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136<sup>th</sup> General Assembly

## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Sens. Reynolds and Lang

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### SUMMARY

#### Delegates to Article V convention

- Specifies the procedures the General Assembly (GA) must use to appoint delegates to represent Ohio if Congress calls a convention of the states under Article V of the U.S. Constitution.
- Requires the GA to appoint an odd number of delegates, by a concurrent resolution or by a majority of those present and voting in a joint session.
- Sets out the qualifications of a delegate, including that a delegate have been a U.S. citizen and Ohio resident for at least five years, be a registered elector, be at least 25, and not hold federal or statewide office.
- Requires the resolution appointing the delegates to contain each delegate's commission and to state the scope of the delegates' authority and allows the GA to provide additional instructions to delegates in the form of subsequent resolutions.
- Requires each delegate to execute a written oath of office.
- Provides for delegates' compensation.
- Allows delegates to be recalled under certain circumstances and specifies procedures for filling vacancies.

#### Convention conduct

- Sets out requirements for the delegates to organize themselves and limits delegates' ability to engage in certain public communications.
- Imposes criminal prohibitions against delegates voting to take certain actions or accepting certain gifts.
- Requires the GA to appoint an advisory committee to oversee the delegates.

- Requires the advisory committee to advise delegates regarding questions of their authority, to monitor the delegation, and to report perceived violations.
- Requires the advisory committee, upon request, to investigate whether a delegate has exceeded the scope of the delegate's authority.
- Requires the advisory committee to recall a delegate who exceeds the delegate's authority and permits the GA to then remove the delegate or reject the recall and reinstate the delegate.

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## **DETAILED ANALYSIS**

The bill specifies the procedures the General Assembly (GA) must use to appoint delegates to represent Ohio if Congress calls a convention of the states under Article V of the U.S. Constitution.<sup>1</sup>

### **Background on Article V**

Article V of the U.S. Constitution provides two methods for proposing amendments to the U.S. Constitution. First, Congress may propose an amendment by a vote of at least  $\frac{2}{3}$  of the members of each house. Second, upon the application of the legislatures of at least  $\frac{2}{3}$  of the states, Congress must call a convention for proposing amendments. The bill describes the procedures to be followed in Ohio if Congress calls a convention of the states.

For any amendment proposed by Congress or by a convention of the states to take effect, it must be ratified by one of the following methods (Congress decides which method will be used):

- Approval by  $\frac{3}{4}$  of the state legislatures;
- Approval by ratifying conventions in  $\frac{3}{4}$  of the states. If Congress designates this method of ratification, current R.C. 3523.01 through 3523.12, unchanged by the bill, provides Ohio's procedures for conducting its ratifying convention.

To date, all formally proposed amendments to the U.S. Constitution have been proposed by a vote of Congress. A convention of the states has never been held under Article V. The U.S. Constitution does not specify how an Article V convention must be conducted or how each state's delegates are to be chosen. A reviewing court might find that Congress, and not each state, must determine how delegates are chosen. In that case, the bill might not be enforceable.

### **Advisory committee**

The bill requires the GA, when a convention is called, to create an advisory committee to the delegation. The committee consists of three members: a senator appointed by the

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<sup>1</sup> R.C. 3523.13.

Senate President, a representative appointed by the Speaker of the House, and a GA member nominated jointly by the Senate President and the Speaker of the House and approved by a majority of those voting in each chamber.

The advisory committee must select a chairperson from among its members, and it may hire staff.<sup>2</sup> The advisory committee has many duties under the bill, including supporting, monitoring, and investigating the delegation, as discussed below.

## **Appointment of delegates**

Under the bill, the GA must appoint an odd number of delegates, either by a concurrent resolution or by a majority of those present and voting at a joint session.<sup>3</sup> This “commissioning resolution” must set forth the names of the appointed delegates, their commissions and instructions, and the scope of their authority. The GA may provide additional instructions to delegates at any time through a subsequent resolution, passed in the same manner as the commissioning resolution.<sup>4</sup>

The Ohio Constitution places limits on the GA’s powers of appointment:<sup>5</sup>

The election and appointment of all officers, and the filling of all vacancies, not otherwise provided for by this constitution, or the constitution of the United States, shall be made in such manner as may be directed by law; but no appointing power shall be exercised by the General Assembly, except as prescribed in this constitution; and in these cases, the vote shall be taken “viva voce.”

A court might examine whether, under this provision, the GA may appoint delegates to a convention of the states.

### **Eligibility**

Each delegate must satisfy all of the following requirements at the time of appointment and throughout the convention:

- The person must have been a U.S. citizen for at least five years.
- The person must have been an Ohio resident for at least five years and must be a registered elector.
- The person must be at least 25.
- The person must not have had any felony conviction within the last ten years.

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<sup>2</sup> R.C. 3523.18 (A), (B), and (C).

<sup>3</sup> R.C. 3523.14(A).

<sup>4</sup> R.C. 3523.13(A) and 3523.14(D) and (E).

<sup>5</sup> Ohio Constitution, Article II, Section 27.

- The person must not be currently registered, or required to be registered, as a federal lobbyist, and must not have been at any time in the last five years.
- The person must not hold a federal elected or appointed office or be a federal employee or contractor, other than serving as a member of the U.S. armed forces, and must not have done so at any time within the last ten years.
- The person must not hold a statewide office while performing the duties of delegate. (Member of the GA is not considered a statewide office.)<sup>6</sup>

## Oath

Each delegate must sign the following oath:

I do solemnly swear that I accept and will act according to the limits of authority specified in my commission and any present or subsequent instructions. I understand that I may be recalled from my duties by the General Assembly or the advisory committee.

