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## Bill Analysis

**Version:** As Introduced

**Primary Sponsors:** Reps. McClain and Willis

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### SUMMARY

#### Article V Convention – appointment of delegates

- Requires the General Assembly (GA), when Congress has called for an Article V Convention of the States, to appoint delegates to the Convention under certain procedures.
- 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.
- Requires a delegate to have been a U.S. citizen and Ohio resident for at least five years, be a registered elector, be at least 25 years old, not hold federal or statewide office, and have other qualifications.
- Requires the resolution appointing a delegate to have the delegate's commission, stating the scope of the delegate's authority.
- Permits the GA to provide additional instructions to delegates with subsequent resolutions.
- Permits the GA to recall and remove delegates at any time and for any reason.

#### Oath of delegate

- Requires the delegate to execute an oath in writing to act according to the limits of the delegate's commission, a copy of which acts as the delegate's credentials.

#### Compensation of delegate

- Provides that a delegate receives the same compensation as a member of the Ohio House of Representatives, prorated for length of time served, plus reasonable expenses.
- Provides that a delegate who is a GA member does not receive compensation, but must be reimbursed for actual and necessary expenses.

## Convention conduct

- Requires the delegates to choose a chairperson, a person to cast the state’s vote on the Convention floor, and a person to speak to the media.
- Requires delegates to avoid communicating the impression that the delegation is divided on a question on which the delegation has taken a formal position, including casting a vote.
- Permits delegates to share the delegate’s opinions and debate on matters for which the delegation has not taken a formal position.
- Prohibits delegates from doing any of the following: vote in favor of changing certain convention rules, vote to amend certain amendments of the U.S. Constitution, vote in favor of an amendment outside the scope of the delegate’s commission, or accept gifts of a certain dollar amount.

## Advisory Committee

- When a convention is called, creates the Advisory Committee to the Delegation of the State of Ohio, consisting of three GA members.
- Requires the Advisory Committee to advise delegates regarding questions of the delegate’s commission, to monitor the delegation, and to report perceived violations of the commission.
- 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 delegates who are found to exceed their authority, and permits the GA to then remove the delegate, or reject the recall and reinstate the delegate.
- Requires the Advisory Committee to fill vacancies in the delegation by appointing an interim delegate, until the GA appoints a new delegate.

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## DETAILED ANALYSIS

### Article V Convention

The bill requires the General Assembly (GA), when Congress calls an Article V Convention of the States (“Convention”), to appoint delegates to represent Ohio at the Convention.<sup>1</sup>

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

## Background on Article V Conventions

The U.S. Constitution requires Congress, upon the application of two-thirds of all state legislatures (34 states), to call a convention for proposing amendments to the U.S. Constitution. Article V also permits Congress to propose an amendment to the Constitution with a two-thirds vote of both houses. Under either circumstance, an amendment becomes part of the Constitution only upon ratification by three-quarters of the states (38 states). Congress decides whether the amendment requires approval by three-fourths of the state legislatures or approval of ratifying conventions in three-fourths of the states.<sup>2</sup>

The Revised Code has a process for electing delegates to a state ratifying convention in order to cast Ohio's vote on whether a proposed amendment becomes part of the U.S. Constitution,<sup>3</sup> but does not currently have a procedure to choose delegates to attend an Article V Convention of the States to *propose* an amendment. The bill creates these procedures.

### Appointment of delegates

The bill requires the GA to appoint an odd number of delegates, either by a concurrent resolution, or by a majority of those present and voting in a joint session.<sup>4</sup> This "commissioning resolution" must set forth the names of the appointed delegates and the delegate's commissions and instructions, which must clearly state the scope of the delegate's 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>5</sup>

No person can be a delegate unless the person, at the time of appointment and throughout the Convention, satisfies all of the following requirements:

- Is a U.S. citizen and Ohio resident, for at least five years;
- Is at least 25 years old;
- Is a registered Ohio elector;
- Is not currently registered or required to be registered as a federal lobbyist, nor has been at any time in the last five years;
- Is not currently a federal employee or contractor, other than a member of the U.S. armed forces, nor has been at any time within the last ten years;
- Has not held a federal elected or appointed office at any time within the last ten years;

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<sup>2</sup> U.S. Constitution, Article V.

<sup>3</sup> R.C. 3523.01 to 3523.12, not in the bill.

<sup>4</sup> R.C. 3523.14(A).

<sup>5</sup> R.C. 3523.13(A) and 3523.14(D) and (E).

