



WISCONSIN LEGISLATIVE COUNCIL AMENDMENT MEMO

2017 Assembly Bill 165

**Assembly Substitute
Amendment 1**

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2017 ASSEMBLY BILL 165

2017 Assembly Bill 165 (AB 165) provides that if, upon application of the Legislatures of at least two-thirds of the states, Congress calls an Article V convention for the purpose of proposing amendments to the U.S. Constitution, as authorized by U.S. Const. art. V, the Wisconsin Legislature and Governor must appoint seven delegates and five alternate delegates to attend the convention as follows:

- The Speaker of the Assembly must appoint three members of the Assembly as delegates and two members of the Assembly as alternate delegates.
- The President of the Senate must appoint three members of the Senate as delegates and two members of the Senate as alternate delegates.
- The Governor must appoint one member of either the Assembly or Senate as a delegate and one member of either the Assembly or Senate as an alternate delegate.

AB 165 requires that the Speaker of the Assembly, the President of the Senate, and the Governor each maintain a list of alternate appointees, in addition to the appointed alternate delegates, in case a delegate is dismissed. Under AB 165, a delegate's term begins with the call of the convention and ends on the day of the final adjournment of the convention.

AB 165 prohibits a delegate from voting on an "unauthorized amendment," which the bill defines to mean "a proposed amendment to the U.S. Constitution that is outside the scope of the subject matter of the article V application or the call of the article V convention." If a delegate votes on an unauthorized amendment, AB 165 provides that the delegate may be immediately dismissed as a delegate by the approval of a majority of the other appointed delegates. No more than one delegate at a time may be dismissed. If a delegate is dismissed,

another delegate may not be dismissed until a new delegate has been appointed to replace the first dismissed delegate.

AB 165 requires the Wisconsin Secretary of State to certify in writing to an Article V convention the identity of the delegates appointed or dismissed and the filling of any delegation vacancy within 24 hours.

Lastly, AB 165 requires the Legislature to create a joint committee of correspondence (JCC) that is responsible for communications with the delegates to the convention. The delegates must direct all communications with the Legislature to the JCC, including proposed adoption or modification of the rules governing the Article V convention. If the JCC does not render a decision on any proposed adoption or modification of rules governing the Article V convention within six hours of receiving notification from the delegates, the delegates must presume that the JCC approves of the proposed adoption or modification of such rules. A JCC member is considered present for the purpose of determining a quorum by participation in a meeting by telephone or by other means of telecommunication or electronic communications.

ASSEMBLY SUBSTITUTE AMENDMENT 1

Assembly Substitute Amendment 1 (ASA 1) increases the number of delegates from seven to nine by allowing the Assembly Minority Leader to appoint one member of the Assembly and the Senate Minority Leader to appoint one member of the Senate to serve as delegates. ASA 1 also increases the number of alternate delegates from five to six by allowing the minority leaders of the Senate and the Assembly to appoint one member of either the Senate or the Assembly to serve as an alternate delegate.

ASA 1 clarifies that a vacancy in the delegation or in the alternate delegation must be filled within 24 hours after the vacancy occurs. A vacancy in the delegation must be filled by an alternate delegate, and a vacancy in the alternate delegation must be filled by an alternate appointee from the list maintained by the persons with appointing authority. ASA 1 also explicitly requires that, in the event of a vacancy, the person who appointed the original delegate or alternate delegate appoint the replacement.

ASA 1 requires the Chief Clerk of the Assembly and the Chief Clerk of the Senate, jointly, rather than the Wisconsin Secretary of State, to certify in writing to an Article V convention the identity of the delegates appointed or dismissed and the filling of any delegation vacancy within 24 hours.

ASA 1 expands the scope of prohibited delegate behavior and narrows the definition of an "unauthorized amendment." Specifically, ASA 1 prohibits a delegate from **voting or taking any other action to consider or approve** an "unauthorized amendment," which is defined to mean "a proposed amendment that is outside the scope of the subject matter of the article V application," rather than either outside the scope of the application or the call of the convention. If a delegate engages in prohibited behavior, ASA 1 clarifies that, at the request of any one delegate, the delegation may convene to consider removing the delegate who engaged in

prohibited behavior and may immediately dismiss the delegate by the approval of a majority of the other appointed delegates.

ASA 1 requires that the JCC be comprised of six members, each of whom may not also serve as a delegate to the convention, appointed as follows:

- The Speaker of the Assembly must appoint two members of the Assembly.
- The President of the Senate must appoint two members of the Senate.
- The Assembly Minority Leader must appoint one member of the Assembly.
- The Senate Minority Leader must appoint one member of the Senate.

Lastly, ASA 1 expands the JCC's responsibilities and places additional limitations on delegate voting activity. ASA 1 explicitly requires the delegates to communicate with the JCC before taking a vote on **any proposal to adopt or modify the rules** governing an Article V convention or on **any proposed final amendment** to the U.S. Constitution.

As under AB 165, if the JCC does not make a decision about a proposal to adopt or modify the convention governing rules within six hours of receiving notification from the delegates, then the delegates must presume that the JCC approves. If, however, the JCC decides against the proposal within the six-hour time frame, then the delegates must vote against the adoption or modification of the rules. If the adoption or modification takes effect regardless of the disapproval, then the delegates may not participate further in the convention.

ASA 1 also requires the JCC to determine whether a proposed final amendment to the U.S. Constitution is an unauthorized amendment, meaning that it is "outside the scope of the subject matter of the article V application." If the JCC determines that the proposed amendment is not unauthorized or if the JCC does not make a decision within six hours of receiving notification from the delegates, then the delegates must presume that the proposed amendment is within the scope of the Article V application and may vote on it. If, however, the JCC decides within the six-hour time frame that the proposed final amendment is an unauthorized amendment, then the delegates may not vote on it and may not participate further in the convention.

BILL HISTORY

On May 16, 2017, Representative Bernier introduced ASA 1 to AB 165. On May 31, 2017, the Assembly Committee on Federalism and Interstate Relations voted to recommend adoption of ASA 1 by a vote of Ayes, 5; Noes, 2; and to recommend passage of AB 165, as amended, by a vote of Ayes, 5; Noes, 2.

RES:ksm