

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 Governmental Oversight and Accountability Committee

BILL: SJR 1906

INTRODUCER: Senator Haridopolos

SUBJECT: Government Revenues/Voter Approval/New Taxes & Fees

DATE: March 16, 2009 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Molloy	Yeatman	CA	Fav/3 amendments
2.	Wilson	Wilson	GO	Pre-Meeting
3.			FT	
4.			WPSC	
5.			RC	
6.				

Please see Section VIII. for Additional Information:

A. COMMITTEE SUBSTITUTE..... 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, and creates a local government revenue limit.
- Limits property tax revenues based on changes in local growth and school enrollment changes.
- 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 and the local government governing body to approve emergency taxes by a supermajority vote.
- Prohibits state and local government 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 and local government 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:

Section 1, Art. VII 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 prior year's allowed revenue plus an adjustment for growth based on the growth rate of state personal income over the preceding five years. Beginning in fiscal year 1995-1996, excess collections are to be deposited in the budget stabilization fund¹ until it is fully funded and overage is to be refunded to taxpayers as provided by general law. 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. The Legislature must wait 72 hours after the third reading of the bill before taking a vote.

"State revenues" are defined as taxes, fees, licenses, and charges for services imposed by the Legislature on individuals, businesses, or agencies outside state government.² "State revenues" do 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. An adjustment to the limitation may 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.

¹ 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.

² 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 staff of 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.)

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

In 1992, Florida's voters approved an amendment to create s. 19, Art. III of the State Constitution. The amendment, which took effect November 4, 1992, created a 72-hour cooling off period before either house of the Legislature may vote on the final passage of the General Appropriations Act, and provided that detail 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.

The amendment provided that the major program areas in the state budget 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. Each program area must include an itemization of expenditures for state operations, state capital outlay, aid to local governments and nonprofit organizations operations, aid to local governments and nonprofit organization capital outlay, federal funds and the associated state matching funds, spending authorizations for operations, and spending authorizations for capital outlay. All expenditures exceeding \$1 million must be itemized.

The amendment also provided for the creation of the budget stabilization fund beginning in fiscal year 1994-1995. At least 1 percent of an amount equal to the last completed fiscal year's net revenue collections for the general revenue fund are to be retained in the stabilization fund. Tiered increases to the fund were provided and beginning in 1998, at least 5 percent of the last completed fiscal year's net revenue collections for the general revenue fund are to be retained. The fund's principal balance may not exceed 10 percent of the last completed fiscal year's net revenue collections for the general revenue fund, and withdrawals from the fund must be provided in a single-subject bill and only 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 s. 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 concurrent of the full Legislature.

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).

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

Gross Receipts Tax on Utilities/Motor Vehicle License Tax— Section 9(a) and (d), Art. XII of the State Constitution, provides 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.

STATUTORY TAXES – LOCAL GOVERNMENT

Non- ad valorem taxes³— A tax is an enforced burden imposed by sovereign right for the support of government, the administration of law, and the exercise of various functions the sovereign is called on to perform.⁴ Examples of taxes that may be imposed by local governments pursuant to legislative authority include tourist development taxes, local discretionary sales taxes, voter-approved indigent care surtax, and local option food and beverage taxes.

Pursuant to the Florida Constitution, taxes may not be levied by a county, municipality, special district, or school district unless specific statutory authority is provided by the Legislature.⁵ The Legislature may not create a special taxing district with general taxing authority; rather, a special

³ See House of Representatives Staff Analysis for HB 715, prepared by staff of the Committee on State Affairs, March 26, 2008.

