

**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.)

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Prepared By: The Professional Staff of the Budget Committee

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BILL: SCR 4

INTRODUCER: President Haridopolos

SUBJECT: Balanced Federal Budget

DATE: April 12, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Diez-Arguelles</u>	<u>Meyer, C.</u>	<u>BC</u>	<u>Pre-meeting</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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**I. Summary:**

Through this concurrent resolution, the Legislature 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. The concurrent resolution specifies that it is revoked and withdrawn, nullified, and superseded if it is used for the purpose of calling or conducting a convention to amend the U.S. Constitution for any other purpose.

**II. Present Situation:<sup>1</sup>**

**Conventions as Method of Proposing Amendments to U.S. Constitution**

The Constitution of the United States prescribes two methods for proposing amendments to the document. Under the first method, Congress – upon the agreement of two-thirds of both houses – may propose an amendment itself. Under the second, Congress – upon application from legislatures in two-thirds of the states – “shall call a Convention for proposing Amendments.”<sup>2</sup>

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<sup>1</sup> The Present Situation section of this analysis relies in large part on the Bill Analysis and Fiscal Impact Statement prepared by the staff of the Senate Judiciary Committee for Senate Concurrent Resolution 10 (Reg. Sess. 2010)

<sup>2</sup> U.S. CONST. art. V. By comparison, the Florida Constitution provides the following methods for proposing amendments to the document: by joint resolution agreed to by three-fifths of the membership of each house of the Legislature (FLA. CONST. art. XI, s. 1); by constitutional revision commission (FLA. CONST. art. XI, s. 2); by citizen initiative (FLA. CONST. art. XI, s. 3); by a constitutional convention to consider revision to the entire document called by the people of the state (FLA. CONST. art. XI, s. 4); and by a taxation and budget reform commission (FLA. CONST. art. XI, s. 6). Regardless of the method by which 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)).

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.<sup>3</sup>

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.<sup>4</sup> 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.*

Despite the fact that over time states have made at least 400 convention applications to Congress on a variety of topics,<sup>5</sup> the constitutional convention method of proposing amendments has never been fully employed and, as authors have noted, occupies some unknown legal territory. Some of the legal questions surrounding the method relate to whether Congress has discretion to call a convention once 34 states make application; whether the scope of a convention may be limited to certain subject matters and by whom; and how applications from the states are to be tallied – “separately by subject matter or cumulatively, regardless of their subject matter.”<sup>6</sup>

Over time, some states have rescinded applications, in part amid concerns that the scope of a constitutional convention could extend to subjects beyond the subject proposed in a given state’s application. For example, in 2003 the Arizona Legislature adopted a concurrent resolution that “repeals, rescinds, cancels, renders null and void and supersedes any and all existing applications to the Congress ... for a constitutional convention ... for any purpose, whether limited or general.”<sup>7</sup> Article V of the U.S. Constitution is silent on the legal effect of a state’s decision to rescind a previously submitted application.

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<sup>3</sup> U.S. CONST. art. V.

<sup>4</sup> 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).

<sup>5</sup> *Id.* at 1005. The author cites this figure as of 1993.

<sup>6</sup> *Id.*

<sup>7</sup> Senate Concurrent Resolution 1022, State of Arizona, Senate, Forty-sixth Legislature (First Reg. Sess. 2003) (copy on file with the Florida Senate Committee on Judiciary). The concurrent resolution notes that “certain persons or states have called for a constitutional convention on issues that may be directly in opposition to the will of the people of this state.” *Id.*

## **Calls for a Constitutional Convention on a 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.<sup>8</sup> 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."<sup>9</sup>

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."<sup>10</sup>

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<sup>8</sup> E. Donald Elliott, *Constitutional Conventions and the Deficit*, 1985 DUKE L.J. 1077, 1078 (1985).

<sup>9</sup> Senate Memorial 234 (Reg. Sess. 1976).

<sup>10</sup> House Memorial 2801 (Reg. Sess. 1976).

### *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.”<sup>11</sup>

### *Florida's 2010 Application to Congress*

In 2010, the Legislature again adopted a measure making application to Congress for a constitutional convention. Senate Concurrent Resolution 10 asked Congress to call a convention for the sole purpose of proposing amendments to the Constitution of the United States “to achieve and maintain a balance budget,” and “to control the ability of the Congress and the various federal executive agencies to require states to expend funds.” Like previous requests to Congress, the concurrent resolution stated that it superseded all previous memorials applying to Congress to call a constitutional convention.<sup>12</sup>

### **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.”<sup>13</sup> Florida’s requirement is 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.”<sup>14</sup> 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.”<sup>15</sup>

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

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<sup>11</sup> Senate Memorial 302 (Reg. Sess. 1988).

<sup>12</sup> Senate Concurrent Resolution 10 (Reg. Sess. 2010).

<sup>13</sup> 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).

<sup>14</sup> FLA. CONST. art VII, s. 1(d).

<sup>15</sup> Section 216.221(1), F.S.

