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 Community Affairs Committee

BILL:	CS/SJR 2420
INTRODUCER:	Community Affairs Committee and Senator Haridopolos
SUBJECT:	State and Local Revenues
DATE:	March 23, 2010 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Gizzi	Yeatman	CA	**Fav/CS**
2.			GO	
3.			FT	
4.			WPSC	
5.			RC	
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE.....	X	Statement of Substantial Changes
B. AMENDMENTS........................		Technical amendments were recommended
		Amendments were recommended
		Significant amendments were recommended

I. Summary:

This joint resolution proposes an amendment to Section 1 and the creation of a new section in Article VII of the State Constitution, to provide the following:

- Replaces the existing state revenue limit based on Florida personal income growth with new state revenue limits.
- Requires excess revenues to be deposited into budget stabilization funds and provides for distribution of the excess funds.
- Authorizes voters to permit the collection of revenues in excess of the limit.
- Authorizes the Legislature to approve emergency taxes by a supermajority vote.
- Prohibits the state from imposing new taxes, fees, assessments, or charges for services without first obtaining approval by a supermajority vote of electors voting on the issue.
- Prohibits the state from incurring multi-year debts or financial obligations without adequate cash reserves.

The proposed amendment will be submitted to the electors at the general election in 2010 or at an earlier special election specifically authorized by law for the purpose, and will take

effect upon adoption. The Legislature is required to adopt implementing legislation which must take effect July 1, 2011.

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

II. Present Situation:

Article VII, Section 1, of the State Constitution:
Taxation; appropriations; state expenses; state revenue limitation.

In 1994, Florida's voters approved an amendment to the State Constitution to limit state revenue collections to the revenues for the prior fiscal year plus an adjustment for growth. Article VII, s. 1(e), of the State Constitution classifies growth to mean "an amount equal to the average annual rate of growth in Florida personal income' over the preceding five years.[1] Beginning in fiscal year 1995-1996, excess collections are to be deposited in the budget stabilization fund[2] until it is fully funded at which point the overage is to be refunded to taxpayers as provided by general law. State Revenues may only 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 are increased.[3]

"State revenues" means taxes, fees, licenses, and charges for services imposed by the Legislature on individuals, businesses, or agencies outside state government.;[4] however, it does not include:

- Revenues necessary to meet bond requirements;
- Revenues that provide matching funds for the federal Medicaid program (with the exception of revenues used to support the Public Medical Assistance Trust Fund);
- Revenues used to fund elective expansions made after July 1, 1994;
- Proceeds used to fund lottery prizes;
- Receipts of the Florida Hurricane Catastrophe Trust fund;
- Balances carried forward from prior fiscal years; or
- Taxes, licenses, fees and charges for services required to be imposed by an amendment or revision to the constitution after July 1, 1994.[5]

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[1] H.J.R. 2053, adopted 1994.
[2] The State Treasury consists of three types of funds in the custody of the Chief Financial Officer: the General Revenue Fund, Trust Funds, and the Budget Stabilization Fund.
[3] Art. III, s.12 of the Florida Constitution.
[4] Art. VII, s. 1(e) of the Florida Constitution. (Examples of state revenue sources include auto title and lien fees, beverage licenses, cigarette and other tobacco products tax, corporation fees, documentary stamp taxes, estate tax, hotel and restaurant licenses and fees, hunting and fishing licenses, insurance premium tax, interest, motor fuel taxes, pari-mutuel tax, pollutant taxes, sales and use tax, severance taxes, and unemployment compensation tax.) See *2008 Florida Tax Handbook,* prepared by the Senate Committee on Finance & Tax, the House Policy and Budget Council, the Office of Economic and Demographic Research, and the Department of Revenue's Office of Resource Management.
[5] Art. VII, s. 1(e) of the Florida Constitution. *See also* Department of Revenue, *Senate Bill 2420 Analysis* at 2 (March 17, 2010) (on file with the Senate Committee on Community Affairs).

