

LEGISLATIVE COMMITTEE MINUTES

# **HB1126**

# Bill as Introduced

HB 1126 - AS INTRODUCED

2016 SESSION

16-2181  
05/09

HOUSE BILL            **1126**

AN ACT                limiting the authority of delegates to Article V conventions.

SPONSORS:            Rep. Itse, Rock. 10; Rep. Eastman, Hills. 28; Rep. Hoell, Merr. 23; Rep. Ingbretson, Graf. 15; Rep. Ulery, Hills. 37; Rep. Moore, Hills. 21; Sen. Reagan, Dist 17

COMMITTEE:          Legislative Administration

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ANALYSIS

This bill establishes a procedure for the selection of delegates to an Article V convention. The bill limits delegates' authority to consideration of amendments that are within the legitimate scope of the Article V applications. Delegates who consider unauthorized amendments may be recalled by the secretary of state.

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Explanation:          Matter added to current law appears in **bold italics**.  
Matter removed from current law appears [~~in brackets and struck through~~]  
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

*In the Year of Our Lord Two Thousand Sixteen*

AN ACT limiting the authority of delegates to Article V conventions.

*Be it Enacted by the Senate and House of Representatives in General Court convened:*

1 1 New Chapter; Constitutional Convention; Authority of New Hampshire Delegates. Amend  
2 RSA by inserting after chapter 20-B the following new chapter:

3 CHAPTER 20-C

4 AUTHORITY OF NEW HAMPSHIRE DELEGATES

5 TO CONSTITUTIONAL CONVENTION

6 20-C:1 Definitions. In this chapter:

7 I. "Article V convention" means a convention for the purpose of proposing amendments,  
8 called by the states pursuant to Article V of the Constitution for the United States of America.

9 II. "Article V petition" means a concurrent resolution by the general court of  
10 New Hampshire calling for a convention pursuant to the Constitution for the United States of  
11 America, Article V.

12 III. "Delegate" means a person from the state of New Hampshire, selected by law to  
13 represent the people and state of New Hampshire at an Article V convention.

14 IV. "Permitted scope" means the topic of an amendment or specific language of an  
15 amendment that may be considered by the Article V convention.

16 V. "Unauthorized amendment" means any amendment outside the scope permitted by the  
17 general court of New Hampshire. If New Hampshire is one of the states whose application has  
18 prompted the call for the convention, then the permitted scope shall be the purposes specified in its  
19 petition. If the New Hampshire general court was not one of the two-thirds of the several states  
20 that applied for a convention, then the lawful scope and authority of the delegates shall be  
21 established by the resolution which names the delegates. The general court shall adopt a scope and  
22 authority by concurrent resolution that is consonant with the tenor of the purposes contained in the  
23 relevant applications from the sister states.

24 20-C:2 Selection of Delegates.

25 I. Whenever an Article V convention is convened, the New Hampshire general court shall  
26 select delegates as follows. Four members of the delegation shall be appointed by the house of  
27 representatives. Three members of the delegation shall be appointed by the senate. No person  
28 holding any office or position with the government of the United States of America, including  
29 members of Congress, the judiciary, or executive branch, shall be named a delegate.

30 II. A list of 7 alternate delegates shall be selected and given priority as follows. The first  
31 alternate delegate shall be appointed by the senate. The second shall be appointed by the house of

1 representatives. This method of alternating appointments shall continue until the full number is  
2 reached.

3 III. In the event that any delegate is unable or unwilling to serve or continue to serve, or if  
4 the delegate becomes disqualified as provided herein, the secretary of state shall immediately notify  
5 the first-named alternate that he or she has been appointed a delegate. The secretary of state shall  
6 also immediately notify the presiding officer of the convention that a replacement delegate has been  
7 named.

8 IV. The expenses of the delegates to the convention shall be paid at the same per diem rate  
9 as received by members of the general court.

10 20-C:3 Authority of Delegates.

11 I. No delegate from New Hampshire to the Article V convention shall have the authority to  
12 allow consideration, consider, or approve an unauthorized amendment. Improper support includes,  
13 but is not limited to, making or seconding a motion, voting for, or otherwise taking any formal  
14 action in favor of an unauthorized amendment to the Constitution.

