HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HJR 7125 PCB GEAC 08-25 State and Local Government Revenue Limitations
SPONSOR(S): Government Efficiency & Accountability Council and Attkisson
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Government Efficiency & Accountability Council	13 Y, 4 N	Camechis/Dykes	Cooper
1) Policy & Budget Council		Diez-Arguelles	Hansen
2)			
3)			
4)			
5)			

SUMMARY ANALYSIS

In 1994, Florida voters approved an amendment to the Florida Constitution (constitution) designed to limit the growth of state revenues. This limitation has never limited the growth of state revenues and appears unlikely to do so in the near future.

The constitution does not limit the total amount of annual revenues that may be collected by counties, cities, school boards, or special districts. There are, however, limits on the imposition of certain taxes, assessments, and fees by local governments. The amount of ad valorem taxes that may be levied on real property is limited by the constitution and by laws enacted by the Legislature. The constitution also prohibits local governments from levying non-ad valorem taxes without legislative approval and allows the Legislature to limit or abolish authority of counties, cities, or special districts to levy special assessments and fees.

This joint resolution proposes an amendment to the constitution that revises the current constitutional limit on state revenues. The major changes are: (1) the use of personal income in the growth factor is replaced with a growth factor based on population and inflation plus one percentage point; (2) the base year is updated to Fiscal Year 2007 – 2008; and (3) the definition of state revenues subject to the limitation is changed to include within the limitation some types of revenues currently excluded and to explicitly exclude some types of revenues from the limitation.

The proposed amendment also limits the growth of revenues that may be collected by counties, cities, school districts, and special districts, by limiting those revenues by a growth factor similar to the one applicable to state revenues. The Legislature is granted discretion to implement the limitation by general law and to: determine the types of revenues to be included in the limitation, determine the types of governments to which the limitation applies, determine how excess revenues may be used and the conditions under which the limitation may be exceeded; and give special consideration to revenues generated by economic development programs and activities.

If approved by the voters, the amendment to the constitution will take effect on January 6, 2009 and will first apply to the 2009-2010 fiscal year.

The proposed state revenue limitation is more stringent than the current limitation and is, over time, more likely to restrict growth in revenues in a way that state revenues will become a declining portion of the state's economy. The proposed local government revenue limitation will also restrict the amount of revenues that may be raised by counties, cities, school districts and special districts, but the extent of the limitation's impact on local government revenues depends upon the manner in which the Legislature implements the limitation.

This joint resolution must be approved by a three-fifths vote of each house of the Legislature.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS: *Provide limited government; Ensure lower taxes:* This joint resolution proposes an amendment to the Florida Constitution to limit the amount of revenues that may be collected by the state, counties, cities, school districts, and special districts.

B. EFFECT OF PROPOSED CHANGES:

EFFECT OF PROPOSED CHANGES

1. State Revenue Limitation

This joint resolution proposes the following changes to the existing state revenue limitation in the Florida Constitution:[1]

- Replaces the growth factor based on average personal income growth over the most recent twenty quarters with a growth factor using the combined average annual rate of change in population and in the Consumer Price Index over the most recent 5 years, plus one percentage point.
- Changes the base year for the limitation from Fiscal Year 1994-1995 to Fiscal Year 2007-2008.
- Allows revenues collected in excess of the limitation to be transferred to the Budget Stabilization Fund or returned to taxpayers as provided by general law. The current limitation provides that excess revenues are to be first transferred to the Budget Stabilization Fund until the fund reaches its maximum and then returned to taxpayers as provided by general law.
- Expands the definition of "state revenues" subject to the limitation to include fines, revenues used to pay debt service for bonds issued by the state after June 30, 2008, and revenues used to provide matching funds for the federal Medicaid program.
- Excludes receipts of Citizens Property Insurance Company, public universities, and community colleges from the definition of state revenues. These revenues are currently not considered as being included in the definition of state revenues.

2. Local Government Revenue Limitation

The joint resolution provides that revenues collected by counties, municipalities, and special districts may not exceed revenues calculated using the adjustment for growth applicable to state revenues – the combined average annual rate of change in population and in the Consumer Price Index over the most recent 5 years, plus one percentage point. For school districts, the same growth adjustment applies, except that growth in enrollment is used instead of population growth. When population statistics are not available for a specific local government, the property tax base is used in the growth adjustment instead of population.

The Legislature is required to implement the local government revenue limitation by general law, and is granted discretion to: determine the types of revenues to be included in the limitation; determine the types of governments to which the limitation applies; determine how excess revenues may be used and the conditions under which the limitation may be exceeded; and, give special consideration to revenues generated by economic development programs and activities.

[1] Art. VII, s. 1(a), Fla. Const.

3. Effective Date

If approved by the voters, the amendment to the constitution will take effect on January 6, 2009 and will first apply to the 2009-2010 fiscal year.

