

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 Judiciary Committee

BILL: CS/SM 1142

INTRODUCER: Judiciary Committee and Senator Hays

SUBJECT: Federal Balanced Budget Amendment

DATE: January 19, 2012 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	White	Cibula	JU	Fav/CS
2.			BC	
3.				
4.				
5.				
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:

Through this Senate Memorial, the Legislature petitions Congress to propose to the states an amendment to the United States Constitution that requires the federal budget to be balanced each year.

II. Present Situation:

Methods of Proposing Amendments to U.S. Constitution

Legal scholarship notes that two methods 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.¹ The language ultimately agreed upon, and which became article V of the U.S. Constitution, states:

¹ 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).

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.

Thus, the Constitution of the United States prescribes two methods for proposing amendments to the document. Under the first method, Congress may propose an amendment itself, upon the agreement of two-thirds of both houses. Under the second, Congress, upon application from legislatures in two-thirds of the states, “shall call a Convention for proposing Amendments.”² 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.³ The President has no ability to veto an amendment proposal, nor a ratification.⁴

The Congressional Proposal Method

In the route taken by all amendments to the U.S. Constitution, a bill passes both houses of the legislature, by a two-thirds majority in each, and then goes on to the states for ratification. To avoid the delay of long outstanding amendments,⁵ Congress will normally put a time limit for the bill to be approved as an amendment.⁶

Florida’s 1988 Request to Congress for a Balanced Federal Budget

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.

² U.S. CONST. art. V. By comparison, the Florida Constitution provides the following methods for proposing amendments to the State Constitution: by joint resolution agreed to by three-fifths of the membership of each house of the Legislature (FLA. CONST. art. XI, s. 1); by constitution 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)).

³ U.S. CONST. art. V.

⁴ *Id.*; *Hollingsworth v Virginia*. 3 U.S. 378, at 381 n. 1 (1798) (“The negative of the President applies only to the ordinary cases of legislation: He has nothing to do with the proposition, or adoption, of amendments to the Constitution.”).

⁵ The 27th amendment was ratified in 1992, nearly 203 years after it was proposed in 1789.

⁶ The 21st and 22nd amendments contain clauses requiring ratification “within seven years from the date of ... submission ... to the States by the Congress.”

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

The Convention Method

Despite the fact that over time states have made at least 400 convention applications to Congress on a variety of topics,⁸ 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.”⁹

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.”¹⁰ Article V of the U.S. Constitution is silent on the legal effect of a state’s decision to rescind a previously submitted application.

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.¹¹ 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.”¹²

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

⁸ Rogers, *supra* note 1. at 1005. The author cites this figure as of 1993.

⁹ *Id.*

¹⁰ 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.*

¹¹ E. Donald Elliott, *Constitutional Conventions and the Deficit*, 1985 DUKE L.J. 1077, 1078 (1985).

¹² 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.”¹³

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 balanced 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.¹⁴

The concurrent resolution proposed achieving and maintaining a balanced federal budget by requiring the balanced budget to account for all obligations of the federal government; providing exceptions to the requirement for a balanced budget in cases of national emergencies or threats to national security; imposing spending limits on the federal government; establishing extraordinary vote requirements for new or increased federal taxes and other revenues; and prohibiting federal mandates on states to impose taxes or fees.

¹³ House Memorial 2801 (Reg. Sess. 1976).

¹⁴ Senate Concurrent Resolution 10 (Reg. Sess. 2010).

Florida's 2011 Application to Congress

In 2011, the Florida Senate adopted a concurrent resolution making application to the Congress of the United States to call an article V constitutional convention for the sole purpose of proposing an amendment to the Constitution to achieve and maintain a balanced budget.¹⁵ The Florida House of Representatives did not vote on the resolution.

The concurrent resolution made proposals to Congress for achieving and maintaining a balanced federal budget by, among other things, requiring that total outlays not exceed total receipts for any fiscal year, and requiring the setting of a fiscal year total outlay limit. The resolution proposed the possibility of Congressional waiver under specific circumstances. Additionally, the resolution proposed prohibiting increases in taxes or other revenue sources. The concurrent resolution specified 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 purpose other than requiring a balanced federal budget.