15 II. Any vote taken by a delegate from New Hampshire at the Article V convention in  
16 violation of paragraph I shall be null and void. Any delegate making this vote shall be immediately  
17 disqualified from serving as a delegate to the Article V convention. Any other delegate from New  
18 Hampshire who believes that such disqualifying action has been taken by another delegate shall  
19 immediately report the same to the secretary of state. Upon receiving written or other recorded  
20 evidence of improper support by a delegate, the secretary of state shall take immediate action to  
21 revoke the credentials of the offending delegate and immediately issue new credentials to the first-  
22 named alternate.

23 III. Every delegate from New Hampshire to the Article V convention called for by the  
24 Article V application shall be required to take the following oath:

25 "I do solemnly swear or affirm that to the best of my abilities, I will, as a delegate to the Article  
26 V convention, uphold the Constitution and laws of the United States of America and the state of  
27 New Hampshire. I will accept and will act according to the limits of the authority as a delegate  
28 granted to me by New Hampshire law, and I will not vote to consider or approve any unauthorized  
29 amendment to the Constitution for the United States of America. I understand and accept any  
30 penalties that may be imposed on me by New Hampshire law for violating this oath."

31 IV. The secretary of state shall certify the selection of the New Hampshire delegates in  
32 writing to the Article V convention and shall provide a copy of the certification to each delegate. No  
33 delegate shall have authority to vote or otherwise serve as a delegate at the Article V convention  
34 without the certification.

35 V. The secretary of state shall notify the Article V convention and any delegate involved of  
36 the automatic revocation of that delegate's certification should the delegate violate his or her pledge  
37 to act only within the limits of the authority granted by the state of New Hampshire.

38 20-C:4 Enforcement by Attorney General; Right to Private Action.

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- 1           I. The provisions of this chapter shall be enforced by the department of justice.
- 2           II. A New Hampshire citizen may file an action to enforce the requirements of this chapter
- 3 and shall be entitled to reasonable attorney's fees if successful.
- 4           2 Effective Date. This act shall take effect 60 days after its passage.

# Speakers





# Hearing Minutes

HOUSE COMMITTEE ON LEGISLATIVE ADMINISTRATION

PUBLIC HEARING ON HB 1126

**BILL TITLE:** limiting the authority of delegates to Article V conventions.

**DATE:** February 16, 2016

**LOB ROOM:** 307

**Time Public Hearing Called to Order:** 10:00 a.m.

**Time Adjourned:** 10:10 a.m.

**Committee Members:** Reps. Hinch, Packard, R. Ober, Pellegrino, Tucker, Weber and Shurtleff

**Bill Sponsors:**

Rep. Itse

Rep. Eastman

Rep. Hoell

Rep. Ingbretson

Rep. Ulery

Rep. Moore

Sen. Reagan

**TESTIMONY**

\* Use asterisk if written testimony and/or amendments are submitted.

**Rep. Ober introduced on behalf of the sponsor, Rep. Itse, Rock. 10:** Introduced the bill.

**\*Rep. Horrigan, Straf. 6:** Spoke in opposition.

**Rep. Hoell, Merr. 23:** Feels this would prevent a feared runaway convention. Delegates leading the state will do what the legislature wants.

Respectfully submitted,

Rep. Richard Hinch



**LEGISLATIVE ADMINISTRATION COMMITTEE**

**HB 1126**, limiting the authority of delegates to Article V conventions.

Sponsors: Rep. Itse, Rock. 10; Rep. Eastman, Hills. 28; Rep. Hoell, Merr. 23; Rep. Ingbretson, Graf. 15; Rep. Ulery, Hills. 37; Rep. Moore, Hills. 21; Sen. Reagan, Dist. 17.

Hearing: February 16, 2016 Time Convened: 10:00 a.m. Place: Rm 307,LOB

Committee members present: Chair, Richard Hinch; Vice Chair, Packard; Reps. Russell Ober; Pellegrino; Tucker; Weber; and Shurtleff. Absent: Reps. Bailey; MacKay and Schuett.

**Rep. Ober introduced on behalf of the sponsor, Rep. Itse, Rock. 10:** Introduced the bill.

**\*Rep. Horrigan, Straf. 6:** Spoke in opposition.

**Rep. Hoell, Merr. 23:** Feels this would prevent a feared runaway convention. Delegates leading the state will do what the legislature wants.

Hearing closed at 10:10 a.m.

