HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 1471 Legislative Power Limitation/Taxes
SPONSOR(S): Representative Gardiner
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Finance and Tax	14 Y, 8 N	Shamy	Diez-Arguelles
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

This joint resolution proposes a constitutional amendment that would limit the legislature's ability to impose or increase taxes, fees, penalties or fines for an amount of significant fiscal impact for a law enacted after January 1, 2005, or to repeal an exemption from taxes, fees, penalties or fines for an amount of significant fiscal impact for a law enacted after January 1, 2010, by requiring that such proposals be adopted by a two-thirds vote of the membership of each house in a separate bill.

The passage of this joint resolution requires a three-fifths vote of the membership of each house of the legislature.

If approved by the voters, the effective date of this constitutional amendment will be January 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. DOES THE BILL:

1. Reduce government?	Yes[]	No[]	N/A[x]
2. Lower taxes?	Yes[]	No[]	N/A[x]
3. Expand individual freedom?	Yes[]	No[]	N/A[x]
4. Increase personal responsibility?	Yes[]	No[]	N/A[x]
5. Empower families?	Yes[]	No[]	N/A[x]

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

B. EFFECT OF PROPOSED CHANGES:

Current Situation

The Florida Constitution contains several provisions that limit the State's ability to impose or increase taxes. Listed below are some examples.

1. The state cannot levy ad valorem taxes on real estate or tangible personal property.[1]

2. In 1994, the voters of the State of Florida adopted a constitutional amendment that limits the amount of taxes the State can collect during a given year. The growth of tax collections can not be more than the average annual growth of Florida personal income averaged over the most recent five years.[2]

3. Florida has a supermajority requirement for increases to the Corporate Income Tax rate. The Constitution sets the rate at five percent and states that any increase above five percent requires a three-fifths vote of the membership of each house of the legislature.[3] In 1984, the legislature increased the rate to 5.5 percent.

4. The tax on intangible personal property (both on stocks and bonds and on mortgages) can not exceed two mills ($2 of tax per $1,000 of value).[4]

5. When calculating the homeowner's assessed value on homesteaded property, the value can only increase at the lower rate of three percent or inflation (as calculated by the annual change in the CPI index).[5]

In conjunction with the above limitations, the Constitution also states that the legislature must pass a law to spend money from the treasury (an appropriation) and the State can not spend more in expenses than it has in revenues.[6]

[1] Article VII, section 1(a), Florida Constitution
[2] Article VII, section 1(e), Florida Constitution
[3] Article VII, section 5(b), Florida Constitution
[4] Article VII, section 2, Florida Constitution
[5] Article VII, section 4(c), Florida Constitution
[6] Article VII, sections 1(c) & (d), Florida Constitution

Other States

There are 16 states that require a supermajority vote to raise taxes. The table below gives a brief historical summary of the states that require a supermajority vote to raise taxes, the year the requirement was adopted, whether the process was adopted as a voter initiative or legislative referendum, the vote required, and the application of the limit.[7]

The first state that enacted a supermajority provision was Arkansas (1934). Arkansas requires that all taxes except sales and alcohol be adopted with a three-fourths vote of the membership of each house of the legislature. Kentucky is the most recent state to enact the supermajority provision (2000). Kentucky requires a three-fifths vote of the membership of each house of the legislature. The three states with the most stringent vote requirements are Arkansas, Michigan, and Oklahoma. Each state requires 75 percent of the vote of the membership of each house of the legislature. Most provisions apply to taxes, though it is difficult to determine if fees, licenses, penalties, and charges are included in this definition.

Legislative Supermajority to Raise Taxes--2004

(National Conference of State Legislators, January 2004)

State	Year Adopted	Initiative or Referendum	Legislative Supermajority Vote Required	Applies To...
Arizona	1992	I	2/3	All taxes
Arkansas	1934	R	3/4	All taxes except sales and alcohol
California	1979	I	2/3	All taxes
Colorado	1992	I	2/3	All taxes (1)
Delaware	1980	R	3/5	All taxes
Florida	1971	R	3/5	Corporate income tax (2)
Kentucky	2000	R	3/5	All taxes (3)
Louisiana	1966	R	2/3	All taxes
Michigan	1994	R	3/4	State property tax
Mississippi	1970	R	3/5	All taxes
Missouri	1996	R	2/3	All taxes (4)
Nevada	1996	I	2/3	All taxes
Oklahoma	1992	I	3/4	All taxes
Oregon	1996	R	3/5	All taxes
South Dakota	1996	R	2/3	All taxes
Washington	1993	I	2/3	All taxes (5)

Notes:

1. Tax increases automatically sunset unless approved by the voters at the next election.
2. Constitution limits corporate income tax rate to 5 %. A 3/5 vote in legislature is needed to surpass 5%. If voters are asked to approve a tax hike, it must be approved by 60% of those voting to pass.
3. Tax and fee increases voted on by legislature in odd-numbered years.
4. If governor declares an emergency, legislature can raise taxes by 2/3 legislative vote; otherwise, tax increases over approximately $70 million must be approved by a vote of the people.
5. Tax increases producing revenue that do not exceed the spending limit must be approved by 2/3 legislative vote; tax increases that produce revenue over the limit must receive2/3 approval by legislature and voters.

[7] National Conference of State Legislators, January 2004

Proposed Changes

This joint resolution proposes a constitutional amendment that would limit the legislature's ability to impose or increase taxes, fees, penalties or fines for an amount of significant fiscal impact for a law enacted after January 1, 2005, or to repeal an exemption from taxes, fees, penalties or fines for an amount of significant fiscal impact for a law enacted after January 1, 2010, by requiring that such proposals be adopted by a two-thirds vote of the membership of each house of the legislature in a separate bill.

Florida's Constitution provides that a proposed amendment to the Constitution must pass by a three-fifths vote of the membership of each house of the legislature.[8] The Constitution also states that the proposed amendment must be submitted to the voters at the next general election. If the amendment is approved by the voters, the amendment will take effect on the first Tuesday after the first Monday in January following the election, or on such date as may be specified in the amendment.[9] The joint resolution provides an effective date of January 1, 2005.

C. SECTION DIRECTORY:

Section 1: Amends Article VII, s.1, Fla. Const., limits the legislature's ability to increase taxes, fees, penalties or fines for an amount of significant fiscal impact for a law enacted after January 1, 2005, or to repeal an exemption from taxes, fees, penalties or fines for an amount of significant fiscal impact for a law enacted after January 1, 2010.

Section 2: Creates Article XII, s.26, Fla. Const., provides a schedule for the implementation of the amendment. The effective date is January 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

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8 Article XI, section 1, Florida Constitution
9 Article XI, section 1, Florida Constitution

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

The joint resolution limits the legislature's ability to pass laws that raise taxes, fees, penalties or fines for an amount of "significant fiscal impact". The term "significant fiscal impact" is not defined in the text of the resolution. Leaving the phrase undefined will lead to implementation problems and leave the court as the fiscal arbiter of what constitutes a "significant fiscal impact".

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES