

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 931 Interstate Compacts
SPONSOR(S): Hill
TIED BILLS: None **IDEN./SIM. BILLS:** SB 1242

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Civil Justice Subcommittee	9 Y, 4 N	Malcolm	Bond
2) Local & Federal Affairs Committee	13 Y, 4 N	Kiner	Kiner
3) Judiciary Committee			
4) Appropriations Committee			

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 bill provides that the state enters into an interstate compact (Compact). Agreeing to the Compact automatically constitutes application for an Article V Convention, the sole purpose of which would be to propose a Balance Budget Amendment, whose text is prescribed in the Compact. The state would also agree to observe the Compact's provisions governing the convention's composition and rules. Finally, by agreeing to the Compact, the legislature commits itself to "prospective" ratification of the proposed amendment.

The key element of the Compact is the Balanced Budget Amendment that would be proposed by the convention. Among its major elements, the amendment would:

- Provide for a balanced federal budget at all times, unless any deficit is financed by debt issued in conformity with the amendment's requirements;
- Set a ceiling for federal debt equal to 105% of the outstanding debt at the time the amendment takes effect;
- Require that any increase in the federal debt ceiling proposed by Congress must be submitted to and approved by a simple majority of state legislatures;
- Require the President to ensure that the debt ceiling is not exceeded by proposing the impoundment of specific expenditures sufficient to prevent the breach;
- Specify that the President's failure to designate or enforce such impoundments would be an impeachable misdemeanor; and
- Require that any new or increased tax revenue legislation be approved by two-thirds of the membership of the Senate and House of Representatives.

The Compact establishes an ongoing Compact Commission to promote the convention and coordinate and enforce the Compact. It also sets the size of the convention, specifies that the President of the Senate and Speaker of the House would serve as the state's delegate, and limit each state to one vote. The convention would last one day, and its sole duty would be to introduce, debate, and vote to ratify the specific text of the Balanced Budget Amendment described above.

The bill does not appear to have a fiscal impact on state or local government.

The bill provides that it is effective upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Process for Amending the United States 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 that 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.³ Of those 33 proposals, 27 amendments to the Constitution have been approved by the states.⁴

The second method, which has never been used,⁵ requires Congress to call a convention for proposing amendments when two-thirds of the state legislatures make application to Congress for a convention.⁶ Thirty-four states would need to make applications to meet the two-thirds requirement to call an Article V Convention. Though the form of a convention is not specified in the Constitution, Congress has historically taken on broad responsibilities in connection with a convention by administering state applications; establishing procedures to summon a convention; setting the amount of time allotted to its deliberations; determining the number and selection process of its delegates; setting internal convention procedures, and providing arrangement for the formal transmission of any proposed amendments to the states.⁷

Florida's Article V Constitutional Conventional Act

In 2014, the legislature passed the Article V Constitutional Convention Act to regulate the eligibility, appointment and restrictions of Florida's delegates if a constitutional convention is called.⁸ The bill also created an advisory group to advise the delegates.

Interstate Compacts

The Compact Clause of the United States Constitution states "No state shall, without the consent of Congress, . . . enter into any agreement or compact with another state . . ."⁹ It is the only section of the United States Constitution that deals with formal agreements between and among the states. Usually congressional consent to an interstate compact takes the form of a joint resolution or act of Congress specifying its approval of the text of the compact, adding any conditions or

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 13, 2015).

³ *Proposed Amendments Not Ratified by the States*, U.S. Government Printing Office, <http://www.gpo.gov/fdsys/pkg/GPO-CONAN-1992/pdf/GPO-CONAN-1992-8.pdf> (last visited April 29, 2014).

⁴ Thomas H. Neale, Cong. Research Serv., RL 7-7883, *The Article V Convention for Proposing Constitutional Amendments: Historical Perspectives for Congress 1* (2012).

⁵ 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.").

