

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: HCR 703 Balanced Federal Budget
SPONSOR(S): Sirois, Gregory, and others
TIED BILLS: **IDEN./SIM. BILLS:** SCR 324

FINAL HOUSE FLOOR ACTION: 80 Y's 33 N's **GOVERNOR'S ACTION:** N/A

SUMMARY ANALYSIS

HCR 703 passed the House on January 9, 2024, and subsequently passed the Senate on February 1, 2024.

The last balanced federal budget was in Fiscal Year (FY) 2001. Each federal budget since then has seen a deficit of revenues to expenditures, resulting in steadily accumulating federal debt. The federal budget deficit for FY 2023 was \$1.7 trillion, and the current outstanding total federal debt is estimated to be \$33.8 trillion. In 2022, the United States Treasury issued an annual report finding that continuing present federal fiscal policies would result in an unsustainable ratio of debt to gross national product.

Article V of the U.S. Constitution provides the specific process for amending the document. Congress may directly propose amendments to the Constitution, the method used for each amendment ratified since the Constitution went into effect. Alternatively, upon application by the legislatures of two-thirds of the states, Congress must call a convention for the purpose of proposing amendments. A proposed amendment goes into effect once ratified by the legislatures or state conventions of three-fourths of the states; the method of ratification being solely the choice of Congress.

In 2010 and 2014, Florida adopted and submitted to Congress applications under Article V for a convention on an amendment for a balanced federal budget. Currently, 26 other states have filed similar applications with Congress. If adopted, this concurrent resolution would update Florida's application but not increase the number of state applications on this issue.

The concurrent resolution constitutes the state's application to Congress under Article V of the U.S. Constitution to call a convention for the sole purpose of considering and proposing constitutional amendments to the Constitution requiring a balanced federal budget, in the absence of a national emergency.

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

The concurrent resolution is not subject to the Governor's veto powers.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Amending the United States Constitution

Article V of the U.S. Constitution¹ provides the exclusive process for amending the document.² Congress may directly propose amendments to the Constitution, the method used for each of the 27 amendments ratified since the Constitution went into effect. Alternatively, upon application by the legislatures of two-thirds of the states,³ Congress must call a convention for the purpose of proposing amendments. A proposed amendment goes into effect once ratified by the legislatures or state conventions of three-fourths of the states;⁴ the method of ratification being solely the choice of Congress.

State Applications for an Article V Constitutional Convention

Article V requires application to be made by a state's legislature, meaning the representative body authorized to make laws and not referring generally to a state's legislative process.⁵ The specific text does not refer to the authority of the President or a Governor to approve or veto legislation⁶ and the Governor's approval is not required.

Under Article V, Congress has the exclusive authority to review state applications and determine whether they count toward the two-thirds requirement. While Congress has not specified the form, structure, or content of a valid state application,⁷ the accumulation of pending applications from the various states shows Congress groups applications according to the issues expressly stated by the petitioning state rather than simply counting the total number of applications. For example, the current twenty-seven applications seeking a convention on a balanced federal budget amendment are not combined with the four applications requesting a convention for an amendment barring discrimination in public schools to satisfy the necessary two-thirds requirement and call a convention.⁸

Article V requires neither a state application nor the congressional call for a convention to include the specific text of a proposed amendment. Article V authorizes applications to Congress to call a convention "for proposing [a]mendments," apparently requiring the convention to study, debate, and compose the terms of a proposed amendment within the scope of issues authorized in the call.⁹ As

¹ "The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution, or, on the Application of the Legislatures of two thirds of the several States, shall call a Convention for proposing Amendments, which, in either Case, shall be valid to all Intents and Purposes, as Part of this Constitution, when ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other Mode of Ratification may be proposed by the Congress; Provided that no Amendment which maybe made prior to the Year One thousand eight hundred and eight shall in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, with out its Consent, shall be deprived of its equal Suffrage in the Senate." Art. V, U.S. CONST.

