

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 Rules

BILL: SCR 326

INTRODUCER: Senator Ingoglia

SUBJECT: Congressional Term Limits

DATE: January 23, 2024

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	Favorable
2.	<u>Davis</u>	<u>Twogood</u>	<u>RC</u>	Pre-meeting

I. Summary:

SCR 326 is an application to the United States Congress calling upon Congress to convene an Article V constitutional amendments convention. The convention would be limited solely to proposing an amendment to the Constitution to set a limit on the number of terms a person may be elected to serve as a member of the United States House of Representatives and as a member of the United States Senate.

The concurrent resolution is to be considered as covering the same subject matter as the presently outstanding applications to Congress from other named states on this same subject. It is to be added or aggregated to those applications for the purpose of attaining the two-thirds number of states, or 34 applications, needed to call a constitutional convention.

The concurrent resolution is a continuing application until the legislatures of at least two-thirds of the states have made applications on the term limit subject. If the application is used to call a convention or used to support a convention on a subject other than this topic, the resolution is revoked and withdrawn, nullified, and superseded as if it had never been passed.

II. Present Situation:

Amending the U.S. Constitution

Two Methods of Proposing Amendments

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 must first be approved by a 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

¹ U.S. CONST. art. V.

for ratification.² Starting with the Bill of Rights in 1789, Congress used this method to submit 33 amendments to the states. Of those 33 proposals, 27 amendments to the Constitution were 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 apply 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. Because an Article V amendments convention has never been conducted, what might occur procedurally or substantively is unclear.

Two Methods of Ratifying Amendments

Article V further provides that the amendments shall 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. The U.S. Supreme Court, in *Dillon v. Gloss*, concluded that Congress does have the authority to determine a reasonable time frame for ratification, even though the Constitution is silent on the matter.⁶

Congressional Terms of Service

The U.S. Constitution controls the election and terms of service for members of the U.S. House of Representatives and the U.S. Senate. Representatives serve two-year terms and members of the Senate serve six-year terms.⁷ While the Constitution establishes the qualifications for members, it does not place a limit on the number of terms that a member may serve in either chamber.

² National Archives, Office of the Federal Register (OFR), *Constitutional Amendment Process*, <https://www.archives.gov/federal-register/constitution>.

³ Thomas H. Neale, Congressional Research Service, *The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress* (Updated March 29, 2016), <https://crsreports.congress.gov/product/pdf/R/R42589>.

⁴ U.S. CONST. art. V.

⁵ Neale, *supra*, note 102, at 25.

⁶ *Dillon v. Gloss*, 256 U.S. 368 (1921).

⁷ U.S. CONST. art. 1, ss.2 and 3.

Term Limits in the State Constitution

In 1992 Florida voters overwhelmingly approved an amendment to the State Constitution that limited the terms of these offices:

- Florida representative
- Florida senator
- Florida Lieutenant governor
- Any office of the Florida cabinet
- U.S. Representative from Florida
- U.S. Senator from Florida

Pursuant to the amendment, no one is permitted to appear on the ballot for re-election if, by the end of the current term of office, the person will have served (or, but for resignation, would have served) in that office for 8 consecutive years.⁸

However, in 1995, the U.S. Supreme Court issued a 5-4 opinion that invalidated the congressional term limits portion of the amendment. In *U.S. Term Limits, Inc. v. Thornton*,⁹ the Court determined that the states could not impose qualifications for the office of U.S. Representative or U.S. Senator in addition to those qualifications specifically set forth in the Constitution. The Court concluded its opinion stating:

We are, however, firmly convinced that allowing the several States to adopt term limits for congressional service would effect a fundamental change in the constitutional framework. Any such change must come not by legislation adopted either by Congress or by an individual State, but rather—as have other important changes in the electoral process -- through the amendment procedures set forth in Article V.¹⁰

As a result of this ruling, there are no limits on the number of terms someone may serve as a member of the U.S. House of Representative or the U.S. Senate.

Past Efforts for an Article V Convention

In 2016, the Legislature passed House Memorial 417, which was an application to Congress to call a convention for the purpose of proposing amendments to the U.S. Constitution. The purpose was to set a limit on the number of terms that a person may be elected to serve as a member of the U.S. House of Representatives or the U.S. Senate.

Applications Made By Other States for an Amendments Convention

The Clerk of the United States House of Representatives maintains a publicly available web page entitled “Selected Memorials.”¹¹ The site states that “each memorial purports to be an application

⁸ FLA. CONST., art VI, s. 4(c).

⁹ *U.S. Term Limits, Inc. v. Thornton*, 514 U.S. 779 (1995).

¹⁰ *Id.* at 837.

¹¹ Clerk, United States House of Representatives, *Selected Memorials*, [Office of the Clerk, U.S. House of Representatives - Selected Memorials](#).

of the legislature calling for a convention for proposing amendments to the Constitution” or the rescission of a previous application. The site, dating back to 1960, lists 192 results by year, state, and designation, as to whether the correspondence is an application or a rescission.

While some applications request an amendment convention solely for term limit purposes, some applications request an amendments convention for a term limit amendment along with additional topics such as a balanced budget or a limitation on the power of the Federal Government. Applications limited singularly to seeking a convention to limit the terms of members of Congress have been submitted by Oklahoma in 2023, Missouri and Wisconsin in 2022, and Alabama in 2018.

The State’s Article V Constitutional Convention Act

This state adopted the “Article V Constitutional Convention Act” in 2014.¹² The act establishes guidelines for the qualification, appointment, recall, and function of delegates to an Article V constitutional convention.

III. Effect of Proposed Changes:

The Senate concurrent resolution¹³ is a state application to the United States Congress to convene an Article V amendments convention for the sole purpose of proposing amendments to the U.S. Constitution to limit the terms of members of Congress. This is a continuing application in accordance with Article V until the legislatures of at least two-thirds, or 34, legislatures have made an application on this same subject.

The concurrent resolution states that its purpose is to conform its application to the active applications made to Congress by the States of Alabama, Missouri, and Wisconsin.

If the application is used to call or support a convention on a subject other than this term limit topic, the resolution is revoked and withdrawn, nullified, and superseded as if it had never been passed.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

¹² Sections 11.93–11.9352, F.S.

¹³ A Senate Concurrent Resolution is an official legislative document used to ratify an amendment to the U.S. Constitution as well as apply to Congress when requesting a constitutional convention. The U.S. Constitution does not specify the type of document a state must use when making an application to Congress. The Florida Senate, Office of Bill Drafting Services, *Manual for Drafting Legislation*, 139-140 (2009), <https://flsenate.sharepoint.com/sites/Secretary/Publications%20Library/Forms/AllItems.aspx?id=%2Fsites%2FSecretary%2FPublications%20Library%2FManual%20for%20Drafting%20Legislation%20%28Senate%29%2Epdf&parent=%2Fsites%2FSecretary%2FPublications%20Library>.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

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, the state might 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:

The Senate Rules require that concurrent resolutions be read by title on two separate days before a voice vote is taken on adoption, unless the matter is decided otherwise by a two-thirds vote of those Senators present.¹⁴

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:

¹⁴ Florida Senate Rule 4.13 (adopted Nov. 22, 2022).

- To what extent Congress would establish the framework for the convention;
- Whether the scope of the convention would be 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 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.¹⁵

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.

¹⁵ Thomas H. Neale, Congressional Research Service, *The Article V Convention to Propose Constitutional Amendments: Contemporary Issues for Congress* (Updated March 29, 2016), <https://crsreports.congress.gov/product/pdf/R/R42589>.