Subsection 1(e) of Article VII, in the State Constitution, provides that any:

> adjustment to the revenue limitation shall be made by general law to reflect the fiscal impact of transfers of responsibility for the funding of governmental functions between the state and other levels of government. The Legislature may enact laws that prescribe procedures for administration of the limitation.[6]

Article III, Section 19, of the State Constitution:
State budgeting, planning and appropriations processes.

Article III, section 19, of the State Constitution, was created in 1992, to establish a 72-hour waiting period before either house of the Legislature may vote on the final passage of the General Appropriations Act, and require that details reflecting the annualized costs of the state budget and reflecting the nonrecurring costs of budget requests accompany all agency and department legislative budget requests, the Governor's recommended budget, and the appropriation bills.[7]

The amendment also required appropriation bills to be formatted so that all major program areas are addressed in separate sections with an itemization of expenditures for certain operations and funds.[8] These major program areas include: education enhancement "lottery" trust fund items; all other education funds; human service; criminal justice and corrections; natural resources, environment growth management, and transportation; general government; and, the judicial branch. Additionally, appropriation bills must include an itemization of specific expenditures exceeding $1 million.

Finally, the amendment also created the Budget Stabilization Fund to require at least five percent not to exceed 10 percent, of the last completed fiscal year's net revenue collections for the general revenue fund to be retained in a "rainy day fund". Any withdraws from the fund must be provided in a single-subject bill and may only be for the purpose of covering shortfalls of the general revenue fund or for the purpose of providing funding for an emergency as defined by general law.

In 2006, Florida voters approved an additional amendment to section 19, Art. III of the State Constitution, which provided, in part, that the Legislature could prescribe by general law conditions under which limited adjustments to the state budget, as recommended by the Governor, or the Chief Justice of the Florida Supreme Court, could be approved without the concurrence of the full Legislature.

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[6] *Id.*
[7] Proposed by the Taxation and Budget Reform Commission, adopted in 1992.
[8] An itemization of expenditures is required for: state operations, state capital outlay, aid to local governments and nonprofit organizations operations, aid to local governments and nonprofit organizations capital outlay, federal funds and the associated state matching funds, spending authorizations for operations, and spending authorizations for capital outlay. *See* Art. III, s. 19(b) of the Florida Constitution.

Constitutional Taxes

***Ad valorem taxes*—** Section 9, Art. VII of the State Constitution, provides that counties, cities, and special districts may levy ad valorem taxes as provided by law and subject to the following millage limitations:

- Ten mills for county purposes.
- Ten mills for municipal purposes.
- Ten mills for school purposes.
- A millage rate fixed by law for a county furnishing municipal services.
- A millage authorized by law and approved by the voters for special districts.
- A millage of not more than 1 mill for water management purposes in all areas of the state except the northwest portion of the state which is limited to 1/20th of 1 mill (.05).[9]

The statutory authority for local governments and schools to assess millage is provided in s. 200.001, F.S. The statutory authority and the maximum rate at which water management districts may assess millage is provided in s. 373.503, F.S.[10]

***Gross Receipts Tax on Utilities/Motor Vehicle License Tax*—** Sections 9(a) and (d), Art. XII of the State Constitution, provide two sources of revenue for the benefit of school districts. The first is a 2.5 percent tax imposed on the gross receipts from utility services that are delivered to a retail consumer within the state, and a 2.37 percent tax imposed on the gross receipts of sellers of telecommunications services. The tax proceeds go into the Public Education Capital Outlay and Debt Service Trust Fund (PECO) and are used for capital outlay projects of the state system of public education including universities, community colleges, vocational technical schools, and public schools. The second source is a portion of the revenues derived from the licensing of motor vehicles and mobile homes. The first proceeds of such revenues are placed in the District Capital Outlay and Debt Service Trust Fund and used for capital outlay projects of school districts and community colleges. The revenue is distributed based on a constitutional formula.