After a delegate's executed oath is filed with the Secretary of State, the Senate Clerk must provide the delegate an official copy of the executed oath and the commissioning resolution, which together serve as the delegate's credentials for the convention.<sup>7</sup>

## Compensation

Delegates are to receive the same compensation as a member of the Ohio House of Representatives (currently \$72,343), prorated for length of time served, except that a delegate who is a GA member must serve without compensation, but must be reimbursed for actual and necessary expenses incurred in the discharge of official duties incurred for work as a delegate. All delegates are entitled to receive allowance for reasonable expenses.<sup>8</sup>

## Removal of delegates and filling vacancies

The bill permits the GA to remove a delegate at any time and for any reason via a concurrent resolution or by a majority vote of those present and voting at a joint session. The GA must recall and remove a delegate if the delegate becomes ineligible to serve. If the advisory committee recalls a delegate (see "**Monitoring and investigation**," below), the GA must act by concurrent resolution or through a joint session to (1) remove the delegate, or (2) reject the recall and reinstate the delegate.

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<sup>6</sup> R.C. 3523.14(B).

<sup>7</sup> R.C. 3523.15.

<sup>8</sup> R.C. 3523.16. See also, R.C. 101.27, not in the bill.

Vacancies are to be filled in the same manner as original appointments, provided that the advisory committee must select an interim delegate to fill any vacancy until the GA fills the vacancy on a permanent basis.<sup>9</sup>

## **Convention conduct**

### **Delegation procedure**

The bill requires the delegates to choose from among themselves a chairperson, a person to cast the state's vote on the convention floor, and a person to speak to the media on behalf of the delegation. A single person may exercise two or all three of the functions, and the delegation may designate a different delegate to perform any function at any time.

A majority of the delegates is required to do business, and a majority vote of the members of the delegation who are present and voting is required for any decision of the delegation, including the designation of delegates for particular duties and the determination of how Ohio's vote is cast.<sup>10</sup>

Only the delegate designated to talk to the media may communicate with the media about convention business, either during the convention or during a temporary recess or adjournment of the convention.

The bill also requires delegates to "take care to avoid communicating the impression to any person outside the delegation" that the delegation is divided on a question on which the delegation has taken a formal position, including casting a vote.

A delegate may share the delegate's opinion to, or debate at, the convention regarding a matter on which the delegation has not taken a formal position. Any delegate violating these provisions may be recalled by the advisory committee or by the GA.<sup>11</sup>

### **Prohibited conduct**

The bill prohibits a delegate from doing any of the following:

- Voting for or otherwise promoting any change to the traditional convention rule of decision on the floor and in the committee of the whole, including that each state has one vote;
- Voting in favor of any proposed amendment that would alter the text of the specific guarantees of individual liberty established by the U.S. Constitution, including those established by:
  - The body of the Constitution;
  - The first ten amendments (the Bill of Rights);

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<sup>9</sup> R.C. 3523.14(C).

<sup>10</sup> R.C. 3523.17(A) and (F).

<sup>11</sup> R.C. 3523.17(B) through (E).

- The 13<sup>th</sup> amendment, the 14<sup>th</sup> amendment, and the 15<sup>th</sup> amendment (the Civil War amendments abolishing slavery, guaranteeing equal protection and due process, and guaranteeing voting rights based on race);
- The 19<sup>th</sup> amendment (women’s right to vote);
- The 23<sup>rd</sup> amendment (residents of the District of Columbia’s right to vote);
- The 24<sup>th</sup> amendment (elimination of poll taxes); and
- The 26<sup>th</sup> amendment (right to vote for anyone 18 and older);
- Voting in favor of any proposed amendment that is outside the scope of the subject matter as limited by the GA’s original application to Congress for an Article V convention (for example, see [S.J.R. 3 of the 136<sup>th</sup> General Assembly](#));
- Accepting, during the delegate’s time of service, any gifts or benefits with a combined value of more than \$200, other than from a member of the delegate’s family and of the kind customarily given by a member of one’s family. “Gift or benefit” is to be liberally construed and includes current and future loans, lodging, food, an offer of prospective employment, and other actual and prospective benefits. It does not include an employer’s decision to continue paying a delegate’s current salary – i.e., paid leave.

A delegate who engages in prohibited conduct is guilty of a third degree felony.<sup>12</sup>

### **Monitoring and investigation**

Upon the request of a delegate, the bill requires the advisory committee to provide advice within 24 hours on whether a prospective action would violate the delegate’s commission or any subsequent instructions of the GA or would violate any of the bill’s prohibitions regarding delegate conduct.<sup>13</sup>

The advisory committee also must develop appropriate procedures and mechanisms for monitoring the delegation, the convention, and its committees and subcommittees. Whenever the advisory committee has reason to believe that a delegate has exceeded the scope of the delegate’s authority or violated the bill’s prohibitions, the advisory committee must notify the Speaker of the House, the Senate President, and the Attorney General. Then, upon the request of the Speaker, the Senate President, or the Attorney General, the advisory committee must investigate and expeditiously determine whether a delegate is in violation and immediately communicate the determination to the requestor.

If the advisory committee determines that a delegate has exceeded the scope of the delegate’s authority, it must immediately recall the delegate and communicate this action and the reasons for it to the Speaker, the Senate President, the Attorney General, and the presiding

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<sup>12</sup> R.C. 3523.99.

<sup>13</sup> R.C. 3523.18(D)(1).

officers of the convention.<sup>14</sup> As described above, the GA may then either remove the delegate or reject the advisory committee's determination and reinstate the delegate.

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## HISTORY

Action	Date
Introduced	02-25-25

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<sup>14</sup> R.C. 3523.18(D)(2) through (5).