



Senate Fiscal Agency
P. O. Box 30036
Lansing, Michigan 48909-7536

BILL



ANALYSIS

Telephone: (517) 373-5383
Fax: (517) 373-1986

Senate Bill 306 (as passed by the Senate)
Sponsor: Senator Mike Green
Committee: Elections and Government Reform

Date Completed: 12-27-16

CONTENT

The bill would enact the "Compact for a Balanced Budget", which would do the following:

- Resolve that the legislature of each Member State apply to Congress to call a convention on the ratification of the Balanced Budget Amendment (BBA), when at least three-fourths of the states became members of the Compact.
- Petition Congress to refer the BBA to the states for ratification by three-fourths of their legislatures, when at least three-fourths of the states became Member States.
- Provide that each Member State would adopt and ratify the Balanced Budget Amendment, after Congress referred the BBA to the states for ratification under Article V of the U.S. Constitution.
- Provide that the agenda of the convention would be exclusively limited to introducing, debating, voting on, and rejecting or proposing for ratification the Balanced Budget Amendment.
- Establish rules of the convention.
- Provide that each Member State would be entitled to one delegate at the convention.
- Establish the Compact Commission and provide for a Compact Administrator.

(Under Article 5 of the U.S. Constitution, Congress must call a convention to propose amendments to the Constitution if required by a two-thirds majority of both the U.S. Senate and the U.S. House of Representatives, or upon the application of two-thirds of the state legislatures. Any proposed amendment then must be ratified by the legislatures of three-fourths of the states or at conventions in three-fourths of the states.)

Balanced Budget Amendment Language

As defined in the Compact, the Balanced Budget Amendment would contain the following language:

Article _____

Section 1. Total outlays of the government of the United States shall not exceed total receipts of the government of the United States at any point in time unless the excess of outlays over receipts is financed exclusively by debt issued in strict conformity with this article.

Section 2. Outstanding debt shall not exceed authorized debt, which initially shall be an amount equal to 105 percent of the outstanding debt on the

effective date of this article. Authorized debt shall not be increased above its aforesaid initial amount unless such increase is first approved by the legislatures of the several states as provided in Section 3.

Section 3. From time to time, Congress may increase authorized debt to an amount in excess of its initial amount set by Section 2 only if it first publicly refers to the legislature of the several states an unconditional, single object measure proposing the amount of such increase...and the measure is thereafter publicly and unconditionally approved by a simple majority of the legislatures of the several states...; provided that no inducement requiring an expenditure or tax levy shall be demanded, offered or accepted as a quid pro quo or such approval. If such approval is not obtained within 60 calendar days after referral then the measure shall be deemed disapproved and the authorized debt shall thereby remain unchanged.

Section 4. Whenever the outstanding debt exceeds 98 percent of the debt limit set by Section 2, the President shall enforce said limit by publicly designating specific expenditures for impoundment in an amount sufficient to ensure outstanding debt shall not exceed the authorized limit...The failure of the President to designate or enforce the required impoundment is an impeachable misdemeanor. Any purported issuance or incurrence of any debt in excess of the debt limit set by Section 2 is void.

Section 5. No bill that provides for a new or increased general revenue tax shall become law unless approved by a two-thirds roll call of the whole number of each House of Congress. However, this requirement shall not apply to any bill that provides for a new end user sales tax which would completely replace every existing income tax levied by the government of the United States; or for the reduction or elimination of an exemption, deduction, or credit allowed under an existing general revenue tax.

Section 6 of the BBA contains definitions of terms used in the amendment. Section 7 provides, "This article is immediately operative upon ratification, self-enforcing, and Congress may enact conforming legislation to facilitate enforcement."

Articles I & II

Article I of the Compact contains a declaration of policy, purpose and intent. Article II contains definitions of terms used in the Compact, including the definition of "Balanced Budget Amendment" described above.

Article III: Compact Membership & Withdrawal

By becoming a member of the Compact, a state would promise to perform and comply strictly with the terms and conditions of the Compact. The Compact also would be construed as contractually binding each Member State when 1) at least one other state had become a member state by enacting substantively identical language adopting and agreeing to be bound by the Compact, and 2) notice of the state's member status was received by the Compact Administrator, if any, or otherwise by the chief executive officer of each other member state.

Legislation would be deemed "substantively identical" as provided in the Compact.