⁴ *City of Boca Raton v. State*, 595 So.2d 25 (Fla. 1992)

⁵ s. 9(a), Art. VII of the State Constitution, *Collier Count v. State*, 733 So.2d 1012, 1014 (Fla. 1999)

district may be empowered only to levy those taxes bearing a substantial relation to the special purpose of the taxing district.⁶

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;⁷
- Local Option Fuel Taxes (up to 12 cents per county composed of three separate taxes);⁸
- Local Option Discretionary Sales Surtaxes;⁹
- Local Option Food and Beverage Taxes;
- Discretionary Surtax on Documents;
- Insurance Premium Tax;
- Municipal Pari-Mutual Tax; and,
- Public Service Tax.

Some of these taxes may be levied by a majority vote of the governing body 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.

HOME RULE REVENUE SOURCES¹⁰

Under Florida's Constitution, local governments possess strong home rule powers, and may utilize a variety of revenue sources for funding services and improvements without express statutory authorization. Franchise fees, impact fees, special assessments, and user fees are examples of these home rule revenue sources. In implementing fee programs and special assessments, a local government's goal is to create an assessment or fee that avoids classification as a tax by the courts. If an assessment or fee does not meet the case law requirements and is classified as a tax, then the local government must have general law authorization.

Special Assessments— As established in Florida case law, two requirements exist for the imposition of a valid special assessment. First, the property assessed must derive a special benefit from the improvement or service provided; and second, the assessment must be fairly and reasonably apportioned among the beneficiaries of the service. Examples of special assessments include garbage disposal, sewer improvements, fire protection, fire and rescue services, and stormwater management services.

⁶ *State ex rel. City of Gainesville v. St. Johns River Water Management Dist.*, 408 So.2d 1067 (Fla. 1st DCA 1982).

⁷ 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 Taxes Within Areas Of Critical State Concern, Convention Development Taxes, Consolidated County Convention Development Tax, And Charter County Convention Development Tax.

⁸ These taxes include Ninth-Cent Fuel Tax, 1 to 6 Cents Local Option Fuel Tax, and 1 to 5 Cents Local Option Fuel Tax.

⁹ 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.

¹⁰ *2008 Local Government Financial Information Handbook, Part Two, pgs. 19-32*

Proprietary Fee— Proprietary fees are imposed under the assertion that local governments have the exclusive legal right to impose such fees. The imposed fee is reasonable in relation to the privilege or service provided by the local government, or the fee payer receives a special benefit from the local government. Proprietary fees include franchise fees, user fees, and utility fees.

Regulatory Fees— Regulatory fees are imposed under the local government’s exercise of police powers in the exercise of its sovereign functions. Two principles guide the use and application of such fees: the imposed fee cannot exceed the cost of the regulatory activity, and the fee is generally required to be applied solely to pay the cost of the regulatory activity for which it is imposed.

LOCAL GOVERNMENT REVENUE SHARING¹¹

State-shared revenue programs allocate a portion of a state-collected tax to specified local governments based on eligibility requirements. A formula is usually developed for the allocation of funds between units of local government. While general law restricts the use of several shared revenues, proceeds from other shared revenues may be used for the general revenue needs of local governments. A number of revenue sharing programs require as a prerequisite that the county or municipality meet eligibility criteria.¹² State-shared revenue sources include the following:

- Alcoholic Beverage License Tax
- County Fuel Tax
- County Revenue Sharing Program
- Distribution of Sales and Use Taxes to Counties
- Emergency Management Assistance
- Fuel Tax Refunds and Credits
- Insurance License Tax
- Local Government Half-Cent Sales Tax Program
- Mobile Home License Tax
- Municipal Revenue Sharing Program
- Oil, Gas, and Sulfur Production Tax
- Phosphate Rock Severance Tax
- Emergency 911 Fee
- State Housing Initiatives Partnership Program

III. Effect of Proposed Changes:

This joint resolution proposes the following revisions to s.1(c), Art. VII of the State Constitution:

- Repeals the state revenue limitation.

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

¹¹ *Id at page 33.*

¹² s. 218.23, F.S. (2008), which provides criteria for participation in revenue sharing based on the ability of the local government to collect certain types of revenue or levy ad valorem taxes that raise a specified amount of money.

