

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 Appropriations Subcommittee on Finance and Tax

BILL: HJR 7001

INTRODUCER: Ways and Means Committee and Representative Leek and others

SUBJECT: Supermajority Vote for State Taxes or Fees

DATE: February 20, 2018

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Fournier</u>	<u>Diez-Arguelles</u>	<u>AFT</u>	Recommend: Fav/1 amendment
2.	_____	_____	<u>AP</u>	_____

Please see Section IX. for Additional Information:

AMENDMENTS - Significant amendments were recommended

I. Summary:

HJR 7001 proposes an amendment to the State Constitution providing that no state tax or fee may be imposed, authorized, raised by the Legislature, or authorized by the Legislature to be raised, except through legislation approved by two-thirds of the membership of each house of the Legislature. The joint resolution also requires that any proposed state tax or fee imposition, authorization or increase must be contained in a separate bill that contains no other subject.

The joint resolution specifies that the proposed amendment does not authorize the imposition of any state tax or fee otherwise prohibited by the State Constitution, and does not apply to any tax or fee imposed by, or authorized to be imposed by, a county, municipality, school board, or special district.

The amendment proposed in the joint resolution will take effect on January 8, 2019, if approved by sixty percent of the voters during the 2018 general election or earlier special election.

The Revenue Estimating Conference determined that the joint resolution does not affect state revenue.

Article XI, Section 5(d) of the 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. Based on 2016 advertising costs, staff estimates full publication costs for advertising the proposed constitutional amendment to be approximately \$43,732, which would likely be paid from nonrecurring General Revenue funds.

II. Present Situation:

Background

Under current law the Legislature has broad power to enact and modify the state's revenue policy through legislation, subject to state and federal constitutional constraints. Such legislation is generally subject to the normal constitutional requirements for the enactment of general law. Passage of a bill requires a majority vote in each house of the Legislature,¹ and presentation to the Governor for approval.² The bill becomes a law if the Governor approves it, or fails to veto it within the timeframes prescribed in the State Constitution.³ Vetoes can be overcome by a two-thirds vote of each house of the Legislature.⁴

Corporate Income Tax

Florida's constitution requires three-fifths approval of the membership of each house of the Legislature for increases in the corporate income tax rate above 5 percent.⁵

Other Types of Bills Requiring a Supermajority Vote

There are several other types of bills that require something greater than a majority vote to become law. These include:

- Bills that would authorize the conveyance of property taken by eminent domain to a natural person or private entity require a three-fifths vote of each house of the Legislature.⁶
- Bills that would appropriate nonrecurring general revenue funds for recurring purposes cannot exceed three percent of the total general revenue funds estimated to be available unless approved by a three-fifths vote of the membership of each house of the Legislature.⁷
- Bills that would repeal court rules of practice or procedure require a two-thirds vote of the membership of each house of the Legislature.⁸
- Bills that would increase or decrease judicial offices by a number different than that certified by the Supreme Court to the Legislature.⁹
- Bills that would create special laws or general laws of local application that are prohibited by general law (but not by the constitution), or bills that would amend or repeal such a prohibition, require a three-fifths vote of the membership of each house of the Legislature.¹⁰

¹ Fla. Const. Art. III, s. 7.

² Fla. Const. Art. III, s. 8(a).

³ The Governor has seven days after presentation to act on a bill if the seven day period occurs during a legislative session, or fifteen days otherwise. Fla. Const. Art. III, s. 8(a).

⁴ Fla. Const. Art. III, s. 8(c).

⁵ Fla. Const. Art. VII, s. 5(a). The current corporate income tax rate is 5.5 percent. Section 220.11(2), F.S.

⁶ Fla. Const. Art. X, s. 6(c).

⁷ Fla. Const. Art. III, s. 19(3).

⁸ Fla. Const. Art. V, s. 2(a).

⁹ Fla. Const. Art. V, s. 9.

¹⁰ Fla. Const. Art. III, s. 11(a)(21). The following for prohibited subject matters have been added under the authority of this constitutional provision: s. 112.67, F.S. (Pertaining to protection of public employee retirement benefits); s. 121.191, F.S. (Pertaining to state-administered or supported retirement systems); s. 145.16, F.S. (Pertaining to compensation of designated county officials); s. 189.031(2), F.S. (Pertaining to independent special districts); s. 190.049, F.S. (Pertaining to the creation of independent special districts having the powers enumerated in two or more of the paragraphs of s. 190.012, F.S.); s. 215.845, F.S. (Pertaining to the maximum rate of interest on bonds); s. 298.76(1), F.S. (Pertaining to the grant of authority,

