

Under either method, Congress is authorized to specify whether the amendment must be ratified by the legislatures of three-fourths of the states or by conventions in three-fourths of the states.²

Legal scholarship notes that the convention method for proposing amendments to the U.S. Constitution emerged as a compromise among “Founding Fathers” who disagreed on the respective roles of Congress and the states in proposing amendments to the document. Although some participants in the Philadelphia Convention of 1787 argued that Congress’ concurrence should not be required to amend the Constitution, others argued that Congress should have the power to propose amendments, and the states’ role should be restricted to ratification.³ The language ultimately agreed upon, and which became article V of the U.S. Constitution, states:

The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which may be made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without its Consent, shall be deprived of its equal Suffrage in the Senate.

Calls for Constitutional Convention on Balanced Federal Budget

One of the country’s most significant movements toward activation of the constitutional convention method of proposing an amendment to the U.S. Constitution occurred starting in the mid-1970s, when eventually 32 states adopted measures, of varying forms, urging Congress to convene a constitutional convention to address federal budget deficits.⁴ Depending upon the manner of tallying applications, that count was two short of the 34 state applications necessary under article V of the U.S. Constitution.

Florida’s 1976 Convention Application

Florida participated in that movement, when in 1976 the Legislature adopted Senate Memorial 234. Through that memorial, the Legislature made “application to the Congress of the United States ... to call a convention for the sole purpose of proposing an amendment to the Constitution of the United States to require a balanced federal budget and to make certain exceptions with respect thereto.”⁵

an amendment to the Florida Constitution is proposed, the amendment must be approved by at least 60 percent of the electors voting on the measure (FLA. CONST. art. XI, s. 5(e)).

² U.S. CONST. art. V.

³ James Kenneth Rogers, *The Other Way to Amend the Constitution: The Article V Constitutional Convention Amendment Process*, 30 HARV. J.L. & PUB. POL’Y 1005, 1006-07 (2007).

⁴ E. Donald Elliott, *Constitutional Conventions and the Deficit*, 1985 DUKE L.J. 1077, 1078 (1985).

⁵ Senate Memorial 234 (Reg. Sess. 1976).

That same year, the Legislature adopted House Memorial 2801, through which the Legislature also made application to Congress for a convention to consider an amendment to the U.S. Constitution requiring a balanced federal budget. Unlike Senate Memorial 234, House Memorial 2801 prescribed the precise language of the proposed constitutional amendment. Among other provisions, the proposed amendment stated:

[T]he Congress shall make no appropriation for any fiscal year if the resulting total of appropriations for such fiscal year would exceed the total revenues of the United States for such fiscal year. ... There shall be no increase in the national debt, and the existing debt, as it exists on the date which this amendment is ratified, shall be repaid during the one hundred-year period following the date of such ratification.

The proposed constitutional language also authorized Congress to suspend the requirement for a balanced budget in times of national emergency, as identified by a concurrent resolution of three-fourths of the membership of the U.S. Senate and the U.S. House of Representatives.

House Memorial 2801 further specified that “the purview of any convention called by the Congress pursuant to this resolution [shall] be strictly limited to the consideration” of a balanced-budget amendment. In addition, the Legislature resolved that the 1976 application for a constitutional convention “constitutes a continuing application ... until such time as two-thirds of the Legislatures of the several states have made similar application, and the convention herein applied for is convened.”⁶

Florida’s 1988 Request to Congress

In 1988, the Legislature adopted a measure urging congressional action related to the federal budget deficit. Adopted by both chambers, Senate Memorial 302, rather than making application for a constitutional convention, urged Congress to use its own power to propose an amendment to the U.S. Constitution requiring the federal budget to be in balance except under specified emergencies.

The memorial specified that it superseded “all previous memorials applying to the Congress of the United States to call a convention to propose an amendment to the Constitution of the United States to require a balanced federal budget,” including the two memorials passed in 1976. The 1988 memorial further specified that the previous memorials were “revoked and withdrawn.”⁷

State Balanced-Budget Requirements

Although it noted that there is not agreement on what is meant by a “balanced budget,” the National Conference of State Legislatures reported in 2004 that 49 states “have at least a limited statutory or constitutional requirement of a balanced budget.”⁸ Florida’s requirement is

⁶ House Memorial 2801 (Reg. Sess. 1976).

