

BILL ANALYSIS

C.S.S.B. 21
By: Birdwell
State & Federal Power & Responsibility, Select
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend a push to call for an Article V constitutional convention is becoming more prevalent throughout Texas and the nation and note that Texas currently has no standard under which to act if such a convention is called. C.S.S.B. 21 provides for the qualifications, duties, and limitations of Texas delegates to a convention called under Article V of the United States Constitution.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.S.B. 21 amends the Government Code to require the governor to serve as a delegate to a convention called by the United States Congress under Article V of the United States Constitution and to establish that the governor is the head of the state delegation of delegates to the convention and that service as a delegate by the governor is an additional duty of the governor's office. The bill requires the legislature to appoint delegates and alternate delegates to the convention, other than the governor, and sets out the manner by which the appointment of delegates and alternate delegates is made by the legislature depending on the number of delegates allocated to represent the state at the Article V convention. The bill establishes that service as a delegate or alternate delegate by a member of the legislature is an additional duty of the member's legislative office, if applicable, and requires the appointing house to pair each alternate delegate with an appointed delegate at the time each appointment is made. The bill sets out provisions relating to filling a vacancy in the office of delegate or alternate delegate and recalling a delegate or alternate delegate. The bill establishes that a delegate or alternate delegate is not entitled to compensation for service as a delegate or alternate delegate but entitles those delegates to reimbursement for necessary expenses incurred in performance of official duties, subject to any applicable limitation on reimbursement provided by general law or the General Appropriations Act. The bill sets out the required oath for the governor and a delegate or alternate delegate and requires each delegate and alternate delegate to file the executed oath with the secretary of state. The bill prohibits a delegate or alternate delegate from accepting a gift, a loan, food or beverages, entertainment, lodging, transportation, or another benefit from a person, including a corporation, nonprofit organization, or individual, if that person is required to register as a lobbyist.

C.S.S.B. 21 requires the legislature by joint resolution to adopt instructions to the delegates and

alternate delegates to govern the actions of those officers at the Article V convention. The bill prohibits the legislature from adopting instructions for an Article V convention called following an application by the legislature to the United States Congress for the convention that authorize a delegate or alternate delegate to consider or vote to approve an amendment to the United States Constitution that is not authorized by the legislature in its application for the convention. The bill provides that the legislature by joint resolution may amend the instructions at any time.

C.S.S.B. 21 requires an alternate delegate to act in the place of the alternate delegate's paired delegate when the delegate is absent from the convention, prohibits a delegate or alternate delegate from casting an unauthorized vote, and restricts the determination of whether a vote cast by an appointed delegate or alternate delegate is unauthorized to the house that appointed the delegate or alternate delegate who cast the vote, except as otherwise provided by the bill. A vote cast by an appointed delegate or alternate delegate determined to be an unauthorized vote is invalid. The bill establishes that an appointed delegate or alternate delegate who casts a vote determined to be an unauthorized vote is disqualified to continue to serve as a delegate or alternate delegate and requires a vacancy in the office of a delegate or alternate delegate created by such a disqualification to be filled in the manner provided by the bill. The bill requires the presiding officer of the house that determined that an appointed delegate or alternate delegate has cast an unauthorized vote to promptly notify the head of the state delegation and the presiding officer of the Article V convention that the delegate or alternate delegate has cast an unauthorized vote and is disqualified to serve as a delegate or alternate delegate. The bill defines "unauthorized vote" for the bill's purposes.

C.S.S.B. 21 requires the legislature to appoint an Article V Oversight Committee at the time delegates and alternate delegates are appointed and provides for the composition of the 10-member committee and the status of the lieutenant governor and the speaker of the house of representatives as joint chairs of the committee. The bill requires the members of the committee, if the legislature is not convened in regular or special session at any time during which an Article V convention is convened, to meet at the call of either joint chair at the State Capitol and determine whether a vote cast by an appointed delegate or alternate delegate is an unauthorized vote. The bill establishes that a vote cast by an appointed delegate or alternate delegate is an unauthorized vote if seven or more members of the committee determine by committee vote that the vote cast was an unauthorized vote. The bill establishes that the committee is not authorized to take any action when the legislature is convened in regular or special session.

C.S.S.B. 21 requires the legislature by concurrent resolution to provide the rules and procedures necessary to implement the bill's provisions. A legislative action relating to the appointment or recall of a delegate or alternate delegate, the filling of a vacancy in the office of a delegate or alternate delegate, or the determination of an unauthorized vote may be accomplished through a resolution adopted by the house that takes the action.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 21 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Subtitle Z, Title 3, Government Code, is amended by adding

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subtitle Z, Title 3, Government Code, is amended by adding

Chapter 393 to read as follows:
CHAPTER 393. DELEGATES TO
FEDERAL ARTICLE V CONVENTIONS
SUBCHAPTER A. GENERAL
PROVISIONS

Sec. 393.001. DEFINITIONS. In this chapter:

(1) "Alternate delegate" means an individual appointed under Section 393.051 to represent this state as an alternate delegate at an Article V convention.

