

SUBJECT: Establishing certain procedures for an Article V convention

COMMITTEE: State and Federal Power and Responsibility, Select — committee substitute recommended

VOTE: 5 ayes — Darby, Murr, Gonzales, K. King, Paddie
2 nays — Anchia, Turner
2 absent — E. Johnson, S. Thompson

SENATE VOTE: On final passage, February 28 — 21 – 10 (Garcia, Hinojosa, Menéndez, Miles, Rodríguez, Uresti, Watson, West, Whitmire, Zaffirini)

WITNESSES: *On House companion, HB 506:*
For — Tamara Colbert, Convention of States - Texas; and six individuals; (*Registered, but did not testify:* Ray Allen, PublicData.com; James Lennon, Coalition for Public Responsibility PAC; Robin Lennon, Kingwood Tea Party; Michael Sullivan, Empower Texans; Alan Arvello, William Bailey, Richard Bohnert, Ester Brant, John Brant, David Brown, Ana Chapman-Wydrinski, Robert Coffey, Sharon Correll, Sylvia Coulson, Michelle Davis, George Dawes, James Dettmann, Brent Dunklau, Stephenn Duvall, Cal Elliott, Jan Elliott, William Ely, Jan Fitzgerald, Keith Fitzgerald, Marian Freeland, Barbara Geerlings, PJ Geerlings, Gary Goff, Sammi Hammers, Neda Henery, Thomas Henry, Karl Heubaum, Audrey Howard, Kirsten Jackson, Mary Jones, Edna Krueger, Sandra Lapsley, Christopher Lewis, Robbie McDaniel, Peter McPhee, Bruce Melberg, Natalie Miller, James Osteen, Robert Peery, Barbara Peters, Wendell Pool, Corey Rapp, Jim Richardson, Douglas Richter, Jim Siphiora, Stephen Smith, Bill Thoreson, Paula Trigg, Thomas Trigg, Laraine Wahrmond, and James Young, Convention of States Project-Texas; and 44 individuals)

Against — Chris Blystone, Citizen Soldiers of Texas; Barbara Harless, North Texas Citizens Lobby; Kurt Hyde, Denton County Republican Assembly; Nancy True, Texas Liberty Committee; and eight individuals;

(Registered, but did not testify: Suzanne Carpenter, Texas Liberty Committee; Grace Chimene, League of Women Voters of Texas; Kelli Cook, Texas Campaign for Liberty; Jim Reaves, Texas Farm Bureau; Dana Blanton; Cindy Geisman; Annie Marrs)

BACKGROUND: Art. V of the Constitution of the United States requires Congress to call a convention to propose constitutional amendments upon application of the legislatures of two-thirds of the states. Any amendments adopted by an Article V convention must be ratified by the legislatures of three-fourths of the states.

DIGEST: CSSB 21 would establish certain procedures relating to the selection, behavior, duties, and oversight of delegates to a convention called by Congress under Art. V of the Constitution of the United States.

Selection. CSSB 1 would require the governor to serve as the head delegate of the delegation from Texas. In addition to the governor, the Texas House of Representatives and the Texas Senate would appoint the remaining number of delegates, either half-and-half or, if the number of delegates needed was odd, three-fifths and two-fifths, respectively. If only two delegates were allocated, the House would appoint the second, with the first being the governor. Both houses would appoint a specific alternate to any delegate they appoint.

Under the definitions in the bill, a delegate could be any individual appointed by either the House or Senate. If the delegate appointed was a legislator, his or her service as a delegate would be an additional duty of the member's legislative office.

Behavior and duties. The bill would prohibit delegates from accepting a gift, a loan, food or beverage, entertainment, lodging, transportation, or another benefit from any person required to register as a lobbyist. Delegates would not be entitled to compensation for their service but would be entitled to reimbursement for necessary expenses.

The Legislature would by joint resolution issue instructions to the

delegates to govern their actions at the convention, except that the Legislature could not adopt instructions that authorized a delegate to consider or vote in favor of an amendment not authorized by the Legislature in its application for the convention.

Each delegate and alternate would be required to file a certain executed oath with the Texas secretary of state before voting or taking an action as part of the delegation.

CSSB 21 would prohibit delegates from casting “unauthorized votes,” defined as votes contrary to instructions adopted above or votes which exceed the scope of either the Legislature’s application or the convention itself. Under the bill, any unauthorized vote would be considered invalid.