BACKGROUND

1. Constitutional Limits on Taxes

The Florida Constitution contains several provisions that impose restrictions on the manner in which taxes are imposed or increased, including the following:

- The state cannot levy ad valorem taxes on real property or tangible personal property.[2]
- The growth of annual state revenues may not exceed the annual growth of Florida personal income averaged over the most recent five years.[3] (see discussion below)
- The corporate income tax rate is set at five percent and requires any increase above five percent to pass by a three-fifths vote of the membership of each house of the Legislature.[4] In 1984, the Legislature increased the rate to 5.5 percent.
- The tax on intangible personal property (including stocks, bonds, and mortgages) may not exceed two mills ($2 of tax per $1,000 of value).[5]
- When calculating the assessed value of homestead property for purposes of determining ad valorem taxation, the value can only increase at the lower rate of three percent or inflation (as calculated by the annual change in the CPI index).[6]
- Assessment increases of certain nonhomestead real property are limited to 10 percent per year for purposes of ad valorem taxation.[7]
- Any amendment to the Constitution that imposes a new tax or fee must be approved by at least two-thirds of Florida voters voting in the election.[8]

The Florida Constitution also requires the Legislature to pass a law in order to spend money from the state treasury and prohibits the State from spending more than it receives in revenues for any given fiscal period.[9]

2. Constitutional Limit on State Revenues[10]

In 1994, the Legislature passed a joint resolution[11] that placed before the voters a constitutional amendment to limit state revenues. The amendment was approved at the general election in November 1994. As amended, subsection 1(e), of Article VII of the Florida Constitution, places a limit on the rate of growth in state revenues, limiting such growth to no more than the growth rate in Florida personal income. In any year, the revenue limit is determined by multiplying the average annual growth rate in Florida personal income over the previous five years by the maximum amount of revenue permitted under the limitation for the previous year. In the first fiscal year of the limitation (1995-96), the limit was based on actual revenues in fiscal year 1994-95.

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[2] Art. VII, s. 1(a), Fla. Const.
[3] Art. VII, s. 1(e), Fla. Const.
[4] Art. VII, s. 5(b), Fla. Const.
[5] Art. VII, s. 2, Fla. Const.
[6] Art. VII, s. 4(c), Fla. Const.
[7] Art. VII, s. 4(e), Fla. Const.
[8] Art. XI, s. 7, Fla. Const.
[9] Art. VII, ss. 1(c) & (d), Fla. Const.
[10] Discussion of the constitutional limit on state revenues taken from the Office of Demographic and Economic Research website on March 28, 2008, http://edr.state.fl.us/reports/revenue%20limitation/revcapweb.htm.
[11] HJR2053 (1994).

State revenues collected for any fiscal year in excess of the limitation must be transferred to the Budget Stabilization Fund until such time as that fund reaches its maximum (10% of general revenue collections in the previous fiscal year) and then must be refunded to taxpayers as provided by general law. The Legislature, by a two-thirds vote of the membership of each house, may increase the allowable state revenue for any fiscal year. Such an increase must be in a separate bill containing no other subject and must set forth the dollar amount of the increase.

For purposes of the revenue limitation, the constitution defines "state revenues" to mean taxes, licenses, fees, and charges for services imposed by the Legislature on individuals, businesses or agencies outside of state government. The constitution specifically excludes from the definition of state revenues the following:

- Revenues necessary to meet the requirements set forth in documents authorizing the issuance of bonds by the state;
- Revenues used to provide matching funds for the federal Medicaid program, with the exception of revenues used to support the Public Medical Assistance Trust Fund and with the exception of state matching funds used for 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; and
- Revenue from taxes, licenses, fees, and charges for services required to be imposed by any amendment or revision to the constitution after July 1, 1994.

The constitution requires that in the event there is a transfer of responsibility for the funding of governmental functions between the state and other levels of government, an adjustment to the revenue limitation is to be made by general law to reflect the fiscal impact of the transfer.

State revenues have not exceeded the constitutional limitation since its adoption in 1994. See FISCAL COMMENTS, below, at page 14.

3. Local Revenue Sources and Limitations

Counties, cities, and independent special districts utilize a variety of revenue sources, including ad valorem taxes, non-ad valorem taxes, special assessments, impact fees, proprietary fees, and regulatory fees. School districts rely primarily on ad valorem tax revenues levied by the districts and impact fee revenues provided by counties. The Florida Constitution does not limit the total amount of revenues that may be collected by a local government entity. There are, however, limitations on the amount of and manner in which taxes, assessments, and fees are imposed. The following table indicates the annual growth in total annual revenues for counties, cities, and independent special districts (ISD) from 1994 to 2005:

Year	County Revenues	City Revenues	ISD Revenues	Year	County Revenues	City Revenues	ISD Revenues
1994	0.49%	1.64%	33.49%	**2000**	6.38%	7.46%	36.19%
1995	9.25%	28.09%	3.44%	**2001**	7.84%	7.14%	9.49%
1996	4.70%	6.68%	-22.40%	**2002**	7.57%	5.43%	11.78%
1997	5.12%	0.49%	2.50%	**2003**	6.20%	7.90%	-16.02%
1998	9.65%	17.71%	36.44%	**2004**	9.93%	5.83%	3.86%
1999	5.67%	4.73%	2.62%	**2005**	15.30%	16.00%	15.27%

a. Ad Valorem Taxes

The Florida Constitution reserves ad valorem taxation to local governments and prohibits the state from levying ad valorem taxes on real and tangible personal property.[12] The property tax is the largest single tax revenue source for local government in Florida, with $30.5 billion levied in FY2006–07.[13] Property taxes in Florida have grown in recent years from $16 billion in 2001 to $30.5 billion in 2006.

In general, the ad valorem tax is an annual tax levied by counties, cities, school districts, and some special districts based upon the value of real and tangible personal property as of January 1 of each year. The "taxable value" of real and tangible personal property is the fair market value, or just value, of the property adjusted for any exclusions, differentials, or exemptions allowed by the constitution or the statutes. The constitution strictly limits the legislature's authority to provide exemptions or adjustments to fair market value.