(2) "Article V convention" means a convention called by the United States Congress under Article V of the United States Constitution.

(3) "Delegate" means:

(A) an individual appointed under Section 393.051 to represent this state as a delegate at an Article V convention; or

(B) an alternate delegate who fills a vacancy in the office of the alternate delegate's paired delegate.

(4) "Unauthorized vote" means a vote cast by a delegate or alternate delegate at an Article V convention that:

(A) is contrary to the instructions adopted under Section 393.101 in effect at the time the vote is taken;

(B) exceeds the scope or subject matter of the Article V convention as authorized by the legislature in the application to the United States Congress to call the convention if the legislature made an application to call the convention; or

(C) exceeds the scope or subject matter of the Article V convention if the legislature did not make an application to the United States Congress to call the convention.

Sec. 393.002. RULES AND PROCEDURES.

SUBCHAPTER B. DELEGATES AND ALTERNATE DELEGATES

Chapter 393 to read as follows:
CHAPTER 393. DELEGATES TO
FEDERAL ARTICLE V CONVENTIONS
SUBCHAPTER A. GENERAL
PROVISIONS

Sec. 393.001. DEFINITIONS. In this chapter:

(1) "Alternate delegate" means an individual appointed under Section 393.052 to represent this state as an alternate delegate at an Article V convention.

(2) "Article V convention" means a convention called by the United States Congress under Article V of the United States Constitution.

(3) "Delegate" means:

(A) the governor;

(B) an individual appointed under Section 393.052 to represent this state as a delegate at an Article V convention; or

(C) an alternate delegate who fills a vacancy in the office of the alternate delegate's paired delegate.

(4) "Unauthorized vote" means a vote cast by a delegate or alternate delegate at an Article V convention that:

(A) is contrary to the instructions adopted under Section 393.101 in effect at the time the vote is taken;

(B) exceeds the scope or subject matter of the Article V convention as authorized by the legislature in the application to the United States Congress to call the convention if the legislature made an application to call the convention; or

(C) exceeds the scope or subject matter of the Article V convention if the legislature did not make an application to the United States Congress to call the convention.

Sec. 393.002. RULES AND PROCEDURES.

SUBCHAPTER B. DELEGATES AND ALTERNATE DELEGATES

Sec. 393.051. GOVERNOR AS EX OFFICIO DELEGATE. (a) The governor shall serve as a delegate to an Article V convention.

(b) The governor is the head of the state delegation of delegates to the convention.

(c) Service as a delegate by the governor is an additional duty of the governor's office.

Sec. 393.051. APPOINTMENT. (a) As soon as possible following the calling of an Article V convention, the legislature shall appoint delegates and alternate delegates to the convention as provided by Subsection (b) or (c), as applicable.

(b) Except as provided by Subsection (c), the legislature shall appoint five delegates and five alternate delegates to the Article V convention as follows:

(1) the house of representatives shall appoint three members of the house as delegates and three members of the house as alternate delegates; and

(2) the senate shall appoint two members of the senate as delegates and two members of the senate as alternate delegates.

(c) If the number of delegates allocated to represent the state at the Article V convention is determined by Congress or by agreement among the states to be a number other than five, the legislature shall appoint the allocated number of delegates and an equal number of alternate delegates as follows:

(1) if the allocated number of delegates is an odd number:

(A) the house of representatives shall appoint a number of members of the house as delegates that is equal to three-fifths of the allocated number or as close to that proportion as possible and the same number of members of the house as alternate delegates; and

(B) the senate shall appoint a number of members of the senate as delegates that is equal to two-fifths of the allocated number or as close to that proportion as possible and the same number of members of the senate as alternate delegates; and

(2) if the allocated number of delegates is an even number:

(A) the house of representatives shall appoint a number of members of the house as delegates that is equal to one-half of the allocated number and the same number of members of the house as alternate delegates; and

(B) the senate shall appoint a number of members of the senate as delegates that is equal to one-half of the allocated number and the same number of members of the senate as alternate delegates.

Sec. 393.052. APPOINTMENT. (a) The legislature shall appoint delegates and alternate delegates to the convention, other than the governor, as provided by this section.

(b) If the difference between the number of delegates allocated to represent the state at the Article V convention and one is an even number:

(1) the house of representatives shall appoint a number of individuals as delegates that is equal to one-half of that number and the same number of individuals as alternate delegates; and

(2) the senate shall appoint a number of individuals as delegates that is equal to one-half of that number and the same number of individuals as alternate delegates.