⁶ U.S. CONST. art. V. Florida would "make application" via a resolution. In 2010, SCR 10 passed in both the Florida House of Representatives and the Senate. SCR 10 urged Congress to call an Article V Convention for the purpose of proposing an amendment to the U.S. Constitution to provide for a balanced federal budget and to limit the ability of Congress to dictate states requirements for the expenditure of federal funds.

⁷ Thomas H. Neale, *supra* note 4.

⁸ Chapter 2014-52, L.O.F.

⁹ U.S. CONST. art. I, § 10, cl. 3.

provisions it deems necessary, and often embodying the compact document. As with any congressional enactment, it must be signed by the President before it becomes law.¹⁰

Effect of the Bill

The bill creates s. 11.95, F.S., which provides, through a series of Articles, that the state agrees to enter and be bound by a compact (Compact) with other states for the purpose of calling a constitutional convention pursuant to Article V of the United State Constitution for the purpose of a Balance Budget Amendment.

The text of the constitutional amendment is provided in Article II of the Compact as follows:

"SECTION 1. Total outlays of the government of the United States shall not exceed total receipts of the government of the United States at any point in time unless the excess of outlays over receipts is financed exclusively by debt issued in strict conformity with this article.

"SECTION 2. Outstanding debt shall not exceed authorized debt, which initially shall be an amount equal to 105 percent of the outstanding debt on the effective date of this article. Authorized debt shall not be increased above its aforesaid initial amount unless such increase is first approved by the legislatures of the several states as provided in Section 3.

"SECTION 3. From time to time, Congress may increase authorized debt to an amount in excess of its initial amount set by Section 2 only if it first publicly refers to the legislatures of the several states an unconditional, single subject measure proposing the amount of such increase, in such form as provided by law, and the measure is thereafter publicly and unconditionally approved by a simple majority of the legislatures of the several states, in such form as provided respectively by state law; provided that no inducement requiring an expenditure or tax levy shall be demanded, offered, or accepted as a quid pro quo for such approval. If such approval is not obtained within 60 calendar days after referral, then the measure shall be deemed disapproved and the authorized debt shall thereby remain unchanged.

"SECTION 4. Whenever the outstanding debt exceeds 98 percent of the debt limit set by Section 2, the President shall enforce said limit by publicly designating specific expenditures for impoundment in an amount sufficient to ensure outstanding debt shall not exceed the authorized debt. Said impoundment shall become effective 30 days thereafter, unless Congress first designates an alternate impoundment of the same or greater amount by concurrent resolution, which shall become immediately effective. The failure of the President to designate or enforce the required impoundment is an impeachable misdemeanor. Any purported issuance or incurrence of any debt in excess of the debt limit set by Section 2 is void.

"SECTION 5. No bill that provides for a new or increased general revenue tax shall become law unless approved by a two-thirds roll call vote of the whole number of each House of Congress. However, this requirement shall not apply to any bill that provides for a new end user sales tax which would completely replace every existing income tax levied by the government of the United States; or for the reduction or elimination of an exemption, deduction, or credit allowed under an existing general revenue tax.

"SECTION 6. For purposes of this article, "debt" means any obligation backed by the full faith and credit of the government of the United States; "outstanding debt" means all debt held in any account and by any entity at a given point in time; "authorized debt" means the maximum total amount of debt that may be lawfully issued and outstanding at any single point in time under this article; "total outlays of the government of the United States" means all expenditures of the government of the United States from any source; "total receipts of the government of the United States" means all tax receipts and other income of the government of the United States, excluding proceeds from its issuance or incurrence of debt or any type of liability; "impoundment" means a proposal not to spend all or part of a sum of money appropriated by Congress; and "general revenue tax" means any income tax, sales tax, or value-added tax levied by the government of the United States excluding imposts and duties.

¹⁰ Thomas Neale, *The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress*, Congressional Research Service, 14-16 (April 11, 2014).

"SECTION 7. This article is immediately operative upon ratification, self-enforcing, and Congress may enact conforming legislation to facilitate enforcement."

