

STORAGE NAME: h0089.sa.doc
DATE: October 12, 2001

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMITTEE ON STATE ADMINISTRATION
ANALYSIS**

BILL #: HJR 89
RELATING TO: Legislative Power Limitation/Taxes
SPONSOR(S): Representative(s) Wallace & Mack
TIED BILL(S): None

ORIGINATING COMMITTEE(S)/COUNCIL(S)/COMMITTEE(S) OF REFERENCE:

- (1) COMMITTEE ON STATE ADMINISTRATION
 - (2) FISCAL POLICY & RESOURCES
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The Florida Constitution provides for raising sufficient revenue to defray the expenses of the state for each fiscal period. The Florida Constitution also limits state revenues collected for any fiscal year to those revenues constitutionally permitted in the prior fiscal year plus an adjustment for growth.

HJR 89 proposes a constitutional amendment which prohibits the Legislature, in any law enacted after January 1, 2003, from imposing a tax, fee, penalty, or fine, expanding the base of a tax, or increasing the rate of a tax, fee, penalty, or fine, for an amount of significant fiscal impact, unless such legislation is enacted in a separate bill. HJR 89 further prohibits the Legislature, in any law enacted after January 1, 2008, from repealing an exemption from a tax, fee, penalty, or fine, "for an amount of significant fiscal impact," unless such law is enacted in a separate bill for only that purpose. If a separate bill is enacted in either instance, a two-thirds vote of the membership of each house of the Legislature is required. HJR 89 stipulates that this requirement will not apply to the "reclassification of criminal activity or the enactment of laws the result of which is to impose an already enacted fee, penalty, or fine to additional conduct."

Because HJR 89 proposes a constitutional amendment, it must be approved by a three-fifths vote of the membership of each house. Following this vote, it must then be adopted by the voters of the State of Florida at the next general election. HJR 89 provides for an effective date of January 1, 2003.

The fiscal impact of HJR 89 is indeterminate. Please see the "Fiscal Analysis & Economic Impact Statement."

The contents of HJR 89 were proposed during the 2001 legislative session in HJR 689. That bill failed.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|------------------------------|-----------------------------|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

B. PRESENT SITUATION:

Article VII, Section 1, Florida Constitution

Article VII, s. 1., Fla. Const., pertains to taxation, appropriations, state expenses, and state revenue limitations. Subsection (a) of this section provides that no tax is levied except in pursuance of law, and no state ad valorem taxes¹ are levied upon real estate or tangible personal property. Additionally, subsection (a) states that all other forms of taxation must be preempted to the state except as provided by general law.

Article VII, s. 1(b), Fla. Const., provides for a license tax on motor vehicles, boats, airplanes, trailers, trailer coaches, and mobile homes, in the amounts and for the purposes prescribed by law. However, these items are not subject to ad valorem taxes. Subsection (c) of this section provides that no money can be drawn from the treasury except pursuant of appropriation made by law.

Article VII, s. 1(d), Fla. Const., provides for raising sufficient revenue to defray the expenses of the state for each fiscal period. Essentially, subsection (d) requires the State to have a balanced budget in each fiscal period.

In 1994, Florida voters approved a constitutional amendment designed to limit the growth of state revenues. Article VII, s. 1(e), Fla. Const., limits state revenues collected for any fiscal year to those revenues constitutionally permitted in the prior fiscal year plus an adjustment for growth. This adjustment for growth is based on the average growth rate in personal income for the most recent 20 calendar quarters multiplied by the state revenues allowed for the prior fiscal year. This constitutional amendment specifies that Florida personal income is determined by the legislature, from information available from the United States Department of Commerce or its successor.

Article VII, s. 1(e), Fla. Const., allows for any state revenues calculated under this subsection to 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 will be increased. The vote may not be taken less than seventy-two hours after the third reading of the bill. "State revenues" are defined in Art. VII, s. 1(e), Fla. Const., as taxes, fees, licenses, and

¹ Section 192.001(1), F.S., defines "ad valorem tax" as a tax based upon the assessed value of property. The term "property tax" may be used interchangeably with the term "ad valorem tax."

charges for services imposed by the legislature on individuals, businesses, or agencies outside state government. However, "state revenues" do not include

- Revenues that are necessary to meet the requirements set forth in documents authorizing the issuance of bonds by the state;
- Revenues that are used to provide matching funds for the federal Medicaid program (except revenues used to support the Public Medical Assistance Trust Fund or its successor program and with the exception of state matching funds used to fund elective expansions made after July 1, 1994);
- Proceeds from the state lottery returned as prizes;
- Receipts of the Florida Hurricane Catastrophe Fund;
- Balances carried forward from prior fiscal years;
- Taxes, licenses, fees, and charges for services imposed by local, regional, or school district governing bodies; or
- Revenue from taxes, licenses, fees, and charges for services required to be imposed by any amendment or revision to this constitution after July 1, 1994.