(c) If the difference between the number of delegates allocated to represent the state at the Article V convention and one is an odd number greater than one:

(1) the house of representatives shall appoint a number of individuals as delegates that is equal to three-fifths of that number or as close to that proportion as possible and the same number of individuals as alternate delegates; and

(2) the senate shall appoint a number of individuals as delegates that is equal to two-fifths of that number or as close to that proportion as possible and the same number of individuals as alternate delegates.

(d) If the number of delegates allocated to represent the state at the Article V convention is two, the house of representatives shall appoint one individual as a delegate and one individual as an alternate delegate.

(d) Service as a delegate or alternate delegate by a member of the legislature is an additional duty of the member's legislative office.

(e) The appointing house shall pair each alternate delegate with a delegate at the time each appointment is made.

Sec. 393.052. VACANCY.

Sec. 393.053. RECALL.

Sec. 393.054. COMPENSATION; REIMBURSEMENT OF EXPENSES.

Sec. 393.055. OATH. (a) An individual appointed as a delegate or alternate delegate must take the following oath before voting or taking an action as a delegate or alternate delegate of this state: "I do solemnly swear (or affirm) that to the best of my abilities, I will, as a delegate (or alternate delegate) to the Article V convention, act according to the limits of the authority granted to me as a delegate or alternate delegate by Texas law, will not consider or vote to approve an amendment to the United States Constitution not authorized by the Texas Legislature in its application to the United States Congress to call this convention or an amendment outside the scope of this convention if the Texas Legislature did not make an application to the United States Congress to call this convention, and will faithfully abide by and execute the instructions to delegates or alternate delegates adopted by the Texas Legislature."

(b) Each delegate and alternate delegate must file the executed oath with the secretary of state.

Sec. 393.056. PROHIBITION ON ACCEPTANCE OF BENEFIT.

SUBCHAPTER C. DUTIES OF DELEGATES AND ALTERNATE DELEGATES

Sec. 393.101. INSTRUCTIONS TO DELEGATES AND ALTERNATE DELEGATES. (a) At the time delegates and alternate delegates are appointed, the legislature by joint resolution shall adopt

(e) If applicable, service as a delegate or alternate delegate by a member of the legislature is an additional duty of the member's legislative office.

(f) The appointing house shall pair each alternate delegate with an appointed delegate at the time each appointment is made.

Sec. 393.053. VACANCY.

Sec. 393.054. RECALL.

Sec. 393.055. COMPENSATION; REIMBURSEMENT OF EXPENSES.

Sec. 393.056. OATH. (a) The governor and an individual appointed as a delegate or alternate delegate must take the following oath before voting or taking an action as a delegate or alternate delegate of this state: "I do solemnly swear (or affirm) that to the best of my abilities, I will, as a delegate (or alternate delegate) to the Article V convention, act according to the limits of the authority granted to me as a delegate or alternate delegate by Texas law, will not consider or vote to approve an amendment to the United States Constitution not authorized by the Texas Legislature in its application to the United States Congress to call this convention or an amendment outside the scope of this convention if the Texas Legislature did not make an application to the United States Congress to call this convention, and will faithfully abide by and execute the instructions to delegates or alternate delegates adopted by the Texas Legislature."

(b) Each delegate and alternate delegate must file the executed oath with the secretary of state.

Sec. 393.057. PROHIBITION ON ACCEPTANCE OF BENEFIT.

SUBCHAPTER C. DUTIES OF DELEGATES AND ALTERNATE DELEGATES

Sec. 393.101. INSTRUCTIONS TO DELEGATES AND ALTERNATE DELEGATES. (a) The legislature by joint resolution shall adopt instructions to the delegates and alternate delegates to govern

instructions to the delegates and alternate delegates to govern the actions of those officers at the Article V convention.

(b) The legislature may not adopt instructions for an Article V convention called following an application by the legislature to the United States Congress for the convention that authorize a delegate or alternate delegate to consider or vote to approve an amendment to the United States Constitution that is not authorized by the legislature in its application for the convention.

(c) The legislature by joint resolution may amend the instructions at any time.

Sec. 393.102. DUTY OF ALTERNATE DELEGATE.

Sec. 393.103. UNAUTHORIZED VOTE.

(a) A delegate or alternate delegate may not cast an unauthorized vote.

(b) Except as provided by Section 393.104, the determination that a vote is an unauthorized vote for purposes of this section may only be made by the house that appointed the delegate or alternate delegate who cast the vote.

(c) A vote determined to be an unauthorized vote is invalid.

(d) A delegate or alternate delegate who casts a vote determined to be an unauthorized vote is disqualified to continue to serve as a delegate or alternate delegate. A vacancy in the office of a delegate or alternate delegate created by the disqualification of the delegate or alternate delegate shall be filled in the manner provided by Section 393.052.