Subsection (a) of the new section to Article VII of the State Constitution creates the following definitions:

- “Fiscal year” means the applicable fiscal year for the state or a local government.
- “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. School districts may use enrollment changes in lieu of population changes.
- “Local government” means a county, municipality, school district, or special district with the authority to impose ad valorem taxes. Municipal service taxing units or benefits unit, and special dependent districts of a county are included in the county government. Municipal service taxing units or benefit units, and special dependent districts of a municipality are included in the municipality. Community development districts are excluded from the proposed amendment.
- “Local government revenues” means taxes, fees, assessments, licenses, fines, and charges for services imposed by a local government. The term does not include bond proceeds, gifts, federal funds, collections for another government, pension contributions, emergency reserve transfers, damage awards, and property sales.
- “Rate of enrollment” means the percentage change in each school district’s student enrollment as reported by the district.
- “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 or a local government 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 AND LOCAL GOVERNMENT REVENUE LIMIT,” provides:

- State revenues collected by the state and local government, and local government revenues collected by each local government 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 “PROPERTY TAX REVENUE LIMIT,” provides:

- The annual percentage change in each local government’s property tax revenue may not exceed property tax revenue in the prior calendar year plus annual local growth, adjusted for property tax revenue changes approved by vote of the electors of the respective local governments.

Paragraph (d), creating “REVENUE RELATING TO BONDS,” provides:

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

Paragraph (e), creating “VOTER APPROVAL TO EXCEED REVENUE LIMITS,” provides:

- State and local governments may not impose taxes, fees, licenses, fines, or charges for services expected to exceed the revenue limit projected by state or local government at the adoption of their respective budgets for the fiscal year.
- Expenditures of revenues collected in excess of the limit must be approved by a majority of the electors residing within the applicable government’s boundaries.
- 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.
 - Additional excess revenue and investment income from that revenue must be treated as revenue in the first or second fiscal year after collection, as prescribed by general law.
- Excess revenues collected by a local government must be transferred to the budget stabilization fund, if a local government has such a fund, until the fund reaches a maximum amount of 3 percent of the last completed fiscal year’s revenue collection.
 - Additional excess revenue must be held in a separate cash reserve.
 - Additional excess revenue and investment income from that revenue must be treated as revenue in the first or second fiscal year after collection, as prescribed by general law.
- The Legislature must provide, by general law, criteria by which a local government may withdraw revenues in the budget stabilization fund.
 - Withdrawals are limited to the purposes of covering revenue shortfalls of the general revenue fund or for providing funding in an emergency in which substantial harm occurs to the population or property of the local government.
 - Expenditures for emergency purposes require a declaration of a state of emergency by the Governor and a two-thirds majority vote of the members of the Legislature or the local governing body by a recorded roll call vote.

Paragraph (f), 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 that are not approved by a vote of the electors of a local government on the next election date occurring 60 days or more after the declaration of a state emergency must terminate on or before the last day of the month in which the election is held.
- “Emergency” does not include economic conditions, revenue shortfalls, or salary and fringe benefit increases.

Paragraph (g) creating “REVENUE LIMITS FOR NEW LOCAL GOVERNMENT,” provides:

- Local governments created after November 2, 2010, shall be subject to the requirements of the proposed amendment as prescribed by general law.

Paragraph (h), 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 or local government 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 (i), 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 (j), creating “VOTER APPROVAL OF NEW REVENUE SOURCES,” provides:

- The state and local governments are required to receive advance approval by a two-thirds vote of the electors voting on a measure in the state or local government 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 (k), creating “CONSTRUCTION,” provides:

- Section 19, Art. VII of the State Constitution, must be interpreted in a manner that reasonable restrains most of the growth of state and local governments. The section supersedes any conflicting provisions of the State Constitution in effect prior to the effective date of the section.