Compact Membership and Withdrawal

Article III of the Compact sets membership and withdrawal requirements. It provides that the Compact governs each Member State¹¹ to the fullest extent permitted by its respective constitution and supersedes and repeals any conflicting law. Additionally, each Member State is contractually bound to other Member states and promises to comply with the terms and conditions of the Compact.

When less than three-fourths of the states are Member States, any Member State may withdraw from this Compact. However, once at least three-fourths of the states are Member States, then no Member State may withdraw from the Compact prior to its termination absent unanimous consent of all Member States.

Compact Commission and Compact Administrators

Article IV of the Compact establishes the Compact Commission and the Compact Administrator. The Compact Commission will appoint and oversee a Compact Administrator, promote the Compact, coordinate the performance of obligations under the Compact, and defend and enforcement the Compact in legal proceedings, among other things.

The Compact Administrator will notify the states of the date, time, and location of the convention; organize the convention, maintain a list of all Member States and their appointed delegates; and maintain all official records relating to the Compact. The Compact Administrator will also notify Member States of key events.

Resolution Applying for a Convention

Article V of the Compact provides that when three-fourths of the states join the Compact, the Legislature of each Member State will apply to Congress to call a convention for the limited purpose of ratifying the Balanced Budget Amendment.

Appointment of Delegates, Limitations, and Instructions

Article VI of the Compact regulates the appointment and authority of delegates who will attend a convention pursuant to the Compact. The President of the Senate, or his or her designee, and the Speaker of the House of Representatives, or his or her designee, will represent Florida as its sole and exclusive delegates. A delegate may be replaced or recalled by the Legislature at any time for good cause, such as criminal misconduct or the violation of the Compact. Each delegate must take an oath to "act strictly in accordance with the terms and conditions of the Compact for a Balanced Budget, the Constitution of the state I represent, and the Constitution of the United States."

A delegate's authority is limited to introducing, debating, voting upon, proposing, and enforcing the convention rules specified in the Compact, and to introducing, debating, voting on, and rejecting or proposing for ratification the Balanced Budget Amendment. Any actions taken by any delegate beyond this limited authority are void ab initio¹². Additionally, a delegate may not introduce, debate, vote upon, reject, or propose for ratification any constitutional amendment at the convention other than the constitutional amendment the Balanced Budget Amendment.

If any Member State or delegate violates any provision of the Compact, then every delegate of that Member State immediately forfeits his or her appointment, and must immediately cease participation at the convention, vacate the convention, and return to his or her respective state's capitol.¹³

¹¹ A "Member State" is defined as "a State that has enacted, adopted, and agreed to be bound by this Compact."

¹² "Void ab initio" means void from the beginning.

¹³ Given the very brief nature of the convention provided by the Compact, it appears that expulsion of a state's delegates would effectively bar a state from having any delegates at the convention. See Article VII, Convention Rules below.

Convention Rules

Article VII of the Compact details the convention agenda and rules. The agenda of the Convention will be exclusively limited to introducing, debating, voting on, and rejecting or proposing for ratification the Balanced Budget Amendment. The convention will not consider any matter outside of this agenda. The convention has a limited time-frame in which it must act. It must permanently adjourn either 24 hours after commencing consideration of the Balanced Budget Amendment or the completion of the business on its agenda, whichever occurs first.

Regardless of whether a state is a member to the compact, each state may have no more than three delegates at the convention. However, each state will only have one vote.

The convention will be chaired by the delegate representing the first state to have become a Member State. Any vote, including the rejection or proposal of any constitutional amendment, requires a quorum to be present and a majority affirmative vote of those states constituting the quorum. In adopting parliamentary procedure, the convention must exclusively adopt or adapt provisions from Robert's Rules of Order and the American Institute of Parliamentarians Standard Code of Parliamentary Procedure.