State Balanced-Budget Requirements

Although it notes disagreement on what is meant by a “balanced budget,” the National Conference of State Legislatures reports that 49 states have at least a limited statutory or constitutional requirement of a balanced budget, with Vermont being the exception.¹⁶ 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.”¹⁷ 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.”¹⁸

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.¹⁹

Federal Budget Deficit and National Debt

The federal government incurred a budget deficit of \$1.3 trillion for fiscal year 2011.²⁰ This is an amount similar to deficits incurred in 2010 and 2009. The Congressional Budget Office (CBO) has explained that large recent deficits:

¹⁵ Senate Concurrent Resolution 4 (Reg. Sess. 2011).

¹⁶ Nat’l Conference of State Legislatures, *State Balanced Budget Provisions* (updated 2010), <http://www.ncsl.org/IssuesResearch/BudgetTax/StateBalancedBudgetRequirementsProvisionsand/tabid/12651/Default.aspx> (last visited Jan. 13, 2012).

¹⁷ FLA. CONST. art VII, s. 1(d).

¹⁸ Section 216.221(1), F.S.

¹⁹ Section 215.98(1), F.S.

²⁰ United States Government Accountability Office, *Statement of the Comptroller General of the United States* (Dec. 23, 2011), <http://www.gao.gov/financial/fy2011/11gao1.pdf> (last visited Jan. 16, 2012).

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.²¹

In turn, these deficits, that have been ongoing and generally increasing since 2002, have caused the federal debt to increase significantly. As of January 16, 2012, the federal government's total public debt outstanding is estimated to be \$15.24 trillion. Of this amount, \$10.48 trillion is debt held by the public and \$4.76 trillion is debt held by government trust funds.²² For comparison purposes, on January 16, 2002, ten years ago, total public debt outstanding was estimated to be \$5.92 trillion.²³

Measuring the debt in relation to other more tangible figures can aid in the task of conceptualizing a debt that has grown to trillions of dollars. One way to measure the debt burden is to allocate it to residents in per capita shares. For January 2012, the total public debt outstanding would be borne by each resident of the United States in an amount greater than \$48,500.²⁴ Another measure of the national debt is the size of the debt burden relative to GDP. In the past few years, the amount of total federal debt surged from 65 percent of GDP at the end of 2007²⁵ to 100 percent of GDP by the third quarter of 2011.²⁶

Although the CBO predicts that “deficits will total roughly \$7 trillion over the next 10 years,” current laws can be changed to bring deficits lower.²⁷ The CBO's 2011 Long-Term Budget Outlook makes clear that the burden of paying debt grows with the interest on it.²⁸ Under one

²¹ 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> (last visited Jan. 16, 2012).

²² Debt held by the public represents money owed to those holding government securities such as Treasury bills and bonds. Total debt includes intra-governmental debt, which includes amounts owed to the Social Security Trust Funds and Civil Service Retirement Funds. TreasuryDirect, *The Debt to the Penny and Who Holds It*, <http://www.treasurydirect.gov/NP/BPDLLogin?application=np> (last visited Jan. 16, 2012). 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 Jan. 11, 2012).

²³ *Id.*

²⁴ The U.S. national population estimate is 312,863,089 persons, as of January 16, 2012. U.S. Census Bureau, *U.S. and World Population Clocks*, <http://www.census.gov/main/www/popclock.html> (last visited Jan. 16, 2012) (“The U.S. population clock shows a series of short-term projections for the resident population of the United States,” including people whose usual residence is in the 50 states and the District of Columbia, but not members of the Armed Forces overseas, their dependents, or other U.S. citizens residing outside the United States.).

²⁵ In the 2007 fiscal year, U.S. federal debt held by the public was approximately \$5 trillion (36.8 percent of GDP) and total debt was \$9 trillion (65.5 percent of GDP). TreasuryDirect, *supra* note 22.

²⁶ In the third quarter of 2011, GDP rose to \$15,180.9 billion. Bureau of Economic Analysis, U.S. Department of Commerce, News Release BEA 11-55 (Nov. 22, 2011), http://www.bea.gov/newsreleases/national/gdp/2011/pdf/gdp3q11_2nd.pdf (last visited Jan. 15, 2012).

²⁷ Congressional Budget Office, *The Macroeconomic and Budgetary Effects of an Illustrative Policy for Reducing the Federal Budget Deficit* (July 14, 2011), http://www.cbo.gov/ftpdocs/123xx/doc12310/07-14-DeficitReduction_forweb.pdf (last visited Jan. 16, 2012).

