

BILL ANALYSIS

Senate Research Center
85R11161 TJB-F

S.B. 959
By: Hughes
State Affairs
5/5/2017
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The United States has more than 20 trillion dollars in debt. That is more than \$61,000 per person.

The Compact For America Balanced Budget (compact) does things no other balanced budget measure can accomplish—and can get the job done in as little as 18 months.

The compact:

- Locks in a debt ceiling;
- Gives states a voice in future debt decisions;
- Requires two-thirds approval in both houses of Congress for most tax increases;
- Achieves the permanence of constitutional reform with zero risk of a multi-topic, runaway convention;

Section 1. Total outlays of the government of the United States (US) shall not exceed total receipts of the US government at any point in time unless the excess of outlays over receipts is financed exclusively by debt issued in strict conformity with this article.

Section 2. Outstanding debt shall not exceed authorized debt, which initially shall be an amount equal to 105 percent of the outstanding debt on the effective date of this article. Authorized debt shall not be increased above its aforesaid initial amount unless such increase is first approved by the legislatures of the several states as provided in Section 3.

Section 3. From time to time, Congress may increase authorized debt to an amount in excess of its initial amount set by Section 2 only if it first publicly refers to the legislatures of the several states an unconditional, single subject measure proposing the amount of such increase, in such form as provided by law, and the measure is thereafter publicly and unconditionally approved by a simple majority of the legislatures of the several states, in such form as provided respectively by state law; provided that no inducement requiring an expenditure or tax levy shall be demanded, offered, or accepted as a quid pro quo for such approval. If such approval is not obtained within sixty 60 calendar days after referral then the measure shall be deemed disapproved and the authorized debt shall thereby remain unchanged.

Section 4. Whenever the outstanding debt exceeds 98 percent of the debt limit set by Section 2, the president shall enforce said limit by publicly designating specific expenditures for impoundment in an amount sufficient to ensure outstanding debt shall not exceed the authorized debt. Said impoundment shall become effective 30 days thereafter, unless Congress first designates an alternate impoundment of the same or greater amount by concurrent resolution, which shall become immediately effective. The failure of the president to designate or enforce the required impoundment is an impeachable misdemeanor. Any purported issuance or incurrence of any debt in excess of the debt limit set by Section 2 is void.

Section 5. No bill that provides for a new or increased general revenue (GR) tax shall become law unless approved by a two-thirds roll call vote of the whole number of each house of Congress. However, this requirement shall not apply to any bill that provides for a new end user

sales tax which would completely replace every existing income tax levied by the US government; or for the reduction or elimination of an exemption, deduction, or credit allowed under an existing GR.

Section 6. For purposes of this article, "debt" means any obligation backed by the full faith and credit of the US government; "outstanding debt" means all debt held in any account and by any entity at a given point in time; "authorized debt" means the maximum total amount of debt that may be lawfully issued and outstanding at any single point in time under this article; "total outlays of the government of the United States" means all expenditures of the US government from any source; "total receipts of the government of the United States" means all tax receipts and other income of the US government, excluding proceeds from its issuance or incurrence of debt or any type of liability; "impoundment" means a proposal not to spend all or part of a sum of money appropriated by Congress; and "general revenue tax" means any income tax, sales tax, or value-added tax levied by the US government excluding imposts and duties.

As proposed, S.B. 959 amends current law relating to the adoption of the Compact for a Balanced Budget.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 7, Government Code, by adding Chapter 793, as follows:

CHAPTER 793. COMPACT FOR A BALANCED BUDGET

Sec. 793.001. EXECUTION OF COMPACT. Provides that The State of Texas enacts, adopts, and agrees to be bound by the following Compact:

ARTICLE I. DECLARATION OF POLICY, PURPOSE AND INTENT

Sets forth the purpose of this Compact and the intent of every State enacting, adopting and agreeing to be bound by this Compact.

ARTICLE II. DEFINITIONS

Section 1. Defines "Compact" to mean Compact for a Balanced Budget.

Section 2. Defines "convention."

Section 3. Defines "state."

Section 4. Defines "member state."

Section 5. Defines "Compact notice recipients."

Section 6. Notice. Requires that all notices required by this Compact to be by United States Certified Mail, return receipt requested, or an equivalent or superior form of notice, such as personal delivery documented by evidence of actual receipt.

Section 7. Defines "Balanced Budget Amendment."

