



exception of the revenues used to support the Public Medical Assistance Trust Fund or its successor program and with the exception of state matching funds used to fund elective expansions made after July 1, 1994; proceeds from the state lottery returned as prizes; receipts of the Florida Hurricane Catastrophe Fund; balances carried forward from prior fiscal years; taxes, licenses, fees, and charges for services imposed by local, regional, or school district governing bodies; or revenue from taxes, licenses, fees, and charges for services required to be imposed by any amendment or revision to this constitution after July 1, 1994.<sup>1</sup>

### ***State Revenue Flexibility***

Appellate court opinions have not examined the scope of the Legislature's authority under Art. II, s. 6, Fla. Const. However, arguably, 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 exercising these powers, the legislature may depart from other requirements of this constitution, but only to the extent necessary to meet the emergency.*<sup>2</sup>

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).*<sup>3</sup>

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<sup>1</sup> Article VII, Section 1, Fla. Const.

<sup>2</sup> Article II, Section 6, Fla. Const.

<sup>3</sup> Article IV, Section 13, Fla. Const.

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.

### ***Traditional Tax and Expenditure Limitations***

At least 30 states, including Ohio, Maine, Colorado, and Massachusetts, currently operate under a tax or expenditure limitation. Twenty three states have spending limits, four have tax limits, and three have both.<sup>4</sup>

Traditional tax and expenditure limitations include revenue, expenditure, or appropriation limits such as:

- Revenue limits. Revenue limits tie allowable yearly increases to personal income or an index which may include inflation or population, and allow for the refund of excess revenues to taxpayers.
- Expenditure limits. Expenditure limits are also tied to personal income or a growth index. In many states, the limit is tied to a growth index related to the expansion of the economy.
- Appropriations limited to a percentage of revenue estimates. This variation of a spending limit simply ties appropriations to the revenue forecast. Delaware, Iowa, Mississippi, Oklahoma, and Rhode Island have this type of appropriation limit in place.
- Hybrids. States also have combined components of various limits. For example, Oregon has a state spending limit tied to personal income growth, and a provision requiring refunds if revenues are more than 2 percent above the revenue forecast. This law limits spending and, in a sense, limits revenues by tying them to the forecasted amount. Colorado, under the Taxpayer's Bill of Rights (TABOR), is another hybrid state.<sup>5</sup>

The most restrictive type of limit includes voter approval requirements. All taxes or increases over a specified amount must receive voter approval to implement this type of limit. Missouri and Washington require voter approval for tax increases over a specified amount. Sixteen states require legislative supermajority votes to increase some or all of the taxes. Of the 30 states with tax and spending limitations, seventeen have constitutional provisions and thirteen have statutory provisions for revenue limits.

### ***Tax and Expenditure Limitations Pros and Cons***

There are arguments for and against, tax and expenditure limitation issues.

Proponents indicate that limits will:

- Make government more accountable and control the growth of government;
- Make government more efficient;
- Provide a means for citizens to become more involved in the process and vote on tax increases;

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<sup>4</sup> National Conference of State Legislatures, *State Tax and Expenditure Limits –2007*: <http://www.ncsl.org/> (Last visited January 30, 2008).

<sup>5</sup> National Conference of State Legislatures, <http://www.ncsl.org/> (Last visited January 30, 2008).

- Help diffuse the power of special interests; and
- Force government to evaluate programs and prioritize services.

Opponents of limits indicate that they will:

- Shift the decision process from the representatives elected to serve the citizens;
- Fail to provide sufficient funds for growth in social services and education;
- Cause a “ratchet-down” effect decreasing the spending base without the ability of growth to bring the base to its original level;
- Fail to provide funding for “shortfall years” and respond to quick changes in the economy;
- Make it harder for states to raise new revenue; and
- Result in declining government service levels over time.

The details of the design of a tax and expenditure limitation will impact the effectiveness of the limitation and its influence on government spending. In a research report from the New England Public Policy Center,<sup>6</sup> the growth index and base are highlighted as powerful determinants of the limitation’s impact. The growth index is the annual rate at which a tax and expenditure limitation allows the state or local government expenditures, appropriations, or revenues to grow and the base is the amount of money expended, collected, or appropriated.