- Bills that would create certain local mandates that would require counties or municipalities to expend funds,¹¹ reduce their authority to raise revenues,¹² or reduce the percentage of a state shared tax,¹³ require a two-thirds vote of the membership of each house of the Legislature.
- Bills that would create or recreate a trust fund require a vote of three-fifths of the membership of each house of the Legislature.¹⁴
- Bills that would raise revenue above certain constitutionally prescribed limits require a two-thirds vote of the membership of each house of the Legislature.¹⁵
- Bills that would exempt public access from certain public records or meetings require a two-thirds vote of the membership of each house of the Legislature.¹⁶
- Joint resolutions proposing an amendment to the State Constitution require a three-fifths vote of the membership of each house of the Legislature.¹⁷
- Bills creating a special election for voter approval of a constitutional amendment proposed by joint resolution, a report of a revision commission, a constitutional convention or the taxation and budget reform commission, require a three-fourths vote of the membership of each house of the Legislature.¹⁸

Constitutional Amendments Approving New State Taxes or Fees

In 1996, Florida voters approved an amendment to the State Constitution raising the threshold by which amendments imposing new state taxes or fees must be approved. It provides, “No new State tax or fee may be imposed on or after November 8, 1994 by any amendment to this State Constitution unless the proposed amendment is approved by not fewer than two-thirds of the voters voting in the election in which such proposed amendment is considered For purposes of this section, the phrase “new State tax or fee” means any tax or fee which would produce revenue subject to lump sum or other appropriation by the Legislature, either for the State general revenue fund or any trust fund, which tax or fee is not in effect on November 7, 1994 including without limitation such taxes and fees as are the subject of proposed constitutional amendments appearing on the ballot on November 8, 1994.”¹⁹

Other States with Supermajority Vote Requirements for Tax or Revenue Increases

Currently, 15 states (including Florida) require a supermajority vote to impose or increase some or all taxes and fees. Except for Wisconsin, these requirements are found in the states’ constitutions. These requirements vary widely in their application. The following table summarizes the requirements for each affected state:

power, rights, or privileges to a water control district formed pursuant to ch. 298, F.S.); s. 373.503(2)(b), F.S. (Pertaining to allocation of millage for water management purposes); s. 1011.77, F.S. (Pertaining to taxation for school purposes and the Florida Education Finance Program); s. 1013.37(5), F.S. (Pertaining to the “State Uniform Building Code for Public Educational Facilities Construction”).

¹¹ Fla. Const. Art. VII, s. 18(a)

¹² Fla. Const. Art. VII, s. 18(b)

¹³ Fla. Const. Art. VII, s. 18(c)

¹⁴ Fla. Const. Art. III, s. 19(f)(1).

¹⁵ Fla. Const. Art. VII, s. (1)(e).

¹⁶ Fla. Const. Art. I, s. 24(c).

¹⁷ Fla. Const. Art. XI, s. 1.

¹⁸ Fla. Const. Art. XI, s. 5(a)

¹⁹ Id.

State	Year Adopted	Vote Requirement	Application
Arizona ²⁰	1992	2/3	New taxes, tax rates, fees, reduction or elimination of exemptions, etc., assessments, authorizations
Arkansas ²¹	1934	3/4	Tax rates, applicable only to taxes in effect as of the effective date of the amendment
California ²²	1979	2/3	New or increased taxes, levies, exactions (not fees)
Delaware ²³	1980	3/5	New taxes and fees
Florida ²⁴	1971	3/5	Corporate income tax rate above 5 percent
Kentucky ²⁵	2000	3/5 ²⁶	Raising revenue or appropriating funds
Louisiana ²⁷	1966	2/3	New taxes
Michigan ²⁸	1994	3/4	A law that increases the statutory limits on ad valorem taxes in effect as of 02-01-1994.
Mississippi ²⁹	1970	3/5	Any revenue bill, or any bill providing for assessments of property for taxation
Missouri ³⁰	1996	2/3	Any increase in taxes or fees that produces annual revenue increases of \$50 million or more
Nevada ³¹	1996	2/3	Increases in public revenue, including taxes, fees, assessments and rates, or tax base changes
Oklahoma	1992	3/4	New taxes and tax rates
Oregon ³²	1996	3/5	New taxes and tax rates
South Dakota ³³	1996	2/3	New taxes and tax rates
Wisconsin ³⁴	2011	2/3	Increases in sales or income tax rates (Statutory requirement)

²⁰ A.R.S. Const. art. 9, s. 22.

²¹ AR Const. art. 5, s. 38.

²² West's Ann. Cal. Const. art. 13A, s. 3.

²³ Del. C. Ann. Const. art. 8, s. 11.

²⁴ Fla. Const. art. VII, s. 5(b).

²⁵ KY Const. s. 36.

²⁶ This limitation applies to a legislative session in an odd-numbered year.