ARTICLE III. COMPACT MEMBERSHIP AND WITHDRAWAL

Section 1. Provides that this Compact governs each member state to the fullest extent permitted by their respective constitutions, superseding and repealing any conflicting or contrary law.

Section 2. Provides that by becoming a member state, each such state offers, promises and agrees to perform and comply strictly in accordance with the terms and conditions of this Compact, and has made such offer, promise and agreement in anticipation and consideration of, and in substantial reliance upon, such mutual and reciprocal performance and compliance by each other current and future member state, if any. Requires that, accordingly, in addition to having the force of law in each member state upon its respective effective date, this Compact and each of its Articles will also be construed as contractually binding each member state when certain conditions are met.

Section 3. Requires legislation enacting, adopting and agreeing to be bound by this Compact to be deemed and regarded as "substantively identical" with respect to such other legislation enacted by another State notwithstanding for purposes of determining member state status under this Compact, as long as all other provisions of the Compact remain identical and operative on the same terms.

Section 4. Authorizes any member state, when fewer than three-fourths of the states are member states, to withdraw from this Compact by enacting appropriate legislation, as determined by state law, and giving notice of such withdrawal to the Compact Administrator, if any, or otherwise to the chief executive officer of each other member state. Requires that a withdrawal not affect the validity or applicability of the Compact with respect to remaining member states, provided that there remain at least two such states. Provides however, that once at least three-fourths of the states are member states, then no member state may withdraw from the Compact prior to its termination absent unanimous consent of all member states.

ARTICLE IV. COMPACT COMMISSION AND COMPACT ADMINISTRATOR

Section 1. Nature of the Compact Commission. Provides that the Compact Commission (Commission) is hereby established. Provides that it has the power and duty: (a) to appoint and oversee a Compact Administrator; (b) to encourage states to join the Compact and Congress to call the convention in accordance with this Compact; (c) to coordinate the performance of obligations under the Compact; (d) to oversee the convention's logistical operations as appropriate to ensure this Compact governs its proceedings; (e) to oversee the defense and enforcement of the Compact in appropriate legal venues; (f) to request funds and to disburse those funds to support the operations of the Commission, Compact Administrator, and convention; and (g) to cooperate with any entity that shares a common interest with the Commission and engages in policy research, public interest litigation or lobbying in support of the purposes of the Compact. Requires the Commission to only have such implied powers as are essential to carrying out these express powers and duties. Requires that it take no action that contravenes or is inconsistent with this Compact or any law of any state that is not superseded by this Compact. Authorizes it to adopt and publish corresponding bylaws and policies.

Section 2. Commission Membership. Provides that the Commission initially consists of three unpaid members. Authorizes each member state to appoint one member to the Commission through an appointment process to be determined by their respective chief executive officer until all positions on the Commission are filled. Requires positions to be assigned to appointees in the order in which their respective appointing states became member states. Authorizes the bylaws of the Commission to expand its membership to include representatives of additional member states and to allow for modest salaries and reimbursement of expenses if adequate funding exists.

Section 3. Commission Action. Provides that each Commission member is entitled to one vote. Requires the Commission to not act unless a majority of its appointed membership is present, and no action to be binding unless approved by a majority of the Commission's appointed membership. Requires the Commission to meet at least once a year, and authorizes it to meet more frequently.

Section 4. First Order of Business. Requires the Commission to at the earliest possible time elect from among its membership a Chairperson, determine a primary place of doing business, and appoint a Compact Administrator.

Section 5. Funding. Requires the Commission and the Compact Administrator's activities to be funded exclusively by each member state, as determined by their respective state law, or by voluntary donations.

Section 6. Compact Administrator. Provides that the Compact Administrator has the power and duty (a) to timely notify the states of the date, time and location of the convention; (b) to organize and direct the logistical operations of the convention; (c) to maintain an accurate list of all member states, their appointed delegates, including contact information; and (d) to formulate, transmit, and maintain all official notices, records, and communications relating to this Compact. Requires the Compact Administrator to only have such implied powers as are essential to carrying out these express powers and duties; and to take no action that contravenes or is inconsistent with this Compact or any law of any state that is not superseded by this Compact. Provides that the Compact Administrator serves at the pleasure of the Commission and is required to keep the Commission seasonably apprised of the performance or nonperformance of the terms and conditions of this Compact. Requires any notice sent by a member state to the Compact Administrator concerning this Compact to be adequate notice to each other member state provided that a copy of said notice is seasonably delivered by the Compact Administrator to each other member state's respective chief executive officer.

Section 7. Notice of Key Events. Requires that the Compact Administrator, upon the occurrence of each of certain described events, or otherwise as soon as possible, to immediately send certain notices to all Compact notice recipients, together with certified conforming copies of the chaptered version of this Compact as maintained in the statutes of each member state.

Section 8. Cooperation. Requires the Commission, member states and Compact Administrator to cooperate with each other and give each other mutual assistance in enforcing this Compact and to give the chief law enforcement officer of each other member state any information or documents that are reasonably necessary to facilitate the enforcement of this Compact.

Section 9. Provides that this Article does not take effect until there are at least two member states.

ARTICLE V. RESOLUTION APPLYING FOR CONVENTION

Section 1. Provides that the legislature of each member state herewith applies to Congress for the calling of a convention for proposing amendments, as provided for in Article V of the Constitution of the United States, limited to the subject matter of proposing for ratification of the Balanced Budget Amendment.

Section 2. Provides that Congress is further petitioned to refer the Balanced Budget Amendment to the states for ratification by three-fourths of their respective legislatures.

Section 3. Provides that this Article does not take effect until at least three-fourths of the several states are member states.

ARTICLE VI. DELEGATE APPOINTMENT, LIMITATIONS AND INSTRUCTIONS

Section 1. Number of Delegates. Provides that this member state is entitled to three delegates to represent the state's interests at the convention.

Section 2. Identity of Delegates. Provides that the governor, speaker of the house of representatives, and lieutenant governor, or their respective designees, are appointed to represent this member state at the convention as its exclusive delegates.

Section 3. Replacement or Recall of Delegates. Authorizes a delegate appointed hereunder to be replaced or recalled by the legislature of his or her respective state at any time for good cause, such as criminal misconduct or the violation of this Compact. Requires that, if replaced or recalled, any delegate previously appointed hereunder to immediately vacate the convention and return to their respective state's capitol.

Section 4. Oath. Authorizes the power and authority of a delegate under this Article to only be exercised after the convention is first called by Congress in accordance with this Compact and provides that such appointment is duly accepted by such appointee publicly taking a certain oath or affirmation. Sets forth the text of the oath or affirmation.

Section 5. Term. Provides that the term of a delegate hereunder commences upon acceptance of appointment and terminates upon the permanent adjournment of the convention, unless shortened by recall, replacement or forfeiture under this Article. Requires any person formerly serving as a delegate to immediately withdraw from and cease participation at the Convention, if any is proceeding upon expiration of such term.

Section 6. Delegate Authority. Provides that the power and authority of any delegate appointed hereunder is strictly limited: (a) to introducing, debating, voting upon, proposing and enforcing the Convention Rules specified in this Compact, as needed to ensure those rules govern the Convention; and (b) to introducing, debating, voting upon, and rejecting or proposing for ratification the Balanced Budget Amendment. Provides that all actions taken by any delegate in violation of this section are void ab initio.

Section 7. Delegate Authority. Provides that no delegate of any member state may introduce, debate, vote upon, reject or propose for ratification any constitutional amendment at the convention unless: (a) the Convention Rules specified in this Compact govern the convention and their actions; and (b) the constitutional amendment is the Balanced Budget Amendment.

Section 8. Delegate Authority. Provides the power and authority of any delegate at the convention does not include any power or authority associated with any other public office held by the delegate. Requires any person appointed to serve as a delegate to take a temporary leave of absence, or otherwise to be deemed temporarily disabled, from any other public office held by the delegate while attending the convention, and prohibits the exercise of any power or authority associated with any other public office held by the delegate, while attending the convention. Provides that all actions taken by any delegate in violation of this section are void ab initio.

Section 9. Order of Business. Requires each delegate of every member state, before introducing, debating, voting upon, rejecting or proposing for ratification any constitutional amendment at the convention, to first ensure the Convention

Rules in this Compact govern the convention and their actions. Requires every delegate and each member state to immediately vacate the convention and notify the Compact Administrator by the most effective and expeditious means if the Convention Rules in this Compact are not adopted to govern the convention and their actions.

Section 10. Forfeiture of Appointment. Provides that if any member state or delegate violates any provision of this Compact, then every delegate of that member state immediately forfeits his or her appointment, and is required to immediately cease participation at the convention, vacate the convention, and return to his or her respective state's capitol.

Section 11. Expenses. Provides that a delegate appointed hereunder is entitled to reimbursement of reasonable expenses for attending the convention from his or her respective member state. Provides that no delegate may accept any other form of remuneration or compensation for service under this Compact.

ARTICLE VII. CONVENTION RULES

Section 1. Nature of the Convention. Requires the convention to be organized, construed and conducted as a body exclusively representing and constituted by the several states.

Section 2. Agenda of the Convention. Requires the agenda of the convention to be entirely focused upon and exclusively limited to introducing, debating, voting upon, and rejecting or proposing for ratification the Balanced Budget Amendment under the Convention Rules specified in this Article and in accordance with the Compact. Provides that it shall not be in order for the convention to consider any matter that is outside the scope of the agenda.

Section 3. Delegate Identity and Procedure. Requires that states be represented at the convention through duly appointed delegates. Requires the number, identity and authority of delegates assigned to each state to be determined by this Compact in the case of member states or, in the case of states that are not member states, by their respective state laws. Prohibits, to prevent disruption of proceedings, more than three delegates attending and participating in the convention on behalf of any state. Requires a certified chaptered conforming copy of this Compact, together with government-issued photographic proof of identification, to suffice as credentials for delegates of member states. Requires that any commission for delegates of states that are not member states be based on their respective state laws, but requires that it furnish credentials that are at least as reliable as those required of member states.

Section 4. Voting. Requires each state represented at the convention to have one vote, exercised by the vote of that state's delegate in the case of states represented by one delegate, or, in the case of any state that is represented by more than one delegate, by the majority vote of that state's respective delegates.

Section 5. Quorum. Requires a majority of the several states of the United States, each present through its respective delegate in the case of any state that is represented by one delegate, or through a majority of its respective delegates, in the case of any state that is represented by more than one delegate, to constitute a quorum for the transaction of any business on behalf of the convention.

Section 6. Action by the Convention. Requires the convention to only act as a committee of the whole, chaired by the delegate representing the first state to have become a member state, if that state is represented by one delegate, or otherwise by the delegate chosen by the majority vote of that state's respective delegates. Provides that the transaction of any business on behalf of the convention, including the designation of a secretary, the adoption of parliamentary procedures

and the rejection or proposal of any constitutional amendment, requires a quorum to be present and a majority affirmative vote of those states constituting the quorum.

Section 7. Emergency Suspension and Relocation of the Convention. Requires further convention proceedings to be temporarily suspended, and the Commission to subsequently relocate or reschedule the convention to resume proceedings in an orderly fashion in accordance with the terms and conditions of this Compact with prior notice given to the Compact notice recipients, in the event that the Chair of the convention declares an emergency due to disorder or an imminent threat to public health and safety prior to the completion of the business on the agenda, and a majority of the states present at the convention do not object to such declaration.

Section 8. Parliamentary Procedure. Requires the convention to exclusively adopt, apply or appropriately of certain parliamentary guides in adopting, applying and formulating parliamentary procedure. Requires that the convention exclusively consider analogous precedent arising within the jurisdiction of the United States in adopting, applying or adapting parliamentary procedure. Requires that parliamentary procedures adopted, applied or adapted pursuant to this section not obstruct, override or otherwise conflict with this Compact.

Section 9. Transmittal. Requires the chair of the convention, upon approval of the Balanced Budget Amendment by the Convention to propose for ratification, to immediately transmit certified copies of such approved proposed amendment to the Compact Administrator and all Compact notice recipients, notifying them respectively of such approval and requesting Congress to refer the same for ratification by the States under Article V of the Constitution of the United States. Requires, however, that in no event to any proposed amendment other than the Balanced Budget Amendment be transmitted as aforesaid.

Section 10. Transparency. Requires records of the convention, including the identities of all attendees and detailed minutes of all proceedings, to be kept by the chair of the convention or secretary designated by the convention. Requires that all proceedings and records of the convention be open to the public upon request subject to reasonable regulations adopted by the convention that are closely tailored to preventing disruption of proceedings under this Article.

Section 11. Adjournment of the Convention. Requires the convention to permanently adjourn upon the earlier of 24 hours after commencing proceedings under this Article or the completion of the business on its agenda.

ARTICLE VIII. PROHIBITION ON ULTRA VIRES CONVENTION

Section 1. Requires member states to not participate in the convention unless: (a) Congress first calls the convention in accordance with this Compact; and (b) the Convention Rules of this Compact are adopted by the convention as its first order of business.

