

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 Ethics and Elections

BILL: SM 630

INTRODUCER: Senator Bean

SUBJECT: Article V Convention for Congressional Term Limits

DATE: November 9, 2015

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Fox	Roberts	EE	Favorable
2.			RC	

I. Summary:

SM 630 is a memorial to the United States Congress calling upon it to convene an Article V convention for the sole purpose of proposing an amendment to the U.S. Constitution to limit the terms of office for members of Congress.

The 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 (34) make such a request.

II. Present Situation:

As discussed in the memorial's *WHEREAS* clauses, voters in 1992 overwhelmingly approved an amendment to the Florida Constitution limiting the terms of Florida's congressional members, as well as other Florida statewide officers and state legislators.¹ The subsequent U.S. Supreme Court decision in *U.S. Term Limits, Inc. v. Thornton*,² however, effectively invalidated *the congressional term limits portion* of the amendment; the Court held that a state's attempt to limit congressional terms prescribed additional requirements for office in violation of the Qualifications Clauses of the U.S. Constitution.³

Article V of the U.S. Constitution provides two mechanisms for proposing amendments to the U.S. Constitution:

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose 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

¹ FLA. CONST., art. VI, s. 4(b).

² 514 U.S. 779 (1995).

³ *Id.*

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...

First, an amendment may be proposed upon a two-thirds vote of the U.S. House of Representatives and the Senate.⁴ Second, Congress must call an amendments convention upon the applications of two-thirds of the state legislatures (34 out of 50).⁵

Congress is authorized to choose the method by which states must ratify the proposed amendments. Congress may require ratification by ad hoc conventions in three-fourths of the states (38 out of 50) for the specific purpose of the consideration of amendments, or it may require that an amendment be ratified by three-fourths of the legislatures of the states.⁶

III. Effect of Proposed Changes:

SM 630 is a state application to the United States Congress calling upon it to convene an Article V convention for the *sole* purposes of proposing an amendment to the U.S. Constitution to limit the terms of office for members of Congress. It 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 (34) also apply to call for a convention on the issue of congressional term limits.

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.

⁴ Thomas H. Neale, Congressional Research Service, *The Article V Convention: Contemporary Issues for Congress* (Apr. 11, 2014) p.1, available at <http://www.fas.org/sgp/crs/misc/R42589.pdf> (last accessed 11.12.2015) [hereinafter, Neale, *Article V Convention*].

⁵ *Id.*

⁶ *Id.*

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:**Previous Memorials on Term Limits**

In 2014, the Florida Legislature passed a memorial to Congress (SM 476) calling for an Article V convention to, among other things, limit the terms of office for “*federal officials* and members of Congress.”⁷ While SM 476 continues as a request to Congress, the removal of the term “*federal officials*” in the memorial under consideration may be viewed as a more limited, separate request *solely* for consideration of an amendment on *congressional* term limits.

Article V Constitutional Amendments Conventions

Because an Article V 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.⁸

Congressional legislation was introduced between 1973 and 1992, in anticipation of an amendments convention being convened, that endeavored to develop a procedural framework

⁷ See SM 476 (2014). The memorial also sought a convention for amendments on the following issues: 1) imposing fiscal restraints on the federal government; and, 2) limiting the power and jurisdiction of the federal government. *Id.* Each of the proposed amendment categories was severable from one another and designed to be counted individually to satisfy the requirement that 34 state legislatures apply to Congress to call a constitutional convention. *Id.*

⁸ See generally, Neale, *Article V Convention*; 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), available at http://www.law.harvard.edu/students/orgs/jlpp/Vol30_No3_Rogersonline.pdf (last accessed 11.12.2015).

that would address the issues raised above and similar issues. None of the legislation passed both Houses of Congress.⁹

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.

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

⁹ Neale, *Article V Convention*, at 26.