

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 Governmental Oversight and Accountability

BILL: CS/SM 368

INTRODUCER: Governmental Oversight and Accountability Committee and Senator Simpson

SUBJECT: Constitutional Convention/Single-Subject Requirement for Federal Legislation

DATE: April 3, 2014

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SM 368 is an application to the United States Congress urging Congress to call an Article V Convention for the purpose of proposing an amendment to the U.S. Constitution which will:

- Prohibit Congress from passing a bill that embraces more than one subject; and
- Require that the subject be clearly expressed in the bill's title.

The memorial also states that it is revoked and withdrawn if used for the purpose of calling a convention for any other purpose, and that it constitutes a continuing application until the legislatures of at least two-thirds of the states have made applications on the same subject.

If this memorial is passed by the Legislature and at least 33 other states pass a similar or identical memorial or resolution calling on Congress to call an amendments convention for the sole purpose of proposing a single subject amendment to the U.S. Constitution, then under Article V of the U.S. Constitution, Congress is obligated to call the convention.

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.

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 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 has used this method to submit 33 amendments to the states. Of those 33 proposals, 27 amendments to the Constitution have been 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 make application to Congress to call an amendments convention.⁴ Currently, 34 states would need to make applications to meet the two-thirds requirement to call an Article V Convention.

Article V further provides that the amendments will 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.⁵

It has become accepted procedure, although not stated in the Constitution, that Congress may set time limits on the ratification process and specify when an amendment must be ratified by the requisite number of states to become valid. With several amendments, Congress stated that ratification must occur within 7 years after their proposal to become effective.⁶ The U.S. Supreme Court, in *Dillon v. Gloss*, concluded that Congress does have the authority to determine what a reasonable time frame for ratification is, even though the Constitution is silent on the matter.⁷

Although no attempts to call an Article V Convention have ever been successful, two relatively recent attempts approached the requisite number of 34 applications to Congress. In 1969, a total of 33 states submitted applications for a convention to address U.S. Supreme Court decisions that dealt with voting districts and the apportionment of votes. The effort fell short of the total

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 February 4, 2014).

³ Thomas H. Neale, Congressional Research Service, *The Article V Convention: Contemporary Issues for Congress* (July 9, 2012) (on file with the Senate Committee on Judiciary).

⁴ U.S. CONST. art. V.

⁵ Neale, *supra*, note 3, at 22.

⁶ *Id.* at 2.

⁷ *Dillon v. Gloss*, 256 U.S. 368 (1921).

number required by one application. Several states later rescinded their applications and the call for a convention dissipated.⁸

In the second instance, and similar to this proposal, state legislatures made application to Congress to call an Article V Convention requesting a balanced budget amendment. North Dakota was the first state to make application to Congress in 1975, followed by a succession of 30 other states over the years, ending with Missouri's application in 1983 as the 32nd application. The effort fell short of the 34 applications to Congress by two states and again, interest in calling for a convention declined.⁹

Single Subject Requirements

State Provisions

The majority of states limit legislation to a single subject in their state constitutions. In Florida, the State Constitution provides that “Every law shall embrace but one subject and matter properly connected therewith, and the subject shall be briefly expressed in the title.”¹⁰ According to the National Conference of State Legislatures, 41 states have similar single-subject requirements. 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.¹¹

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 Houses 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.”¹² The bills, H.R. 2113 and S. 1664, have each been referred to a committee but neither has been scheduled for a hearing at this time. Similar legislation died in committee last year.¹³

III. Effect of Proposed Changes:

Senate Memorial 368 is an application to Congress urging Congress to call an Article V Convention for the purpose of proposing an amendment to the U.S. Constitution which will:

- Prohibit Congress from passing a bill that embraces more than one subject; and

⁸ James Kenneth Rogers, *The Other Way to Amend the Constitution: The Article V Constitutional Convention Amendment Process*, 30 1005, 1009-10 (2007).

⁹ *Id.* at 1010.

¹⁰ FLA. CONST. art. III, s. 6.

¹¹ National Conference of State Legislatures, “*State Constitutional Provisions that Limit Bills to One Subject*” (*Single Subject Requirement*). E-mail and attachment dated February 4, 2014, (on file with the Senate Committee on Judiciary).

¹² H.R. 2113 and S. 1664. H.R. 2113 is currently pending in the Constitution and Civil Justice Subcommittee in the House Judiciary Committee and S. 1664 has been referred to the Senate Committee on Rules and Administration. At this time, neither bill has received a committee hearing. Phone conversations conducted February 5, 2014, with the House Constitution Civil Justice Subcommittee and Senate Committee on Rules and Administration.

¹³ The Library of Congress website, Thomas. <http://thomas.loc.gov/cgi-bin/bdquery/D?d112:1:/temp/~bdTBk0:@@X/home/LegislativeData.php?n=BSS:c=112>; <http://thomas.loc.gov/cgi-bin/bdquery/z?d112:SN03359:@@L&summ2=m&#status>. (last visited on February 5, 2014).

- Require that the subject be clearly expressed in the bill's title.

If the memorial is used for any purpose other than calling a convention to propose a single-subject amendment to the Constitution, the memorial is revoked and treated as though it was never passed. The memorial also provides that it is a continuing application in accordance with Article V until the legislatures of at least two-thirds of the states have made applications on the same subject.

If this memorial is passed by the Legislature and at least 33 other states pass a similar or identical memorial or resolution calling on Congress to call a single-subject amendments convention, then under Article V of the U.S. Constitution, Congress is obligated to call the convention.

While the constitutional amendment process involves two separate steps, the proposal and its ratification, this memorial only makes application for an amendments convention and has no control over the outcome of the convention. Therefore, there is no guarantee that the proposed language will eventually be agreed upon or ratified by the states. If the amendments convention is called and the language is later ratified by the requisite number of states, it will become an amendment to the U.S. Constitution. The amendment will state, "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."

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:

If an Article V amendments convention is called at some point in the future, the state may be responsible for the costs of sending delegates to the convention. Whether Congress or

the state would be responsible for related expenses for the convention is not a settled issue at this time.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Because an Article V amendments convention has never been conducted, what might actually occur procedurally or substantively is not known.

Diverse scholars have raised, but have not necessarily answered, many questions regarding the nature of an amendments convention. Some of those issues involve, in part:

- To what extent Congress would establish the framework for the convention;
- Whether the scope of the convention is limited in its focus or may be expanded to include other topics;
- Whether the states have any constitutional authority over the convention once it is convened;
- Whether the role of Congress is to summon, convene, define, and administer the convention; or
- How convention delegates will be apportioned among the states and whether it might occur in a manner similar to the Electoral College.¹⁴

Congressional legislation was introduced between 1973 and 1992, in anticipation of an amendments convention being convened, which endeavored to develop a procedural framework that would address the issues raised above and similar issues. None of the legislation passed both Houses of Congress.¹⁵

VIII. Statutes Affected:

None.

IX. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Governmental Oversight and Accountability on April 3, 2014:

The CS deletes a provision that the memorial supersedes all previous single-subject memorials and resolutions, and adds a provision that the memorial constitutes a continuing application.

¹⁴ See the sources cited in footnotes 3 and 8 for an in-depth analysis of the issues.

¹⁵ Neale, *supra* note 3, at 26.

B. Amendments:

None.

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