

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 609 Article V Constitutional Convention

SPONSOR(S): Civil Justice Subcommittee; Wood and others

TIED BILLS: None **IDEN./SIM. BILLS:** SB 1008

| REFERENCE | ACTION | ANALYST | STAFF DIRECTOR or BUDGET/POLICY CHIEF |
|------------------------------------|-----------------|---------|--|
| 1) Civil Justice Subcommittee | 8 Y, 3 N, As CS | Aziz | Bond |
| 2) Ethics & Elections Subcommittee | 8 Y, 3 N | Davison | Marino |
| 3) Judiciary Committee | | Aziz | Havlicak |

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. Florida law does not provide for appointment or governing of Florida's delegates if a convention was called .

The bill creates the Article V Constitutional Convention Act, which includes the following provisions:

- Requires the Florida House and Senate to appoint delegates and alternate delegates to an Article V constitutional convention.
- Requires the Legislature to adopt a concurrent resolution to provide instructions to the delegates.
- Requires the delegates and alternate delegates to execute an oath to support the constitutions of the United States and the state, abide by the instructions of the Legislature, and faithfully discharge the duty of a delegate or alternate delegate.
- Provides penalties for a delegate or alternate delegate who votes outside the scope of the instructions of the Legislature.
- Provides that a delegate who knowingly or intentionally votes or attempts to vote outside the scope of the instructions of the Legislature commits a third-degree felony.
- Provides for an advisory group who must advise the delegates and alternate delegate whether a delegate or alternate delegate's action would violate the instructions set forth by the Legislature.

The bill has an undetermined but likely minimal fiscal impact on state government that would only apply if a convention were called. The bill does not appear to have a fiscal impact on local governments.

The bill has an effective date of July 1, 2014.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

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

Nothing in Florida law gives guidance to how delegates are chosen if an Article V Convention is called.

Effect of the bill

The bill creates ss. 11.93-11.9352, F.S., known as the "Article V Constitutional Convention Act," which applies should an Article V Convention be called. The bill provides guidance on eligibility, appointment and restrictions of delegates. The bill also creates an advisory group to advise the delegates.

Delegates

Appointment and Qualifications

The bill provides that the House of Representatives and Senate will appoint the number of delegates allocated to represent Florida and an equal number of alternate delegates. In order to be a delegate, a person must reside in Florida, be a registered voter in Florida, not be registered or required to be registered as a lobbyist, and not hold federal office. Unless provided elsewhere, it is presumed that there will only be two delegates and two alternate delegates. Each alternate delegate will be paired with a delegate. An alternate delegate must act in the place of the paired delegate when the paired delegate

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 21, 2014).

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 February 21, 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, Cong. Research Serv., RL 7-7883, *The Article V Convention for Proposing Constitutional Amendments: Historical Perspectives for Congress* 1 (2012).

is absent from the Article V convention. An alternate delegate replaces the paired delegate if the paired delegate vacates office.

The delegates will be appointed by a majority vote by each chamber and can be recalled at any time. The Legislature must appoint delegates or alternate delegates by concurrent resolution. If the Legislature is not in session, the presiding officers must call the Legislature into special session for the purpose of appointing delegates and alternate delegates.

The bill requires the House of Representatives and the Senate to appoint delegates and alternate delegates under rules adopted jointly.

Vacancy

The bill provides that the Legislature may, at any time, fill a vacancy in the office of delegate or alternate delegate with another eligible person. If the Legislature is not in session, then the presiding officers must call the Legislature into a special session for the purpose of filling the vacancy.

Compensation

Delegates will not receive compensation. However, delegates may be reimbursed for per diem and travel expenses pursuant to Florida law.

Oath; Instructions to Delegates

Delegates must execute an oath, in the state and in writing, before exercising any function of the position, to support the constitutions of the United States and the state, abide by the instructions of the Legislature, and otherwise faithfully discharge the duties of a delegate or alternate delegate. The executed oath of a delegate or alternate delegate must be filed with the Secretary of State. After the oath is filed, the Governor must issue a commission to the delegate or alternate delegate.

After delegates are appointed, the Legislature must adopt a concurrent resolution to provide instructions to the delegates and alternate delegates regarding the rules of procedure and any other matter the Legislature considers necessary. The Legislature may amend the instructions at any time by concurrent resolution.

Votes Cast Outside the Scope of Instructions

The bill provides that, if a delegate or alternate delegate votes outside the scope of the instructions of the Legislature, then:

- The vote is void; and
- The delegate's appointment is forfeited.

If a delegate forfeits an appointment, the paired alternate delegate becomes the delegate at the time of the forfeiture.

If a delegate or alternate delegate knowingly or intentionally votes or attempts to vote outside the scope of the instructions of the Legislature, the delegate or alternate delegate commits a third-degree felony.

If all of the delegates and alternate delegates vote outside the scope of the instructions of the Legislature, then the application of the Legislature to call an Article V Convention ceases to be a continuing application.