Unless otherwise specified by Congress in its call, the convention will be held in Dallas, Texas, on the sixth Wednesday after the latter of the date on which three-fourths of the states become Member States or the enactment date of the Congressional resolution calling the convention.¹⁴ In the event that the chair declares an emergency due to disorder or an imminent threat to public health and safety, and a majority of the states present do not object, convention proceedings may be temporarily suspended and the Commission will relocate or reschedule the convention.

Prohibition on Ultra Vires¹⁵ Convention

Article VIII of the Compact prohibits Member States from participating in any convention organized pursuant to the Compact other than one called pursuant to and in accordance with the rules provided in the Compact. Additionally, Member states are prohibited from ratifying any proposed amendment to the Constitution of the United States, which originates from the convention, other than the Balanced Budget Amendment.

Resolution Prospectively Ratifying the Balanced Budget Amendment

Article IX of the Compact provides that upon becoming a Member State, the Legislature prospectively adopts and ratifies the Balanced Budget Amendment. However, this Article does not take effect until Congress refers the Balanced Budget Amendment to the states for ratification.

Construction, Enforcement, and Termination of the Compact

Article IX of the Compact regulates the construction of the Compact as well as providing for its legal enforcement and termination. To the extent that the effectiveness of the Compact requires the alteration of legislative rules to be effective, legislation agreeing to be bound by the Compact is deemed to repeal, supersede, or amend all such rules to allow for the effectiveness of the Compact to the fullest extent permitted by the constitution of the Member State.

The Compact provides that the chief law enforcement officer of each Member State may defend the Compact from any legal challenge, as well as seek civil mandatory and prohibitory injunctive relief to enforce the Compact. The exclusive venue for all actions arising under the Compact will be in the United States District Court for the Northern District of Texas or the courts of the State of Texas within

¹⁴ The time and date of the convention is provided in Article X of the Compact.

¹⁵ "Ultra vires" means "[u]nauthorized; beyond the scope of power allowed or granted by a corporate charter or by law."

Black's Law Dictionary (10th ed. 2014).

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the jurisdictional boundaries of the district court. Each Member State is required to submit to the jurisdiction of those courts with respect to all actions arising under the Compact. However, the Compact Commission may waive this provision.

The severability clause of the Compact provides that any provision of the Compact except Article VIII related to ultra vires conventions may be severable. If a court finds that the Compact is entirely contrary to the state constitution of a Member State or otherwise entirely invalid, that Member State is withdrawn from the Compact, and the Compact with remain in full force and effect as to any remaining Member State. Moreover, if a court finds the Compact to be wholly or substantially in violation of Article I, Section 10, of the United State Constitution, then it will be construed and enforced solely as reciprocal legislation enacted by the affected Member States.

The termination clause provides that the Compact will terminate when it is fully performed and the Constitution of the United States is amended by the Balanced Budget Amendment. However, in the event such amendment does not occur within 7 years after the date the first state passed legislation agreeing to be bound to the Compact, the Compact terminates 90 days after that 7-year date.

The bill provides that it takes effect upon becoming law.

B. SECTION DIRECTORY:

Section 1 of the bill creates s. 11.95 relating to the compact for a balanced budget.

Section 2 provides that the bill becomes effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill does not appear to have any impact on state revenues.

2. Expenditures:

The bill does not appear to have any impact on state expenditures.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The bill does not appear to have any impact on local government revenues.

2. Expenditures:

The bill does not appear to have any impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill does not appear to have any direct economic impact on the private sector.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

It is a general constitutional principle that "one legislature may not bind the legislative authority of its successors."¹⁶ It is unclear if, and to the extent, the bill may bind future legislatures and whether such conduct is permissible.

B. RULE-MAKING AUTHORITY:

The bill does not appear to create a need for rulemaking or rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

None.

¹⁶ *United States v. Winstar Corp.*, 518 U.S. 839, 872 (1996); see Eric J. Posner and Adrian Vermeule, *Legislative Entrenchment*, 111 Yale L.J. 1665 (2002)