²⁸ Congressional Budget Office, *CBO's 2011 Long-Term Budget Outlook* (June 2011), at 1-2, http://www.cbo.gov/ftpdocs/122xx/doc12212/06-21-Long-Term_Budget_Outlook.pdf (last visited Jan. 16, 2012).

fiscal scenario,²⁹ if revenues “increase much more slowly than spending,” and debt held by the public continues to grow according to current policy,³⁰ annual federal spending on interest rises “from about 1 percent of GDP today to 9 percent by 2035.”³¹ Continued rising debt, and interest on the debt, will have a negative impact on economic output and incomes, unless it is reversed.³²

III. Effect of Proposed Changes:

Through this memorial, the Legislature petitions Congress to propose to the states an amendment to the United States Constitution which requires the federal budget to be balanced each year. This memorial makes a request for Congress to make its own proposal to the states, in accordance with one of the two amendment methods set out in the U.S. Constitution. The concurrent resolution does not contain specific constitutional language; nor does it propose how to achieve and maintain a balanced federal budget.

Copies of the memorial are to be provided to the President of the United States, the President of the United States Senate, the Speaker of the United States House of Representatives, and each member of the Florida delegation to the United States Congress.

After passage, the Senate President signs the memorial. The memorial is not subject to approval or veto by the Governor.

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.

B. Public Records/Open Meetings Issues:

None.

²⁹ The CBO names this set of assumptions the “alternative fiscal scenario.” The *CBO’s 2011 Long-Term Budget Outlook* also makes projections based on a set of assumptions labeled the “extended-baseline scenario.”

³⁰ Debt held by the public would, “balloon to nearly 190 percent of GDP by 2035” under this scenario. *Id.*

³¹ *Id.*

³² For policy recommendations and other considerations for reducing the federal budget deficit, See CBO, *The Macroeconomic and Budgetary Effects of an Illustrative Policy for Reducing the Federal Budget Deficit*, *supra* note 27.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

Senate Memorial 1142 petitions Congress to propose to the states an amendment to the United States Constitution, which requires the federal budget to be balanced each year. See the “Present Situation” section of this bill analysis for a discussion of the methods of proposing amendments to the Constitution.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The memorial itself does not directly affect the private sector fiscally. However, to the extent the Congress takes actions ultimately resulting 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 memorial itself does not directly affect state government or local governments fiscally. However, to the extent the Congress takes actions ultimately resulting 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:

The bill includes “whereas” clauses containing references to debt figures and budget projections that the Legislature may consider updating. The “current national debt” figures, which represent the total public debt outstanding, could be updated to reflect a better understanding of the debt situation since the bill was drafted.³³

Similarly, two “whereas” clauses containing projected data can be updated because final data now exists. For 2011, the Congressional Budget Office reports a federal budget deficit of \$1.3 trillion, or a national deficit equal to nearly 8.7 percent of the country’s entire economic output,

³³ Total public debt outstanding continued to grow from \$14.3 trillion in August of 2011 to \$15.2 trillion in January of 2012. The associated share of the public debt per resident is over \$48,500.

the third largest share of entire economic output this country has experienced since 1945.³⁴ Lastly, total public debt outstanding already exceeded current GDP, so it is unnecessary for the bill to refer to a projection of this event occurring by December, 2012.³⁵

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 January 19, 2012:

The committee substitute replaced three “whereas” clauses in the original bill in order to remove outdated debt figures and budget projections. The committee substitute specifies the amount of total public debt outstanding as of December 30, 2011; the cost per capita of the total public debt as of December 30, 2011; the 2011 fiscal year federal budget deficit; and the debt to GDP ratio as of January 2012.

- B. Amendments:

None.

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

³⁴ Congressional Budget Office Director’s Blog, *Federal Budget Deficit for Fiscal Year 2011: \$1.3 Trillion* (Nov. 8, 2011) <http://cboblog.cbo.gov/?p=2998> (last visited Jan. 16, 2012).

³⁵ *Total public debt outstanding* reached parity with GDP as early as November 1, 2011. The *total debt held by the public* is around 68% of GDP, as of January 2012. For explanation of differences between these two measures, *see supra* note 22.