Millage rates[14] vary among local governments, but are subject to both constitutional and statutory limitations. With certain exceptions for millage levies approved by the voters, counties, cities, and school districts are each subject to a constitutional limitation of 10 mills (or 1 percent). In addition, school districts are subject to certain statutory caps less than ten mills to be eligible to participate in the state K-12 funding program (FEFP). Dependent special district millage rates are included in the limitation applicable to the authority to which they are dependent. Independent special district millage rates are limited by law establishing such districts. Local voters, by referendum, may authorize additional mills to be levied above the ten mill limitation for debt service without a time restriction, and for other purposes for a period of not longer than two years. Counties providing municipal services may also levy up to an additional ten mills above the ten mill county limitation within those areas receiving municipal-type services. Tax bills are mailed in November of each year based on the previous January 1st valuation and payment is due by the following March 31.

In 1992, Florida voters approved the popularly named "Save Our Homes" amendment to the State Constitution. This amendment limits the annual growth in the assessed value of homestead property to 3 percent over the prior year assessment or the percentage change in the U. S. Consumer Price Index, whichever is less.

In 2007, the Legislature enacted statutory changes that require most county, municipal, and special district governments to reduce their 2007-08 millage rates below their rolled back rates. Exceptions are made for certain fiscally limited governments and for certain types of activities. Local governments are allowed to override the prescribed rate reductions by extraordinary votes of their governing boards or by referenda of the electorate. For fiscal year 2008-09 and beyond, the same legislation limits growth in each county's, city's, or independent special district's property tax levies to growth in state per capita personal income growth plus growth attributable to the value of net new construction added to the tax roll each year. Again, overrides of the limitation are allowed by certain extraordinary votes or referenda.

On January 29, 2008, a constitutional amendment was approved that made four major changes to the provisions governing ad valorem taxation. First, an additional homestead exemption of up to $25,000 for assessed value between $50,000 and $75,000 was granted (this exemption does not apply to school district tax bases). Second, owners of homesteads relocating within the state were given the ability to transfer up to $500,000 of value protected from taxation due to the Save Our Homes assessment limitation. Third, an exemption was granted for the first $25,000 of tangible personal property. Finally, a per parcel annual assessed value growth limitation of 10% was created for non-

[12] Art. VII, sec. 1(a), Fla. Const.
[13] Property Tax Reform Committee: Preliminary Report and Recommendations. Presentation to the House Committee on State Affairs, January 24, 2007.
[14] One mill rate may be expressed as follows: 1 mill = .1 cent or $.001; also expressed as $1 per $1,000 or .1%.

homestead, non-agricultural property (the value protected from taxation as a result of this limitation does not apply to school district tax bases).

b. Non-Ad Valorem Taxes

A tax is an enforced burden imposed by sovereign right for the support of the government, the administration of law, and the exercise of various functions the sovereign is called on to perform.[15] Pursuant to the Florida Constitution, non-ad valorem taxes may not be levied by a county, municipality, special district, or school district unless specific statutory authorization is provided by the Legislature.[16] The Legislature may not create a special taxing district with general taxing authority; rather, a special district may be empowered to levy only those taxes bearing a substantial relation to the special purpose of the taxing district.[17]

The Legislature has authorized certain counties or cities to levy the following taxes, subject to statutory restrictions regarding the manner in which the taxes are imposed, the use of tax proceeds, and the amount of taxes that may be levied:

- Tourism-Related Local Option Taxes.[18]
- Local Option Fuel Taxes (up to 12 cents per county composed of three separate taxes).[19]
- Local Option Discretionary Sales Surtaxes.[20]
- Local Option Food and Beverage Taxes.
- Discretionary Surtax on Documents.
- Insurance Premium Tax.
- Municipal Pari-Mutual Tax.
- Public Service Tax.[21]

Some of these taxes may be levied by a majority vote of the governing board wishing to impose the tax, some taxes may be levied by ordinance adopted by an extraordinary vote of the governing body of the county or municipality levying the tax, and other taxes must be approved by a majority vote of the affected electors voting in a referendum

c. Special Assessments and Non-Ad Valorem Assessments

Special assessments are levied by counties, cities, and special districts and are generally collected as part of a property owner's annual ad valorem tax bill. If a special assessment is collected using the uniform procedure, the special assessment is characterized as a "non-ad valorem assessment."[22] The sole difference between a "special assessment" and a "non-ad valorem assessment" is the manner in which the assessments are collected. Therefore, for purposes of this analysis, the term "special assessment" refers to non-ad valorem assessments as well as special assessments that are not collected using the uniform procedure.

