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FISCAL IMPACT REPORT

ORIGINAL DATE 02/06/13

SPONSOR Espinoza LAST UPDATED _____ HB 363

SHORT TITLE Constitution Amendments & NM Delegate Limits SB _____

ANALYST Cerny

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

Similar to HB 156

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)

Attorney General's Office (AGO)

SUMMARY

Synopsis of Bill

House Bill 363 (HB 363) prohibits a New Mexico delegate to a national constitutional convention under Article V of the United States Constitution from voting to allow consideration of, or voting to approve, an unauthorized amendment for ratification. ("Unauthorized amendment" is defined as an amendment that is outside the subject matter of the application, the call, the commission, or any legislative instructions.) The bill requires that a delegate who casts a vote to allow consideration or approval of an unauthorized amendment be immediately replaced by an alternate.

HB 363 sets out an oath for delegates and alternates to take, with a civil fine of up to \$10,000 to be imposed for violation of the oath. The bill requires delegates and alternates to be certified by the legislature or by an official or entity designated by the legislature to certify delegates and alternates, recall and replace a delegate with an alternate or nullify unauthorized votes cast by a New Mexico delegate.

HB 363 defines the following terms to be used in the event that New Mexico is a participant in requesting a constitutional convention under Article V.:

- Article V constitutional convention;
- Article V application;
- delegate or alternate;
- legislative instructions; and
- unauthorized amendment.

The Act contains an emergency clause.

FISCAL IMPLICATIONS

HB 363 carries no fiscal impact.

SIGNIFICANT ISSUES

Article V of the Constitution of the United States describes the process whereby the Constitution may be amended. The Article provides that amendments may be proposed by either two-thirds of both houses of Congress or by a national convention assembled at the request of the legislatures of at least two-thirds of the states. Amendments must then be ratified by either approval of the legislatures of three-fourths of the states or state ratifying conventions held in three-fourths of the states, with Congress having the discretion to decide which method of ratification should be used.

AGO states that HB 363 provides guidelines for delegates who participate at such Convention. Subsection D on Page 3, Lines 6-11 provides that delegates or alternates shall be certified by either the legislature or by an official or entity designated by the legislature. However, HB 363 does not provide guidance as to how delegates or alternates are selected.

AOC's analysis points out that Michael Stern, former U.S. House of Representative senior counsel and author of the blog Point of Order, notes in a blog post titled, "Legislative Instructions and the Article V Convention," that there has been little debate over the power of state legislatures to instruct their delegates to a convention. (Reference: <http://www.pointoforder.com/2011/09/23/legislative-instructions-and-the-article-v-convention/>).

Recent efforts by states to call for an Article V Convention have been primarily motivated by the desire to provide for a balanced federal budget. Reference the National Council of State Legislatures: <http://www.ncsl.org/LinkClick.aspx?fileticket=aJlhOIQWtqg%3D&tabid=20865>.

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

HB 156, which deals with the same subject matter, defines "unauthorized amendment" as "a proposed amendment that is outside the subject matter of the legislative instructions," while HB 363 defines the term as "a proposed amendment that is outside the subject matter of the application, the call, the commission, or any Legislative Instructions." Given the text of Article V of the Constitution of the United States, it appears that "the call" refers to the call of Congress for a convention proposing amendments. There is no reference within the Article V text to a "commission," however, and HB 363 does not define the term as used.

TECHNICAL ISSUES

The term “commission” as used in the Act should be defined.

CAC/bm