² "The language of the article is plain, and admits of no doubt in its interpretation. It is not the function of courts or legislative bodies, national or state, to alter the method which the Constitution has fixed." *Hawke v. Smith*, 253 U.S. 221, 227 (1920). See Henry Paul Monaghan, *We the People[s]*, *Original Understanding, and Constitutional Amendment*, 96 Colum. L. Rev. 121, 127 (1996); Arthur Earl Bonfield, *Proposing Constitutional Amendments by Convention: Some Problems*, 39 Notre Dame L. Rev. 659 (1964).

³ Currently, 34 states.

⁴ Currently, 38 states.

⁵ *Hawke*, *supra* note 2 at 227.

⁶ Sen. Sam J. Ervin, Jr., *Proposed Legislation to Implement the Convention Method of Amending the Constitution*, 66 Mich. L. Rev. 875, 888-889 (1968); see also art. I, s. 7, cl. 2, U.S. CONST.; art. III, s. 8(a), FLA. CONST.

⁷ Legislation previously was proposed but never enacted. See Kenneth F. Ripple, *Article V and the Proposed Federal Constitutional Convention Procedures Bills*, 3 Cardozo L. Rev. 529, 530-533 (1981-1982); Ervin, *supra* note 6 at 885. See also Mary M. Penrose, *Conventional Wisdom: Acknowledging Uncertainty in the Unknown*, 78 Tenn. L. Rev. 789, 796 (2011), citing separate prior legislation filed by Senator Sam Ervin and Senator Jesse Helms.

⁸ See Selected Memorials, Office of the Clerk of the United States House of Representatives, *available at* <https://clerk.house.gov/SelectedMemorial> (last visited Dec. 4, 2023)

⁹ Michael A. Almond, *Amendment by Convention: Our Next Constitutional Crisis*, 53 N.C. L. Rev. 491, 513 (1975); Robert M. Rhodes, *A Limited Federal Constitutional Convention*, 26 Fla. L. Rev. 1 (1973).

Article V does not restrict the scope of a state's application, states may request a general convention for any purpose or a convention limited only to certain issues.¹⁰

There is no court decision on whether a time limit applies to state applications. However, the U.S. Supreme Court determined Congress has sole authority to set a time limit for states to ratify proposed amendments.¹¹ Federalist Papers 43 and 85¹² imply that applications for a convention should be reasonably contemporaneous, addressing a particular problem or issue recognized by at least two-thirds of the states as requiring consideration of constitutional amendment.

Calling an Article V Convention on Application by the States

Article V states that "Congress...on the Application of the Legislatures of two thirds of the several states, shall call a Convention..." (emphasis supplied). As the U.S. Supreme Court has interpreted the text as "plain" and its interpretation "admits of no doubt,"¹³ the general consensus appears to be that once two-thirds of the states apply for a convention on a common topic, Congress has no discretion and must call for the requested convention.¹⁴

Article V is silent on such matters as the selection of delegates by the states, voting requirements at the convention, and the procedural rules of the convention. Under the Supremacy Clause,¹⁵ because Congress would be exercising its national power provided in Article V, congressional action on these issues would be controlling, particularly on national matters such as the date, time, place, and financing of the convention. Congress also could determine the number of votes allocated to each state and establish uniform requirements for the selection, guidance, removal, and replacement of state delegates. Absent congressional action, each state may be able to decide such matters for itself.

Florida Control of Delegates to an Article V Constitutional Convention

The Article V Constitutional Convention Act¹⁶ provides guidelines for Florida to qualify, appoint, remove, and recall delegates to an Article V constitutional convention. These statutes would control absent express directions by Congress on the same issues, whether in the convention call itself or established in separate federal legislation.¹⁷

Submitted State Applications for a Balanced Budget Amendment

The current national debt is approximately \$33.84 trillion,¹⁸ representing a debt-to-Gross Domestic Product ratio of 97.3 percent.¹⁹ For the federal Fiscal Year (FY) ending September 30, 2023, the budget deficit was \$1.7 trillion.²⁰ The U.S. Department of the Treasury has projected that continuing the current fiscal policies of the federal government would result in increases to the debt-to-GDP ratio that are unsustainable.²¹ The U.S. Department of the Treasury defines a sustainable fiscal policy as "one where the ratio of debt held by the public to GDP (the debt-to-GDP ratio) is stable or declining over the long term."²²