Paragraph (l), creating “EFFECTIVE DATE,” provides:

- Section 19, Art. VII of the State Constitution 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:

The mandate provisions of s. 18, Art. VII of the State Constitution, do not apply to joint resolutions.

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 of the State Constitution, requires 60 percent voter approval for a constitutional amendment to take effect. If approved by 60 percent of the electors voting on the measure in the next general election, the amendment will take effect upon approval.

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

This joint resolution will make it more difficult for a county, municipality, special district, or school district to increase taxes, special assessments, and other home rule 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 state and local government 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:

This joint resolution has not been heard by the Revenue Estimating Conference and the full impact of the provisions in the resolution on state and local government are unknown at this time.

In order to place some of the impacts of this constitutional amendment in to some perspective, this section will further discuss the following: scope, including affected and excluded entities; the directional and magnitude of impacts; hydraulic and displacement consequences; and, the effects upon selected core functions of public entities.

Scope

The bill nominally affects all ad valorem units of Florida government. It does not, however, affect independent taxing districts, or another form of governmental entity, the public authority, in the same manner. Independent districts can be created at the discretion of the voters while traditional forms of government organization, the county, for example, are fixed in law or constitution. Independent districts also have stackable millage which permits these revenues to be cumulative to all others raised within that jurisdiction. The term “public authority” is context-specific and refers generally to one or more special purpose units which issue debt for discrete purposes, such as housing, industrial development, research and development, or private activity.¹³

There are 67 units of constitutional office distributed among each of several jurisdictions: property appraiser, tax collector, clerk of the court, sheriff, supervisor of elections, and district school board. Water management districts may also impose millage and their boundaries are multi-county. The vast majority of these units discharge inherently governmental services, linked either organizationally or financially under the functions of education, elections, property, or public safety and justice services.

Direction and Magnitude

The direction by this proposal is to impose limiting brackets, absent and extraordinary vote, on the ability of a governmental unit to increase its revenues or expenditures beyond a nominal index. The magnitude is difficult to estimate, as will be discussed further below, given the individual particularities involved. The impact of any limitation will be felt by those governmental units operating at the upper end of their permitted operating millage. It is likely these will be predominantly small and rural governments with limited tax bases. What residual tax base remains is already consumed by nondiscretionary public functions: water and sewer, police protection, corrections, and fire service. While such governments may have received some relief from the costs associated with Article V costs, so, too, have they lost the revenue stream, although it is arguable this may have been a neutralized result.

For units with available tax capacity, the effect will be less pronounced since there is available millage, although at an extraordinary price. But in these units the funding and operation of core governmental responsibilities can be distributed over a tax roll that is not dominated by exemptions, governmental ownership, or low unit values with higher homestead exemptions that have effectively rendered the property unusable for the support of the public infrastructure.

¹³ See ch. 159, Parts I through VIII, F.S

Hydraulic and Displacement Effects

None of the above effects occur in a static environment and, in this section, some of the consequences of dynamic change will be described.

Government organizations are rigid creatures, reflecting some long considered sensibility over previous generations that there are services that lend themselves to being delivered on behalf of citizens rather than by citizens themselves. For the unit of government attempting to forecast how to navigate through an altered funding relationship, the following will be likely considerations:

