

SESSION OF 2024

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2807

As Recommended by House Committee on
Federal and State Affairs

Brief*

HB 2807 would create a legislative procedure that would be followed when a constitutional convention has been called under Article V of the *U.S. Constitution*, specify delegate duties and instructions, establish a recall procedure, and create a procedure to investigate and prosecute delegate oath violations.

Appointment of Delegates (Section 3)

The bill would direct the appointment of delegates and alternate delegates to represent Kansas whenever an Article V convention is called.

Under the bill, appointments would be made proportionally as follows:

- The Speaker of the House of Representatives (Speaker) and the Speaker Pro Tem would each appoint one member of the House of Representatives as a delegate and one member as an alternate delegate;
- The President of the Senate and the Vice President of the Senate would each appoint one member of the Senate as a delegate and one member as an alternate delegate;

*Supplemental notes are prepared by the Legislative Research Department and do not express legislative intent. The supplemental note and fiscal note for this bill may be accessed on the Internet at <http://www.kslegislature.org>

- The majority party caucus of the House of Representatives would appoint two delegates and two alternate delegates;
- The majority party caucus of the Senate would appoint one delegate and one alternate delegate;
- The Minority Leaders of the House of Representatives and Senate would each appoint one delegate and one alternate delegate; and
- The minority party caucuses of the House of Representatives and Senate would each appoint one delegate and one alternate delegate.

The bill would require any delegate or alternate delegates appointed to be elected or appointed and qualified to serve as members of the Legislature at the time of appointment. A delegate's term would begin with the call of the Article V convention and end with the final adjournment of the convention, unless the delegate is recalled.

Delegate Oath and Organization (Sections 4, 5, and 7)

Appointed delegates and their alternates would be required to reaffirm an oath to support the *U.S. Constitution* and the *Kansas Constitution* and faithfully abide by and execute any instructions adopted by the Legislature.

The bill would specify that the delegate appointed by the Speaker would be the chairperson of the delegation and the delegate appointed by the President would be the vice-chairperson of the delegation.

Delegation members would be paid the statutory amounts for expenses, mileage, and subsistence as found in continuing law.

Convention Voting

Under the bill, only the chairperson, or if unavailable, the vice-chairperson, could cast a vote for the delegation at an Article V convention. A majority of the delegation would be required to approve any vote cast.

Delegates would be prohibited from considering or voting for any unauthorized amendments or measures that are outside the scope of the limits placed by the Article V application or any instructions provided by the Legislature, and any such votes cast would be considered void. Additionally, any votes cast that were not approved by a majority of the delegation would be considered void.

Adoption of Delegation Rules

Delegates would be authorized to propose or negotiate proposed rules for an Article V convention and for proposed constitutional amendments. Such rules would be required to conform with any instructions provided by the Legislature.

Legislative Staff

The Revisor of Statutes, or their designee, would be required to attend the Article V convention and serve as legal counsel for the delegates while negotiating any proposed rules or constitutional amendments. The bill would also require the Chief Clerk of the House of Representatives and the Secretary of the Senate, or their designee, to attend the convention and prepare daily reports on the convention sessions and meetings of the delegation. Such reports would be required to be submitted to the Legislature daily.

Legislative Instructions (Section 6)

Instructions could be provided to delegates under the bill by adoption of a concurrent resolution by a majority of the

members of both chambers of the Legislature. The bill would state that members of the delegation shall be considered the voice of the Legislature, and the chairperson of the delegation would be required to maintain regular communication with the Speaker and President and any other legislative officers designated by concurrent resolution, or their designees.

Recall of a Delegate (Section 3)

Under the bill, the Legislature could recall a delegate or alternate delegate at any time through adoption of a concurrent resolution by a majority vote. Any recalled delegate would be replaced by the alternate delegate appointed by the same appointing authority. In the event of a recall, a new alternate delegate would be appointed by the same appointing authority. Additionally, the bill would direct that a vacancy in the delegation would be filled in the same manner.

The Secretary of State would be required to certify in writing to the Article V convention the identity of the delegates appointed or dismissed and the filling of any vacancy.

Oath Violations (Section 8)

Under the bill, voting in favor of an unauthorized amendment would be considered a violation of a delegate's oath. The bill would further specify that a violation would have been deemed to occur regardless of whether the delegation as a whole cast a vote in favor of such unauthorized amendment. An oath violation would constitute grounds for immediate recall of such delegate.

Violation Investigation

The Legislative Coordinating Council (LCC) would be directed to review allegations of an oath violation. Upon completion of the review, the LCC could provide a written

recommendation to the Attorney General recommending further investigation and possible prosecution for any violation.

Violation Penalty

Under the bill, conviction of an oath violation would be considered a severity level 6 nonperson felony.

Definitions (Section 2)

Key terms would be defined by the bill, including the terms “alternate delegate,” “Article V application,” “Article V convention,” and “delegate”.

Background

The bill was introduced by the House Committee on Federal and State Affairs at the request of Representative E. Smith.

House Committee on Federal and State Affairs

In the House Committee hearing, **proponent** testimony was provided by Representative B. Carpenter and Representative E. Smith. The proponents stated the bill would create a procedure that would be followed to select delegates in the event an Article V convention was called and that the bill would create ways to provide legislative instruction, recall delegates, and establish a mechanism to investigate and address unauthorized votes.

Written proponent testimony was provided by a representative of the Convention of States-Kansas and a private citizen.

Opponent testimony was provided by representatives of Guard the Constitution and the Kansas Campaign for Liberty who stated their concerns that once appointed, a delegate could not be held to follow their oath and legislative instructions. The opponents also stated their concern that even if a delegate is recalled, their vote for an unauthorized amendment may still be counted at the convention.

No other testimony was provided.

Fiscal Information

According to the fiscal note prepared by the Division of the Budget on the bill, the LCC estimates the total costs for an Article V convention would be \$48,323 from the State General Fund (SGF). The estimate was calculated by the Office of Legislative Administrative Services to include reimbursement for the 11 delegates and 3 staff named in the bill. Specific estimates included \$10,500 for airfare, \$16,800 for hotel expenses, \$4,760 for meal expenses, \$2,814 for mileage expenses, \$4,200 for miscellaneous expenses, \$7,568 for salary expenses, and \$1,681 for fringe benefit expenses.

The Kansas Sentencing Commission states enactment of the bill could lead to arrests and convictions under the new crime, but notes any conviction would likely result in probation. The Commission and the Department of Corrections state any effect on prison admissions due to enactment of the bill would be negligible.

The Secretary of State indicates the agency would utilize existing resources to implement the provisions of the bill and that enactment would not have a fiscal effect on the agency. The Attorney General indicates that any new investigative or prosecutorial responsibilities due to enactment of the bill would be performed within the agency's current workload. Costs related to future litigation cannot be estimated.

The Office of Judicial Administration (OJA) states the bill could result in increased litigation due to the new crime, resulting in additional costs. However, OJA is unable to estimate the effect of additional litigation, stating those effects would most likely be accommodated within the existing schedule of court cases and would not require additional resources. Enactment of the bill could also result in the collection of supervision fees, as well as increased collection of docket fees, which would be deposited in the SGF. However, estimates related to those fees could not be made.

Any fiscal effect associated with enactment of the bill is not reflected in *The FY 2025 Governor's Budget Report*.

Article V; convention; Constitution; delegate; crimes