⁷ Senate Memorial 302 (Reg. Sess. 1988).

⁸ Nat’l Conference of State Legislatures, *State Balanced Budget Requirements: Provisions and Practice* (updated 2004), <http://www.ncsl.org/IssuesResearch/BudgetTax/StateBalancedBudgetRequirementsProvisionsand/tabid/12651/Default.aspx> (last visited Mar. 7, 2010).

prescribed in article VII, section 1 of the Florida Constitution. The constitution requires that “[p]rovision shall be made by law for raising sufficient revenue to defray the expenses of the state for each fiscal period.”⁹ Among other elements, the implementing statute, s. 216.221, F.S., provides that all appropriations shall be maximum appropriations, based on the collection of sufficient revenue. In addition, “[i]t is the duty of the Governor, as chief budget officer, to ensure that revenues collected will be sufficient to meet the appropriations and that no deficit occurs in any state fund.”¹⁰

Section 215.98, F.S., provides that the “Legislature shall not authorize the issuance of additional state tax-supported debt if such authorization would cause the designated benchmark debt ratio of debt service to revenues available to pay debt service to exceed 7 percent unless” it finds that the additional debt is necessary to address a critical state emergency.¹¹

Federal Budget Deficit and National Debt

The Congressional Budget Office (CBO) estimates that the federal budget deficit will be approximately \$1.3 trillion for fiscal year 2010, assuming current law and policies remain unchanged.¹² According to the CBO, at “9.2 percent of gross domestic product (GDP), that deficit would be slightly smaller than the shortfall of 9.9 percent of GDP (\$1.4 trillion) posted in 2009.”¹³ The CBO explained that:

The large 2009 and 2010 deficits reflect a combination of factors: an imbalance between revenues and spending that predates the recession and turmoil in financial markets, sharply lower revenues and elevated spending associated with those economic conditions, and the costs of various federal policies implemented in response to those conditions.¹⁴

The office projects average deficits of approximately \$600 billion per year over the 2011-2020 period.¹⁵

In turn, the deficits will cause federal debt held by the public to increase significantly. Currently, the debt held by the public is estimated to be \$8.1 trillion.¹⁶ The CBO projects that the figure will increase to \$15 trillion by the end of 2020.¹⁷

⁹ FLA. CONST. art VII, s. 1(d).

¹⁰ Section 216.221(1), F.S.

¹¹ Section 215.98(1), F.S.

¹² Congressional Budget Office, Congress of the United States, *The Budget and Economic Outlook: Fiscal Years 2010 to 2020, Summary* (Jan. 2010), <http://www.cbo.gov/ftpdocs/108xx/doc10871/01-26-Outlook.pdf> (last visited Mar. 10, 2010).

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ TreasuryDirect, *The Debt to the Penny and Who Holds It*, <http://www.treasurydirect.gov/NP/BPDLogin?application=np> (last visited Mar. 5, 2010). TreasuryDirect is a financial services website through which a person may purchase and redeem securities directly from the U.S. Department of the Treasury in paperless electronic form. TreasuryDirect is a service of the U.S. Department of the Treasury Bureau of the Public Debt. See TreasuryDirect, *About TreasuryDirect*, <http://www.treasurydirect.gov/about.htm> (last visited Mar. 5, 2010).

¹⁷ Congressional Budget Office, *supra* note 12.

Following is historical data for the past 10 years on surpluses, deficits, and debt held by the public as a percentage of gross domestic product:¹⁸

| Surpluses, Deficits, and Debt Held by the Public: 2000-2009 | | |
|--|--|---|
| Year | Surplus or Deficit Total (in Billions of Dollars) | Debt Held by the Public (in Billions of Dollars) |
| 2000 | \$236.2 | \$3,409.8 |
| 2001 | \$128.2 | \$3,319.6 |
| 2002 | (\$157.8) | \$3,540.4 |
| 2003 | (\$377.6) | \$3,913.4 |
| 2004 | (\$412.7) | \$4,295.5 |
| 2005 | (\$318.3) | \$4,592.2 |
| 2006 | (\$248.2) | \$4,829.0 |
| 2007 | (\$160.7) | \$5,035.1 |
| 2008 | (\$458.6) | \$5,803.1 |
| 2009 | (\$1,413.6) | \$7,544.0 |

