and safety.

Generally, the label applied to a charge or imposition is less important than how it operates. For example, in *Collier County v. State*, the Florida Supreme Court held that a "fee" on property owners was in fact a tax "because it is proposed to support many of the general sovereign functions contemplated within the definition of a tax," such as "sheriff services; libraries; parks; election services; public health services; and public works."[14]

Tax Exemptions and Credits

Tax statutes are generally written to apply to broad classes of property, income, or activity. For example, Florida's sales and use tax is levied "at the rate of 6 percent of the sales price of each item or article of tangible personal property when sold at retail in this state…."[15] Similarly, the corporate income tax is "a tax measured by net income…on every taxpayer for each taxable year…"[16] These and other statutes create the "tax base" for each tax, and by their construction certain classes are excluded. The sales tax, for instance, does not include intangible property or wholesale sales.

Tax exemptions create exceptions to the broad application of the tax and take several forms. A sales tax exemption may apply to a product, (food products for human consumption are exempt from sales and use tax[17]) a purchaser, (sales or leases made to s. 501(c)(3) organizations are exempt from sales and use tax[18]) or a seller, (farm products sold directly by the producer are exempt from sales tax[19]). Exemptions often apply only if a product is being used for a specific purpose.

Tax credits enable taxpayers to reduce their tax liability by providing that certain other payments they make may be credited against their tax liability. For example, corporations may receive credits against their income tax for making certain capital investments,[20] performing voluntary cleanup of contaminated sites,[21] or making contributions to Scholarship Funding Organizations.[22]

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[14] *See Collier v. State*, 733 So. 2d 1012, 1018 (Fla. 1999).
[15] Section 212.05(1)(a)1.a., F.S.
[16] Section 220.11(1), F.S.
[17] Section 212.08(1)(a), F.S.
[18] Section 212.08(7)(p), F.S.
[19] Section 212.07(5), F.S.
[20] Section 220.191, F.S.
[21] Section 220.1845, F.S.
[22] Section 220.187, F.S.

Determining the Impact of Tax Law Changes on State Revenues

Florida's revenue forecasting system is based on a consensus estimating process, by which professional staff of the Executive Office of the Governor, the coordinator of the Office of Economic and Demographic Research, and professional staff of the Senate and the House of Representatives, designated by their respective presiding officers, unanimously adopt forecasts of economic, demographic, resource-demand, and revenue measures.[23] This process includes conferences convened to develop official information on behalf of the Legislature to use in its budget deliberations[24] and to consider impacts of specific changes or proposed changes.[25]

Other States with Supermajority Vote Requirements for Tax or Revenue Increases

Currently, 15 states (including Florida) require a supermajority vote to impose or increase taxes. Except for Wisconsin, these requirements are found in the states' constitutions. These requirements vary widely in their application. The following table summarizes the requirements for each affected state:

State	Year Adopted	Vote Requirement	Application
Arizona[26]	1992	2/3	New taxes, tax rates, fees, reduction or elimination of exemptions, etc., assessments, authorizations
Arkansas[27]	1934	3/4	Tax rates, applicable only to taxes in effect as of the effective date of the amendment
California[28]	1979	2/3	New or increased taxes, levies, exactions (not fees)
Delaware[29]	1980	3/5	New taxes and fees
Florida[30]	1971	3/5	Corporate income tax rate above 5 percent
Kentucky[31]	2000	3/5	"Raising revenue or appropriating funds"
Louisiana[32]	1966	2/3	New taxes
Michigan[33]	1994	3/4	A law that increases the statutory limits on ad valorem taxes in effect as of 02-01-1994.
Mississippi[34]	1970	3/5	Any revenue bill, or any bill providing for assessments of property for taxation

[23] Sections 216.133-137, F.S.
[24] Section 216.137(1)(b), F.S.
[25] Section 216.137(1)(d), F.S.
[26] A.R.S. Const. art. 9, s. 22.
[27] AR Const. art. 5, s. 38.
[28] West's Ann. Cal. Const. art. 13A, s. 3.
[29] Del. C. Ann. Const. art. 8, s. 11.
[30] Fla. Const. art. VII, s. 5(b).
[31] KY Const. s. 36.
[32] LSA-Const. art. 7, s. 2.
[33] M.C.L.A. Const. art. 9, s 3.
[34] MS Const. art. 4, s 70.