Advisory Group

The bill creates an Article V convention delegate advisory group ("advisory group") that consists of an attorney appointed by the President of the Senate, an attorney appointed by the Speaker of the House of Representatives, and an attorney selected by agreement of the attorneys appointed by the Senate President and the Speaker of the House who will serve as chair. Upon call of the chair, the advisory group must meet to establish the policies and procedures that the advisory group determines necessary to carry out its function.

Advisory Determinations

Upon request of a delegate or alternate delegate, the advisory group must advise the delegate or alternate delegate whether there is reason to believe that an action or attempt to take an action by the delegate or alternate delegate would violate the instructions set forth by the Legislature.

The advisory group must render the advisory determination within twenty-four hours after receiving a request in any summary manner considered appropriate by the advisory group. The advisory group must transmit a copy of the advisory determination as quickly as possible to the delegate or alternate delegate who made the request.

Upon request by the President of the Senate, the Speaker of the House of Representatives, or the Attorney General, the advisory group must render a determination on whether a delegate or alternate delegate's vote or attempt to vote would violate the Legislature's instructions. The advisory group can issue the advisory determination either without notice or an evidentiary proceeding; or after a hearing conducted by the advisory group. Any determination must be delivered within twenty-four hours after receiving the request. The advisory group must transmit a copy of an advisory determination as quickly as possible to the Attorney General. Upon receipt of an advisory determination that finds that a vote or attempt to vote by a delegate or alternate delegate is in excess of the authority given by the Legislature, the Attorney General must inform the delegates, alternate delegates, the President of the Senate, the Speaker of the House of Representatives, and the Article V convention that: the vote or attempt to vote did not comply with Florida law, is void, and has no effect; and the credentials of the delegate or alternate delegate who is the subject of the determination are revoked.

The bill provides an effective date of July 1, 2014.

B. SECTION DIRECTORY:

Section 1 creates s. 11.93, F.S., creating a short title of the "Article V Constitutional Convention Act."

Section 2 creates s. 11.931, F.S., relating to the applicability of the Act.

Section 3 creates s. 11.932, F.S., relating to definitions.

Section 4 creates s. 11.933, F.S., relating to qualifications of delegates and alternate delegates.

Section 5 creates s. 11.9331, F.S., relating to the appointment of delegates.

Section 6 creates s. 11.9332, F.S., relating to the appointment of delegates.

Section 7 creates s. 11.9333, F.S., relating to the recall of delegates.

Section 8 creates s. 11.9334, F.S., relating to the method of appointment and recall of delegates.

Section 9 creates s. 11.9335, F.S., relating to the reimbursement of delegates.

Section 10 creates s. 11.9336, F.S., relating to the oath for delegates.

Section 11 creates s. 11.9337, F.S., relating to the filing of the oath for delegates.

Section 12 creates s. 11.934, F.S., relating to the instructions to the delegates.

Section 13 creates s. 11.9341, F.S., relating to the duties of the alternate delegates.

Section 14 creates s. 11.9342, F.S., relating to votes cast outside the scope of instructions.

Section 15 creates s. 11.9343, F.S., relating to votes cast outside the scope of instructions.

Section 16 creates s. 11.9344, F.S., relating to votes cast outside the scope of instructions.

Section 17 creates s. 11.9345, F.S., relating to votes cast outside the scope of instructions.

Section 18 creates s. 11.935, F.S., relating to the Article V Convention advisory group.

Section 19 creates s. 11.9351, F.S., relating to the oversight of delegates with respect to instructions.

Section 20 creates s. 11.9352, F.S., relating to advisory determination concerning a vote outside the scope of instructions.

Section 21 provides an effective date of July 1, 2014.

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 appears to have a minimal impact on state expenditures. If an Article V Constitutional Convention were convened, the state would reimburse delegates for travel expenses, as well as, incur the cost of calling a special session or sessions to appoint delegates and take other actions contemplated by this bill.

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:

None.

B. RULE-MAKING AUTHORITY:

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

C. DRAFTING ISSUES OR OTHER COMMENTS:

The bill provides that a delegate's vote that is beyond the instructions is void (lines 178-188). Also, the bill provides that if all of Florida's delegates vote beyond the instructions, then the Legislature's application for a convention ceases to be a continuing application (lines 208-221). It is unclear how this statute would or could bind the convention once a vote is cast and is final according to the rules of the convention. In addition, it is unclear who is authorized to determine that a delegate or alternate delegate's vote is beyond the scope of the Legislature's instructions or what procedures must be followed.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 19, 2014, the Civil Justice Subcommittee adopted three amendments and reported the bill favorably as a committee substitute. The amendments provide that the presiding officers of both chambers, not the Governor, will call a special session to appoint delegates; an attorney, not the Chief Justice of the Florida Supreme Court, will serve as chair of the advisory group; and the delegates' oath must be executed in the state. This analysis is drafted to the committee substitute as passed by the Civil Justice Subcommittee.