1. **Consolidation of governmental units (structural consolidation).** While the structural examples are few, Broward County and Jacksonville represent attempts to bring functional and structural consolidation together. There are many other examples less visible than these two in the discharge of functional operations - fire service, dispatch and communications, and emergency response - in other parts of the state. A variation to this would also permit the shift of service delivery from the statutory unit of government to its superior constitutional successor, that is, the county, provided the funding burden and service provision was equitably distributed.
2. **Shifting from single employer to multi-employer services (functional consolidation).** Various provisions of Florida law already permit the combination of employee benefit or service programs among different employers. Examples of this include health insurance, pension management, employer-sponsored salary deferral programs, purchasing, and debt issuance. These can take the form of government-to-government combinations or, as in the case of the City of Weston, involve the wholesale procurement of multiple private and public contract vendors to discharge the totality of municipal services.
3. **Shifting service delivery from labor- to process-intensity.** How an entity is organized to do business determines its ability to respond. If a local government has organized itself with the goal of employment or the perpetuation of paper-based transactions, it will find itself less able to respond to revenue or expenditure limitations as payroll transactions are the largest single expenditure category. Since many local governments tend to be permission-based entities, in which the homeowner, renter, or business owner must receive individual permissions in the form of licenses, permits, certifications, applications, or approvals – this amendment will force the discussion on how the government organizes its business operations and what it values most and least highly.
4. **Suitability of the existing revenue base.** Two relatively recent developments at the state level have caused a rethinking of traditional methods of revenue collection and expenditure. Previous legislatures enacted a series of changes to the funding of court services organized under Article V of the State Constitution.¹⁴ The State of Florida apportioned the responsibility for all of the discrete functions of the court system and their associated revenues. Justice services tend to command the first dollar of local government operating budgets. They are high

¹⁴ See also ch. 29, F.S.

visibility and in high demand with virtually no intergovernmental revenue support from other funding entities. They make particularly onerous demands on property tax poor counties, leaving them with little capacity for other governmental services. While there is still some discussion about whether this was an assumption of cost or merely a shifting of the burden, the result was a recognition that a larger jurisdiction had a responsibility to a uniform expectation of justice that could no longer be a function of county property values and their millage. A similar transformation occurred with the assumption by the State of Florida of traditional, non-lottery wagering revenues distributed to the counties. Competing forms of wagering entertainment, as well as the maturation of the industry itself, had caused these revenues decline over the years. In exchange, the Legislature permitted local governments to receive a dedicated portion of the state sales tax. The significance of these two changes should not be lost on the examples. In both cases there had been a judgment made that the revenue and business base underlying the transactions had fundamentally changed. This ultimately required an assumption of different governmental responsibility.

Collateral Effects

Years ago Florida made the statutory commitment that infrastructure support must precede development. Concurrency, or the simultaneous alignment of capital improvements with subsequent development, entails commitments years in advance of execution.¹⁵ Many local governments have chosen diverse means of providing the lead time to assemble revenues for the acquisition of easements and rights-of-way, providing access, utility improvements and extensions, and schools for subsequent commercial and residential development. Upon request, the Legislative Committee on Intergovernmental Relations catalogued the revenue categories that implicate current and future commitments for concurrency. They are listed below:

Special Assessments and Impact Fees in 2006 Associated with Local Government Infrastructure Development¹⁶

Government Unit	Specific Purpose Revenue Categories	Amount
County	252	\$ 1,481,619,715
Municipality	593	\$ 587,582,589
Special District	613	\$ 721,752,485
Other	2	\$ 1,192,484
TOTAL	1460	\$ 2,792,147,273

To the extent that this proposal affects these lead revenues, there will be consequential effects in subsequent periods of time. As a number of these decision involve financing questions – cash or debt – financial managers or lenders will insist on some assurance of predictability and stability in the funding base. In the absence of such assurance the

¹⁵ See ch. 163, F.S.

¹⁶ Department of Financial Services, Division of Accounting and Auditing, Bureau of Local Government, *Local Government Annual Financial Report*, 2006.

creditworthiness of the debt issuer, and of the issuance itself, will be recognized in the market with an appropriate investment or non-investment grade rating. In its current form, the bill seems to recognize these advance revenues as implicated in the limitations.