Missouri[35]	1996	2/3	Any increase in taxes or fees that produces annual revenue increases of $50 million or more
Nevada[36]	1996	2/3	Increases in public revenue, including taxes, fees, assessments and rates, or tax base changes
Oklahoma	1992	3/4	New taxes and tax rates
Oregon[37]	1996	3/5	New taxes and tax rates
South Dakota[38]	1996	2/3	New taxes and tax rates
Wisconsin[39]	2011	2/3	Increases in sales or income tax rates (Statutory requirement)

III. Effect of Proposed Changes:

This joint resolution requires a law that imposes a new tax, increases the rate or amount of a tax, or expands a tax base, and that results in a net increase in state revenues, to be approved by three-fifths of the membership of each house of the Legislature.

- It defines the term "expands the tax base" to mean broadening the scope of a tax to include additional classes of property, activity, or income, but it does not include the amendment or repeal of a credit or exemption. For example, a bill that extends a new tax to a previously-untaxed class of property, income, or activity, such as the 1986 extension of Florida's sales and use tax to the service sector,[40] must pass by a three-fifths majority. A bill that repeals a specific sales and use tax exemption may be adopted by a simple majority vote.
- It defines the term "net increase in state revenues" to mean the revenues produced by the tax increases contained in the law, minus any revenue reductions contained in the law. A bill that includes both tax increases and revenue reductions requires a three-fifths vote only if the tax increases are not offset by reductions in state revenues. An example of a bill with this effect is HB 7099 (2016),[41] which included many tax reductions as well as a change in the definition of the "wholesale sales price" of other tobacco products. This definition change, which was enacted to overcome a court decision[42] that was inconsistent with historic practices in tobacco taxation, had the effect of increasing state tax revenues, but this increase was offset by other provisions of the bill.

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[35] V.A.M.S. Const. art. 10. s. 18(e).
[36] N.R.S. Const. art 4, s. 18.
[37] OR Const. art IV, s. 25.
[38] SD Const. art. 11, s. 14.
[39] Wisconsin Statutes 13.085.
[40] Section 212.059, F.S. (1987).
[41] Chapter 2016-220, Laws of Florida
[42] MICJO, INC., v. DEPARTMENT OF BUSINESS AND PROFESSIONAL REGULATION, Division of Alcoholic Beverages and Tobacco, 78 So. 3d 124 (Fla 2nd DCA 2012).

Whether a law results in a net increase is determined by the annual net revenues estimated to be collected in the first state fiscal year when all the changes in the bill are fully effective. If a law both increases and reduces revenues, a revenue increase of less than one percent of the tax increase contained in the law is not considered a net increase in state revenues. For example, a bill with a tax increase of $1,000,000 and a revenue decrease of $995,000 would not require a three-fifths vote because the net revenue increase of $5,000 is less than 1 percent of the tax increase of $1,000,000.

The joint resolution does not authorize the Legislature to impose any state tax otherwise prohibited by the State Constitution, and it does not apply to any tax imposed by, or authorized to be imposed by, a county, municipality, school board, or special district.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

Not applicable to joint resolutions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The Revenue Estimating Conference (REC) has not reviewed this proposed amendment. Based on the impact adopted by the conference for HJR 7001, staff estimates a zero impact on state revenues because the amendment does not directly impact current baseline revenue forecasts because they are based on current law and current administration and do not contain assumptions regarding future legislative changes.

B. Private Sector Impact:

None.

C. Government Sector Impact:

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 10th 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.

Based on 2016 advertising costs, staff estimates full publication costs for advertising the proposed constitutional amendment to be approximately $43,732, which will likely be funded by appropriations from the General Revenue Fund.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This resolution creates Article VII, section 19 of the State Constitution.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.