

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HJR 211                      Sales Tax Exemptions/Periodic Review  
**SPONSOR(S):** Ryan  
**TIED BILLS:** None                      **IDEN./SIM. BILLS:** SB 1420

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Judiciary		Billmeier	Havlicak
2) Finance & Tax			
3) Procedures			
4) Commerce & Local Affairs Apps. (Sub)			
5) Appropriations			

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### SUMMARY ANALYSIS

HJR 211 is a constitutional amendment that creates a joint committee of the House of Representatives and the Senate. The joint committee is required to conduct a review of exemptions from the sales and use tax or exclusions from the tax and recommend changes to those exemptions or exclusions. The joint resolution requires the committee to file a single bill for each recommendation. Each bill is voted on by the Senate. If it passes the Senate, it is voted on by the House of Representatives. The joint resolution retains the right of each legislator to file any bill relating to tax exemptions or exclusions.

The review required by HJR 211 takes place over a five year review period. The review starts again ten years after completion of the previous review.

HJR 211 has some fiscal impact on the state because the constitution requires the state to publish the amendment in newspapers prior to the 2004 general election.

This joint resolution becomes effective, if passed by a 3/5 vote of each house and approved by the voters, in January, 2005.

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

**STORAGE NAME:** h0211.ju.doc  
**DATE:** March 4, 2003

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |                             |   |
|--------------------------------------|------------------------------|-----------------------------|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |

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

N/A

#### B. EFFECT OF PROPOSED CHANGES:

##### Sales and Use Tax

Florida’s six percent sales and use tax is provided in chapter 212, F.S. The “sales” tax is imposed on items sold in Florida. A “use” tax is imposed on items not sold, but used in Florida.

Many 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. 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.

Changes in the tax law are made by the legislature pursuant to general law.

##### HJR 211

HJR 211 is a constitutional amendment to provide a mechanism to review the exemptions from the sales and use tax. The joint resolution creates a joint committee “to conduct comprehensive, periodic reviews of all exemptions to the tax on sales, use, and other transactions imposed by law and exclusions of sales of services from such taxation.” The joint resolution specifies the composition of the joint committee, the duties of the joint committee, and the powers retained by individual legislators.

##### Composition of the Joint Committee

This joint resolution requires that the joint committee shall consist of nine representatives appointed by the Speaker of the House of Representatives (“Speaker”) and nine senators appointed by the President of the Senate (“President”). Vacancies on the committee are filled in the same manner as the original appointment so the President would appoint a new senator if a senator left the committee and the Speaker would appoint new representatives. The first members appointed to the committee will serve until the general election prior the organization of the next legislature. The terms of

the members of subsequent committees for each review cycle shall be for 2 years and shall run from the organization of one legislature to the general election preceding the organization of the next legislature. The joint resolution provides that the committee chair is appointed by the President and the vice chair of the committee is appointed by the Speaker during even-numbered years. During odd-numbered years, the chair is appointed by the Speaker and the vice chair is appointed by the President.

The committee shall be governed by joint rules adopted by the legislature. Those rules must be adopted no later than the 2005 regular legislative session so that the committee can begin meeting by December 1 of the year of its first regular legislative session.

### **Duties of the Joint Committee**

The joint resolution requires that the committee reviews of exemptions over a five year review period. It allows the committee to use its discretion in determining the order in which it reviews the exemptions and exclusions but states, "the committee should review approximately one-fifth of the exemptions each year of a 5-year review period." The committee is required to make findings of fact and recommend whether the exemption should be retained, modified, or repealed or the exclusion should be retained or eliminated. Each recommendation must be made by majority vote of the committee members from each house so at least five senators and at least five representatives must approve each recommendation. If a majority vote cannot be achieved, the committee must recommend that the exemption or exclusion be retained.

The findings of fact and recommendations of the committee shall be made by reports to the President and the Speaker. This joint resolution requires the committee to submit reports to President and the Speaker not later than 30 days prior to each regular session in the years 2006, 2007, 2008, 2009, and 2010.

This joint resolution requires the committee to introduce bills for each of its recommendations. Each bill introduced must be restricted to a single exemption or the imposition of the tax on a single service and must be submitted to a vote of the members of the Senate no later than the eighth week of the legislative session in which introduced. If the bill passes the Senate by a majority vote, it is submitted to a vote of the members of the House of Representatives. If a bill passes both houses, it is subject to approval or veto by the governor pursuant to article III, section 8, Fla. Const.<sup>1</sup> Under the joint resolution, an exemption is not repealed if a bill presenting the exemption for reenactment fails to become law.

The joint resolution requires that a new 5-year review start every 10 years following the termination of the previous review cycle. For each subsequent 5-year review, the committee shall submit its reports not later than 30 days prior to the regular legislative session of each year of that review period, beginning with the 10th year after the year of the final report for the previous review.

### **The Joint Resolution's Effect on a Member's Ability to File Bills**

This joint resolution does not restrict a representative or senator from filing tax-related legislation. The joint resolution provides that nothing contained in it, "shall preclude, or be construed to limit, a legislator from filing for any legislative session a bill proposing to modify, repeal, or enact any exemption from the tax on sales, use, and other transactions or any exclusion of sales of services from such taxation."

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<sup>1</sup> This joint resolution does not specifically mention approval by the governor but it requires the committee to propose and the legislature to vote on a "bill." Article III, section 8, Fla. Const., provides that "[e]very bill passed by the legislature shall be presented to the approval and shall become a law if the governor approves and signs it, or fails to veto it within seven consecutive days after presentation."

C. SECTION DIRECTORY:

The joint resolution creates Article III, Section 20 of the Florida Constitution to require the legislature to create a joint committee to review exemptions and exclusions from the sales and use tax.