(e) The presiding officer of the house that determined that a delegate or alternate delegate has cast an unauthorized vote shall promptly notify the head of the state delegation and the presiding officer of the Article V convention that the delegate or alternate delegate has cast an unauthorized vote and is disqualified to serve as a delegate or alternate delegate.

Sec. 393.104. OVERSIGHT COMMITTEE.

(a) The legislature shall appoint an Article V Oversight Committee at the time delegates and alternate delegates are appointed under Section 393.051.

the actions of those officers at the Article V convention.

(b) The legislature may not adopt instructions for an Article V convention called following an application by the legislature to the United States Congress for the convention that authorize a delegate or alternate delegate to consider or vote to approve an amendment to the United States Constitution that is not authorized by the legislature in its application for the convention.

(c) The legislature by joint resolution may amend the instructions at any time.

Sec. 393.102. DUTY OF ALTERNATE DELEGATE.

Sec. 393.103. UNAUTHORIZED VOTE.

(a) A delegate or alternate delegate may not cast an unauthorized vote.

(b) Except as provided by Section 393.104, the determination that a vote cast by an appointed delegate or alternate delegate is an unauthorized vote may only be made by the house that appointed the delegate or alternate delegate who cast the vote.

(c) A vote cast by an appointed delegate or alternate delegate and determined to be an unauthorized vote is invalid.

(d) An appointed delegate or alternate delegate who casts a vote determined to be an unauthorized vote is disqualified to continue to serve as a delegate or alternate delegate. A vacancy in the office of a delegate or alternate delegate created by the disqualification of the delegate or alternate delegate shall be filled in the manner provided by Section 393.053.

(e) The presiding officer of the house that determined that an appointed delegate or alternate delegate has cast an unauthorized vote shall promptly notify the head of the state delegation and the presiding officer of the Article V convention that the delegate or alternate delegate has cast an unauthorized vote and is disqualified to serve as a delegate or alternate delegate.

Sec. 393.104. OVERSIGHT COMMITTEE.

(a) The legislature shall appoint an Article V Oversight Committee at the time delegates and alternate delegates are appointed under Section 393.052.

(b) The committee consists of the following 10 members:

- (1) the lieutenant governor;
- (2) the speaker of the house of representatives;
- (3) the chair of the senate state affairs committee;
- (4) the chair of the house state affairs committee;
- (5) three members of the senate appointed by the lieutenant governor; and
- (6) three members of the house of representatives appointed by the speaker of the house of representatives.

(c) The lieutenant governor and the speaker of the house of representatives are joint chairs of the committee.

(d) If the legislature is not convened in regular or special session at any time during which an Article V convention is convened, the members of the committee shall:

- (1) meet at the call of either joint chair at the State Capitol; and
- (2) determine whether a vote cast by a delegate or alternate delegate is an unauthorized vote for the purposes of Section 393.103.

(e) A vote cast by a delegate or alternate delegate is an unauthorized vote for the purposes of Section 393.103 if seven or more members of the committee determine by committee vote that the vote cast was an unauthorized vote.

(f) The committee is not authorized to take any action when the legislature is convened in regular or special session.

Sec. 393.105. CRIMINAL PENALTY. (a) A delegate or alternate delegate commits an offense if the delegate or alternate delegate knowingly casts an unauthorized vote.

(b) An offense under this section is a state jail felony.

(c) A judge granting community supervision to a defendant convicted of an offense under this section shall require as a condition of community supervision that the defendant submit to not less than 10 days of confinement in county jail. If a sentence of confinement is imposed on the revocation of community supervision, the term of confinement served under this subsection may not be credited toward completion of the sentence imposed.

(b) The committee consists of the following 10 members:

- (1) the lieutenant governor;
- (2) the speaker of the house of representatives;
- (3) the chair of the senate state affairs committee;
- (4) the chair of the house state affairs committee;
- (5) three members of the senate appointed by the lieutenant governor; and
- (6) three members of the house of representatives appointed by the speaker of the house of representatives.

(c) The lieutenant governor and the speaker of the house of representatives are joint chairs of the committee.

(d) If the legislature is not convened in regular or special session at any time during which an Article V convention is convened, the members of the committee shall:

- (1) meet at the call of either joint chair at the State Capitol; and
- (2) determine whether a vote cast by an appointed delegate or alternate delegate is an unauthorized vote.

(e) A vote cast by an appointed delegate or alternate delegate is an unauthorized vote if seven or more members of the committee determine by committee vote that the vote cast was an unauthorized vote.

(f) The committee is not authorized to take any action when the legislature is convened in regular or special session.

No equivalent provision.

SECTION 2. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2017.

SECTION 2. Same as engrossed version.