

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HM 417 Article V Convention for Congressional Term Limits

**SPONSOR(S):** Metz and others

**TIED BILLS:** **IDEN./SIM. BILLS:** SM 630

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Local & Federal Affairs Committee	13 Y, 0 N	Kiner	Kiner
2) State Affairs Committee	14 Y, 3 N	Camechis	Camechis

### SUMMARY ANALYSIS

HM 417 constitutes the state's application to Congress for an Article V convention for the sole purpose of proposing an amendment to the U.S. Constitution to establish term limits for members of the U.S. Senate and U.S. House of Representatives. Currently, there is not a limit on the number of terms a member of Congress may serve. The memorial does not specify the number of terms that members should be allowed to serve.

In the early 1990s, twenty-three states, including Florida, approved state constitutional amendments or passed laws imposing congressional term limits. However, in 1995, the U.S. Supreme Court ruled that congressional term limits may only be imposed by amending the U.S. Constitution.

There are two methods to amend the U.S. Constitution. The first method calls for each house of Congress to approve a proposal for an amendment by a two-thirds majority. Alternatively, two-thirds of the states (34 states) may submit applications to Congress for an Article V convention. An Article V convention has never been called. In either case, proposed amendments must be ratified by three-fourths of the states (38 states) in order to become part of the U.S. Constitution.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject.

This memorial does not have a fiscal impact on the state or on local governments.

# FULL ANALYSIS

## I. SUBSTANTIVE ANALYSIS

### A. EFFECT OF PROPOSED CHANGES:

#### Present Situation

##### Process for Amending the United States Constitution

Article V of the U.S. Constitution provides two methods for proposing amendments. The first method authorizes Congress to propose amendments to the states that are approved by two-thirds vote of both houses of Congress.<sup>1</sup> Amendments approved in this manner do not require the President's signature and are transmitted to each state for ratification.<sup>2</sup> Starting with the Bill of Rights in 1789, Congress has used this method to submit 33 amendments to the states.<sup>3</sup> Of those 33 proposals, 27 amendments to the Constitution have been ratified by the states.<sup>4</sup>

The second method, which has never been used,<sup>5</sup> requires Congress to call a convention for proposing amendments when two-thirds of the state legislatures make application to Congress for an Article V convention.<sup>6</sup> Thirty-four states would need to submit valid applications to meet the two-thirds requirement. Though the form of a convention is not specified in the Constitution, Congress has historically attempted to take 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.<sup>7</sup> Congressional legislation was introduced between 1973 and 1992 that would provide a procedural framework for an Article V convention should one ever be called; however, none of the legislation passed both houses of Congress.<sup>8</sup>

##### Congressional Term Limits

The U.S. Constitution governs the composition and election of members of Congress.<sup>9</sup> Specifically, members of the U.S. House of Representatives serve two-year terms and members of the U.S. Senate serve six-year terms.<sup>10</sup> However, the Constitution does not limit the number of terms or years a member of Congress may serve.<sup>11</sup>

##### Background of the Congressional Term Limit Debate

---

<sup>1</sup> U.S. CONST. art. V.

<sup>2</sup> *The Constitutional Amendment Process*, U.S. National Archives and Records Administration, <http://www.archives.gov/federal-register/constitution> (last visited November 30, 2015).

<sup>3</sup> *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 November 30, 2015).

<sup>4</sup> *Id.*

<sup>5</sup> See Sara R. Ellis et al., *Article V Constitutional Conventions: A Primer*, 78 TENN. L. REV. 663, 665 (2011).

<sup>6</sup> U.S. CONST. art. V.

<sup>7</sup> See Thomas H. Neale, Congressional Research Service, *The Article V Convention: Contemporary Issues for Congress* R42589, (April 11, 2014), pp 39-41.

<sup>8</sup> See Thomas H. Neale, Congressional Research Service, *The Article V Convention: Contemporary Issues for Congress* R42589, (April 11, 2014), p. 36.

<sup>9</sup> U.S. CONST. art. I.