Section 2. Provides that any proposal or action of the convention is void ab initio and issued by a body that is conducting itself in an unlawful and ultra vires fashion if that proposal or action meets certain criteria.

Section 3. Requires member states to not ratify or otherwise approve any proposed amendment, alteration or revision to the Constitution of the United States, which originates from the convention, other than the Balanced Budget Amendment.

ARTICLE IX. RESOLUTION PROSPECTIVELY RATIFYING THE BALANCE BUDGET AMENDMENT

Section 1. Provides that each member state, by and through its respective legislature, hereby adopts and ratifies the Balance Budget Amendment.

Section 2. Provides that this Article does not take effect until Congress effectively refers the Balanced Budget Amendment to the states for ratification by three-fourths of the legislatures of the several states under Article V of the Constitution of the United States.

ARTICLE X. CONSTRUCTION, ENFORCEMENT, VENUE, AND SEVERABILITY

Section 1. Requires to the extent that the effectiveness of this Compact or any of its Articles or provisions requires the alteration of local legislative rules, drafting policies, or procedure to be effective, the enactment of legislation enacting, adopting and agreeing to be bound by this Compact will be deemed to waive, repeal, supersede, or otherwise amend and conform all such rules, policies or procedures to allow for the effectiveness of this Compact to the fullest extent permitted by the constitution of any affected member state.

Section 2. Date and Location of the Convention. Requires the convention to be held in Dallas, Texas and commence proceedings at 9:00 a.m. Central Standard Time on the sixth Wednesday after the latter of the effective date of Article V of this Compact or the enactment date of the Congressional resolution calling the convention, unless otherwise specified by Congress in its call.

Section 3. Provides that in addition to other powers and duties conferred by state law which are consistent with the terms and conditions of this Compact, the chief law enforcement officer of each member state is empowered to defend the Compact from any legal challenge, as well as to seek civil mandatory and prohibitory injunctive relief to enforce this Compact; and to take such action whenever the Compact is challenged or violated.

Section 4. Requires the exclusive venue for all actions in any way arising under this Compact to be in the United States District Court for the Northern District of Texas or the courts of the State of Texas within the jurisdictional boundaries of the foregoing district court. Requires each member state to submit to the jurisdiction of said courts with respect to such actions. Authorizes the Commission, however, upon written request by the chief law enforcement officer of any member state, to elect to waive this provision for the purpose of ensuring an action proceeds in the venue that allows for the most convenient and effective enforcement or defense of this Compact. Requires any such waiver to be limited to the particular action to which it is applied and not construed or relied upon as a general waiver of this provision. Requires the waiver decisions of the Commission under this provision to be final and binding on each member state.

Section 5. Provides that the effective date of this Compact and any of its Articles is the latter of certain dates.

Section 6. Provides that Article VIII of this Compact is hereby deemed non-severable prior to termination of the Compact. Provides that if any other phrase, clause, sentence or provision of this Compact, or the applicability of any other phrase, clause, sentence or provision of this Compact to any government, agency, person or circumstance, is declared in a final judgment to be contrary to the Constitution of the United States, contrary to the state constitution of any member state, or is otherwise held invalid by a court of competent jurisdiction, such phrase, clause, sentence or provision is required to be severed and held for naught, and the validity of the remainder of this Compact and the applicability of the remainder of this Compact to any government, agency, person or circumstance will not be affected. Provides that if this Compact is declared in a final judgment by a court of competent jurisdiction to be entirely contrary to the state constitution of any member state or otherwise entirely invalid as to any member state, such

member state is required to be deemed to have withdrawn from the Compact, and the Compact to remain in full force and effect as to any remaining member state. Provides that if this Compact is declared in a final judgment by a court of competent jurisdiction to be wholly or substantially in violation of Article I, Section 10, of the Constitution of the United States, then it is required to be construed and enforced solely as reciprocal legislation enacted by the affected member state(s).

Section 7. Termination. Requires this Compact to terminate and be held for naught when the Compact is fully performed and the Constitution of the United States is amended by the Balanced Budget Amendment. Requires that the Compact terminate in a certain manner, notwithstanding anything to the contrary set forth in this Compact, in the event such amendment does not occur within seven years after the first state passes legislation enacting, adopting and agreeing to be bound to this Compact.

SECTION 2. Effective date: upon passage or by September 1, 2017.