### ***TABOR (Taxpayer’s Bill of Rights)***

The most well-known tax and expenditure limitation is the Colorado initiative known as “TABOR.” In 1992, the TABOR constitutional amendment, a citizen initiative, was adopted by Colorado voters. TABOR limits the growth of Colorado’s state revenues to inflation plus population. The limits do not apply to federal funds, private gifts, and a few other specified revenue sources. The TABOR amendment also requires voter approval for any tax increase proposed by the state, counties, cities, towns, school districts, or special districts. Revenues in excess of the revenue limit must be returned to the voters; however, the voters may vote to allow the state to retain the excess funds. TABOR limits the revenue that the state government can retain in a year to the previous year’s allowed collection.

Dr. Barry Poulson, Professor of Economics at the University of Colorado, proposed a framework for the development of a Taxpayer Protection Amendment for Florida, and reasons why an amendment is necessary, in “Taxes in Florida Are At An All Time High: Time for a Taxpayer Protection Amendment.”<sup>7</sup> The reasons presented indicating why an amendment is necessary are:

- To limit the growth in revenue and spending to the growth of population plus inflation;
- To stabilize the budget over the business cycle;

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<sup>6</sup> New England Public Policy Center, Research Report 06-3, Reading the Fine Print: How Details Matter in Tax and Expenditure Limitations, <http://www.bos.frb.org/economic/neppc/researchreports/2006/rr0603.html>.

<sup>7</sup> Barry Poulson, “Taxes in Florida Are At An All Time High: Time for a Taxpayer Protection Amendment”, Presentation to the Taxation and Budget Reform Commission, September, 2007.

- To ensure that some surplus revenue is invested in an emergency and budget stabilization fund;
- To ensure that additional surplus revenue is rebated to taxpayers;
- To require voter approval for increased taxes, debt, or expenditure of surplus revenue;
- To establish a hard budget constraint that would create incentives for tax reform;
- To provide much-needed property tax relief, and reduce property tax rates;
- To create opportunities for home ownership for all Florida citizens;
- To create a more favorable tax climate that Florida needs to attract business investment and create jobs; and
- To improve incomes and standards of living for Florida citizens.

The framework provided for the development of an amendment included that:

- It is a constitutional, rather than a statutory, provision;
- It would impose a stringent limit on the growth in spending equal to inflation and population growth;
- This limit would be applied to a broad measure of state revenue and spending, with few exceptions;
- Some surplus revenue would be allocated to a budget stabilization and emergency fund;
- Some surplus revenue would be allocated to tax relief, including property tax relief;
- Voter approval would be required for any increase in taxes, debt, or expenditure of surplus revenue; and
- This limit would be applied at the local, as well as the state, level.

### **III. Effect of Proposed Changes:**

Constitutional Proposal 45 proposes an amendment to the State Constitution to limit the spending increases by the state and other units of government to the rate of inflation and population or student enrollment changes. Ad valorem revenue increases are generally limited to the rate of inflation plus changes in property values due to changes, additions, reductions, or improvements. Voters may approve the suspension of the spending and revenue limits, or new or additional revenues temporarily.

The proposal provides spending limits for school districts, the state, special districts, and local governments. Voter approval is necessary to exceed the fiscal year spending limits. Spending limits for the state, local government, and special districts are equal to the entities' spending authorized on November 4, 2008 adjusted for percentage changes in population and inflation. The spending limit for school districts is equal to the spending authorized on November 4, 2008 adjusted for the percentage change in enrollment and inflation, and for property tax revenue increases approved by the voters.

The State Constitution limits Florida's state revenues to the average growth rate in state personal income for the previous five years. Personal income is determined by the Legislature through information available from the United States Department of Commerce. Colorado and several other states with limitations based on population and inflation use the Consumer Price Index (CPI) as an inflation indicator. The CPI measures change in the total cost of a "market basket" of goods and services purchased by a typical urban consumer. Since a typical urban consumer spends a majority of his or her income on housing, transportation, and food and beverages, those items are the primary drivers of the CPI. However, governments spend revenues primarily on education, health care, transportation, and corrections. Therefore, the market baskets of spending are entirely different. CP 45 proposes using the United States Department of Commerce Bureau of Economic Analysis Price Index for State and Local Government Consumption Expenditures and Gross Investor, which is an indicator of government spending, in lieu of the CPI.

