

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: SB 1242

INTRODUCER: Senator Hays

SUBJECT: Interstate Compacts

DATE: March 30, 2015

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------------------|
| 1. | Davis | Cibula | JU | Pre-meeting |
| 2. | | | FT | |
| 3. | | | AP | |

I. Summary:

SB 1242 proposes the Compact for a Balanced Budget. It is an interstate compact that binds member states together in calling for an Article V Constitutional Convention for the purpose of adopting a federal balanced budget amendment. Upon passage of the bill, a state enters into the Compact with other states and agrees to observe the provisions of the compact which govern its rules and procedures.

The Compact contains the specific language of the balanced budget amendment that limits the borrowing capacity of the federal government. The amendment requires the supermajority approval of Congress for any new or increased income or sales taxes while keeping the current simple majority rule for eliminating or reducing tax exemptions, credits, and deductions, replacing the income tax with a consumption tax, and altering new or increased tariffs or fees. The amendment contains two so-called “release valves.” One is a referendum initiated by Congress requesting a simple majority of state legislatures to approve a proposed increase in the debt limit within 60 days. The second is an impoundment process that requires the President to designate necessary spending delays and reprioritizations when a “red zone” or 98 percent of borrowing capacity is reached, subject so simple majority override by Congress.

The Compact also contains the application for calling an Article V convention for proposing amendments, a pre-commitment to ratifying the amendment, the method for designating and instructing each state’s delegates to the convention, convention rules, and a commission to oversee the process. Because the Compact contains conditional enactments, the amendment process is not initiated until 38 states join the Compact. However, the Compact’s commission was authorized to begin oversight operations when two states joined the Compact. Because two states have already joined, the commission is already operational.

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

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, 6}

¹ U.S. CONST. Article 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>.

⁴ U.S. CONST. Article V.

⁵ Neale, *supra*, note 3, at 22.

⁶ With respect to ratification, 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. (See footnote 2 above.) The U.S. Supreme Court, in *Dillon v. Gloss*, 256 U.S. 368 (1921), 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.

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. 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). 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. (Rogers at 1010)

Florida's Article V Constitution Act

The Legislature passed the Article V Constitutional Convention Act in 2014 to establish the framework for selecting, appointing, and restricting Florida delegates if an Article V Constitutional Convention is called. The bill also established an advisory group to provide guidance to the delegates in carrying out their responsibilities.⁷

Federal and State Balanced Budget Requirements

There is no requirement in the U.S. Constitution that the federal government 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, as of 2014, 45 states had 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.⁸

Interstate Compacts

The Compact Clause of the United States Constitution provides that "No state shall, without the Consent of Congress, ... enter into any Agreement or Compact with another State"⁹ This provision is the only section of the Constitution that addresses formal agreements between and among the various states. The Constitution does not place "limits on what might be done through an interstate compact other than the requirement of congressional consent."¹⁰ Congress expresses its consent in the form of a joint resolution or act of Congress that specifies its approval of the text of the compact and adds any conditions or provisions that it determines are necessary, with the text of the compact contained in the document.¹¹

⁷ Chapter 2014-52, Laws of Fla.

⁸ E-mail from Todd Haggerty, NCSL Fiscal Affairs Program (February 3, 2014) (on file with the Senate Committee on Judiciary).

⁹ U.S. CONST. Article I, s. 10, cl. 3.

¹⁰ Thomas Neale, Congressional Research Service, *The Article V Convention: Contemporary Issues for Congress* (April 11, 2014).

¹¹ *Id.* 14-15. Authorities disagree as to whether a joint resolution, such as this proposal, must be signed by the President before becoming law. Thomas Neale, with the Congressional Research Service, states that this proposal could be challenged as unconstitutional without presentment to the President. In contrast, supporters of this proposal state that it would not need presidential approval because no other application calling for a Constitutional Convention has required a presidential signature to become effective.

Compact for a Balanced Budget – Enactments

The Compact for a Balanced Budget proposed by this bill and discussed below has been adopted by Georgia, Alaska, Mississippi, and North Dakota and is pending before several other state legislatures.¹² House Congressional Resolution 26, which effectuates the Compact for a Balanced Budget, was filed in Congress on March 19, 2015. The resolution calls for an Article V Convention for a balanced budget amendment as contemplated in the Compact for a Balanced Budget. The congressional resolution will not take effect until Congress receives a sufficient number of certified conforming copies evidencing that at least three-fourths of the states are Member States of the compact and have made application for a convention.¹³

III. Effect of Proposed Changes:

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 Balanced 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.

¹² Telephone interview with Nick Drania, Compact for America Educational Foundation, Inc., (March 29, 2015).

¹³ H.R. Con. Res. 26, 114th Cong. (2015).

"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.

"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 establishes membership and withdrawal requirements. It provides that the Compact governs each Member State¹⁴ 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 and agrees to comply with the terms and conditions of the Compact.

When fewer than three-fourths, or 38, 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 enforce 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.

¹⁴ A "Member State" is defined as "a State that has enacted, adopted, and agreed to be bound to this Compact."

Resolution Applying for a Convention

Article V of the Compact provides that the states are applying for a convention but the application will only have legal effect, due to a conditional enactment provision, when 38 states join the compact.

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 initio.¹⁵ 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.¹⁶

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

¹⁵ "Void ab initio" means void from the beginning.

¹⁶ 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.

quorum. In adopting rules of 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.¹⁷ 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 Vires¹⁸ 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 by three-fourths of the Legislatures of the states.

Construction, Enforcement, and Termination of the Compact

Article X 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 waive, 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 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

¹⁷ The time and date of the convention is provided in Article X of the Compact.

¹⁸ "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).

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 will 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 and the Commission dissolves 90 days after that 7-year date.

The bill provides that it takes effect upon becoming law.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to have an impact on cities or counties and as such, does not appear to be a mandate for constitutional purposes.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates s. 11.95, Florida Statutes:

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.