***Motor Vehicle Fuel Taxes*—** Section 9(c), Art. XII of the State Constitution, provides a state tax of 2 cents per gallon on motor fuel and other like products of petroleum, an equivalent tax upon other sources of energy used to propel motor vehicles, and an allocation formula for distribution of the taxes collected. The tax proceeds may be used for debt service requirements, if there are any, on local bond issues backed by the tax proceeds, and then for the acquisition, construction, and maintenance of roads. The allocation formula has three components: a geographic area component, a population component, and a collection component. The taxes are collected by the Department of Revenue and transmitted to the State Board of Administration for distribution. A distribution factor, based on the three allocation components, is calculated annually for each county in the form of weighted county-to-state ratios. To determine each county’s monthly distribution, the monthly statewide tax receipts are multiplied by each county’s distribution factor.

[9] Art. VII, s. 9 of the Florida Constitution.
[10] *See* ss. 200.001 and 373.503, F.S., for more information.

III. Effect of Proposed Changes:

This joint resolution proposes to amend section 1(e), Art. VII, of the State Constitution to repeal the state revenue limitation.

This joint resolution also creates a new section to Art. VII, of the State Constitution.

Paragraph (a) of the new section creates the following "DEFINITIONS":

- "Fiscal year" means the applicable fiscal year of the state.
- "Growth" means an amount equal to government revenues collected in the 2010-2011 fiscal year multiplied for each fiscal year by the combined rate of inflation and rate of population change.
- "Rate of inflation" means the percentage change in the Consumer Price Index for all urban wage earners and clerical workers for the south region, or a successor index, for the preceding year as calculated by the U. S. Department of Labor, Bureau of Labor Statistics.
- "Rate of population change" means the percentage change in population within the boundaries of the state as estimated by the U.S. Census Bureau.
- "State revenues" means taxes, fees, assessments, licenses, fines, and charges for services imposed by the legislature or the executive branch agencies. The term does not include bond proceeds, state lottery prize proceeds, receipts of the Florida Hurricane Catastrophe Fund and Citizens Property Insurance Corporation or their successor entities, community college and university tuition and fees, gifts, federal funds, collections for another government, pension fund contributions and earnings, budget stabilization fund transfers, damage awards, and property sales.

Paragraph (b), creating "STATE REVENUE LIMIT," provides:

- State revenues for any fiscal year are limited to the revenues collected in the 2010-2011 fiscal year, plus an annual adjustment for growth, subject to the exceptions provided in the proposed amendment.

Paragraph (c), creating "REVENUE RELATING TO BONDS," provides:

- Although bond proceeds are excluded as state revenues, state revenue limits must be decreased by the amount of the annual debt service on such bonds.

Paragraph (d), creating "LEGISLATIVE OVERIDE OF REVENUE LIMITS," provides:

- That the state may not impose taxes, fees, licenses, fines, or charges for services expected to exceed the revenue limit projected by the state at the adoption of the General Appropriations Act.
- Excess state revenues collected each year must be transferred to the budget stabilization fund specified in s. 19(g), Art. III of the State Constitution until the fund reaches the constitutionally specified maximum amount.

  - Additional excess revenue must be held in a separate cash reserve.
    - With such excess revenue and any investment income thereon treated as revenue in the first or second fiscal year after collection, as prescribed by general law.
  - Funds from the budget stabilization fund may not be expended except pursuant to a declaration of emergency by the Governor and a two-thirds vote of the membership of each house of the Legislature.
  - When the budget stabilization fund is fully funded, revenue collected in excess of the revenue limit may not be spent unless:
    - Authorized by a two-thirds vote of the membership of each house of the Legislature; or
    - The funds are used to provide tax relief or to reduce the ad valorem taxes that must be levied by a school district to become eligible for state funding.