When fewer than three-fourth of the states were members, any Member State could withdraw from the Compact by enacting appropriate language, and giving notice to the Compact Administrator, if any, or otherwise by the chief executive officer of each other Member State. Once at least three-fourths of the states were members, then no Member State could withdraw before the Compact terminated without the unanimous consent of all Member States.

Article IV: Compact Commission & Administrator

The Compact Commission would be established and would have the powers set forth in the Compact, including the power to appoint and oversee a Compact Administrator. The Commission initially would consist of three unpaid members. Each Member State could appoint one member to the Commission until all positions on the Commission were filled. Each Commission member would be entitled to one vote.

The activities of the Commission and the Administrator would be funded exclusively by each Member State, as determined by its state law, or by voluntary donations.

The Administrator would have the powers and duties set forth in the Compact, including formulating, transmitting, and maintaining all official notices, records, and communications related to the Compact. The Administrator would serve at the pleasure of the Commission.

The Administrator would have to send notices to all "Compact Notice Recipients" when each of the following occurred: 1) any state became a Member State; 2) at least three-fourths of the states were Member States; 3) Congress called the convention contemplated by the Compact; 4) the Balance Budget Amendment was approved by the convention; and 5) any article of the Compact prospectively ratifying the BBA was effective in any Member State.

"Compact Notice Recipients" would mean the Archivist of the United States, the President of the United States, the President of the U.S. Senate, the Office of the Secretary of the U.S. Senate, the Speaker of the U.S. House of Representatives, the Office of the Clerk of the U.S. House, the chief executive officer of each state, and the presiding officer of each house of the Legislatures of the states.

Article IV would not take effect until there were at least two Member States.

Article V: Resolution Applying for Convention

Article V states, "Be it resolved, as provided for in Article V of the Constitution of the United States, the Legislature of each Member State herewith applies to Congress for the calling of a convention for proposing amendments limited to the subject matter of proposing for ratification the Balanced Budget Amendment."

Article V also would petition Congress to refer the BBA to the states for ratification by three-fourths of their legislatures.

Article V would not take effect until at least three-fourths of the states were Member States.

Article VI: Delegate Appointment, Limitations, & Instructions

Each Member State would be entitled to one delegate as its sole and exclusive representative at the convention. Each Member State's chief executive officer, who was serving on the enactment date of the Compact, would be appointed in an individual capacity to represent his or her state at the convention.

An appointed delegate could be replaced or recalled by the legislature of his or her state for good cause.

The power of a delegate could be exercised only after Congress first called the convention, and the appointee publicly took an oath set forth in the Compact.

The term of a delegate would begin upon acceptance of appointment and would terminate upon the permanent adjournment of the convention, unless shortened by recall, replacement, or forfeiture.

The power and authority of any delegate would be limited to 1) introducing, debating, voting upon, proposing and enforcing the convention rules specified in the Compact; and 2) introducing, debating, voting upon, and rejecting or proposing for ratification the BBA. No delegate could introduce, debate, vote on, reject or propose for ratification any constitutional amendment at the convention unless a) the convention rules specified in the Compact governed the convention and his or her actions, and b) the constitutional amendment was the BBA.

If any Member State or delegate violated any provision of the Compact, every delegate of that state would immediately forfeit his or her appointment and would have to cease participation at the convention.

An appointed delegate would be entitled to reimbursement of reasonable expenses for attending the convention from his or her Member State. No delegate could accept any other form of remuneration or compensation for service under the Compact.

Article VII: Convention Rules

The convention would have to be organized, construed, and conducted as a body exclusively representing and constituted by the states.

The agenda of the convention would have to be entirely focused on and exclusively limited to introducing, debating, voting on, and rejecting or proposing for ratification the Balanced Budget Amendment.

States would be represented at the convention through duly appointed delegates. The number, identify, and authority of delegates assigned to each state would have to be determined by the Compact or, in the case of states that were not Member States, by their state laws. Not more than three delegates could attend and participate in the convention on behalf of any state.

Each state represented at the convention would have one vote. The vote would have to be exercised by the state's delegate in the case of states represented by one delegate, or by the majority vote of the state's delegates in the case of states represented by more than one delegate.

A majority of the states of the United States, present through their delegate or through a majority of their delegates, would constitute a quorum for the transaction of any business on behalf of the convention.