Respectfully submitted,

Rep. Richard Hinch

# Testimony

## **Testimony Against HB 1126**

### **“AN ACT limiting the authority of delegates to Article V conventions.”**

House Legislative Administration Committee, February 16, 2016

Rep. Timothy Horrigan (Strafford 6)

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I share the sponsors' concerns about an Article V constitutional convention turning into a “runaway convention.” However, the proposals in HB 1126 are unenforceable and unconstitutional, and they are repugnant to our nation's 240-year tradition of federalism. Moreover, HB 1126 contradicts common law principles which allow legislative bodies to make their own rules, and which empower each and every individual legislator to speak his or her mind and to vote his or her conscience.

An Article V convention would function like a third branch of Congress, pursuant to an enabling act passed by the U.S. House and Senate after a sufficient number of petitions come in from state legislatures. The convention would set its rules pursuant to that enabling act as well as to common law. Our delegates would have the same rights, responsibilities and privileges as a member of Congress, and they would work within the framework of the enabling act and the convention's rules. The New Hampshire general court would have no control over what those delegates say or do, just as we have no authority over Senator Shaheen, Senator Ayotte, Congressman Guinta, or Congresswoman Kuster.

This bill is massively premature and totally unnecessary. An Article V convention is not going to happen anytime soon, and if it does happen, we will know about it long in advance. If such a convention ever is going to happen, 2/3 of the states would first have to submit petitions to Congress. That would be 33 out of the 50 states. Congress would next have to pass an enabling act, which more likely than not will not allow anything which is stipulated in this particular bill. We certainly can't count on having exactly 7 delegates. We certainly can't count on being allowed to summarily remove and replace delegates with little or no due process simply for taking “formal action” which people outside (or even inside) the convention disagree with. We certainly can't count on being able to force the convention to deem certain actions by certain members “null and void.” We probably can't even count on being able to stipulate how the delegates are chosen or what their qualifications are.

There is an even more fundamental reason why HB 1126 is premature and unnecessary. Even if a “runaway” convention does pass one or more “unauthorized” amendments, the states still have to ratify the amendments. This requires a ¾ supermajority: 38 states out of 50. In the past, very few amendments have been ratified after passing through the Congress: only 27 in total and only 17 since the Bill of Rights was passed. Only one of those amendments (Amendment XVIII, the Prohibition Amendment) was overturned by a later amendment. The remaining 25 amendments have stood the test of time.

38 out of 50 states is a very high hurdle to jump over. The runaway convention would be significant only if it manages to come up with something which actually has extremely widespread support. A runaway convention (or even a non-runaway convention) which fails to come up with any ratifiable amendments would do no harm to anything except possibly to the delegates' reputations.



**HOUSE COMMITTEE RESEARCH OFFICE**  
New Hampshire House of Representatives  
4<sup>th</sup> Floor, Legislative Office Building  
Concord, NH 03301  
Tel: (603) 271-3600  
Fax: (603) 271-6689

*Pam Smarling, Committee Researcher*  
(603) 271-3387; Pam.Smarling@leg.state.nh.us

To: Rep. Richard W. Hinch, Chairman, House Legislative Administration Committee

From: Pam Smarling, Committee Researcher  
House Committee Research

Date: February 16, 2016

RE: Disposition of HB 148 (2015), limiting the authority of delegates to Article V conventions.

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HR 35

HB 1126 (2016) is identical to HB 148 (2015) as amended by the House. This memorandum provides a detailed disposition of HB 148 and includes the Governor's veto message from 2015.

In addition to the 2015 legislation, two other bills that are similar to HB 1126 were introduced previously. One bill was vetoed and the other was killed in the House.

**SB 356 (2012)** passed the Senate on a voice vote and passed the House with a vote of 210-130. After the Governor vetoed the bill, the Senate voted to override his veto with a vote of 17-5, but the House failed to attain the necessary 2/3 vote to override the veto with a vote of 211-116.

**HB 219 (2013)** was reported to the House floor by the State-Federal Relations Committee without recommendation. An Ought to Pass motion was defeated with a Division vote of 128-223. A motion to find the bill Inexpedient to Legislate was adopted with a Division vote of 231-119.

