

SENATE BILL NO. 274—SENATOR SETTELMAYER

MARCH 13, 2015

Referred to Committee on Legislative Operations and Elections

SUMMARY—Enacts provisions governing the State’s delegates to any federal constitutional conventions. (BDR 24-600)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.
Effect on the State: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to federal constitutional conventions; enacting provisions governing the State’s delegates to any federal constitutional conventions called pursuant to Article V of the United States Constitution; providing for the appointment, qualifications, duties, terms, recall and replacement of the delegates; prescribing oaths, rules, instructions and limitations for the delegates; prohibiting the delegates from acting or voting outside the scope of the rules, instructions and limitations; providing penalties; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Article V of the United States Constitution provides that on the application of the state legislatures of two-thirds of the states, Congress shall call a convention for proposing amendments to the Constitution. Based on the records from the state ratifying conventions in 1788, the Founders of our Nation understood that when “amendments be generally wished for by the people, two thirds of the legislatures of the different states may require a general convention for [that] purpose, in which case Congress [is] under the necessity of convening one.” (Debate in North Carolina Ratifying Convention (July 29, 1788) (statement of Mr. Iredell), reprinted in 4 *The Founders’ Constitution* 582-83 (Philip B. Kurland & Ralph Lerner eds., 1987)) The Founders also understood that “[t]he conventions which shall be so called will have their deliberations confined to a few points.” (Debate in Virginia Ratifying Convention (June 5-6, 1788) (statement of Mr. Nicholas), reprinted in 4 *The Founders’ Constitution* 582 (Philip B. Kurland & Ralph Lerner eds., 1987)) Therefore, the Founders understood that when the state legislatures make applications to Congress to call a federal constitutional convention, the state



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legislatures are authorized in their applications to limit the subjects and amendments which may be considered by the delegates to the convention. (Robert M. Rhodes, *A Limited Federal Constitutional Convention*, 26 U. Fla. L. Rev. 1 (1973))

Even though the state legislatures are empowered to make such applications, the power of Congress to call the convention is a federal function, and Congress may regulate the process of proposing amendments to the United States Constitution. (*Hawke v. Smith*, 253 U.S. 221, 224-31 (1920); *Leser v. Garnett*, 258 U.S. 130, 137 (1922); *Coleman v. Miller*, 307 U.S. 433, 451-56 (1939)) However, Congress has not enacted any federal laws regulating the process of state legislatures making applications to Congress to call a federal constitutional convention. In the absence of any federal laws preempting this field of regulation, it must be presumed that state legislatures may enact their own state laws governing their delegates to a federal constitutional convention. (*Gregory v. Ashcroft*, 501 U.S. 452, 458-64 (1991); John A. Jameson, *A Treatise on Constitutional Conventions* §§ 376-396 (4th ed. 1887))

This bill is modeled on several laws governing delegates to a federal constitutional convention which have been enacted by other states, including Florida, Georgia, Indiana, South Dakota, Tennessee and Utah. (Fla. Stat. §§ 11.93 et seq.; Ga. Code Ann. § 28-6-8; Ind. Code §§ 2-8.2-1-1 et seq.; S.D. H.B. 1069, 90th Leg., Reg. Sess., approved Feb. 24, 2015; Tenn. Code Ann. §§ 3-18-101 et seq.; Utah Code Ann. § 20A-18-101)

Sections 5 and 11 of this bill provide for the appointment of delegates and alternate delegates by the Legislature when it is in a regular or special session or by the Legislative Commission when the Legislature is not in a regular or special session. **Section 11** also provides for the recall and replacement of the delegates by the appointing authority. **Sections 12 and 13** of this bill establish qualifications and terms of office for the delegates and state that they serve without compensation but are entitled to receive from the Legislative Fund per diem allowances and travel expenses while engaged in the business of the convention.

Sections 14 and 15 of this bill require the delegates to take an oath to faithfully perform their duties and abide by and implement all: (1) limits placed on the subjects and amendments which may be considered by the delegates that are set forth in the Legislature's application calling for the convention; and (2) all instructions provided to the delegates by the appointing authority, including all internal rules of procedure for Nevada's delegation, which the delegates must follow when acting or voting on behalf of Nevada at the convention.

Section 16 of this bill prohibits the delegates from acting or voting in a manner that conflicts with or is outside the scope of any limits placed on the subjects and amendments which may be considered by the delegates or any instructions provided to the delegates by the appointing authority. **Section 16** also imposes certain criminal penalties and civil sanctions against the delegates for such violations of their duties.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 304 of NRS is hereby amended by adding thereto the provisions set forth as sections 2 to 16, inclusive, of this act.