Excess ad valorem revenues must be refunded to property owners or be used to reduce the next year's ad valorem taxes. Excess revenues, other than ad valorem revenues, must be offset by a temporary reduction in the sales tax rate, taxes on motor and diesel fuel, or reduction in another tax, fee, or toll, or other broad-based tax or fee.

CP 45 provides that units of government must maintain a fund for use in response to a state of emergency declared by the Governor or for use when revenues are less than a spending limit. One-third of excess revenues must be deposited in the budget stabilization fund until the fund reaches 10 percent of the prior year's spending limit, or greater percentage, as approved by voters. The stabilization fund for the state is the budget stabilization fund authorized by subsection 19(g) of Article III.

A majority of the voters of a unit of government may approve the suspension of a spending limit or ad valorem revenue limit for up to four years. Spending or revenue limits during the last fiscal year of suspension are the basis for future spending limits.

A majority of the voters of a unit of government may approve a new tax or increase in a tax rate with a duration of up to four years. Two-thirds of the voters of a unit of government may approve new user fees with a duration of up to four years.

Exclusions from the revenue limits in CP 45 include:

- Receipts of the Florida Hurricane Catastrophe Fund;
- Revenues from gifts, donations, or grants, or revenues from another unit of government;
- Revenues received from the sale of property or legal damages awards;
- Pension contributions by employees or pension fund earnings;
- Revenues from the proceeds of bonds;
- Revenues that are necessary to meet the requirements set forth in documents authorizing the issuance of bonds prior to January 1, 2009;

- Revenues representing the direct cost of operating the Lottery;
- Revenues representing the direct cost of providing electric, water, wastewater, gas, or other utility services; and
- Revenues from the issuance of licenses and permits to the extent that the revenues do not exceed the cost of issuing the licenses or permits and the services provided to the licensees and permit-holders.

Exclusions from the spending limits in CP 45 include:

- Expenditures of the receipts of the Florida Hurricane Catastrophe Fund;
- The payment of pensions for employees from an employee pension fund;
- Expenditures of revenues from gifts, donations, or grants, or revenues from another unit of government;
- Expenditures of funds received from the sale of property or legal damages awards;
- Expenditures of the proceeds of bonds;
- Expenditures of revenues that are necessary to meet the requirements set forth in documents authorizing the issuance of bonds prior to January 1, 2009;
- Expenditures of funds for the direct cost of operating a lottery authorized by Section 15 of Article X;
- Expenditures of funds for the direct cost of providing electric, water, wastewater, gas, or other utility services;
- Expenditures of revenues from local government impact fees that have a reasonable connection, or rational nexus, between the need for additional capital facilities and the growth in population generated by a subdivision and a connection, or rational nexus, between the expenditures of the funds collected and the benefits accruing to a subdivision;
- Expenditures of funds not to exceed the actual costs to issue licenses and permits and to provide services to the licensees and permit-holders;
- Refunds of excess tax revenues; and
- Emergency expenditures authorized by a state of emergency declared by the Governor.

The Legislature must provide a process, by law, to permit the electors to approve assessments for neighborhood improvements that may be amortized over a period not to exceed ten years.

The Legislature must provide a process, by law, to notify each local government, school district, or special district of the applicable spending limits.

Spending and revenue limits must be adjusted to reflect the fiscal impact of transfers of responsibility for funding governmental functions from one unit of government to another.

#### **IV. Constitutional Issues:**

##### **A. Constitutional or Statutory Issue:**

None.

**B. Other Constitutional Issues:**

None.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

CP 45 limits revenues for state and local government; however, it does not increase any taxes or fees.

**B. Private Sector Impact:**

None.

**C. Government Sector Impact:**

CP 45 will limit the fiscal growth of the state and local governments, including school districts. These limitations will impact services provided at all government levels, if passed by the electors. At the state level, services impacted may include education and social service programs.

CP 45 does not exclude the state's Public Medical Assistance Trust Fund (PMATF) from the revenue limit. Failure to exclude the PMATF may cause the state to have to shift funds from other sources to cover matching fund requirements for federal Medicaid programs, or reduce services provided to Florida citizens.

Under Art. XI, s. 5(d), Fla. Const., the Secretary of State must publish in newspapers throughout the state proposed constitutional amendments and notice of the date of the election at which it will be submitted to the electors. According to the Department of State, the average publishing costs for citizen initiative amendments is \$60,000. However, the cost to publish lengthy amendments will exceed that amount.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.