

**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 Committee on Rules

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BILL: SM 476

INTRODUCER: Senator Hays

SUBJECT: Amendments to the Constitution of the United States

DATE: March 17, 2014

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

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Munroe</u>	<u>Cibula</u>	<u>JU</u>	<b>Favorable</b>
2.	<u>Munroe</u>	<u>Phelps</u>	<u>RC</u>	<b>Favorable</b>

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**I. Summary:**

SM 476 is a state application to the United States Congress calling upon Congress to convene an Article V constitutional amendments convention for the sole purposes of proposing amendments to the U.S. Constitution to: impose fiscal restraints on the federal government; limit the power and jurisdiction of the federal government; and limit the terms of office for federal officials and members of Congress. Each of these three proposed amendment categories is severable from one another and may be counted individually to satisfy the requirement that 34 state legislatures apply to Congress to call a constitutional convention.

This memorial is revoked and withdrawn, nullified, and superseded as if it had never been passed, if it is used for the purpose of calling a convention or used in support of conducting a convention to amend the U.S. Constitution for any purpose other than imposing fiscal restraints on the federal government, limiting the power and jurisdiction of the federal government, or limiting the terms of office for federal officials and members of Congress.

This memorial serves as a continuing application, in accordance with the requirements for calling a constitutional convention, until the legislatures of at least two-thirds of states also make applications on one or more of the three proposed amendment categories listed in the memorial.

**II. Present Situation:**

Article V of the U.S. Constitution provides a mechanism for proposing amendments to the U.S. Constitution. Article V of the U.S. Constitution, states:

The Congress, whenever two thirds of both Houses shall deem it necessary, shall proposed 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.

Article V of the U.S. Constitution means that amendments to the Constitution may be proposed in one of two ways. First, an amendment may be proposed upon a two-thirds vote of the U.S. House of Representatives and the Senate.<sup>1</sup> Secondly, upon the applications of two-thirds (34) of the state legislatures, Congress must call an amendments convention.

Congress is authorized to choose the method states may ratify proposed amendments. First, Congress may require that amendments be ratified by ad hoc conventions in three-fourths (38) of the states for the specific purpose of the consideration of amendments. Secondly, Congress may require that an amendment be ratified by three-fourths (38) of the legislatures of the states.<sup>2</sup>

Article X of the U.S. Constitution provides that “[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.” Article X draws the line between the powers of states and the power of the federal government. The volume of litigation on the scope of federal power suggests that the exact line between state and federal power is not clear. However, if Congress legislates upon a subject that is exclusively within its jurisdiction and constitutional control, and manifests its intention to deal with the subject in full, then any state law is preempted to the extent it is contrary to federal law.<sup>3</sup>

### III. Effect of Proposed Changes:

This memorial is a state application to the United States Congress calling upon Congress to convene an Article V constitutional amendments convention for the sole purposes of proposing amendments to the U.S. Constitution to: impose fiscal restraints on the federal government; limit the power and jurisdiction of the federal government; and limit the terms of office for federal officials and members of Congress. Each of these three proposed amendment categories is severable from one another and may be counted individually towards the requirement that 34 states apply to Congress to call to satisfy the requirement that 34 state legislatures apply to Congress to call a constitutional convention.

This memorial is revoked and withdrawn, nullified, and superseded as if it had never been passed, if it is used for the purpose of calling a convention or used in support of conducting a convention to amend the U.S. Constitution for any purpose other than imposing fiscal restraints on the federal government, limiting the power and jurisdiction of the federal government, or limiting the terms of office for federal officials and members of Congress.

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<sup>1</sup> See 16 AM. JUR. 2D CONSTITUTIONAL LAW s. 15.

<sup>2</sup> Thomas H. Neale, Congressional Research Service, *The Article V Convention: Contemporary Issues for Congress* (Jul. 9, 2012) p. 2, <http://www.fas.org/sgp/crs/misc/R42589.pdf>

<sup>3</sup> See 16A AM. JUR. 2D CONSTITUTIONAL LAW s. 232.

This memorial serves as a continuing application, in accordance with the requirements for calling a constitutional convention, until the legislatures of at least two-thirds of states also make applications on one or more of the three proposed amendment categories listed in the memorial

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

#### **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:

None.

#### **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 unclear.

Diverse scholars have raised, but 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 expanded to include other topics;
- Whether the states have any constitutional authority over the convention once it is convened;
- Whether it is the role of Congress 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.<sup>4</sup>

Congressional legislation was introduced between 1973 and 1992, in anticipation of an amendments convention being convened, that 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.<sup>5</sup>

**VIII. Statutes Affected:**

None.

**IX. Additional Information:**

**A. Committee Substitute – Statement of 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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<sup>4</sup> See general, Thomas H. Neale, Congressional Research Service, *The Article V Convention: Contemporary Issues for Congress* (Jul. 9, 2012), <http://www.fas.org/sgp/crs/misc/R42589.pdf>. See also, 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, 1009-1010 (2007).

<sup>5</sup> Neale, at 26.