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[15] City of Boca Raton v. State, 595 So.2d 25 (Fla.1992).
[16] Art. VII, § 9(a), Fla. Const.; Collier County v. State, 733 So.2d 1012, 1014 (Fla. 1999).
[17] State ex rel. City of Gainesville v. St. Johns River Water Management Dist., 408 So.2d 1067 (Fla. 1st DCA 1982).
[18] These taxes include the Municipal Resort Tax, Tourist Development Taxes, 1 or 2 Percent Tax on transient rental transactions, Additional 1 Percent Tax on transient rental transactions, Professional Sports Franchise Facility Tax, Additional Professional Sports Franchise Facility Tax, Tourist Impact Tax within Areas of Critical State Concern, Convention Development Taxes, Consolidated County Convention Development Tax, and Charter County Convention Development Tax.
[19] These taxes include Ninth-Cent Fuel Tax, 1 to 6 Cents Local Option Fuel Tax, and 1 to 5 Cents Local Option Fuel Tax.
[20] These taxes include Charter County Transit System Surtax, Local Government Infrastructure Surtax, Small County Surtax Indigent Care and Trauma Center Surtax, County Public Hospital Surtax, School Capital Outlay Surtax, Voter-Approved Indigent Care Surtax.
[21] *See* the 2006 Local Government Financial Information Handbook for a complete discussion of each tax, available at http://www.floridalcir.gov/reports/lgfih06.pdf.
[22] S. 197.3632(1)(d), F.S.; Madison v. Foxx, 636 So.2d 39 (1st DCA 1994).

In 1992, the Florida Supreme Court explained that, although special assessments and taxes are both mandatory, a special assessment is distinct from a tax.[23] Taxes are levied throughout a particular taxing unit for the general benefit of residents and property and are imposed under the theory that contributions must be made by the community at large to support the various functions of government. Consequently, many citizens may pay a tax to support a particular government function from which they receive no direct benefit. Conversely, special assessments must confer a specific benefit on the land burdened by the assessment and are imposed under the theory that the portion of the community that bears the cost of the assessment will receive a special benefit from the improvement or service for which the assessment is levied.[24]

Florida case law has established two characteristics of a valid special assessment.[25] First, the property assessed must derive a special benefit from the improvement or service provided. Second, the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit.[26] In order for property to derive a special benefit, there must be a "'logical relationship' between the services provided and the benefit to the real property."[27]

A special assessment may provide funding for capital expenditures or the operational costs of services. Examples of services and improvements that may be funded by special assessments include:

- garbage collection and disposal
- fire protection
- street improvements
- landscaping
- erosion control
- parking facilities
- stormwater management services
- sewer improvements
- first response medical service
- mosquito control
- signage
- lighting
- downtown redevelopment
- water and sewer line extensions[28]

Services such as general law enforcement activities, the provision of courts, and indigent health care are, like fire protection services, functions required for an organized society. However, unlike fire protection services, those services provide no direct, special benefit to real property. Thus, such services may not be funded through special assessments.[29]

The following table reflects the aggregate amount of special assessment revenues reported by counties, municipalities, and special districts for the years 1993 and 2005:[30]

	1993 Revenues	2005 Revenues	Percent Increase
Counties	$204,456,351	$322,788,976	58%
Municipalities	24,932,058	230,428,793	824%
Special Districts	91,290,876	299,106,986	228%
TOTAL	320,679,285	852,324,755	166%

County Authority: A county has constitutional home rule authority to levy valid special assessments without specific authorization from the Legislature.[31] However, charter county authority to impose

[23] Sarasota County v. Sarasota Church of Christ, Inc., 667 So.2d 180 (Fla.1995), citing City of Boca Raton v. State, 595 So.2d 25 (Fla.1992).
[24] *Id.* at 183.
[25] City of Boca Raton, 555 So.2d 25 (Fla. 1992).
[26] *2006 Local Government Financial Information Handbook*, at 19.
[27] Lake County v. Water Oak Mgmt. Corp, 695 So.2d 667 (Fla. 1997).
[28] *2006 Local Government Financial Information Handbook*, at 19.
[29] Lake County v. Water Oak Mgmt. Corp, 695 So.2d 667 (Fla. 1997).
[30] Florida Legislative Committee on Intergovernmental Relations, based upon data reported by the entities to the Department of Financial Services.

special assessments may be limited by general law enacted by the Legislature or special law approved by the voters, and general or special law enacted by the Legislature may limit non-charter county authority.[32] Section 125.01, F.S., authorizes the governing body of a county to levy and collect special assessments to the extent not inconsistent with general or special law.

Municipal Authority: A municipality has constitutional home rule authority to levy valid special assessments without specific authorization from the Legislature; however, general or special laws enacted by the Legislature may limit municipal authority.[33]

Special District Authority: A special district possesses only those powers expressly provided by, or which can be reasonably implied from, the authority granted in the special district's charter.[34] Therefore, independent special districts may levy special assessments only if authorized by the Legislature in general or special law, while dependent special districts may levy special assessments if authorized by the county or municipality that created the district.

d. Impact Fees

An impact fee, which is considered a "regulatory fee," represents a total or partial reimbursement to local governments for the cost of additional facilities or services necessary as the result of new development. Impact fees shift the capital expense burden of growth from the general public to the developer and new residents, rather than imposing the cost of these additional facilities or services upon the general public.[35]

In Florida, impact fees are an outgrowth of local governments' home rule powers to provide certain services within their jurisdictions.[36] Therefore, the characteristics and limitations of impact fees are found in Florida case law rather than statute.[37]

In 1976, the Florida Supreme Court declared that an impact fee must meet the two-pronged "dual rational nexus test" in order to be a valid impact fee.[38] Under the dual rational nexus test, an entity imposing an impact fee must establish that the impact fee has:

- A reasonable connection, or a rational nexus, between the anticipated need for the additional capital facilities and the growth generated by the new development; and
- A reasonable connection, or a rational nexus, between how the collected funds are spent and the benefits received by the new development from those funds.[39]

