

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB SAC 24-02 Line-item Veto

SPONSOR(S): State Affairs Committee

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

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: State Affairs Committee		Robinson	Williamson

SUMMARY ANALYSIS

Line-item vetoes allow the head of an executive branch of government to reject certain provisions of bills, while allowing other provisions to become law. Congress passed the Line Item Veto Act (LIVA) of 1996 to give the President of the United States the ability to veto certain appropriations by line item. The U.S. Supreme Court found LIVA unconstitutional, noting that a change that gives the President this authority must come through an amendment to the U.S. Constitution.

Article V of the U.S. Constitution provides the specific process for amending the document. Congress may directly propose amendments to the Constitution, which is the method that has been 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, 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.

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 a constitutional amendment giving the President authority to eliminate one or more items of appropriations while approving other portions of a bill.

Concurrent resolutions are not subject to action by the Governor and are not presented to the Governor for review. Concurrent resolutions originating in the House present only exclusively legislative matters, including actions taken pursuant to federal law not requiring gubernatorial approval.

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

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED 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 27 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

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 may be made prior to the Year One thousand eight hundred and eight shall be in any Manner affect the first and fourth Clauses in the Ninth Section of the first Article; and that no State, without 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 in 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 Jan. 30, 2024).

compose the terms of a proposed amendment within the scope of issues authorized in the call.⁹ As 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

Veto Power and Line-item Vetoes

The President, along with the governor of every state,¹⁸ has the ability to reject bills and return them back to the respective legislative body — an action otherwise known as a veto.¹⁹ This power, outlined in the federal and state constitutions respectively, is limited to signing or returning bills in their

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).

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 *Governors: Powers and Authority*, National Governors Association, <https://www.nga.org/governors/powers-and-authority/> (last visited Jan. 30, 2024); "If he approve [the bill] he shall sign it, but if not he shall return it, with his Objections..." Art. I, s. 7, cl. 2, U.S. CONST.

¹⁹ Legal Information Institute, *Veto*, Cornell Law School, <https://www.law.cornell.edu/wex/veto> (last visited Jan. 31, 2024); see also *Governors: Powers and Authority*, National Governors Association, <https://www.nga.org/governors/powers-and-authority/> (last visited Jan. 30, 2024).

entirety.²⁰ Line-item vetoes are a subset of the general veto power; their purpose is to reject specific portions of a bill.²¹

Line-item veto power is most commonly associated with striking certain appropriations from a legislatively created budget, while accepting the other spending provisions.²² In that context, an executive officer without line-item veto authority may either reject the entire proposed budget or approve it. Forty-four states' constitutions specifically include an executive line-item veto power.²³ Several presidents have argued the necessity of more executive budgetary influence, specifically in the form of line-item veto power.²⁴

Line Item Veto Act of 1996 (LIVA)

LIVA was passed by Congress in 1996 and took effect in 1997.²⁵ LIVA gave the President the ability to “cancel certain items in appropriations and entitlement measures and also certain narrowly applicable tax breaks” within legislation while otherwise signing into law the rest of the bill.²⁶ While LIVA was in effect, then-President Clinton exercised this line item veto power 82 times within federal appropriations acts.²⁷

In 1998, the U.S. Supreme Court struck down LIVA as unconstitutional, because it violated the Presentment Clause.²⁸ The Court emphasized that the Presentment Clause requires the President to either accept and sign into law a whole bill, or reject and return to Congress a whole bill;²⁹ by striking certain provisions, the President improperly amends legislation.³⁰ The Court further explained that an executive removal of any portion of text passed by both chambers results in a document which does not comply with the Framers' procedures outlined in the Constitution.³¹

The Court held that if a change were to be made to the President's role in “determining the final text” of legislation, it would need to be done through the procedures for constitutional amendments outlined in Article V.³²

Florida Line-item Veto Provisions

The Florida Constitution states that the “governor shall be the chief administrative officers of the state responsible for the planning and budgeting for the state.”³³ The governor is granted the power to veto specific appropriations; however, he or she can only do so in a general appropriation bill and may not veto any qualification or restriction on such an appropriation without also vetoing the entire

²⁰ *The Presidential Veto and Congressional Veto Override Process*, National Archives and Records Administration, <https://www.archives.gov/files/legislative/resources/education/veto/background.pdf> (last accessed Jan. 30, 2024).

²¹ Legal Information Institute, *Line-item veto*, Cornell Law School, https://www.law.cornell.edu/wex/line-item_veto (last visited Jan. 30, 2024).

²² *Id.*

²³ *Separation of Powers: Executive Veto Powers*, National Conference of State Legislatures (updated Nov. 16, 2022), <https://www.ncsl.org/about-state-legislatures/separation-of-powers-executive-veto-powers> (last visited Jan. 30, 2024).

²⁴ Schmitt at 171-72; see also Virginia A. McMurtry, *Item Veto and Expended Impoundment Proposals: History and Current Status*, Congressional Research Services (updated June 18, 2010), <https://crsreports.congress.gov/product/pdf/RL/RL33635/20> (last visited Jan. 30, 2024).

²⁵ Virginia A. McMurtry, *Item Veto and Expended Impoundment Proposals: History and Current Status*, Congressional Research Services (updated June 18, 2010), <https://crsreports.congress.gov/product/pdf/RL/RL33635/20> (last visited Jan. 30, 2024).

²⁶ *Id.* at 8.

²⁷ *Id.* at 11.

²⁸ *Clinton v. City of New York*, 524 U.S. 417, 421 (1998).

²⁹ *Id.* at 440.

³⁰ *Id.* at 442.

³¹ “Something that might be known as ‘Public Law 105-33 as modified by the President’ may or may not be desirable, but it is surely not a document that may ‘become a law’ pursuant to the procedures designed by the Framers of Article I, § 7 of the Constitution.” *Id.* at 448-49.

³² *Id.* at 449.

³³ Art. IV, s. 1(a), FLA. CONST.

appropriation.³⁴ The Legislature can override a governor's line-item veto with a two-thirds vote of each house, just as it can with a standard veto.³⁵

Effect of the Concurrent Resolution

The concurrent resolution is 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 a constitutional amendment authorizing the President to eliminate one or more items of appropriation while approving other portions of a bill.

The concurrent resolution states that it is a continuing application until the required two-thirds of the states' legislatures have made similar applications on the same subject, and proposes that other state legislatures similarly apply to Congress to call for a convention regarding such an amendment. 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.

The concurrent resolution requires copies of the application to be dispatched to the U.S. President, the President of the U.S. Senate, the Speaker of the U.S. House of Representatives, each member of the Florida delegation to the U.S. Congress, and the presiding officer of each house of the legislature of each state.

Concurrent resolutions are not subject to action by the Governor and are not presented to the Governor for review. Concurrent resolutions originating in the House present only exclusively legislative matters, including actions taken pursuant to federal law not requiring gubernatorial approval.

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:

³⁴ Art. III, s. 8(a), FLA. CONST.

³⁵ Art. III, s. 8(c), FLA. CONST.

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. This concurrent resolution does not affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

Not applicable.