¹⁰ William W. Van Alstyne, *A Response to Justice Thomas Brennan's Remarks at the Thomas M. Cooley Law School Article V Symposium*, 28:1 *Thomas M. Cooley L. Rev.* 51, 54 (2011); Ripple, *supra* note 7 at 548; William W. Van Alstyne, *The Limited Constitutional Convention – The Recurring Answer*, 1979 *Duke Law Journal* 985; Rhodes, *supra* note 9 at 18.

¹¹ *Coleman v. Miller*, 307 U.S. 433, 454 (1939); *Dillon v. Gloss*, 256 U.S. 368, 375-376 (1921).

¹² See James Madison, *The Federalist No. 43* (January 23, 1788); Alexander Hamilton, *The Federalist No. 85* (May 28, 1788).

¹³ *Hawke*, *supra* note 2 at 227.

¹⁴ Michael B. Rappaport, *The Constitutionality of a Limited Convention: An Originalist Analysis*, 81 *Constitutional Commentary* 53, 80 (2012); Gerald Gunther, *Constitutional Brinkmanship: Stumbling toward a Convention*, 65 *A.B.A. J.* 1046, 1048 (1979); Almond, *supra* at 498; Ervin, *supra* note 6 at 885; Bonfield, *supra* note 2 at 675. See also Alexander Hamilton, *The Federalist No. 85* (May 28, 1788).

¹⁵ Art. VI, cl. 2, U.S. CONST.

¹⁶ Ss. 11.93-11.9352, F.S.

¹⁷ See art. VI, cl. 2, U.S. CONST., the "Supremacy Clause."

¹⁸ U.S. Dept. of Treasury, *What is the national debt?*, available at <https://fiscaldata.treasury.gov/americas-finance-guide/national-debt/#dive-deeper-into-the-debt> (last visited Nov. 29, 2023).

¹⁹ Congressional Budget Office, *Monthly Budget Review: Summary for Fiscal Year 2023*, available at <https://www.cbo.gov/system/files/2023-11/59640-MBR.pdf> (last visited Nov. 29, 2023).

²⁰ *Id.*

²¹ U.S. Dept. of the Treasury, *Financial Report of the United States Government: Fiscal Year 2022*, at 9, available at https://fiscaldata.treasury.gov/static-data/published-reports/frusg/FRUSG_2022.pdf (last visited Nov. 29, 2023).

²² *Id.* at 7.

The last year in which the federal budget was balanced was 2001.²³ As shown by the following chart, each subsequent federal FY through 2022 produced a deficit of expenditures over revenues:²⁴

(In billions of dollars)