Legally sufficient impact fees share common characteristics, including: (1) the fee is levied on new development or new expansion of existing development; (2) the fee is a one-time charge, although collection may be spread over time; (3) the fee is earmarked for capital outlay only, operating costs are excluded; and (4) the fee represents a proportional share of the cost of the facilities needed to serve the new development.[40]

In 2006, the Legislature created the Florida Impact Fee Act in s. 163.31801, F.S., finding "that impact fees are an important source of revenue for a local government to use in funding the infrastructure

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[31] Art. VIII, §1(f), (g), Fla. Const.; § 125.01(1)(r), F.S.; Collier County v. State, 733 So.2d 1012, 1014 (Fla. 1999).
[32] Art. VIII, §1(f), (g), Fla. Const.
[33] Art. VIII, § (2)(b), Fla. Const.; City of Boca Raton v. State, 595 So.2d 25, 30 (Fla. 1992).
[34] State ex rel. City of Gainesville v. St. Johns River Water Mgmt District, 408 So.2d 1067 (Fla. 1st DCA 1982).
[35] *2006 Local Government Financial Information Handbook*, at 25-26.
[36] Art. VIII, §§1-2, Fla. Const.; Contractors and Builders Association of Pinellas County v. City of Dunedin, 329 So.2d 314 (Fla. 1976).
[37] *Id.* at 26.
[38] Florida Impact Fee Review Task Force, *Final Report & Recommendations*, Feb. 1, 2006, at 2; *See*, City of Dunedin at 320.
[39] *Id.*
[40] *2006 Local Government Financial Information Handbook*, at 26.

necessitated by new growth" and that "impact fees are an outgrowth of the home rule power of a local government to provide certain services within its jurisdiction."[41] The Legislature, however, declared its intent that an impact fee adopted by ordinance of a county or municipality or by resolution of a special district must, at a minimum:

- Require that the fee's calculation be based on the most recent and localized data;
- Provide for accounting and reporting of impact fee collections and expenditures via the use of separate accounting funds;
- Limit administrative charges for the collection of impact fees to actual costs; and
- Require the provision of notice no less than 90 days before the effective date of an ordinance or resolution imposing a new or amended impact fee.[42]

Impact fees are the most significant of the regulatory fees in terms of their fiscal impact on counties, municipalities, and school districts.[43] In 1993, reported impact fee revenues in Florida totaled $177 million. In 2005, reported impact fee revenues totaled $1.6 billion. This growth in impact fee revenues represents at least an 800 percent increase, with much of the accelerated growth occurring since the late 1990s.

County Authority: A county may levy valid impact fees under its constitutional home rule power without specific authorization by the Legislature.[44] However, charter county authority to impose impact fees may be limited by general law enacted by the Legislature or special law approved by the voters, and general or special law enacted by the Legislature may limit non-charter county authority.[45] School districts do not have independent authority to levy impact fees; therefore, county governments levy impact fees and share the proceeds with the school districts.

Municipal Authority: A municipality may levy valid impact fees under its constitutional home rule power without specific authorization by the Legislature; however, general or special law enacted by the Legislature may limit that authority.[46]

Special District Authority: A special district possesses only those powers expressly provided by, or which can be reasonably implied from, the authority granted in the special district's charter.[47] Therefore, independent special districts may levy impact fees only if authorized by the Legislature in general or special law, while dependent special districts may levy impact fees if authorized by the county or municipality that created the district.

e. Proprietary and Regulatory Fees

Counties and municipalities possess home rule authority to impose a variety of proprietary and regulatory fees to pay the cost of providing a service or facility or regulating an activity.

Proprietary fees are based on the assertion that local governments have the exclusive legal right to impose such fees.[48] Two principles guide the use and application of such fees. The imposed fee must be reasonable in relation to the privilege or service provided by the local government, or the fee payer must receive a special benefit from the local government.

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[41] Ch. 2006-218, L.O.F. (CS/SB 1194)
[42] s. 163.31801, F.S.; *2006 Local Government Financial Information Handbook*, at 25.
[43] 2006 Local Government Financial Information Handbook, paragraph at 25-26.
[44] Art. VIII, §1(f), (g), Fla. Const.; § 125.01(1)(r), F.S.; City of Dunedin, 329 So.2d 314 (Fla. 1976).
[45] Art. VIII, §1(f), (g), Fla. Const.
[46] Art. VIII, § (2)(b), Fla. Const.; City of Dunedin, 329 So.2d 314 (Fla. 1976).
[47] State ex rel. City of Gainesville v. St. Johns River Water Mgmt District, 408 So.2d 1067 (Fla. 1st DCA 1982).
[48] Fees of this type include franchise fees, user fees, and utility fees.

Regulatory fees are imposed pursuant to the local government's police powers in the exercise of its sovereign functions.[49] Two principles guide the use and application of such fees. The imposed fee cannot exceed the cost of the regulatory activity, and proceeds from the fee must be used solely to pay the cost of the regulatory activity for which it is imposed.[50]

4. <u>Tax or Expenditure Limits in Other States</u>[51]

As of January 2007, 30 states operate under a tax or expenditure limitation (TEL). Twenty-three states having spending limits, four have tax limits, and three have both. About half are constitutional provisions and the other half are statutory. Many of the existing TELs were enacted in two periods of time--the late 1970s and early 1990s. These periods coincided with economic fluctuations in the United States and began shortly after the property tax revolt in California that resulted in passage of Proposition 13.

a. Types of Limits

In general, no two TELs are exactly alike in their design and characteristics. While the general goal of limits is the same--to restrain government tax revenues or spending outlays--TELs vary considerably in design, scope and restrictiveness. The National Conference of State Legislatures (NCSL) has identified four categories of traditional TELs: expenditure limits, revenue limits, appropriations limited by the revenue estimate, and hybrids or combinations. In addition, within these categories, some TELs also may include certain exceptions and exemptions. Also, some states have other provisions that require voter approval or supermajority legislative votes.