- Has not had any felony convictions for crimes involving moral turpitude in any jurisdiction, nor any felony convictions for any crime in any jurisdiction within the last ten years;
- Does not hold a statewide office, excluding a GA member, while performing the duties of delegate.<sup>6</sup>

## **GA appointment powers and federal interaction**

The bill provides that the GA appoints the delegates to the Convention in a joint session, or via a resolution. Article V of the U.S. Constitution provides that Congress must call an Article V convention “on the Application of the Legislatures of two thirds of the several States.”

However, the Ohio Constitution places limits on the General Assembly’s powers of appointment:

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;<sup>7</sup>

It is not clear whether the GA’s federal constitutional authority to petition for a convention implies federal authority to appoint the Convention delegates, so that the Ohio prohibition against the GA making appointments would not apply. There has not been an Article V Convention before, so the question has not been formally addressed.

## **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 of those present and voting at a joint session. The GA is required to recall and remove a delegate if the delegate becomes ineligible to serve.

The bill also permits the GA, if the Advisory Committee recalls a delegate (see “**Advisory Committee**,” below), to then remove the delegate, or reject the recall and reinstate the delegate via a concurrent resolution or by a majority of those present and voting at a joint session.

The bill permits the GA to fill vacancies in the same manner as original appointments.<sup>8</sup>

## **Delegate oath**

The bill requires a delegate to execute the following oath in writing:

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

<sup>7</sup> Ohio Constitution, Article II, Section 27.

<sup>8</sup> R.C. 3523.14(C).

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 House 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>9</sup>

## **Compensation of delegate**

The bill provides a delegate the same compensation as a member of the Ohio House of Representatives (currently \$71,099), 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>10</sup>

## **Convention conduct**

### **Delegation procedure**

The delegates must 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.

The quorum for any decision of the delegation, including the designation of delegates for particular duties and the determination of how the state's vote is cast, is a majority present and voting at the time the delegation is polled. No decisions may be made and no vote may be cast if less than a majority of the delegates vote.<sup>11</sup>

### **Prohibited communications**

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.

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<sup>9</sup> R.C. 3523.15.

<sup>10</sup> R.C. 3523.16. See also, R.C. 101.27, not in the bill.

<sup>11</sup> R.C. 3523.17(A) and (F).

Any delegate violating these provisions may be recalled by the Advisory Committee (see “**Advisory Committee**,” below), or by the General Assembly.<sup>12</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);
  - The 13<sup>th</sup> amendment, the 14<sup>th</sup> amendment, and the 15<sup>th</sup> amendment (abolishing slavery, the Civil War amendments (equal protection and due process), and 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;
- 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.

For this last item, gifts or benefit is to be liberally construed and includes current and future loans, lodging, food, 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 person who violates a prohibition in this section is guilty of a third degree felony.<sup>13</sup>

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<sup>12</sup> R.C. 3523.17(B) through (E).

<sup>13</sup> R.C. 3523.99.

## Advisory Committee

The bill requires the GA, when a convention is called, to create an Advisory Committee to the Delegation of the State of Ohio, consisting of three members: a Senator appointed by the Senate President, a Representative appointed by the Speaker of the House, and a GA member nominated jointly by the Senate President and Speaker of the House and approved by the majority of those voting in each chamber.

The Advisory Committee must select a chairperson from among its members, and it may hire staff.<sup>14</sup> The Advisory Committee has many duties under the bill, including supporting, monitoring, and investigating the delegation.

### Delegation support

The Advisory committee must, upon the request of a delegate and within 24 hours of the request, advise the delegate on whether a prospective action violates the delegate's commission or any subsequent instructions of the GA, or any of the bill's prohibitions on delegate conduct.

Additionally, the Advisory Committee must fill any vacancies in the delegation by selecting an interim delegate to serve until the vacancy is filled by the GA (see "**Removal of delegates and filling vacancies**," above).<sup>15</sup>

### Monitoring and investigation

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 delegate's prohibitions as described under "**Convention conduct**," above, the Advisory Committee must notify the Speaker of the House, the Senate President, and the Attorney General (AG).

Then, upon the request of the Speaker, Senate President, or AG, the Advisory Committee must investigate whether a delegate has so exceeded the scope of the delegate's authority, expeditiously make a determination whether a delegate has done so, 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 AG, and the presiding officers of the Convention.<sup>16</sup> As described under "**Removal of delegates and filling vacancies**,"

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<sup>14</sup> R.C. 3523.18 (A), (B), and (C).

<sup>15</sup> R.C. 3523.18(D)(1) and (6).

<sup>16</sup> R.C. 3523.18(D)(2) through (5).

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	05-20-24

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