



TAXATION AND BUDGET REFORM COMMISSION

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Staff Analysis and Economic Impact Statement

Measure:	CP 25	REFERENCE:	ACTION:
Sponsor:	Commissioner D'Alemberte	1. GPSC	Pre-meeting
		2. PBPC	
Subject:	Raising revenues during a fiscal crisis	3.	
Date:	January 10, 2008		

I. Summary:

Various provisions of the Florida Constitution limit the power of the state to raise revenue or impose certain taxes. This measure, CP 25, will permit the Legislature to raise these revenues or impose these taxes if the Governor certifies the existence of a fiscal crisis.

Under this measure, a bill raising revenues or imposing a tax not otherwise permitted by the Florida Constitution must be approved by a three-fourths vote of both houses of the Legislature. Laws raising revenues or imposing a tax under the measure will expire two years from the date of the certification of a fiscal crisis or an earlier date specified by the Legislature.

This measure creates a new section 20 of Article III of the Florida Constitution.

II. Present Situation:

Article VII, s. 1(d), Fla. Const., requires the Legislature to provide by law for "raising sufficient revenue to defray the expenses of the state for each fiscal period." However, the constitution also places several limits on the power of the state to raise revenue.

Limits on the Power of the Legislature to Raise Revenue

The Florida Constitution limits the power of the state to raise revenue as follows:

- ***Ad Valorem Tax*** "No state ad valorem taxes shall be levied upon real estate or tangible personal property."¹
- ***Ad Valorem Tax*** "Motor vehicles, boats, airplanes, trailers, trailer coaches and mobile homes . . . shall not be subject to ad valorem taxes."²

¹ Article VII, s. 1(a), Fla. Const.

- **State Revenue Limit** “State revenues collected for any fiscal year [generally are] limited to state revenues allowed under [Art. VII, s. 1(e), Fla. Const.,] for the prior fiscal year plus an adjustment for growth.”³
- **Personal Income Tax** “No tax . . . upon the income of natural persons who are residents or citizens of the state shall be levied by the state, or under its authority, in excess of the aggregate of amounts which may be allowed to be credited upon or deducted from any similar tax levied by the United States or any state.”⁴
- **Estate Tax** “No tax upon estates or inheritances . . . of natural persons who are residents or citizens of the state shall be levied by the state, or under its authority, in excess of the aggregate of amounts which may be allowed to be credited upon or deducted from any similar tax levied by the United States or any state.”⁵
- **Corporate Income Tax** “No [corporate income tax] shall be levied by the state, or under its authority, in excess of 5% of net income, as defined by law, or at such greater rate as is authorized by a three-fifths ($\frac{3}{5}$) vote of the membership of each house of the legislature or as will provide for the state the maximum amount which may be allowed to be credited against income taxes levied by the United States and other states. There shall be exempt from taxation not less than five thousand dollars (\$5,000) of the excess of net income subject to tax over the maximum amount allowed to be credited against income taxes levied by the United States and other states.”⁶
- **State Bonds** “State bonds pledging the full faith and credit of the state may be issued only to finance or refinance the cost of state fixed capital outlay projects authorized by law, and purposes incidental thereto, upon approval by a vote of the electors . . . The total outstanding principal of state bonds issued . . . shall never exceed fifty percent of the total tax revenues of the state for the two preceding fiscal years, excluding any tax revenues held in trust . . .”⁷

State Revenue Flexibility

Appellate court opinions have not examined the scope of the Legislature’s authority under Art. II, s. 6, Fla. Const. Arguably, however, the provision may permit the Legislature to raise revenue from restricted sources during an emergency resulting from an enemy attack. Article II, s. 6, Fla. Const., states:

Enemy attack.—In periods of emergency resulting from enemy attack the legislature shall have power to provide for prompt and temporary succession to the powers and duties of all public offices the incumbents of which may become unavailable to execute the functions of their offices, and to *adopt such other measures as may be necessary and appropriate to insure the continuity of governmental operations during the emergency. In*

² Article VII., s. 1(b), Fla. Const.