There are 503 local government pension plans in Florida, all of which have some form of *ad valorem* financial support. Of this number, several hundred municipal police officer and firefighter pension plans receive dedicated distributions from the insurance premium tax on fire and hazard insurance premiums. Such plans are customarily more generous in their benefits than the multi-employer state pension plan. To that extent, they are also more vulnerable to systemic changes in the incidence of tax burden. Article X, Section 14, State Constitution, requires all public sector pension plans to be funded on a sound actuarial basis. The proposed constitutional amendment exempts its limiting effect upon employee pension contributions; it does not do so with those payments made by the employer. This effect could cause public employers to shift to the employee more of the benefit burden to maintain compliance with the constitutional provision for a constant level of benefits. Recent legislative studies have reported a growing number of local government pension plans with lowered funded ratios, that is, the relationship of total assets to total liabilities.¹⁷

In 2004, a school board filed suit attacking the adequacy of one of the component parts of the Florida Educational Finance Program, the state funding formula for kindergarten through twelfth grade education.¹⁸ The circuit court dismissed the school board's claims that a change to the calculation of one of the economic variables had unconstitutionally impaired the adequacy or uniformity of a child's education. The court noted in its opinion that some eighty percent of the formula funds were allocated to personnel costs. Two excerpts from that opinion are provided, below, as they discuss the historic role and relationship among the several branches of government involved in the making of education policy:

“12. The appellate courts have repeatedly acknowledged that the field of education appropriations is uniquely within the joint province of the legislative and executive branches and the expertise of their agencies and staff. Judges should be careful not to violate the separation of powers – just as the executive and legislative branches should be mindful of this fundamental principle. Where appropriate, the judiciary's role is to interpret the law and determine whether the actions of the legislative and executive branches are within the ambit of their constitutional authority. It is not the function of the judiciary to second-guess, or act as a super legislator, or decide political questions.”

Later, in that same opinion, the court further concluded:

¹⁷ See Senate Governmental Oversight and Accountability Committee, *Local Government Pension Plans*, Report 2009-327. Tallahassee, FL: September 2008.

¹⁸ *School Board of Miami-Dade County v. King*, 940 So.2d 593 (Fla. 1st DCA, 2006); review denied by *School Bd. Of Volusia County v. King*, 954 So.2d 1156 (Fla. 2007); and, review denied by *Spiegel v. King*, 954 So.2d 1156 (Fla. 2007).

“Where, as here, statutory provisions are not defined, the interpretation and application by the department of education and the legislature should be given deference by the courts unless it is clearly erroneous or arbitrary.”

...

“However, plaintiffs have failed to offer any evidence to establish that any of the plaintiff school districts have been so severely disadvantaged by the funding formula at issue that basic education needs are not being funded.”

The court of appeal, affirmed the circuit court decision but also discussed the ramifications of the issue by examining two complementary decisions nearly one generation removed from each other:

“In *Brown v. Firestone*, 382 So.2d 654 (Fla. 1980), the supreme court outlined and compared the general scope of authority conferred upon each branch of government in the field of general appropriation law, and acknowledged that any citizen/taxpayer may bring a declaratory action to challenge the constitutionality of provisions in a general appropriations act.”

...

“In *Coalition for Adequacy and Fairness in School Funding, Inc. v. Chiles*, 680 So.2d (Fla. 1996), various school boards and other filed a declaratory action against state officials, asserting that the state had failed to allocate adequate resources for a uniform system of free public schools, as required by Art. IX, section 1.”

...

““(w)hile ‘adequate’ may be difficult to quantify, certainly a minimum threshold exists below which the funding provided by the legislature would be considered ‘inadequate’ ” and he acknowledged that a “proper showing of inadequacy has not been made in this case.” Id.

The bill includes school district revenues in its definition. The courts have provided considerable deference to the judgments of the policy-making branch of government, as noted above. The proposed amendment places constitutional limitations on the recognition of such revenues and may provide enough factual grounds for subsequent plaintiffs to question the adequacy or uniformity of the funding components. Estimating the factual elements in such a challenge is premature at this point but certainly a district unable to increase its support but willing to do so could exist alongside a similar district with unused tax capacity but unwilling to do so.