Traditional limits refer to revenue, expenditure or appropriation limits. The features and restrictiveness of these limits vary considerably. Such variations make it difficult to categorize state TELs, but generally, they fall into one of the categories described below:

- Revenue limits -- Revenue limits tie allowable yearly increases in revenue to personal income or some other type of index such as inflation or population. The limit provides for the refund of excess revenues to taxpayers.
- Expenditure limits -- This is the most common type of state TEL. Expenditure limits, like revenue limits, are typically tied to personal income or a growth index. The impact of expenditure limits depends upon the limit parameters. In many states, the limit is tied to a growth index related to the expansion of the economy. Somewhat more restrictive are expenditure limits with refund provisions if revenues exceed the authorized spending level.
- Appropriations limited to a percentage of revenue estimates -- This variation of a spending limit simply ties appropriations to the revenue forecast, typically ranging from 95 percent to 99 percent of expected revenues. It does not establish an absolute limit or tie growth to a measurable index. Delaware, Iowa, Mississippi, Oklahoma and Rhode Island have this type of appropriation limit in place.
- Hybrids -- States also have combined components of various limits. For example, Oregon has a state spending limit tied to personal income growth, and a provision requiring refunds if revenues are more than 2 percent above the revenue forecast. This law limits spending and, in a sense, limits revenues by tying them to the forecasted amount. Colorado is another hybrid state.

A number of states operate under voter approval or supermajority requirements that are not tax or expenditure limitations in the traditional sense; however, they can limit state revenue and expenditure options. Often these measures are more restrictive than traditional limits.

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[49] Examples of regulatory fees include building permit fees, inspection fees, and storm water fees.
[50] *2006 Local Government Financial Information Handbook*, at 19.
[51] This discussion of other state limitations is largely adapted from *State Tax and Expenditure Limits*, Bert Waisanen, National Conference of State Legislatures (Sept. 2007).

- Voter approval requirements -- This is the most restrictive type of limit since all tax increases or tax increases over a specified amount must receive voter approval. Only three states have adopted voter approval requirements.
- Supermajority requirements -- Sixteen states now require supermajority votes to pass tax increases. Supermajority requirements dictate either a three-fifths, two-thirds or three-fourths majority vote in both chambers to pass tax increases or impose new taxes. The effectiveness of supermajority requirements depends upon the political makeup of the legislature. In states with one predominant party, the majority party may have enough votes to increase taxes or block tax proposals.

b. TABOR in Colorado[52]

Perhaps the most well known TEL is Colorado's Taxpayers' Bill of Rights (TABOR), which is commonly viewed as having the most restrictive set of fiscal limits. TABOR is a set of constitutional provisions Colorado voters adopted in 1992 that limits revenue growth for state and local governments and requires that any tax increase by state or local government (counties, cities, towns, school districts and special districts) be approved by the voters of the affected government.

TABOR is principally a revenue limit. It limits annual revenue the state government can retain from all sources except federal funds to the previous year's actual collections (not necessarily actual collections) plus a percentage adjustment equal to the percentage growth in population plus the inflation rate. Any revenues received in excess of this limit must be refunded to the voters. When revenues fall, the following year's limit on collections is still based on the actual collections of the previous year. The result is that in years following a recession, allowed revenues will grow only from the worst revenue collection year of the recession to the extent allowed by the rate of population growth and inflation. (This "ratchet" provision was eliminated in 2005 as discussed below.) Although citizens may vote to allow the state to keep the excess, TABOR limits the times when such votes may occur.

TABOR also limits the growth of general fund expenditures to 6 percent more than the previous year or 5 percent of personal income, whichever amount is lower. In practice, the 6 percent limit has generated the lower amount.

Colorado's early experience with TABOR included very rapid demographic and economic growth because of substantial migration (30 percent population growth from 1990 to 2000) and the rapid expansion of the electronics and telecommunications industries in the state. Taxpayers saw substantial "TABOR refund checks" as revenues above the limit were returned to them. The General Assembly subsequently reduced personal income and sales tax rates to reduce surplus (returnable) revenues.

Contraction in electronics and telecommunications industries occurred rapidly in 2000 and 2001, shrinking the state economy and tax collections. The interaction of an additional constitutional provision with the TABOR revenue limit exacerbated the state's budget problems. Voters in 2000 approved Amendment 23, which requires the General Assembly to increase base per-pupil funding for K-12 education by inflation plus 1 percentage point annually through 2010, and by inflation thereafter. K-12 funding now accounts for 42 percent of the Colorado general fund budget.

Without any voter-approved adjustments to the limit, the TABOR cap ensures that state revenue growth will remain below the rate of economic growth in the state. At the same time, Amendment 23 requires an increasing share of allowable revenue growth be directed to K-12 education.