³ Art. VII, s. 1(e), Fla. Const.

⁴ Art. VII, s. 5(a), Fla. Const.

⁵ Art. VII, s. 5(a), Fla. Const.

⁶ Art. VII, s. 5(b), Fla. Const.

⁷ Art. VII, s. 11(a), Fla. Const.

exercising these powers, the legislature may depart from other requirements of this constitution, but only to the extent necessary to meet the emergency.

Article IV, s. 13, Fla. Const., gives the state some procedural flexibility to address revenue shortfalls. The constitutional provision states:

Revenue Shortfalls.—In the event of revenue shortfalls, as defined by general law, the governor and cabinet may establish all necessary reductions in the state budget in order to comply with the provisions of Article VII, Section 1(d). The governor and cabinet shall implement all necessary reductions for the executive budget, the chief justice of the supreme court shall implement all necessary reductions for the judicial budget, and the speaker of the house of representatives and the president of the senate shall implement all necessary reductions for the legislative budget. Budget reductions pursuant to this section shall be consistent with the provisions of Article III, Section 19(h).

Article IV, s. 13, Fla. Const., was proposed by the 1990 Taxation and Budget Reform Commission in response to an opinion of the Florida Supreme Court requiring all revenue reductions to be made by the Legislature.⁸

III. Effect of Proposed Changes:

Constitutional Proposal 25 will permit the Legislature to raise constitutionally restricted revenues during a fiscal crisis certified by the Governor. Revenues that may be raised under this amendment may include:

- A state ad valorem tax;
- An ad valorem tax on vehicles;
- Revenues in excess of the state revenue limit;
- A personal income tax;
- An estate or inheritance tax greater than that permitted by the Florida Constitution; and
- Revenues from bonds prohibited by the Florida Constitution.

The measure provides that any bill raising constitutionally restricted revenues must be approved by a three-fourths vote of both houses of the Legislature. Laws raising revenues or imposing a tax under the measure will expire two years from the date of the certification of a fiscal crisis or on an earlier date specified by the Legislature.

The Legislature's authority under CP 25 is triggered by a certification by the Governor that a "serious fiscal crisis threatens the state." The authority of the Governor to make such a certification does not appear to be limited or subject to any guidelines. Moreover,

⁸ *Chiles v. Children A, B, C, D, E, and F*, 589 So. 2d 260 (Fla. 1991).

the measure does not limit the number of fiscal crises that may be certified by the Governor. As such, the power of the Legislature to raise constitutionally restricted revenues may extend beyond two years.

The measure will take effect upon approval by the voters.

IV. Constitutional Issues:

A. Constitutional or Legislative Matter:

This proposed amendment to the Florida Constitution creates an exception to the limits on the power of the Legislature to raise revenue. As such, the purposes of the amendment can be accomplished only through a constitutional amendment.

B. Other Constitutional Issues:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

The measure permits the Legislature to raise state revenues that the Legislature usually does not have authority to raise. As the measure refers to a state fiscal crisis, the measure does not appear to permit local governments to raise constitutionally restricted revenues.

B. Private Sector Impact:

If the Legislature implements its power under CP 25, additional taxes likely will be imposed on individuals and businesses.

C. Government Sector Impact:

If the Legislature implements its power under CP 25, the Legislature may be able to fund programs that it would otherwise be unable to fund. The state may have to hire additional employees to administer the collection of constitutionally restricted revenues.

VI. Technical Deficiencies:

The Commission may wish to amend the title of the measure as follows:

Remove lines 4-5 and insert:

Constitution to permit the Legislature to raise certain revenues upon certification by the Governor of the existence of a serious fiscal crisis.

VII. Related Issues:

Constitutional Proposal 25 permits the Legislature to raise constitutionally restricted revenues during a fiscal crisis. However, the Commission may wish to consider whether the Legislature should also have the authority to reduce spending required by the Florida Constitution.

The Commission may also wish to consider whether the power of the Governor to declare the existence of a fiscal crisis should be subject to some guidelines.