Sec. 2. *The Legislature hereby finds and declares that:*



1 *1. Article V of the United States Constitution provides that on*
2 *the application of the state legislatures of two-thirds of the states,*
3 *Congress shall call a federal constitutional convention for*
4 *proposing amendments to the United States Constitution.*

5 *2. The Founders of our Nation understood that when the*
6 *state legislatures make applications to Congress to call an Article*
7 *V convention, the state legislatures are empowered through their*
8 *applications to limit the subjects and amendments which may be*
9 *considered by the delegates to the Article V convention.*

10 *3. The provisions of sections 2 to 16, inclusive, of this act are*
11 *intended to:*

12 *(a) Give full meaning and effect to the Legislature's power*
13 *under Article V of the United States Constitution to make*
14 *applications to Congress to call an Article V convention; and*

15 *(b) Ensure that this State's delegates to an Article V*
16 *convention faithfully abide by and implement all limits placed by*
17 *the Legislature on the subjects and amendments which may be*
18 *considered by the delegates that are set forth in the Legislature's*
19 *application calling for an Article V convention.*

20 **Sec. 3.** *As used in sections 2 to 16, inclusive, of this act,*
21 *unless the context otherwise requires, the words and terms defined*
22 *in sections 4 to 9, inclusive, of this act have the meanings ascribed*
23 *to them in those sections.*

24 **Sec. 4.** *"Alternate delegate" means a person appointed to*
25 *represent the State of Nevada at an Article V convention by*
26 *fulfilling the duties of his or her paired delegate when necessary*
27 *pursuant to sections 2 to 16, inclusive, of this act.*

28 **Sec. 5.** *"Appointing authority" means:*

29 *1. The Legislature when it is in a regular session or when it is*
30 *in a special session convened by:*

31 *(a) The members of the Legislature pursuant to Section 2A of*
32 *Article 4 of the Nevada Constitution; or*

33 *(b) The Governor pursuant to Section 9 of Article 5 of the*
34 *Nevada Constitution; or*

35 *2. The Legislative Commission when the Legislature is not in*
36 *a regular or special session.*

37 **Sec. 6.** *"Article V convention" means a convention called for*
38 *by the states pursuant to Article V of the United States*
39 *Constitution for the purpose of proposing amendments to the*
40 *United States Constitution.*

41 **Sec. 7.** *"Delegate" means a person appointed to represent the*
42 *State of Nevada at an Article V convention by fulfilling the duties*
43 *of a delegate pursuant to sections 2 to 16, inclusive, of this act.*

44 **Sec. 8.** *"Legislature" means the Legislature of the State of*
45 *Nevada.*



Sec. 9. *“Paired delegate” means the delegate with whom an alternate delegate is paired.*

Sec. 10. *The provisions of sections 2 to 16, inclusive, of this act must not be interpreted to authorize the State of Nevada to participate in an Article V convention unless the rules and procedures of the Article V convention provide that each state of the United States possesses one vote equal to the vote of each of the other states at the Article V convention.*

Sec. 11. 1. *Unless the rules and procedures of an Article V convention are otherwise provided by federal law, when an Article V convention is called, the appointing authority shall appoint the number of delegates allocated to represent the State of Nevada and an equal number of alternate delegates.*

2. *At the time of appointment, each alternate delegate shall be paired with a delegate. An alternate delegate shall:*

(a) Act in place of his or her paired delegate when the paired delegate is absent from the Article V convention; and

(b) Replace his or her paired delegate if the appointing authority directs the alternate delegate to replace the paired delegate because the paired delegate vacates the office or is recalled from the office by the appointing authority pursuant to sections 2 to 16, inclusive, of this act.

3. *The appointing authority shall fill a vacancy in the office of a delegate or an alternate delegate because of death, incapacity, resignation, ineligibility, recall or any other reason in the same manner as the original appointment.*

4. *The appointing authority may recall a delegate or an alternate delegate at any time and replace that delegate or alternate delegate with another person in the same manner as the original appointment.*

5. *As soon as is practicable after taking any action relating to a delegate or an alternate delegate pursuant to sections 2 to 16, inclusive, of this act, the appointing authority shall certify the action in writing to the Article V convention, including, without limitation, each action:*

(a) Appointing a delegate or an alternate delegate.

(b) Recalling a delegate or an alternate delegate.

(c) Filling a vacancy in the office of a delegate or an alternate delegate.

(d) Certifying that a delegate or an alternate delegate acted or voted unlawfully and that the unlawful act or vote is void by operation of law and must be treated as having no legal effect.