| FY | Revenues | Expenditures | Surplus/(Deficit) | Debt Held by Public ²⁵ |
|------|----------|--------------|-------------------|-----------------------------------|
| 2001 | 1,991.4 | 1,863.2 | 128.2 | 3,319.6 |
| 2002 | 1,853.4 | 2,011.2 | (157.8) | 3,540.4 |
| 2003 | 1,782.5 | 2,160.1 | (377.6) | 3,913.4 |
| 2004 | 1,880.3 | 2,293.0 | (412.7) | 4,295.5 |
| 2005 | 2,153.9 | 2,472.2 | (318.3) | 4,592.2 |
| 2006 | 2,407.3 | 2,655.4 | (248.2) | 4,829.0 |
| 2007 | 2,568.2 | 2,728.9 | (160.7) | 5,035.1 |
| 2008 | 2,523.6 | 2,978.5 | (454.8) | 5,802.9 |
| 2009 | 2,105.0 | 3,517.7 | (1,412.7) | 7,544.7 |
| 2010 | 2,162.7 | 3,457.1 | (1,294.4) | 9,018.9 |
| 2011 | 2,303.5 | 3,603.1 | (1,299.6) | 10,128.2 |
| 2012 | 2,450.0 | 3,526.6 | (1,076.6) | 11,281.1 |
| 2013 | 2,775.1 | 3,454.9 | (679.8) | 11,982.7 |
| 2014 | 3,021.5 | 3,506.3 | (484.8) | 12,779.9 |
| 2015 | 3,249.9 | 3,691.9 | (442.0) | 13,116.7 |
| 2016 | 3,268.0 | 3,852.6 | (584.7) | 14,167.6 |
| 2017 | 3,316.2 | 3,981.6 | (665.4) | 14,665.4 |
| 2018 | 3,329.9 | 4,109.0 | (779.1) | 15,749.6 |
| 2019 | 3,463.4 | 4,447.0 | (983.6) | 16,800.7 |
| 2020 | 3,421.2 | 6,553.6 | (3,132.4) | 21,016.7 |
| 2021 | 4,047.1 | 6,822.4 | (2,775.3) | 22,284.0 |
| 2022 | 4,896.1 | 6,271.5 | (1,375.4) | 24,256.8 |

Under current federal fiscal policies, the Congressional Budget Office (CBO) projects the following for federal FY 2033 (in billions of dollars):²⁶

| | |
|----------------------------|------------------------|
| Total revenues: | 7,102 |
| Total expenditures: | 9,955 |
| Total deficit: | (2,852) |
| Total debt held by public: | 46,709 – 118.9% of GDP |
| Total GDP 2033: | 39,288 |

Twenty-seven states have submitted applications for Congress to call a convention under Article V to consider amendments to the U.S. Constitution requiring a federal balanced budget.²⁷

²³ U.S. Dept. of the Treasury, *What is the national deficit?* available at <https://fiscaldata.treasury.gov/americas-finance-guide/national-deficit/> (last visited Dec. 4, 2023).

²⁴ Congressional Budget Office, *Budget and Economic Data*, available at <https://www.cbo.gov/data/budget-economic-data#11> (last visited Dec. 4, 2023).

²⁵ “Debt Held by Public” is comprised of securities issued by the U.S. Treasury and is the measure of debt primarily used by the Congressional Budget Office in its reports. The total Debt Held by Public does not include intragovernmental Treasury securities (debt owed by the Treasury to other federal governmental entities such as federal trust funds). Congressional Budget Office, *Federal Debt: A Primer*, available at https://www.cbo.gov/publication/56309#_idTextAnchor048 (last visited Dec. 4, 2023).

²⁶ Congressional Budget Office, *The Budget and Economic Outlook: 2023 to 2033*, available at <https://www.cbo.gov/system/files/2023-02/58848-Outlook.pdf>, (last visited Dec. 4, 2023).

²⁷ See Selected Memorials, Office of the Clerk of the United States House of Representatives, available at <https://clerk.house.gov/SelectedMemorial> (last visited Dec. 4, 2023).

Florida previously passed and submitted applications for Congress to call a convention to consider amendments on a balanced federal budget, in 2010²⁸ and 2014.²⁹ If passed, this concurrent resolution would update Florida's application for an Article V convention on a balanced budget amendment but would not increase the total number of states applying for such a convention.

Effect of the Concurrent Resolution

The concurrent resolution constitutes the state's application to Congress under Article V of the U.S. Constitution to call a convention for the sole purpose of considering and proposing amendments to the Constitution requiring a balanced federal budget, in the absence of a national emergency. The concurrent resolution states it covers the same subject matter as similar applications from states that are presently outstanding, is to be aggregated with such other applications to achieve the two-thirds number of states necessary to call for a convention on this specific issue, and is a continuing application until the necessary two-thirds of the states is achieved. The concurrent resolution also provides that the application is revoked and withdrawn, nullified, and superseded as if never passed, retroactive to the date of passage, if the application is used to support calling a convention on any other subject.

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.

²⁸ SCR 10 (2010).

²⁹ SM 658 (2014).