<sup>10</sup> U.S. CONST. art I. §2 (as affected by the 14<sup>th</sup> and 16<sup>th</sup> Amendments); U.S. CONST. art I. §3 (as affected by the 17<sup>th</sup> Amendment).

<sup>11</sup> *Id.*

In the early 1990s, twenty-three states, including Florida, approved constitutional amendments or passed laws imposing congressional term limits.<sup>12</sup> These efforts were found to be unconstitutional, however, in the 1995 Supreme Court case, *U.S. Term Limits, Inc. v. Thornton*.<sup>13</sup> In that case, the Supreme Court held the following:

- 1) State-imposed candidacy limitations on federal legislative office violates the U.S. Constitution's "qualifications clauses;" and
- 2) Congressional term limits may only be imposed by amendment to the U.S. Constitution.<sup>14</sup>

Since 1995, congressional members have filed several bills proposing an amendment to the U.S. Constitution to impose congressional term limits, but none have been successful.<sup>17</sup>

### Florida's Prior Congressional Term Limit Applications

Over the years, several memorials have been filed during the regular session of the Florida Legislature relating to the imposition of congressional term limits:

- In 2012, HM 83 (SM 672) urged Congress to propose to the states an amendment to the U.S. Constitution that would impose consecutive congressional term limits. HM 83 passed the Florida House of Representatives on February 29, 2012, and the Florida Senate on March 1, 2012. HM 83 was filed with the Florida Secretary of State on March 23, 2012.
- In 2013, HM 763 (SM 970) again urged Congress to propose to the states an amendment to the U.S. Constitution that would impose consecutive congressional term limits. HM 763 passed the House, but died in the Senate.
- In 2014, HM 81, as filed, urged Congress to propose to the states an amendment to the U.S. Constitution to impose consecutive Congressional term limits. The memorial was amended on the House floor to petition Congress to call an Article V convention for the purpose of proposing a congressional term limits amendment to the states for ratification. The memorial passed the House on March 26, 2014, but died in the Senate.
- In 2014, SM 476 (HM 381) petitioned Congress to call an Article V convention for the purpose of proposing amendments to the U.S. Constitution which: impose fiscal restraints on the federal government; limit the power and jurisdiction of the federal government; or limit the terms of office for "federal officials" and "members of Congress". The memorial stated that each of these amendment categories were "severable from one another and may be counted individually toward the required two-thirds number of applications made by the state legislatures for the calling of an Article V convention." SM 476 passed the Senate and House on April 21, 2014.

### Other State Applications for an Article V Convention on Congressional Term Limits

The total number of state applications that have been submitted to Congress for an Article V convention on this subject is unknown. However, in January 2015, the U.S. House of Representatives passed H.Res. 5, which amended the House Rules, to among other things, provide transparency with respect to memorials submitted pursuant to Article V of the U.S. Constitution.<sup>18</sup> Under the revised

---

<sup>12</sup> Sula P. Richardson, U.S. Congressional Research Service, *Term Limits for Members of Congress: State Activity* (June 4, 1998), available at [http://digital.library.unt.edu/ark:/67531/metacrs582/m1/1/high\\_res\\_d/96-152\\_1998Jun04.pdf](http://digital.library.unt.edu/ark:/67531/metacrs582/m1/1/high_res_d/96-152_1998Jun04.pdf) (finding that passed some form of congressional term limits include the following: AK, AR, AZ, CA, CO, FL, ID, ME, MA, MI, MO, MT, NE, NH, NV, ND, OH, OK, OR, SD, UT, WA, WY).

<sup>13</sup> *Thornton*, 514 U.S. 779 (1995).

<sup>14</sup> *Id.*

<sup>17</sup> CONGRESS.GOV (Feb. 3, 2014), available at <http://beta.congress.gov/>.

<sup>18</sup> See H.Res.5 – Adopting rules for the One Hundred Fourteenth Congress, Section 3(c). The text of H.Res.5 may be viewed on the Congress.gov website here <https://www.congress.gov/bill/114th-congress/house-resolution/5/actions?q=%7B%22search%22%3A%5B%22%5C%22hres5%5C%22%22%5D%7D&resultIndex=1> (last visited November 30, 2015).

