

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 Committee on Appropriations

BILL: CS/SB 1008

INTRODUCER: Appropriations Committee and Senator Stargel

SUBJECT: Article V Constitutional Conventions

DATE: April 14, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Shettle</u>	<u>Kynoch</u>	<u>AP</u>	Fav/CS
3.	_____	_____	<u>RC</u>	_____

I. Summary:

CS/SB 1008 creates the “Article V Constitutional Convention Act” and establishes a framework for selecting and authorizing delegates to attend an Article V convention for the purpose of proposing amendments to the United States Constitution.

The bill provides that:

- Delegates and alternate delegates will be appointed by the Senate and House of Representatives pursuant to joint rules adopted by both chambers;
- Delegates must execute a written oath stating that the delegate will support the U.S. Constitution and the State Constitution and abide by any instructions adopted by the Legislature;
- The Legislature must adopt a concurrent resolution once delegates are appointed and provide instructions to the delegates regarding the rules of procedure and relevant matters relating to the Article V convention;
- A delegate who votes outside the scope of the instructions established by a concurrent resolution is subject to criminal penalties, forfeits his or her appointment, and the vote is void; and
- An advisory group shall be appointed to advise the delegates on whether certain actions would violate the instructions established by a concurrent resolution.

The bill is not expected to have a significant fiscal impact.

II. Present Situation:

Methods of Amending the U.S. Constitution

Article V of the United States Constitution provides two methods for proposing amendments to the Constitution. The first method authorizes Congress to propose amendments to the states

which are approved by a two-thirds vote of both Houses of Congress.¹ Amendments approved in this manner do not require the President's signature and are transmitted to each state for ratification.² Starting with the Bill of Rights in 1789, Congress used this method to submit 33 amendments to the states. Of those 33 proposals, 27 amendments to the Constitution were approved by the states.³

The second method, which has never been used, requires Congress to call a convention for proposing amendments when two-thirds of the state legislatures apply to Congress to call an Article V convention.⁴ Currently, 34 states would need to make applications to meet the two-thirds requirement to call an Article V Convention. Because an Article V convention has never been conducted, what might actually occur procedurally or substantively is unclear.⁵

With the recent passage of a Michigan balanced budget memorial,⁶ it has been suggested that the requisite 34 states have now made application to Congress for an Article V convention. Because some states have passed and rescinded their applications, the final count is unclear and will likely involve legal analysis by Congress as to how to best proceed.

If an Article V convention is called by Congress, nothing in Florida law or federal law provides guidance as to how delegates will be selected or what the scope of their authority will be. Also unclear is how delegates to a convention will be apportioned. One approach could be a model similar to the Electoral College which is based on population. Another could be based on the Senate model of two people per state. Accordingly, how many delegates Florida would have is also unknown.

III. Effect of Proposed Changes:

Purpose

This bill creates the "Article V Constitutional Convention Act" and establishes a framework for selecting and authorizing delegates to attend an Article V convention to propose amendments to the United States Constitution. The legislation is similar to a format adopted by Indiana for the same purpose.

¹ U.S. CONST. Article V.

² U.S. National Archives and Records Administration, *The Constitutional Amendment Process*, <http://www.archives.gov/federal-register/constitution> (last visited February 4, 2014).

³ Thomas H. Neale, Congressional Research Service, *The Article V Convention: Contemporary Issues for Congress* (July 9, 2012), <http://www.fas.org/sgp/crs/misc/R42589.pdf>.

⁴ U.S. CONST. Article V.

⁵ Article V further provides that the amendments shall become a part of the Constitution when ratified by the Legislatures of three-fourths of the states or by conventions in three-fourths of the states. This would require ratification by 38 states. Because Article V provides that the amendments become valid when ratified by three-fourths of the legislatures or conventions "as the one or the other Mode of Ratification may be proposed by the Congress," Congress may choose the method of ratification. With the exception of the 21st Amendment, which repealed the 18th Amendment and prohibition, Congress has sent all proposed amendments to the legislatures for ratification.

⁶ Stephan Dinan, *Constitutional conundrum: Michigan demand for a balanced budget could trigger amendment convention*, THE WASHINGTON TIMES, March 31, 2014, <http://www.washingtontimes.com/news/2014/mar/31/constitutional-conundrum-michigan-demand-for-a-bal/>; Barnini Chakraborty, *Did Michigan just trigger 'constitutional convention'? Bid gains steam*, FOX NEWS, April 2, 2014, <http://www.foxnews.com/politics/2014/04/02/rare-option-forcing-congress-to-meet-change-constitution-gains-momentum/>

Appointment of Delegates

Under the bill, the Senate and House of Representatives will appoint an equal number of delegates and alternate delegates by concurrent resolution pursuant to joint rules adopted by each chamber. The bill presumes that Florida will have two delegates, but authority is provided to appoint the number of delegates that the state is allocated.

If the Legislature is not in session at the time that delegates must be appointed, the President of the Senate and the Speaker of the House of Representatives must call the Legislature into special session for the purpose of appointing the delegates.

To be appointed as a delegate or alternate delegate a person must receive, in each chamber, a vote of a majority of all the members elected to that chamber. At the time of appointment each alternate delegate will be paired with a delegate. An alternate delegate must act in the place of the paired delegate if the delegate is absent from the Article V convention or vacates the office.

The Legislature may recall a delegate or alternate delegate and replace that person at any time. If the Legislature is not in session when a vacancy needs to be filled, the President of the Senate and Speaker of the House of Representatives shall call a special session for that purpose.