Sec. 12. 1. *A person is not eligible to be appointed or to serve as a delegate or an alternate delegate unless the person:*

(a) Is 18 years of age or older;



(b) *Is a qualified elector in this State;*
(c) *Is a registered voter in this State;*
(d) *Has been an actual, as opposed to constructive, citizen resident of this State for at least 1 year immediately preceding the appointment; and*

(e) *Meets all other qualifications for the office as required by law.*

2. *Each delegate and alternate delegate who are paired must be residents of the same county.*

3. *Each pair of delegates and alternate delegates must be residents of a different county from each of the other pairs of delegates and alternate delegates, unless application of this residency requirement is impracticable because of the number of delegates allocated to represent the State of Nevada at the Article V convention.*

4. *The appointing authority shall not appoint a person to serve as a delegate or an alternate delegate if the person:*

(a) *During the immediately preceding 2 years, was registered or required to be registered as a lobbyist pursuant to chapter 218H of NRS for any regular or special session;*

(b) *Is registered or required to be registered as a lobbyist pursuant to 2 U.S.C. § 1603, as amended, or any regulations or rules adopted pursuant thereto;*

(c) *Holds or will hold an elective or appointed office of the United States at the time of appointment or while serving as a delegate or an alternate delegate; or*

(d) *Has been recalled from the office by the appointing authority or has violated the provisions of section 16 of this act.*

Sec. 13. 1. *The term of office of each delegate and alternate delegate expires upon the adjournment sine die of the Article V convention, except that the term of office may not exceed 4 years regardless of the duration of the Article V convention.*

2. *A delegate or an alternate delegate may be reappointed in the same manner as the original appointment, unless the delegate or alternate delegate has been recalled from the office by the appointing authority or has violated the provisions of section 16 of this act.*

3. *The delegates and alternate delegates serve without compensation. While engaged in the business of the Article V convention, each delegate and alternate delegate is entitled to receive from the Legislative Fund the:*

(a) *Per diem allowance provided for state officers and employees generally; and*

(b) *Travel expenses for Legislators provided pursuant to NRS 218A.655.*



Sec. 14. 1. *Before a person who is appointed to serve as a delegate or an alternate delegate enters upon the duties of the office, the person shall take an oath, in writing, that he or she will:*

(a) Support the United States Constitution and the Nevada Constitution;

(b) Faithfully abide by and implement all limits placed by the Legislature on the subjects and amendments which may be considered by the delegates and alternate delegates that are set forth in the Legislature's application calling for the Article V convention;

(c) Faithfully abide by and implement all instructions provided to the delegates and alternate delegates by the appointing authority pursuant to section 15 of this act; and

(d) Otherwise faithfully discharge the duties of the office.

2. *The oath of each delegate and alternate delegate must be filed in the Office of the Secretary of State.*

3. *After the oath is filed in the Office of the Secretary of State, the Governor shall issue a commission to the delegate or alternate delegate pursuant to NRS 281.020.*

Sec. 15. 1. *At the time the delegates and alternate delegates are appointed, the appointing authority shall adopt instructions to provide to the delegates and alternate delegates regarding:*

(a) The internal rules of procedure for this State's delegation which the delegates and alternate delegates must follow when acting or voting as members of this State's delegation to the Article V convention; and

(b) Any other matters that the appointing authority considers necessary for this State's delegation which the delegates and alternate delegates must follow when acting or voting as members of this State's delegation to the Article V convention.

2. *The appointing authority may amend the instructions at any time.*

Sec. 16. 1. *When exercising the power to act or vote as a member of this State's delegation to an Article V convention, a delegate or an alternate delegate shall not knowingly or intentionally act or vote, or attempt to act or vote, in a manner that conflicts with or is outside the scope of any of the:*

(a) Instructions provided to the delegates and alternate delegates by the appointing authority pursuant to section 15 of this act; or

(b) Limits placed by the Legislature on the subjects and amendments which may be considered by the delegates and alternate delegates that are set forth in the Legislature's application calling for the Article V convention.



2. *If a delegate or alternate delegate violates the provisions of this section:*

(a) *The unlawful act or vote of the delegate or alternate delegate is void by operation of law and must be treated as having no legal effect; and*

(b) *The delegate or alternate delegate forfeits and vacates the office by operation of law.*

3. *If, when exercising its collective power to act or vote on behalf of the State of Nevada at an Article V convention, this State's delegation acts or votes, or attempts to act or vote, in a manner that conflicts with or is outside the scope of any of the:*

(a) *Instructions provided to the delegates and alternate delegates by the appointing authority pursuant to section 15 of this act; or*

(b) *Limits placed by the Legislature on the subjects and amendments which may be considered by the delegates and alternate delegates that are set forth in the Legislature's application calling for the Article V convention,*

↳ the delegation's act or vote is void by operation of law and must be treated as having no legal effect, and the Legislature's application calling for the Article V convention ceases to be a continuing application and must be treated as having no legal effect thereafter.

4. *A delegate or an alternate delegate who violates the provisions of this section is guilty of a misdemeanor and, for a period of 5 years after conviction, is disqualified from and ineligible for any appointment to or employment in a position in the public service or a public office in this State.*

5. *In addition to any other remedy or penalty provided by law, a delegate or an alternate delegate who violates the provisions of this section is subject to a civil penalty of not more than \$5,000 for each violation and payment of court costs and attorney's fees. The civil penalty must be recovered in a civil action brought in the name of the State of Nevada by the Secretary of State in the First Judicial District Court and deposited by the Secretary of State for credit to the State General Fund in the bank designated by the State Treasurer.*

Sec. 17. This act becomes effective on July 1, 2015.

