

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HM 261 Constitutional Convention/Single-Subject Requirement for Federal Legislation

SPONSOR(S): Judiciary Committee; Beshears and others

TIED BILLS: None **IDEN./SIM. BILLS:** SM 368

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	16 Y, 1 N	Dougherty	Rojas
2) Judiciary Committee	12 Y, 3 N, As CS	Aziz	Havlicak

SUMMARY ANALYSIS

One method of proposing amendments to the United States Constitution is through a constitutional convention pursuant to Article V, which requires Congress to call a convention for proposing amendments when two-thirds of the state legislatures make application to Congress for a convention. No convention has ever been convened under the current constitution.

The memorial serves as an application to Congress to call an Article V Convention of the states for the limited purpose of proposing a single subject constitutional amendment. Such an amendment would prevent Congress from considering varied and disparate subjects in a single bill. The memorial provides that the application for an Article V Convention is a continuing application to Congress until at least two-thirds of states have made an application on the same subject.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law—they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject.

This memorial does not have a fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED MEMORIAL:

Present Situation

Methods of Amending the U.S. Constitution

Article V of the United States Constitution authorizes two methods for amending the Constitution: by Congress or by a constitutional convention.¹

Congressional Amendments

A constitutional amendment may be proposed by a two-thirds majority of both chambers in the form of a joint resolution. After Congress proposes an amendment, the Archivist of the United States is responsible for administering the ratification process under the provisions of 1 U.S.C. s.106b.² Since the President does not have a constitutional role in the amendment process, the joint resolution does not go to the White House for signature or approval. The Office of the Federal Register (OFR) assembles an information package for the states which includes copies of the joint resolution and the statutory procedure for ratification under 1 U.S.C. s.106b. The Archivist submits the proposed amendment to the states for their consideration by sending a letter of notification and the OFR informational material to each Governor. The Governors then formally submit the amendment to their state legislatures.³

When a state ratifies a proposed amendment, it sends the state action to the Archivist. A proposed amendment becomes part of the Constitution as soon as it is ratified by three-fourths of the states (38). The OFR verifies the 38 ratification documents and drafts a formal proclamation for the Archivist to certify that the amendment is valid and has become part of the Constitution. This certification is published in the Federal Register and U.S. Statutes at Large and serves as official notice that the amendment process has been completed.⁴

Since 1789, Congress has proposed 33 amendments by this method, 27 of which have been adopted.

Constitutional Convention Amendments

An amendment may be proposed by a constitutional convention called for by two-thirds of the state legislatures (34). If 34 states apply, Congress must call an Article V Convention to consider and propose amendments. These proposed amendments must also be ratified by three-fourths of the states (38).⁵ This method has never been implemented⁶; therefore, there is no precedent for the exact process and application requirements. Some of the issues concerning this process include procedures within the state legislatures; the scope and conditions of applications for a convention; steps in submitting applications to Congress; and the role of the state governors in the process.⁷

¹ U.S. CONST. art. V.

² *The Constitutional Amendment Process*, U.S. National Archives and Records Administration, <http://www.archives.gov/federal-register/constitution> (last visited March 25, 2014).

³ *Id.*

⁴ *Id.*

⁵ Thomas H. Neale, Cong. Research Serv., RL 7-7883, *The Article V Convention for Proposing Constitutional Amendments: Historical Perspectives for Congress 1* (2012).

⁶ See Sara R. Ellis et al., *Article V Constitutional Conventions: A Primer*, 78 Tenn. L. Rev. 663, 665 (2011) (“Despite the submission of approximately 750 applications for an Article V convention, including applications by all fifty states, no constitutional convention has ever been called.”).

⁷ *Id.* See also Thomas H. Neale, Cong. Research Serv., RL 7-5700, *The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress* (2012).

The records of the Philadelphia Convention of 1787 demonstrate that the founders intended to balance Congress' amendatory power by providing the convention method to empower the people to propose amendments.⁸ Article V identifies these methods as equal and requires the same ratification for all proposed amendments.