Paragraph (e), creating "EMERGENCY TAXES," provides:

- Emergency taxes may be assessed only under the following conditions:
  - Emergency reserves must be depleted before emergency tax revenues can be spent.
  - Emergency tax revenues must be refunded within 180 days after the emergency terminates if the tax revenues have not been spent down.
  - Emergency property taxes are prohibited.
  - No new taxing power is granted.

- Emergency taxes may not be levied unless the Governor declares a state of emergency and the taxes are approved by a two-thirds vote of the membership of each house of the Legislature, with each vote recorded.
- "Emergency" does not include economic conditions, revenue shortfalls, or salary and fringe benefit increases.

Paragraph (f), creating "BALLOT ISSUE TO EXCEED A REVENUE LIMIT," provides:

- A ballot issue for authorization to exceed a revenue limit must state the amount by which the state proposes to exceed the limit in each fiscal year.
- A ballot issue must also state the date on which the authority to exceed a revenue limit expires. That date must be the last day of the fiscal year.

Paragraph (g), creating "REVENUE LIMIT ADJUSTMENT," provides:

- The Legislature may provide by general law for adjustments to the revenue limits to reflect the fiscal impact of the following events occurring on or after January 4, 2011:
  - A change in federal or state law which increases or decreases state or local government responsibility for the funding of governmental functions; or
  - A transfer of responsibility to fund a government function to the state or local government.

Paragraph (h), creating "VOTER APPROVAL OF NEW REVENUE SOURCES," provides:

- The state must receive advance approval by a two-thirds vote of the electors voting on a measure to:
  - Impose a new tax, fee, assessment, or charge for services; or
  - Incur multiple-year direct or indirect debt or other financial obligations without having adequate present cash reserves pledged irrevocably and held for all future payments.
    - An exception is provided for refinancing bond debt at a lower interest rate or to add new employees to a pension plan.

Paragraph (i), creating "CONSTRUCTION," provides:

- That this section must be interpreted in a manner that reasonably restrains most state revenue growth. The section supersedes any conflicting provisions of the State Constitution in effect prior to the effective date of the section.

Paragraph (j), creating "EFFECTIVE DATE," provides:

- That this section is effective upon approval by the electors.
- During the 2011 Regular Session of the Legislature, the Legislature must adopt implementing legislation with an effective date of July 1, 2011.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This joint resolution does not fall under the mandate provisions in section 18, Art. VII, of the State Constitution.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Section 1, Art. X, of the State Constitution, authorizes the Legislature to propose amendments to the State Constitution by joint resolution approved by three-fifths vote 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.

Section 5(e), Art. XI, State Constitution, requires a 60 percent voter approval for a constitutional amendment to take effect. An approved amendment becomes effective on the first Tuesday after the first Monday in January following the election at which it is approved, or on such other date as may be specified in the amendment or revision.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

This joint resolution will make it more difficult for the state to increase taxes and other revenue sources by requiring voter approval to exceed revenue limits and to spend excess revenues when limits are exceeded.

B. Private Sector Impact:

To the extent that voter approval is required in order for the state to exceed the revenue and spending limits contained in the proposed resolution, members of the public may see a reduction in taxes, assessments, and fees.

C. Government Sector Impact:

Section 5(d), Art. XI, State 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 tenth week and again in the sixth week immediately preceding the week the election is held. The Division of Elections within the Department of State estimated that the average cost per word to advertise an amendment to the State Constitution is $94.68 for this fiscal year.

Since this joint resolution has not been heard by the Revenue Estimating Conference, the full fiscal impact of this resolution is unknown at this time.

VI. Technical Deficiencies:

This joint resolution proposes to create a new section in Article VII of the State Constitution, but the section number is not designated.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

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

CS by Community Affairs Committee on March 23, 2010:
This committee substitute (CS) limits the applications of this SJR to the State, thereby exempting local governments from these revenue limitations.

B. Amendments:

None.