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.<sup>16</sup>

### **Federal Budget Deficit and National Debt**

The Congressional Budget Office (CBO) estimates that the federal budget deficit will be approximately \$1.5 trillion for fiscal year 2011, assuming current law and policies remain unchanged.<sup>17</sup> According to the CBO:

*The resulting federal budget deficit of nearly \$1.5 trillion projected for this year will equal 9.8 percent of GDP, a share that is nearly 1 percentage point higher than the shortfall recorded last year and almost equal to the deficit posted in 2009, which at 10.0 percent of GDP was the highest in nearly 65 years.*<sup>18</sup>

The CBO projects deficits ranging from \$600 to \$800 billion per year over the 2012-2021 period.<sup>19</sup>

In turn, the deficits will cause federal debt held by the public to increase significantly. As of April 12, 2011, the federal government’s Total Public Debt Outstanding is estimated to be \$14.3 trillion. Of this amount, \$9.7 trillion is debt held by the public and \$4.6 trillion is debt held by government trust funds.<sup>20</sup> For comparison purposes, on April 12, 2001, ten years ago, Total Public Debt Outstanding was estimated to be \$5.8 trillion.<sup>21</sup> Finally, during a recent 8-month period, from May 1, 2010 to December 31, 2010, Total Public Debt Outstanding grew by more than \$1 trillion.<sup>22</sup>

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

Through this concurrent resolution, the Legislature makes application to the Congress of the United States to call a convention under article V of the U.S. Constitution for the sole purpose of proposing an amendment to the Constitution to achieve and maintain a balanced budget.

The concurrent resolution does not contain specific constitutional language; however, it proposes achieving and maintaining a balanced federal budget by, among other things:

- (1) Requiring that total outlays not exceed total receipts for any fiscal year;

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<sup>16</sup> Section 215.98(1), F.S.

<sup>17</sup> Congressional Budget Office, Congress of the United States, *The Budget and Economic Outlook: Fiscal Years 2011 to 2021, Summary* (Jan. 2011), <http://www.cbo.gov/ftpdocs/120xx/doc12039/SummaryforWeb.pdf>

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> TreasuryDirect, *The Debt to the Penny and Who Holds It*, <http://www.treasurydirect.gov/NP/BPDLogin?application=np> (last visited April 14, 2011). 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 April 14, 2011).

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

- (2) Requiring the setting of a fiscal year total outlay limit;
- (3) Prohibiting increases in taxes or other revenue sources;
- (4) Providing that, for reasons other than war or military conflict, the limits of this amendment may be waived by law for any fiscal year if approved by at least two-thirds of both houses of Congress;
- (5) Allowing for provisions of the amendment to take effect within specified time periods;
- (6) Providing for the waiver of the provisions of the amendment for any fiscal year in which a declaration of war is in effect or the United States is engaged in military conflict that causes an imminent and serious military threat to national security; and
- (7) Allowing for congressional enforcement.

The concurrent resolution specifies that it supersedes all previous memorials and concurrent resolutions applying to Congress for a constitutional convention for the purpose of proposing a balanced budget amendment to the U.S. Constitution, including the memorials and concurrent resolutions adopted in 1976, 1988, and 2010. The concurrent resolution provides that the previous memorials and resolutions are “revoked and withdrawn, nullified, and superseded to the same effect as if they had never been passed.”

In addition, the concurrent resolution specifies that it is similarly revoked and withdrawn, nullified, and superseded if it is used for the purpose of calling or conducting a convention to amend the U.S. Constitution for any purpose other than requiring a balanced federal budget. Under the Senate rules, a concurrent resolution must be read twice, passed by both houses of the Legislature, and signed by the presiding officers.<sup>23</sup>

#### **Other Potential Implications:**

Unlike Florida, which has a constitutional requirement for raising sufficient revenue to defray the expenses of the state in each fiscal year, the U.S. Constitution does not contain a requirement for a balanced federal budget. Amending the U.S. Constitution to require a balanced federal budget would represent a fundamental change in federal fiscal policy and practice and would undoubtedly affect decisions ranging from the nature and quantity of government expenditures to the sources and level of revenue generation. The potential implications for government at all levels and for private citizens and businesses are difficult to quantify but likely to be significant.

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

##### **A. Municipality/County Mandates Restrictions:**

None.

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<sup>23</sup> The Florida Senate, *Manual for Drafting Legislation*, 129 (6th ed. 2009); see also Rule 4.13, *Rules and Manual of the Senate of the State of Florida*, Senator Mike Haridopolos, President, 2010-2012.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:**

None.

**D. Other Constitutional Issues:**

This concurrent resolution makes an application to Congress under article V of the U.S. Constitution for a convention to propose amendments to the Constitution requiring a balanced federal budget. See the “Present Situation” section of this bill analysis for a discussion of the convention as a method of proposing amendments to the Constitution.

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

None.

**B. Private Sector Impact:**

The concurrent resolution itself does not directly affect the private sector fiscally. However, to the extent applications from the states to Congress for a constitutional convention ultimately result in amendments to the U.S. Constitution requiring a balanced federal budget, the private sector may be affected by budgetary and economic changes stemming from the constitutional changes.

**C. Government Sector Impact:**

The concurrent resolution itself does not directly affect state government or local governments fiscally. However, to the extent applications from the states to Congress for a constitutional convention ultimately result in amendments to the U.S. Constitution requiring a balanced federal budget, the government sector may be affected by budgetary and economic changes stemming from the constitutional changes.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Senate Concurrent Resolution 1558 has also been filed during the 2011 Regular Session. That resolution makes application to Congress for a convention to propose the following amendment to the U.S. Constitution:

*Any provision of law or regulation of the United States may be repealed by the several states, and such repeal shall be effective when the*

*legislatures of two-thirds of the several states approve resolutions for this purpose that particularly describe the same provision or provisions of law or regulation to be repealed.*

The resolution also states that “the State of Florida reserves its right to add future amendments as the Legislature deems warranted to this application.”

**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:**

None.

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

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