Although never used in full, this method has been a useful tool to provoke congressional action. The most successful incidence of using the threat of a constitutional convention to induce change was the movement for the direct election of Senators, which prodded Congress to propose the 17th Amendment.⁹

Single Subject Provision

A single-subject constitutional provision prohibits a legislative body from enacting a law that embraces more than one subject.

State Provisions

According to the National Conference of State Legislatures, 41 states, including Florida, have a single subject provision in their state constitutions.¹⁰ Florida's reads, "Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title."¹¹ Seven state constitutions contain no single-subject provisions, one state places the requirement in a joint rule, while one remaining state seems to imply in its constitution that that legislation should be limited to a single subject.¹²

Federal Provisions

Currently, there is no federal constitutional or statutory requirement that legislation be limited to a single subject. However, legislation calling for a single subject requirement was introduced in both bodies of Congress during the current 113th Congress. Entitled the "One Subject at a Time Act," the legislation provides, in part, that "each bill or joint resolution shall embrace no more than one subject."¹³ The bills have each been referred to a committee but neither has been scheduled for a hearing at this time. Similar legislation died in committee in 2012.¹⁴

Constitutional Single Subject Amendment

The adoption of a single subject amendment to the U.S. Constitution would prevent Congress from considering bills that encompass more than one subject. Such a restriction would limit pork barrel spending, the use of riders to legislate, and the logrolling of omnibus legislation. Proponents argue that each measure before Congress should pass on its own merits without depending on legislative support for other unrelated measures to achieve the required number of votes for passage. Furthermore, they contend that a single-subject amendment will increase productivity, efficiency, and transparency in a less acrimonious Congress.

Effect of Memorial

⁸ Thomas H. Neale, *supra* note 7 at 6-8.

⁹ *Id.* at 9-10.

¹⁰ National Conference of State Legislatures, *Germaneness Requirements*, available at <http://www.ncsl.org/research/about-state-legislatures/germaneness-requirements.aspx> (last visited March 25, 2014).

¹¹ Art. III, s. 6, FLA. CONST.

¹² National Conference of State Legislatures, *State Constitutional Provisions that Limit Bills to One Subject (Single Subject Requirement)*, on file with the House Local & Federal Affairs Committee.

¹³ H.R. 2113 and S. 1664, 113th Cong. (2013). H.R. 2113 is currently pending in the Subcommittee on the Constitution and Civil Justice, see <http://beta.congress.gov/bill/113th-congress/house-bill/2113> (last visited March 25, 2014). S. 1664 is currently pending in the Committee on Rules and Administration, see <http://beta.congress.gov/bill/113th-congress/senate-bill/1664> (last visited March 25, 2014).

¹⁴ H.R. 3806 and S. 3359, 112th Cong. (2012), available at <http://www.ncsl.org/research/about-state-legislatures/germaneness-requirements.aspx> (last visited March 25, 2014).

The memorial serves as an application to Congress pursuant to Article V of the U.S. Constitution to call an Article V Convention of the states for the limited purpose of proposing a single subject amendment. This memorial provides that such an amendment should read as follows:

Congress shall pass no bill, and no bill shall become law, which embraces more than one subject, that subject to be clearly expressed in the bill's title.

The memorial provides for its own withdrawal should it be used to call a Convention that achieves any purpose other than a single subject amendment consideration. Additionally, the memorial provides that the application for an Article V Convention is a continuing application to Congress until at least two-thirds of states have made an application on the same subject.

Copies of the memorial will 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.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law—they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject. This memorial does not have a fiscal impact.

B. SECTION DIRECTORY:

Not applicable.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 27, 2014, the Judiciary Committee adopted a strike all and reported the bill favorably as a committee substitute. The strike all amendment provides that the application for an Article V Convention is a continuing application until enough states make similar applications. This analysis is drafted to the committee substitute as passed by the Judiciary Committee.