Oversight. The house that appointed a delegate could make a determination that a delegate’s vote was unauthorized. Such a determination would disqualify the delegate from continuing to serve. A house could also recall a delegate or alternate.

The bill also would require the Legislature to create an Article V Oversight Committee when delegates are appointed. The committee would consist of ten members:

- the lieutenant governor, who would be a joint chair;
- the speaker of the House, who would be a joint chair;
- the chairs of the House and Senate State Affairs committees; and
- three members of the House and Senate, appointed by the speaker and lieutenant governor, respectively.

The Oversight Committee would meet at the call of either joint chair, and could declare a vote by an appointed delegate to be unauthorized if at least seven members of the committee voted to do so. However, the committee could only do so if the Legislature was not convened.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take

effect September 1, 2017.

**SUPPORTERS
SAY:**

CSSB 21 would prepare Texas for the possibility of a convention called under Article V of the U.S. Constitution. Twenty-eight states have already made applications, which means that a convention is increasingly likely. Texas should not want to be left out and should establish procedures so it can have a seat at the table, even if the Legislature does not apply for a convention itself.

Selection. CSSB 21 correctly would allow the Legislature to select a delegation of citizens to represent Texas before an Article V convention. This would allow choice from the widest group of people, allowing the creation of the most qualified delegation possible. Through the oversight mechanisms established in the bill, legislators could exercise as much influence with an appointed individual as they would be able to with a fellow member of the Legislature.

The procedures and selection of delegates would be left to a future legislature, meaning that a delegation could very well be bipartisan. In any case, securing the state's interests is the goal of any delegation, and both political parties have an interest in seeing Texas succeed.

Oversight. While some suggest that unauthorized votes should be subject to criminal penalties, such a move would go too far. Several other mechanisms exist to limit the possibility of rogue delegates, including the ability to recall and the possibility that a vote could be declared invalid. Furthermore, because of the sometimes vague nature of policy, this could lead delegates to be hesitant in gray areas. In any case, the state should not establish criminal penalties without first establishing that malice existed.

Whether or not an Article V convention was supported by the Legislature, the state needs to establish procedures in preparation to ensure that Texas has a seat at the table if it does happen. The convention will decide its rules and set its agenda regardless of how or if Texas acts on CSSB 21, so the state should at least establish the procedures to ensure a delegation was present to support Texas' interests.

OPPONENTS
SAY:

CSSB 21 should be amended to better ensure an accurate representation of a cross-section of Texas and adherence to the state's application for a convention under Article V of the U.S. Constitution.

Selection. CSSB 21 would err in allowing non-legislators to be delegates to a convention. Once chosen, non-legislators have a limited incentive to make decisions reflective of the will of the individuals they represent. On the other hand, legislators must answer both to their fellow members and to voters.

The bill also should not make the governor a delegate. A governor could not be recalled and could not be held accountable by either house or the Oversight Committee. Also, questions exist over whether it would be constitutional for the governor to be a delegate. Texas Constitution, Art. 4, sec. 6 provides that the governor shall not hold any other office, be it civil, military, or corporate.

In any case, a delegation needs to be representative of the state's political makeup. The selection of a limited number of delegates by the Legislature would provide no incentive to include delegates from the minority party, making the probability of an accurate cross-section of the political views of the state unlikely at best.

Oversight. Representing Texas at an Article V convention is one of the most important duties the Legislature could give to anyone, and with that comes the need for strong incentives against unauthorized votes and rogue delegates. Therefore, criminal penalties should be attached to a determination that a vote was unauthorized, with actual jail time for delegates who knowingly went beyond the Legislature's instructions.

OTHER
OPPONENTS
SAY:

Oversight. CSSB 21 is wrongheaded because the state should not be considering participation in a convention under Article V. No matter what procedures the Legislature laid out, it could not guarantee unauthorized votes would actually be rescinded and considered invalid because the convention would set its own rules. This bill could help create the

conditions for a runaway convention, and that risk is too great to take.

NOTES:

CSSB 21 differs from the bill as received from the Senate in that the committee substitute would:

- require the governor to be a delegate
- not require delegates to be members of the Legislature; and
- not impose a criminal penalty on a delegate who knowingly cast an unauthorized vote.

The companion bill, HB 506 by P. King, was considered in a public hearing of the House Select Committee on State and Federal Power and Responsibility on April 13 and left pending.