

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 Judiciary

BILL: SM 658

INTRODUCER: Senator Stargel

SUBJECT: Balanced Federal Budget

DATE: February 10, 2014

REVISED: 02/11/14

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Davis	Cibula	JU	Favorable
2.			RC	

I. Summary:

SM 658 is an application to the United States Congress calling upon Congress to convene an Article V constitutional amendments convention. The convention would be limited to proposing an amendment to the Constitution which requires that, except in a national emergency, the total of all federal appropriations for any fiscal year may not exceed the total of all estimated federal revenues for that fiscal year, together with any related and appropriate fiscal restraints. This is commonly referred to as a balanced budget amendment.

The memorial provides that it may not be added to other application totals on any other subject calling for a constitutional convention in an effort to meet the requisite number of 34 applications needed to call a convention. It is to be a continuing application and supersedes all previous applications on the subject.

II. Present Situation:

Methods of Amending the U.S. 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 which are 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 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

¹ U.S. CONST. art. V.

² U.S. National Archives and Records Administration, *The Constitutional Amendment Process*, <http://www.archives.gov/federal-register/constitution> (last visited February 4, 2014).

³ Thomas H. Neale, Congressional Research Service, *The Article V Convention: Contemporary Issues for Congress* (July 9, 2012), <http://www.fas.org/sgp/crs/misc/R42589.pdf>.

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 actually occur procedurally or substantively is unclear.

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.⁶ The U.S. Supreme Court, in *Dillon v. Gloss*, concluded that Congress does have the authority to determine what a reasonable time frame for ratification is, even though the Constitution is silent on the matter.⁷

Although no attempts to call an Article V Convention have ever been successful, two relatively recent attempts approached the requisite number of 34 applications to Congress. In 1969, a total of 33 states submitted applications for a convention to address U.S. Supreme Court decisions that dealt with voting districts and the apportionment of votes. The effort fell short of the total number required by one application. Several states later rescinded their applications and the call for a convention dissipated.⁸

In the second instance, and similar to this proposal, state legislatures made application to Congress to call an Article V Convention requesting a balanced budget amendment. In 1975, North Dakota was the first state to make application, followed by a succession of 30 other states over the years, ending with Missouri’s application in 1983 as the 32nd application. The effort fell short of the 34 applications to Congress by two states and again, interest in calling for a convention declined.⁹

In 1976, Florida adopted Senate Memorial 234 and House Memorial 2801, each calling for a convention for proposing an amendment that would require a balanced federal budget. In 1988,

⁴ U.S. CONST. art. V.

⁵ Neale, *supra*, note 3, at 22.

⁶ *Id.* at 2.

⁷ *Dillon v. Gloss*, 256 U.S. 368 (1921).

⁸ 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).

⁹ *Id.* at 1010.

the Legislature adopted Senate Memorial 302, which, rather than call for a constitutional convention, urged Congress to propose an amendment to the U.S. Constitution requiring a federal balanced budget. In 2010, the Legislature passed SCR 10, which called for an amendments convention to propose amendments to provide for a balanced federal budget and limit Congress' ability to dictate to the states requirements for the expenditure of federal funds. None of these attempts was ultimately successful and no federal balanced budget amendment has been offered to the states for ratification.

Federal and State Balanced Budget Requirements

There is no requirement in the U.S. Constitution that the federal government must operate under a balanced federal budget. Florida, in contrast, is required to have a balanced budget and those provisions are set forth in both the State Constitution and statute. Article VII, section 1 states that "Provision shall be made by law for raising sufficient revenue to defray the expenses of the state for each fiscal period." Similarly, s. 216.221(1), F.S., provides that "All appropriations shall be maximum appropriations, based upon the collection of sufficient revenues to meet and provide for such appropriations." The subsection also provides that it is the Governor's duty to ensure that "revenues collected will be sufficient to meet the appropriations and that no deficit occurs in any state fund."

According to the National Conference of State Legislatures, 45 states have some kind of a constitutional requirement for a balanced budget. In four states it is only a statutory requirement, while Vermont is the only state without any requirement for a balanced budget.¹⁰

Current Federal Financial Debt Information

On February 4, 2014, the Congressional Budget Office (CBO) released its report "*The Budget and Economic Outlook: 2014 to 2024*." Contained in that report is the following financial information from the CBO's Baseline Budget Projections and Federal Debt Projected in CBO's Baseline:

- The actual budget deficit for the U.S. Government for 2013 was \$680 billion.
- The actual debt held by the public for 2013 was \$11.982 trillion, which is the sum total of all previous annual deficits.
- The budget deficit will be \$514 billion and the debt held by the public will be \$12.717 trillion at the end of 2014.¹¹
- The Gross Federal Debt at the end of 2013 was \$16.717 trillion and the Gross Federal Debt for 2014 is projected to be \$17.694 trillion.¹²

¹⁰ E-mail from Todd Haggerty, NCSL Fiscal Affairs Program (February 3, 2014) (on file with the Senate Committee on Judiciary).

¹¹ Congressional Budget Office, Congress of the United States, *The Budget and Economic Outlook: 2014 To 2024* (2014), Congressional Budget Office, Table 1-2.

¹² *Id.*, at Table 1.3. The report, on p. 17, defines Gross Federal Debt as "Federal debt held by the public plus Treasury securities held by federal trust funds and other government accounts."

III. Effect of Proposed Changes:

Senate Memorial 658 is an application to Congress urging Congress to call a limited Article V Convention for the purpose of proposing an amendment to the U.S. Constitution that would, in the absence of a national emergency, specify that the total of all federal appropriations made by Congress for any fiscal year not exceed the total of all estimated federal revenues for that year, along with any related and appropriate fiscal restraints.

Senate Memorial 658 also provides that the application is to be considered as covering the same subject matter as other state applications calling for a federal balanced budget and is to be combined with those applications to reach the requisite 34 applications necessary to call an amendments convention. It may not be added for purposes of reaching the two-thirds total necessary to call a convention on any other topic. It is considered a continuing application and exists until the two-thirds total of applications on the same subject matter is reached. It supersedes all previous applications made by the Legislature on this balanced budget subject.

While the constitutional amendment process involves two separate steps, the proposal and its ratification, this memorial only makes application for an amendments convention and has no control over the outcome of the convention. Therefore, there is no guarantee that the proposed language would eventually be agreed upon or ratified by the states. If the amendments convention is called and the language is later ratified by the requisite number of states, it would become an amendment to the U.S. Constitution which would mandate that, in the absence of a national emergency, Congress may not pass a budget in which the appropriations exceed the estimated federal revenues for a fiscal year, together with any related and appropriate fiscal restraints.

If this proposed amendment is eventually ratified, the federal government would be required to drastically change its approach to fiscal policy. The fiscal impact would be felt significantly in the government and private sector, although it would be difficult to offer any measurable indication of what those results would be.

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:

If an Article V amendments convention is called at some point in the future, 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:

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 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.¹³

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.¹⁴

¹³ See the sources cited in footnotes 3 and 8 for an in-depth analysis of these issues.

¹⁴ Neale, *supra* note 3 at 26.

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.