Qualifications of Delegates and Alternate Delegates

A delegate or alternate delegate must:

- Reside in the state;
- Be a registered voter in the state; and
- Not be registered or required to be registered as a lobbyist under state law.

A person may not be a delegate if he or she holds a federal office.

Reimbursement of Expenses

Delegates serve without compensation but may be reimbursed, at the expense of the Senate and House of Representatives, for their per diem and travel expenses pursuant to s. 112.061, F.S.

Oath of Office

Each delegate and alternate delegate is required to execute an oath in the state, and in writing before exercising any function of that position. The oath provides that he or she will:

- Support the United States Constitution and the State Constitution;
- Faithfully abide by and execute any instructions adopted by the Legislature; and
- Otherwise faithfully discharge the duties of a delegate or alternate delegate.

The executed oath must be filed with the Secretary of State. After the oath is filed, the Governor will issue a commission to the delegate or alternate delegate.

Instructions

After delegates and alternate delegates are appointed, the Legislature must adopt a concurrent resolution to provide instructions to the delegates and alternate delegates to provide instructions on the rules of procedure and any other matter relating to the Article V convention that the Legislature deems necessary. Those instructions may be amended by the Legislature at any time by a concurrent resolution.

Votes Cast Outside the Scope of Instructions or Limits

A vote cast by a delegate or alternate delegate at an Article V convention is void if the vote is:

- Outside the scope of the instructions established by the Legislature's concurrent resolution; or
- Outside the limits placed by the Legislature in its application calling for the Article V convention.

Status of Appointment

If a delegate or alternate delegate votes or attempts to vote outside the Legislature's instructions or the limits of the Legislature's application for a convention, the delegate or alternate forfeits his or her appointment. If the delegate forfeits an appointment for these reasons, the paired alternate delegate assumes the role of the delegate at the time that the forfeiture occurs.

Status of Application

If all of the delegates and alternate delegates vote or attempt to vote outside the scope of the Legislature's instructions or outside the limits placed by the Legislature in its application for the constitutional convention, then the Legislature's application for the constitutional convention ceases to be a continuing application and is to be treated as having no effect.

Criminal Liability

If a delegate or alternate delegate knowingly or intentionally votes or attempts to vote outside the scope of the instructions or limits as discussed above, he or she commits a third degree felony, which is punishable by a term of imprisonment that does not exceed 5 years⁷ and a fine that does not exceed \$5,000.⁸

Advisory Group

Membership and Policies

The bill establishes an Article V convention advisory group. The advisory group consists of an attorney appointed by the President of the Senate, an attorney appointed by the Speaker of the House of Representatives, and an attorney selected by agreement of the appointed attorneys, who will serve as chair of the advisory group. The group will meet at the call of the chair and

⁷ Section 775.082, F.S.

⁸ Section 775.083, F.S.

establish policies and procedures that the group deems necessary to carry out the provisions of this bill.

Responsibilities

The advisory group is responsible to advise a delegate or alternate delegate, when asked by the delegate or alternate delegate, whether an action or attempt to take an action would:

- Violate the instructions established by the Legislature; or
- Exceed the limits placed by the Legislature in the application for an Article V convention on the subjects and amendments that may be considered by the convention.

The advisory group must render an advisory determination within 24 hours after receiving a request and must transmit a copy of its determination to the requester as expeditiously as possible.

Upon the request of the President of the Senate, the Speaker of the House, the Attorney General, or on its own motion, the advisory group shall advise the Attorney General whether there is reason to believe that a vote or attempt to vote has violated the instructions of the Legislature or the limits placed in the application for an Article V convention. The opinion may be issued without notice or an evidentiary proceeding, or after a hearing conducted by the advisory group. The advisory determination must be rendered within 24 hours after the request and a copy of the opinion must be transmitted to the Attorney General as expeditiously as possible.

Revocation of Credentials

When the Attorney General receives an advisory determination stating that a vote or attempt to vote is a violation of the Legislature's instructions or exceeds the limits placed by the Legislature in the Article V convention application, he or she must inform the delegates, alternate delegates, President of the Senate, Speaker of the House, and the Article V convention that:

- The vote or attempt to vote did not comply with Florida law and is void and has no effect; and
- The credentials of the delegate or alternate delegate who is the subject of the determination are revoked.

The bill takes effect July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

CS/SB 1008 is not expected to have a significant fiscal impact. Delegates or alternate delegates will serve without compensation but may be reimbursed for per diem and travel expenses.

VI. Technical Deficiencies:

Section 4 of the bill describes the qualifications of delegates and alternate delegates. Beginning on line 80, the bill states that “A person may not be appointed as a delegate if he or she holds a federal office.” The other qualifications in this section apply to both delegates and alternate delegates.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates the following sections of the Florida Statutes: 11.93, 11.931, 11.932, 11.933, 11.9331, 11.9332, 11.9333, 11.9334, 11.9335, 11.9336, 11.9337, 11.934, 11.9341, 11.9342, 11.9343, 11.9344, 11.9345, 11.935, 11.9351, and 11.9352.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Appropriations on April 10, 2014:

The committee substitute:

- Provides that the President of the Senate and the Speaker of the House of Representatives, rather than the Governor, shall call the Legislature into special session for the purpose of appointing delegates and alternate delegates.
- Requires that the oath executed by a delegate or alternate delegate is executed in the state.

- Provides that the advisory group will consist of an attorney appointed by the President of the Senate, an attorney appointed by the Speaker of the House of Representatives, and an attorney selected by agreement of the appointed attorneys, who will serve as chair of the advisory group.

B. Amendments:

None.