TABOR prevented the creation of a traditional state rainy day fund through implication as well as its requirement that revenues in excess of a limit be returned to the voters. Reserves of 3 percent of the

[52] Bert Waisanen, *State Tax and Expenditure Limits--2007*, National Conference of State Legislatures, Sept. 2007.

general fund are allowed, but any use must be repaid in the following fiscal year. Thus the reserve fund is more like a cash-flow reserve than a rainy-day fund.
As a result of pressure points exposed by the impact of a severe recession in the early 2000s, there was bipartisan agreement that some easing of the existing limits would be helpful in allowing the state budget to recover and move forward. On November 1, 2005, voters in Colorado approved a constitutional amendment proposed by the legislature to allow the state to retain all revenues collected during the next five years. In 2011, a new revenue base will be selected, and growth from that base will be limited to the increase in population plus inflation. This change effectively removes the so-called "ratchet effect" which had frozen the revenue base at its 2002 recessionary low. By approving the referendum, voters decided to forego projected mandatory tax refunds that would have been required had allowable revenue collections been left at the former base level. The revenue impact over five years is $3.743 billion.

5. Consumer Price Index[53]

The Consumer Price Index (CPI) is calculated by the U.S. Department of Labor, Bureau of Labor Statistics (BLS). CPI is a measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services and measures inflation as experienced by consumers in their day-to-day living expenses. Each month, BLS releases thousands of detailed CPI numbers; however the broadest, most comprehensive CPI is the *Consumer Price Index for All Urban Consumers (CPI-U) for the U.S. City Average for All Items, 1982-84=100.*

The following table illustrates the percentage change, or growth rate, in the CPI since 1997:

YEAR	CPI	GROWTH IN CPI	YEAR	CPI	GROWTH IN CPI
1997	160.5		**2003**	184.0	2.3%
1998	163.0	1.6%	**2004**	188.9	2.7%
1999	166.6	2.2%	**2005**	195.3	3.4%
2000	172.2	3.4%	**2006**	201.6	3.2%
2001	177.1	2.8%	**2007**	207.3	2.8%
2002	179.9	1.6%			

The CPI market basket is developed from detailed expenditure information provided by families and individuals on what they actually bought. The CPI represents all goods and services purchased for consumption by the reference population. BLS has classified all expenditure items into more than 200 categories, arranged into eight major groups. Major groups and examples of categories in each are as follows:

- Food and Beverages (breakfast cereal, milk, coffee, chicken, wine, service meals and snacks)
- Housing (rent of primary residence, owners' equivalent rent, fuel oil, bedroom furniture)
- Apparel (men's shirts and sweaters, women's dresses, jewelry)
- Transportation (new vehicles, airline fares, gasoline, motor vehicle insurance)
- Medical Care (prescription drugs and medical supplies, physicians' services, eyeglasses and eye care, hospital services)
- Recreation (televisions, pets and pet products, sports equipment, admissions);
- Education and Communication (college tuition, postage, telephone services, computer software and accessories);
- Other goods and services (tobacco and smoking products, haircuts and other personal services, funeral expenses).

[53] The information in this section regarding the CPI was obtained from the U.S. Department of Labor, Bureau of Labor Statistics website at http://www.bls.gov/cpi/cpifaq.htm#Question_11. Additional information is available on the website.

Also included within these major groups are various government-charged user fees, such as water and sewerage charges, auto registration fees, and vehicle tolls. In addition, the CPI includes taxes (such as sales and excise taxes) that are directly associated with the prices of specific goods and services. However, the CPI excludes taxes (such as income and Social Security taxes) not directly associated with the purchase of consumer goods and services. The CPI does not include investment items, such as stocks, bonds, real estate, and life insurance. (These items relate to savings and not to day-to-day consumption expenses.)

6. Florida's Population Growth

Population growth continues to be the state's primary engine of economic growth, fueling both employment and income growth. Population growth hovered between 2.0% and 2.6% since the mid 1990's, slowing to 1.8% in 2007. Over the forecast horizon, population growth will further slow – averaging 1.2% between 2025 and 2030. Florida is still on track to break the 20 million mark during 2011 and become the third most populous state – surpassing New York.[54]

7. Growth in Personal Income

Generally speaking, personal income is the sum of all earnings (wages, salaries, proprietors' income) plus dividends, interest, rent and transfer payments. In Florida, the annual growth in personal income since 1996 has ranged from a low of 3.3% in 2003 to a high of 9.8% in 2005, as indicated in the following table:

FISCAL YEAR	Percent Growth in Personal Income	FISCAL YEAR	Percent Growth in Personal Income	FISCAL YEAR	Percent Growth in Personal Income
1994	4.5%	**1999**	6.9%	**2004**	6.9%
1995	6.8%	**2000**	6.4%	**2005**	9.8%
1996	6.2%	**2001**	6.7%	**2006**	8.7%
1997	6.2%	**2002**	3.6%	**2007**	6.4%
1998	7.1%	**2003**	3.3%		

Data is not available to calculate personal income or growth rates in personal income for each individual county and city in Florida.

C. SECTION DIRECTORY: Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: See FISCAL COMMENTS

2. Expenditures: The Florida Constitution requires publication of a proposed amendment or revision to the constitution in one newspaper of general circulation in each county in which a newspaper is published, once in the tenth week and once in the sixth week immediately preceding the week in which the election is held. The Department of State, Division of Elections, estimates that the average non-recurring cost of compliance is approximately $60,000 in FY2007-08.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

[54] Florida: An Economic Overview, Presented by The Office of Economic and Demographic Research to the House Policy & Budget Council, p. 4 (Jan. 8, 2008).