²⁷ LSA-Const. art. 7, s. 2.

²⁸ M.C.L.A. Const. art. 9, s 3.

²⁹ MS Const. art. 4, s 70.

³⁰ V.A.M.S. Const. art. 10. s. 18(e).

³¹ N.R.S. Const. art 4, s. 18.

³² OR Const. art IV, s. 25.

³³ SD Const. art. 11, s. 14.

³⁴ Wisconsin Statutes 13.085.

III. Effect of Proposed Changes:

This joint resolution proposes an amendment to the State Constitution that would provide that no state tax or fee may be imposed, authorized, or raised by the Legislature, or authorized by the Legislature to be raised, except through legislation approved by two-thirds of the membership of each house of the Legislature. The joint resolution defines the following terms:

- "Fee" means any charge or payment required by law, including any fee for service, fee or cost for licenses, and charge for service.
- "Raise" means:
 - To increase or authorize an increase in the rate of a state tax or fee imposed on a percentage or per mill basis;
 - To increase or authorize an increase in the amount of a state tax or fee imposed on a flat or fixed amount basis; or
 - To decrease or eliminate a state tax or fee exemption or credit.

The joint resolution requires that any proposed state tax or fee imposition, authorization or increase must be contained in a separate bill that contains no other subject. The joint resolution also specifies that the proposed amendment does not authorize the imposition of any state tax or fee otherwise prohibited by this Constitution, and does not apply to any tax or fee imposed by, or authorized to be imposed by, a county, municipality, school board, or special district.

The amendment proposed by the joint resolution does not contain an effective date. Therefore, pursuant to Art. XI, Fla. Const., s. 5(e), it shall be effective on the first Tuesday after the first Monday in January following the election, which is January 8, 2019.

While this joint resolution does not affect existing taxes and fees, it affects the Legislature's ability to respond to future conditions.

For example, fees are typically used to recover the costs of providing a service or benefit. "User fees" are used to recover the costs of goods and services provided by the government to individuals or businesses that use them, such as highway tolls, parks admissions, and university tuition. "Regulatory fees" are used to recover the costs of providing a license or permit under laws enacted to protect health, welfare, and public safety. The joint resolution limits the Legislature's ability to impose increased costs upon those persons receiving services or benefits.

The joint resolution limits the Legislature's ability to change the state's revenue structure in response to changing circumstances even when the result of any change is revenue-neutral. Exemptions or tax credits that have outlived their intended purposes will be more difficult to repeal under this joint resolution. Also, the Legislature's ability to enact a bill to correct a court or administrative decision that results in an interpretation of a tax statute that was not intended by the Legislature will be limited.

The joint resolution limits the Legislature's ability to change legislatively established premiums and copayments associated with the State Employee Health Insurance Program or the Florida Medicaid Program.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

Not applicable to joint resolutions.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The Revenue Estimating Conference adopted a zero impact for the joint resolution.³⁵ This is a joint resolution proposing a constitutional amendment to be submitted to the voters, and whether the constitutional amendment passes or not, the impact is zero. If it passes, the amendment creates a new constraint on the Legislature's ability to enact, authorize or increase state taxes and fees. It does not directly impact current baseline revenue forecasts because they are based on current law and current administration and do not contain assumptions regarding future legislative changes. Future positive state and local revenue impacts from proposed legislation that could pass under current legislative authority may not occur if the amendment is approved by voters.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This resolution creates Article VII, section 19 of the State Constitution.

³⁵Revenue Estimating Conference, Supermajority Vote for State Taxes and Fees, 2018 HB 7001, p. 138, http://edr.state.fl.us/Content/conferences/revenueimpact/archives/2018/_pdf/page138-139.pdf (Analyzed Nov 17, 2017).

IX. Additional Information:

- A. **Committee Substitute – Statement of Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None

- B. **Amendments:**

Barcode 813842 by Appropriations Subcommittee on Finance and Tax on February 20, 2018:

The amendment is the substance of SJR 1742 which passed the subcommittee on January 29, 2018.

The amendment requires a 3/5 vote of the membership of each house of the Legislature for a law that:

- imposes a new tax,
- increases the rate or amount of an existing tax, or
- broadens the tax base of an existing tax

and

- results in a net increase in state revenue.

The amendment does not require a supermajority vote for:

- a law that increases state fees.
- a law that amends or repeals a tax exemption or credit.
- a law that contains both increases and decreases in revenues but that does not result in a net increase in state revenues.

(The amendment allows for very small increases in revenues for bills that contain both increases and decreases. The increase cannot exceed 1% of the tax increases contained in the bill.)

The amendment does not apply to any tax imposed by, or authorized to be imposed by, a county, municipality, school board, or special district.