**2015 Legislative Session*****HB 148 (2015), limiting the authority of delegates to Article V conventions.***

Sponsors: Rep. Itse, Rep. Hoell, Rep. Ingbretson, Rep. Ulery, Rep. Tucker, Sen. Reagan

**House Action**

Referred to: House State-Federal Relations Committee

House Hearing: January 22, 2015

Committee Report: Ought to Pass with Amendment, vote 12-2, Consent Calendar

"Rep. Linda A. Massimilla for State Federal Relations and Veterans Affairs. This bill, as amended reasserts the authority of the states in matters which directly affect their sovereignty, solvency, and general welfare. Furthermore, this bill affirms that delegates/agents to an Article V convention of the states would strictly be identified as agents of the state of NH and would be bound by the law of agency. It assures the implementation of proportional penalties for non-compliance with the tenets of the "permitted scope" of an Article V application/resolution passed by the NH General Court and submitted to the United States Congress. This legislation addresses the fear of the perceived possibility for an unmanageable convention, by articulating practical safeguards which are consistent with the recommendations of numerous notable and accomplished constitutional scholars. NH delegates would be legally compelled to adhere to specifically identified subject matter when drafting or voting on proposed constitutional amendments at such a convention event. This bill, as amended, addresses the obligations of delegates to an Article V Convention of the states and the penalties for not fulfilling those duties."

Floor Action: Removed from Consent Calendar  
Amendment adopted, Division vote 245-62  
Adopted with Amendment, Division vote 233-76

**Senate Action**

Referred to: Senate Rules, Enrolled Bills and Internal Affairs Committee

Senate Hearing: March 24, 2015

Committee Report: Ought to Pass

Floor Action: Adopted, voice vote

**Final Action** Vetoed by the Governor, June 2, 2015  
Veto sustained, roll call 197-140, lacked required 2/3 vote



### **Governor 's Veto Message on HB 148**

By the authority vested in me, pursuant to part II, Article 44 of the New Hampshire Constitution, on June 2, 2015, I vetoed House Bill 148, an act limiting the authority of delegates to Article V conventions.

House Bill 148 establishes a procedure for the selection of state delegates to a convention called by the states for the purpose of considering amendments to the United States Constitution. This bill also limits the authority of those appointed delegates. This bill is similar to Senate Bill 356, legislation vetoed by Governor John Lynch in 2012, requiring every delegate from New Hampshire at an Article V convention to take an oath, which in part states, 'I will accept and will act according to the limits of the authority as a delegate granted to me by New Hampshire law, and I will not vote to consider or approve any unauthorized amendment to the Constitution for the United States of America. I understand and accept any penalties that may be imposed on me by New Hampshire law for violating this oath.' Whether or not one agrees that an Article V convention is the right course of action for proposing amendments to the United States Constitution, and regardless of one's stance on potential amendments proposed across the political spectrum, it is apparent that a convention to consider amending the constitution is not going to be called by the states any time soon. If such a convention were to be called under Article V of our Constitution, it seems that would be the appropriate time to consider procedural concerns for delegates, including how those delegates should be appointed. Furthermore, the language of this measure places restrictions on our hypothetical delegates that are contrary to the true purpose of any constitutional convention.

If similar restrictions had been in place during the original Constitutional Convention in 1787, our Founders may very well have never created the United States Constitution. Finally, I also have concerns with the prospect that duly appointed delegates could be subject to potential criminal penalties in the fulfillment of their role. For these reasons, I have vetoed House Bill 148.

Respectfully submitted, Margaret Wood Hassan, Governor

If I can provide further information on this, please let me know.

# Voting Sheets

**HOUSE COMMITTEE ON LEGISLATIVE ADMINISTRATION**

**EXECUTIVE SESSION on HB 1126**

**BILL TITLE:** limiting the authority of delegates to Article V conventions.

**DATE:** February 16, 2016

**LOB ROOM:** 307

**MOTIONS:** **INEXPEDIENT TO LEGISLATE**

Moved by Rep. R. Ober

Seconded by Rep. Shurtleff

Vote: 7-1

**CONSENT CALENDAR: YES**

**Statement of Intent:** Refer to Committee Report

Respectfully submitted,

Rep Dianne Schuett, Clerk

HOUSE COMMITTEE ON LEGISLATIVE ADMINISTRATION

EXECUTIVE SESSION on HB 1126

BILL TITLE: limiting the authority of delegates to Article V conventions.

DATE: 2/16/16

LOB ROOM: ~~104~~ 307

MOTIONS: OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr) 7-1  
(Please circle one)

Moved by Rep. Ober Seconded by Rep. Shurtleff AM Vote: \_\_\_\_\_  
Adoption of Amendment # \_\_\_\_\_

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_  
\_\_\_\_\_ Amendment Adopted \_\_\_\_\_ Amendment Failed

MOTIONS: OTP, OTP/A, ITL, Retained (1st Yr), Interim Study (2nd Yr)  
(Please circle one)

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ AM Vote: \_\_\_\_\_  
Adoption of Amendment # \_\_\_\_\_

Moved by Rep. \_\_\_\_\_ Seconded by Rep. \_\_\_\_\_ Vote: \_\_\_\_\_  
\_\_\_\_\_ Amendment Adopted \_\_\_\_\_ Amendment Failed

CONSENT CALENDAR:  YES  NO  
(Vote to place on Consent Calendar must be unanimous.)