1. Revenues: See FISCAL COMMENTS

2. Expenditures: None.

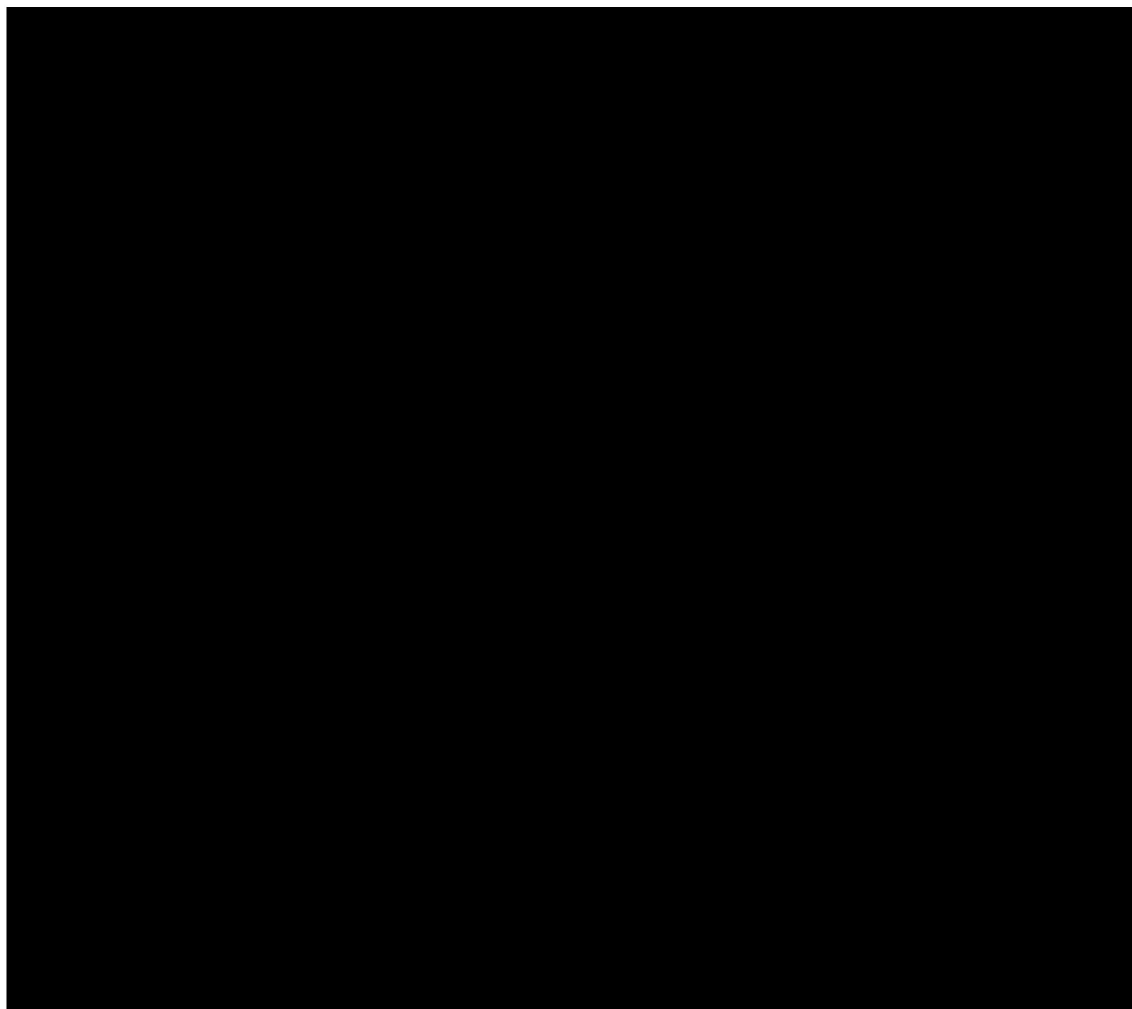
C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: The provisions of this joint resolution will restrict the ability of state and local governments to receive revenues.

There is a belief that the current state revenue limit has not worked as a meaningful limitation on state government's growth in revenue collections. For example, under the existing limitation, the state would be able to receive over $12.7 billion more than expected in fiscal year 2008-2009 and not exceed the limit. In the current fiscal year, 2007-2008, the state could receive $9.5 billion more than expected and not exceed the limitation. Current projections are that the gap between expected revenues and the limitation is expected to continue to grow over the foreseeable future.

The proposed limitation is stricter than the current limitation and, over time, is more likely to restrict growth in revenues in a way that state revenues will become a declining portion of the state's economy.

The following table shows the history and future estimates for the current revenue limitation and projections for the proposed limitation.



Once implemented by the Legislature, the local government revenue limitation set forth in the joint resolution will also restrict the ability of counties, cities, school districts and special districts to receive

revenues. The extent of the restriction will be dependent on how the Legislature chooses to implement the limitation.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision: The mandates provisions of Article VII, section 18 of the Florida Constitution do not apply to joint resolutions.

2. Other: Article XI, Section 1 of the State Constitution, authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by three-fifths of the membership of each house. The amendment must be placed before the electorate at the next general election held after the proposal has been filed with the Secretary of State's office or at a special election held for that purpose.

B. RULE-MAKING AUTHORITY: This joint resolution does not require any agency to adopt administrative rules.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

D. STATEMENT OF THE SPONSOR: Not applicable.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

None.