Revenue Recognition and Enterprise Activities

How public revenues and expenditures are recognized for financial reporting purposes is a critical factor in assessing what funds are at risk. The proposed amendment makes this determination ever more critical. The State of Florida operates with a \$66 billion operating budget, but its non-operating and fiduciary budget is nearly twice as large. The amendment is not clear whether the reach of its provisions extends also to non-operating revenues or enterprise activities. This is critically important for the debt service required of many local governments who may organize their services into operating and non-operating accounts.

A number of local governments operate ancillary enterprise activities in which there is a specific use charge in the form of admissions or consumption. The best examples are charges for utility services, and franchise fees, where the provider of the service is the governmental unit itself. This reflects the governmental preference for the use of revenues unrelated to property taxes. The case of the City of Tallahassee is particularly instructive. That city operates its own utility system and brands itself as a public power community. It charges a higher utility cost than some of its peers but charges only cost for some non-electricity services. That cost allocation reflects the judgment that consumers can adjust their consumption more readily than they can the value of their property for the same result. The policy also reflects the complicated market dynamics in which utility operators must forecast their demand requirements years in advance to estimate future capital needs. They must purchase the raw commodity – coal, natural gas, fuel oil, or other non-fossil fuel – in advance of the delivery date through futures contracts to assure supply and prompt delivery.

Many local governments participate in subscription membership service agreements with their peers.¹⁹ These organizations discharge centralized functions for their membership – debt issuance, employee benefits, fund management, insurance – and impose a fee that may or may not be passed along in the form of direct or indirect property taxes. As these organizations are effectively standing in the place of their members, the relationship that these off-budget entities have to the parent organization in terms of revenue and expenditure recognition becomes critical.

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:

This proposed resolution provides that the revenue limitations contained in the proposal will supersede all conflicting provisions in the State Constitution in effect prior to its effective date. Both the State Constitution and statutory provisions provide counties, municipalities, and school

¹⁹ Examples of these include various programs operated by the Florida League of Cities, the Florida Association of Counties, the Florida Sheriffs' Association, and the Florida Clerks of Court Operations Corporation, the latter specifically created in s. 28.35, F.S.

districts with the authority to levy ad valorem taxes at a rate of not more than 10 mills each. The proposed resolution provides that the annual percentage change in each local government's property tax revenue may not exceed property tax revenue in the prior calendar year, plus annual local growth. In addition, some local governments already tax at the maximum millage rate. To the extent that these provisions could conflict with each other, it is possible that the constitutional provisions regarding millage caps will be obsolete.

Pursuant to provisions of the State Constitution, school districts receive a percentage distribution from the gross receipts tax on utilities and communication services, and a portion of the revenues derived from motor vehicles and motor home licenses. Because the proposed resolution provides that any provisions of the State Constitution that conflict with the revenue limitations in the resolution are superseded on its effective date, revenue distributions to schools that exceed the revenue limits of the proposal may be affected.

In the property tax reform measures enacted by the Legislature in 2007 and constitutional provisions amended into the State Constitution in January 2008, school districts were held harmless from the statutory rolled-back rate requirements, and the constitutional provisions relating to the additional homestead benefit, limitations on non-residential property, and the portability of the Save Our Homes benefit.

Finally, because of the definition of "state revenues", it appears that the proposed amendment will require the voters to approve every bill enacted by Legislature that proposes the creation of a new program or amends an existing program and requires the imposition of a fee or assessment to pay for the cost of the program.

VIII. Additional Information:

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

None.

- B. **Amendments:**

Barcode 410418 by Community Affairs on March 10, 2009:

Title amendment to reflect the creation of section 19, Art. VII, State Constitution.

Barcode 225334 by Community Affairs on March 10, 2009:

Amendment to reflect the creation of section 19, Art. VII, State Constitution.

Barcode 717990 by Community Affairs on March 10, 2009:

Amendment to the ballot summary to reflect the creation of section 19, Art. VII, State Constitution.