Statement of Intent: Refer to Committee Report

Respectfully submitted,

Rep. Dianne C. Schuch  
Committee Clerk



2016 SESSION

LEGISLATIVE ADMINISTRATION

Bill #: HB 1126 Title: limiting authority of delegates to Art. V.  
PH Date: 2/11/16 1/16 convention Exec Session Date: 2/11/16  
Motion: ITL Amendment #: \_\_\_\_\_

MEMBER	YEAS	NAYS
Hinch, Richard W., Chairman	7	
Packard, Sherman A., V Chairman	1	
Bailey, Brad	1	
Ober, Russell T.	2	
Pellegrino, Anthony J.	3	
Tucker, Pamela Z.		1
Weber, Lucy M.	4	
Shurtleff, Stephen J.	5	
Mackay, James R.	1	
Schuett, Dianne E., Clerk	6	
<b>TOTAL VOTE:</b>	<b>37</b>	<b>1</b>

# Committee Report

**CONSENT CALENDAR**

**February 17, 2016**

**HOUSE OF REPRESENTATIVES**

**REPORT OF COMMITTEE**

**The Committee on Legislative Administration to which  
was referred HB 1126,**

**AN ACT limiting the authority of delegates to Article V  
conventions. Having considered the same, report the  
same with the following resolution: RESOLVED, that it  
is INEXPEDIENT TO LEGISLATE.**

**Rep. Russell Ober**

**FOR THE COMMITTEE**

## COMMITTEE REPORT

Committee:	Legislative Administration
Bill Number:	HB 1126
Title:	limiting the authority of delegates to Article V conventions.
Date:	February 17, 2016
Consent Calendar:	CONSENT
Recommendation:	INEXPEDIENT TO LEGISLATE

### STATEMENT OF INTENT

This bill establishes a procedure for the selection of delegates to an Article V Convention. An Article V Convention is a convention called by the states for the purpose of proposing amendments to the US Constitution. The bill is premature and unnecessary. There would be adequate time, if an Article V Convention were called, for determining the authority of delegates. The language of the bill places restrictions on delegates that may or may not be appropriate at that time. We should not be forcing our representatives into positions which could change if, or when, such a convention is called.

Vote 7-1.

Rep. Russell Ober  
FOR THE COMMITTEE

Original: House Clerk  
Cc: Committee Bill File



## CONSENT CALENDAR

Legislative Administration

**HB 1126**, limiting the authority of delegates to Article V conventions. **INEXPEDIENT TO LEGISLATE.**

Rep. Russell Ober for Legislative Administration. This bill establishes a procedure for the selection of delegates to an Article V Convention. An Article V Convention is a convention called by the states for the purpose of proposing amendments to the US Constitution. The bill is premature and unnecessary. There would be adequate time, if an Article V Convention were called, for determining the authority of delegates. The language of the bill places restrictions on delegates that may or may not be appropriate at that time. We should not be forcing our representatives into positions which could change if, or when, such a convention is called. **Vote 7-1.**

Original: House Clerk

Cc: Committee Bill File

COMMITTEE REPORT

COMMITTEE: LEG ADMIN

BILL NUMBER: HB 1126

TITLE: limiting authority of delegates to  
Art. V Conventions

DATE: 2/16/16 CONSENT CALENDAR: YES  NO

- OUGHT TO PASS
- OUGHT TO PASS W/ AMENDMENT
- INEXPEDIENT TO LEGISLATE
- INTERIM STUDY (Available only 2<sup>nd</sup> year of biennium)

Amendment No.  
\_\_\_\_\_

STATEMENT OF INTENT:

*HB 1126 established a procedure for the selection of delegates to an Article V convention. The bill is premature and unnecessary. There would be adequate time of an Article V convention were called for determining the authority of delegates. The language of the bill places restrictions on delegates that may or may not be appropriate at the time. We should not be forcing our representatives into positions which could change if or when such a convention is called.*

COMMITTEE VOTE: 7-1

RESPECTFULLY SUBMITTED,

- Copy to Committee Bill File
- Use Another Report for Minority Report

Rep. Russell J. Ober  
For the Committee