Article VII, s. 1(e), Fla. Const., provides for the transfer to the budget stabilization fund of any state revenues collected for any fiscal year in excess of this limitation until the fund reaches the maximum balance specified in Art. III, s. 19(g), Fla. Const.,² after which the money must be refunded to taxpayers as provided by general law.

Article VII, s. 1(e), Fla. Const., is the only constitutional restraint on the State's ability to raise revenue.³

Article XII, Florida Constitution

Article XII, Fla. Const, provides schedules for the execution of duties prescribed in the state constitution pursuant to constitutional revisions. For example, Article XII, s. 21., Fla. Const., provides an effective date of January 1, 1995, for the amendment to Section 1 of Article VII limiting state revenues.

Article XI, Florida Constitution

Article XI, s. 1, Fla. Const., provides that an amendment of a section or a revision of one or more articles, or the whole, of the Florida Constitution may be proposed by joint resolution agreed to by three-fifths of the membership of each house of the legislature. The full text of the joint resolution and the vote of each member voting must be entered on the journal of each house.

Article XI, s. 5, Fla. Const., provides that any proposed amendment to or revision of the Florida Constitution must be submitted to the electors at the next general election held more than 90 days after the joint resolution, initiative petition or report of revision commission, constitutional convention, or taxation and budget reform commission proposing it is filed with the Secretary of

² Article III, Section 19(g), Florida Constitution, states that the budget stabilization fund's principal balance must not exceed an amount equal to 10% of the last completed fiscal year's net revenue collections for the general revenue fund.

³ HJR 689, Fiscal Responsibility Council, Bill Analysis, April 17, 2001.

State. However, if an affirmative vote of three-fourths of the membership of each house of the legislature limits the proposal to a single amendment or revision, it may be submitted at an earlier special election held more than 90 days after such filing.

Additionally, Article XI, s. 5, Fla. Const., provides that once in the tenth week, and once in the sixth week immediately preceding the week in which the election is held, the proposed amendment or revision, with notice of the date of election at which it will be submitted to the electors, must be published in one newspaper of general circulation in each county in which a newspaper is published.

Lastly, Article XI, s. 5, Fla. Const., provides that if the proposed amendment or revision is approved by vote of the electors, it will be effective as an amendment to or revision of the constitution of the state on the first Tuesday after the first Monday in January following the election, or on such other date as may be specified in the amendment or revision.

C. EFFECT OF PROPOSED CHANGES:

HJR 89 proposes an amendment to Article VII, s. 1(d), Fla. Const., to prohibit the Legislature, in any law enacted after January 1, 2003, from imposing a tax, fee, penalty, or fine, expanding the base of a tax, or increasing the rate of a tax, fee, penalty, or fine, for an amount of significant fiscal impact, unless such legislation is enacted in a separate bill. HJR 89 further prohibits the Legislature, in any law enacted after January 1, 2008, from repealing an exemption from a tax, fee, penalty, or fine, for an amount of significant fiscal impact, unless such law is enacted in a separate bill for only that purpose. If a separate bill is enacted in either instance, a two-thirds vote of the membership of each house of the Legislature is required.

HJR 89 stipulates that the two-thirds vote requirement will not apply to the "reclassification of criminal activity or the enactment of laws the result of which is to impose an already enacted fee, penalty, or fine to additional conduct."

Additionally, HJR 89 creates an additional section to Article XII of the Florida Constitution. Article XII, s. 26, Fla. Const., provides an effective date of January 1, 2003, for the amendment to Article VII, s. 1(d), Fla. Const., set forth in HJR 89.

Lastly, HJR 89 provides the format for the title and substance of the proposed amendment, as it would appear on the voter ballot.

D. SECTION-BY-SECTION ANALYSIS:

See "Effect of Proposed Changes."

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Indeterminate.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

HJR 689, proposed during the 2001 legislative session, contained similar provisions to HJR 89. The fiscal impact of HJR 689 was stated as "indeterminate." The unofficial fiscal estimate for HJR 89 is that the impact is indeterminate for it is purely speculative whether this limitation on the Legislature to increase taxes or impose fees, penalties, and fines, would result in decreased revenue to the State. This estimate will be eventually reviewed by the Revenue Impact Conference.⁴

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that counties or municipalities have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

None.

B. RULE-MAKING AUTHORITY:

None.

⁴ Pursuant to conversation with staff, Fiscal Policy and Resources Committee, October 18, 2001.

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C. OTHER COMMENTS:

The contents of HJR 89 were proposed during the 2001 legislative session in HJR 689. HJR 689 died on the calendar on May 4, 2001. The Senate companion to HJR 689, SJR 1414, was referred to the Committee on Finance and Taxation, where it died on May 4, 2001.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON COMMITTEE ON STATE ADMINISTRATION:

Prepared by:

Staff Director:

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