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

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

This joint resolution does not appear to impact state revenues.

2. Expenditures:

This joint resolution would require the state to comply with the constitutional requirement that proposed amendments be advertised in local newspapers. See Art. XI, s. 5, Fla. Const.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This joint resolution does not appear to increase or decrease revenues to local governments.

2. Expenditures:

This joint resolution does not appear to require expenditures by local governments.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This joint resolution could benefit private newspapers if those newspapers charged the state for the cost of publishing the constitutional amendment prior to the election. See Art. XI, s. 5, Fla. Const.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

A mandates analysis is unnecessary for a proposed constitutional amendment.

2. Other:

**Joint Resolutions**

Article XI, section 1, of the Florida Constitution, provides that a constitutional amendment may be proposed by joint resolution of the Legislature. Final passage in the House and Senate requires a three-fifths vote in each house;<sup>2</sup> passage in a committee requires a simple majority vote. If the joint resolution is passed during the 2003 session, the proposed amendment would be placed before the electorate at the 2004 general election.<sup>3</sup> 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

<sup>2</sup> See Art. XI, s. 1, Fla. Const.

<sup>3</sup> See Art. XI, s. 5(a), Fla. Const.

one newspaper of general circulation in each county in which a newspaper is published.<sup>4</sup> 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.<sup>5</sup>

### **Constitutional Issues Relating to Ballot Summaries**

The Florida Supreme Court requires that ballot summaries accurately explain the effect of a proposed constitutional amendment.<sup>6</sup> In Florida Association of Realtors, Inc. v. Smith,<sup>7</sup> the court struck a legislatively proposed constitutional amendment relating to a review of tax exemptions from the ballot. The court said that the ballot summary in that case did not clearly explain to the voters that they were significantly altering the legislative process by permitting a small number of legislators to directly make law.<sup>8</sup>

It can be argued that the ballot summary in this joint resolution does not have the same problems found in Florida Association of Realtors. The summary explains to the voters how the lawmaking process would be altered. The ballot summary states that the committee is required to conduct reviews, make recommendations, and propose legislation. It explains that proposed legislation must be voted on by the legislature. It states that the amendment does not prevent an individual legislator to file whatever bill he or she chooses relating to tax exemptions or exclusions.

### **The Joint Resolution's Requirement that the Senate Vote on Legislation Before the House**

The joint resolution requires that a bill proposed by the joint committee be submitted to the Senate for a vote. If the bill receives a majority vote in the Senate, it is submitted to the House of Representatives. This differs from article III, section 7, Fla. Const., which permits any bill to originate in either house. The procedure proposed under this joint resolution would raise constitutional concerns if it were a statute because it requires certain bills to originate in the Senate. Enacting the proposal as an amendment to the constitution should alleviate those concerns.

Giving each house different responsibilities occurs in other portions of the Florida Constitution. For example, the House of Representatives has the power to impeach certain officers while the Senate conducts the trial that determines whether impeached officers will be removed.<sup>9</sup> The constitution also permits the Senate to confirm appointments to certain offices.<sup>10</sup> Further, article I, section 7 of the United States Constitution requires that all bills raising revenue originate in the House of Representatives.

### **The Joint Resolution's Relationship to the Legislature's Rulemaking Authority**

Article III, s. 4, Fla. Const., provides that each house can create rules relating to quorum and procedure and that each house is the "sole judge for the interpretation, implementation, and enforcement" of the constitutional provision relating to quorum and procedure. This joint resolution would limit some of the rulemaking authority of each house by requiring that the joint committee propose legislation and requiring that the first vote be taken in the Senate.

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<sup>4</sup> See Art. XI, s. 5(c), Fla. Const.

<sup>5</sup> See Art. XI, s. 5(d), Fla. Const.

<sup>6</sup> See Armstrong v. Harris, 773 So. 2d 7 (Fla. 2000).

<sup>7</sup> 825 So. 2d 532 (Fla. 1<sup>st</sup> DCA 2002), rev. denied, 829 So. 2d 854 (Fla. 2002)

<sup>8</sup> See Fla. Assn. of Realtors, 825 So. 2d at 537.

<sup>9</sup> See Art. III, s. 17, Fla. Const.

<sup>10</sup> See Art. IV, s. 6, Fla. Const.

The constitution does have other requirements relating to legislative rules. For example, the constitution requires that legislative meetings be open and noticed to the public.<sup>11</sup> It also requires that certain meetings between the governor and legislative leadership be noticed and open to the public.<sup>12</sup>

**B. RULE-MAKING AUTHORITY:**

None.

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

This joint resolution would require the legislature to take action on bills recommended by the joint committee. It can be argued that the procedure mandated by this joint resolution could be created by the House of Representatives and the Senate pursuant to the rulemaking authority of each house. However, if the procedure were to be adopted by rule, it would have to be re-adopted at each organizational session by subsequent legislatures.

As discussed above, creating the procedure set forth in this joint resolution by statute would raise constitutional concerns because the joint resolution requires that certain legislation must originate in the Senate. In addition, creating the procedure described in this joint resolution would put this legislature in the position of attempting to bind the acts of future legislatures. One legislature cannot limit or enlarge the general powers of a subsequent legislature or prevent it from amending or repealing any legislation. The Florida Supreme Court stated:

To hold otherwise would mean that one legislature could bind a future legislature and interfere with the exercise of its orde[r]ly functions. That this cannot be done is too academic to discuss.

Ware v. Seminole County, 38 So. 2d 432, 433 (Fla. 1949).

**IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES**

N/A

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<sup>11</sup> See Art. III, s. 4(e), Fla. Const.

<sup>12</sup> See Art. III, s. 4(e), Fla. Const.