House Rules, the Chairman of the House Committee on the Judiciary is authorized to determine the extent to which a state application purports to comply with Article V for the purpose of counting towards the two-thirds requirement. In relevant part, section 3(c)(1) of H.Res.5, states “the chair of the Committee on the Judiciary shall, in the case of such a memorial presented in the One Hundred Fourteenth Congress, and may, in the case of such a memorial presented prior to the One Hundred Fourteenth Congress, designate any such memorial for public availability of the Clerk.”<sup>19</sup>

The U.S. House of Representatives website lists state applications submitted since 2012 that call for an Article V convention on various issues, including campaign finance, a balanced federal budget, and the federal debt.<sup>20</sup> As of December 2015, the list contains 20 applications. However, none call for an Article V convention with the sole purpose of proposing a constitutional amendment to impose congressional term limits. Since 2012, Florida,<sup>21</sup> Georgia,<sup>22</sup> and Alaska<sup>23</sup> have submitted applications regarding congressional term limits, but those applications also addressed term limits for federal officials, fiscal restraints on the federal government, and limitations on the power and jurisdiction of the federal government.<sup>24</sup>

### Florida’s ‘Article V Constitutional Convention Act’

In 2014, the Florida Legislature passed, and the Governor signed, the Article V Constitutional Convention Act.<sup>28</sup> Florida’s Article V Constitutional Convention Act governs the appointment, qualification, and conduct of Florida’s delegates to an Article V convention should one ever be called. The Act’s provisions, among other things, govern the appointment of and conduct of Florida’s delegates.<sup>29</sup>

### **Effect of the Memorial**

HM 417 constitutes the state’s application to Congress for an Article V convention with the sole purpose of proposing an amendment to the U.S. Constitution to limit the number of terms that may be served by a member of the U.S. Senate or the U.S. House of Representatives. The memorial does not specify a particular term limit.

The memorial serves as a continuing application until the legislatures of at least two-thirds of the states (34 states) also apply to Congress to call for a convention on the issue of congressional term limits. The text of the memorial states that the application is conditional and will be revoked and withdrawn, nullified, and superseded to the same effect as if it had never been passed, and retroactive to the date of passage, if it is used for the purpose of calling an Article V convention on any other subject.

In 2014, the Florida Legislature passed a memorial to Congress (SM 476) calling for an Article V convention to, among other things, propose an amendment to the states that would limit the terms of office for “federal officials” and “members of Congress”.<sup>30</sup> While SM 476 (2014) continues as an application to Congress for an Article V convention, HM 417’s scope is more limited in that it does not advocate for a proposed amendment to limit the terms of office of “federal officials,” and only petitions for an amendment that would limit congressional terms.

---

<sup>19</sup> *Id.*

<sup>20</sup> Available at <http://clerk.house.gov/legislative/memorials.aspx> (last visited December 16, 2015).

<sup>21</sup> See SM 476, available at <http://clerk.house.gov/legislative/memorials.aspx> (last visited November 30).

<sup>22</sup> See Senate Resolution 736, available at <http://clerk.house.gov/legislative/memorials.aspx> (last visited November 30).

<sup>23</sup> See HJR 22, available at <http://clerk.house.gov/legislative/memorials.aspx> (last visited November 30).

<sup>24</sup>

<sup>28</sup> Ch. 2014-52, Laws of Florida.

<sup>29</sup> See ss. 11.93-11.9352, F.S.

<sup>30</sup> The memorial also sought a convention for amendments on the following issues: 1) imposing fiscal restraints on the federal government; 2) limiting the power and jurisdiction of the federal government. 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.

Legislative memorials are not subject to the Governor's veto power and are not presented to the Governor for review. Memorials have no force of law, as they are mechanisms for formally petitioning the U.S. Congress to act on a particular subject. This memorial does not have a fiscal impact.

B. SECTION DIRECTORY: Not applicable.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.
2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.
2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR: None.

D. FISCAL COMMENTS: None.

## **III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

Applicability of Municipality/County Mandates Provision: Not applicable.

1. Other: None

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

## **IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

None