Source: Congressional Budget Office; Office of Management and Budget

Referenda; Ballots

When a public measure is submitted to the voters, the substance of the measure must be printed in clear and unambiguous language on the ballot, followed by the word “yes” and the word “no.” Florida law further requires that the ballot must be styled in a manner so that a “yes” vote indicates approval of the proposal, and a “no” vote indicates rejection.¹⁹

The purpose of the requirement for clear and unambiguous language “is to provide the voter with fair notice of the content of the proposed measure so that he or she will not be misled as to its purpose and may intelligently cast his or her vote.”²⁰ When a question proposed by a city failed to adequately inform voters that their response had “no official effect, i.e., that the ballot question is simply a nonbinding opinion poll,” one appellate court ruled that the ballot was defective.²¹ However, when a ballot asked voters *whether* they would support a voter petition requesting the county commission to propose a charter change, the same appellate court concluded that the ballot language complied with the statute.²²

Advisory Referenda

An advisory referendum has been described as a method for voters to make their views known without binding a legislature to act.

The advisory referendum aims to secure action by the elected officials and representatives in conformity with the popular judgment but through milder

¹⁸ Congressional Budget Office, *supra* note 12, at Appendix F, Table F-1.

¹⁹ Section 101.161(1), F.S.

²⁰ *City of Miami v. Staats*, 919 So. 2d 485, 487 (Fla. 3d DCA 2005).

²¹ *Id.*

²² *City of Hialeah v. Delgado*, 963 So. 2d 754, 757 (Fla. 3d DCA 2007). The court distinguished the *Staats* case by noting that the ballot language in *Staats* “made it appear that the vote would actually have binding effect.” *Id.* at 756-57.

methods than direct legislation. The voters may suggest or express their opinion on a course of action without themselves making the law. It is a method of ascertaining the will of the electorate without binding the legislature to a specific course of action and without enacting or rejecting a statute. The vote is advisory in character and leaves the public authorities with full power to act independently, whether it be in accordance with or against the wishes of the people. Thus, as a device for measuring electoral opinion, the advisory referendum stands somewhere between the legislating referendum and the opinion survey, less binding than the former but more politically authoritative than the latter.²³

III. Effect of Proposed Changes:

This bill provides for a nonbinding statewide advisory referendum, at the 2010 general election, on the question of whether the U.S. Constitution should be amended to require a balanced federal budget without raising taxes. The bill requires the following question to be printed on the ballot, followed by the word “yes” and the word “no”:

In order to stop the uncontrolled growth of our national debt and prevent excessive borrowing by the Federal Government, which threatens jobs, robs America and our children of their opportunity for success, and threatens our national security, should the United States Constitution be amended to require a balanced federal budget without raising taxes?

The bill appropriates \$80,000 from the General Revenue Fund to the Department of State for use by the department and the counties to offset costs related to including the question on the ballot.

The bill takes effect upon becoming a law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

The bill may require local governments to spend funds by requiring a specific question on the 2010 general election ballot. However, the measure would appear to be exempt from the State Constitution’s provisions restricting local mandates because the bill applies to election law and also because the fiscal impact appears to be insignificant. The bill includes an appropriation to the Department of State for use by the department and counties to offset costs of including the question on the ballot.

B. Public Records/Open Meetings Issues:

None.

²³ Ralph M. Goldman, *The Advisory Referendum in America*, PUB. OPINION QUARTERLY 303, 304 (1950) (on file with the Committee on Judiciary).

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The nonbinding advisory referendum prescribed by the bill asks voters if the U.S. Constitution should be amended to provide for a balanced federal budget without raising taxes. See the “Present Situation” section of this bill analysis for a discussion of methods of proposing amendments to the Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

The bill appropriates \$80,000 from the General Revenue Fund to the Department of State for use by the department and counties to offset costs related to including the question on the ballot.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Senate Concurrent Resolution 10 has also been filed during the 2010 Regular Session. Although it is not linked to this bill, it calls upon Congress to convene a constitutional convention under article V of the U.S. Constitution for the purpose of proposing amendments to the Constitution to achieve and maintain a balanced federal budget and to control the ability of the federal government to require states to expend funds.

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 Judiciary on March 9, 2010:

The committee substitute adds language to the proposed ballot question specifying that the federal budget should be balanced “without raising taxes.”

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