The convention could act only as a committee of the whole, chaired by a delegate representing the first state to become a Member State. The transaction of any business on behalf of the convention, including the rejection or proposal of any constitutional amendment, would require a quorum to be present and a majority affirmative vote of those states constituting the quorum.

The chair of the convention or secretary designated by the convention would have to keep records of the convention, including detailed minutes of all proceedings. All proceedings and records of the convention would have to be open to the public upon request, subject to reasonable regulations adopted by the convention tailored to preventing disruption of proceedings.

The convention would have to permanently adjourn upon the earlier of 24 hours after commencing proceedings or the completion of the business on its agenda.

Article VIII: Prohibition of Ultra Vires Convention

Member States would be prohibited from participating in the convention unless 1) Congress first called the convention in accordance with the Compact; and 2) the convention rules of the Compact were adopted by the convention as its first order of business.

Any proposal or action of the convention would be void and issued by a body that was conducting itself unlawfully if that proposal or action 1) violated or was approved in violation of the convention rules or the delegate instructions and limitations specified in the Compact, 2) purported to propose or effectuate a mode of ratification that was not specified in Article V of the U.S. Constitution, or 3) purported to propose or effectuate the formation of a new government.

Member States could not ratify or otherwise approve any proposed amendment, alteration, or revision to the U.S. Constitution that originated from the convention, other than the Balanced Budget Amendment.

Article IX: Resolution Prospectively Ratifying the BBA

Article IX states, "Each Member State, by and through its respective Legislature, hereby adopts and ratifies the Balanced Budget Amendment."

Article IX would not take effect until Congress effectively referred the BBA to the states for ratification by three-fourths of the legislatures under Article V of the U.S. Constitution.

Article X: Construction, Enforcement, Venue, & Serverability

To the extent that the effectiveness of the Compact of any of its articles or provisions required the alteration of local legislative rules, drafting policies, or procedure to be effective, the enactment of legislation enacting, adopting, and agreeing to be bound by the Compact would have to be deemed to waive, repeal, supersede, or otherwise amend and conform all such rules, policies, or procedures to all for the effectiveness of the Compact to the fullest extent permitted by the constitution of any affected Member State.

Unless otherwise specified by Congress, the convention would have to be held in Dallas, Texas, and begin proceedings at 9:00 a.m. Central Standard Time on the sixth Wednesday after the effective date of Article V of the Compact or the enactment date of the congressional resolution calling the convention, whichever was later.

The chief law enforcement officer of each Member State would be empowered to defend the Compact from any legal challenge, as well as seek civil mandatory and prohibitory injunctive relief to enforce the Compact, and would be required to take that action when the Compact was challenged or violated.

The exclusive venue for all actions arising under the Compact would have to be in the United States District Court for the Northern District of Texas or the courts of the State of Texas within the jurisdictional boundaries of that District Court. The Commission could waive this provision, upon the request of the chief law enforcement officer of any Member State, for the purpose of ensuring that an action proceeded in the venue that allowed for the most convenient and effective enforcement or defense of the Compact.

The effective date of the Compact and any of its articles would be the latter of 1) the date of any event rendering it effective according to its terms and conditions; or 2) the earliest date otherwise permitted by law.

Article VIII of the Compact would be deemed nonseverable before the Compact terminated. If any other provision of the Compact, or the application of any other provision, were declared in a final judgment to be contrary to the U.S. Constitution or contrary to the constitution of a Member State, or otherwise were held invalid by a court of competent jurisdiction, that provision would be deemed severed and the validity of the remainder of the Compact and the applicability of the remainder would not be affected.

The Compact would terminate when it was fully performed and the Constitution of the United States was amended by the Balanced Budget Amendment. If the amendment did not occur within seven years after the first state passed legislation enacting the Compact, however, the Commission would have to dissolve within 90 days and upon, the completed dissolution of the Commission, the Compact would be deemed terminated.

Legislative Analyst: Suzanne Lowe

FISCAL IMPACT

The bill could have a minimal fiscal impact on the State. A delegate appointed to the Commission would be entitled to reimbursement from the State for reasonable expenses for attending the national convention. The amount of the reimbursements would depend on the costs associated with attendance at the national convention at the time it took place. The expected costs should be minimal and should be absorbable within State appropriations at that time.

Fiscal Analyst: Joe Carrasco

S1516\sb306p

This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.