

## BILL ANALYSIS

Senate Research Center

S.B. 21  
By: Birdwell et al.  
State Affairs  
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Enrolled

### AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The federal system of government that must respect and defer to the inherent rights of the states is broken. Washington is spending beyond the means of its citizens, seizing power from the states, and taking liberty from the very people to whom it is accountable. Not only is the federal government not working, but in fact, it is actively working against citizens by confiscating powers and authorities contrary to what the Constitution allows. Accordingly, a strong push to call for an Article V convention of states is growing throughout Texas and the nation.

Alongside S.J.R. 2, the formal application to Congress for a convention of states, S.B. 21 provides structural guidelines and procedures by which Texas delegates would be chosen and how said delegates would operate if a convention of states were to be called. Of note, this bill is particularly critical for Texas as we have no current standards under which to act in the event of a convention of states actually being called.

S.B. 21 does not call for a convention (i.e., as S.J.R. 2 does), but rather, this legislation simply outlines the qualifications, duties, and limitations of Texas delegates, ensuring their accountability to the citizens of our state.

This proactive legislation needs to be in place. Even if Texas does not apply to Congress for an Article V convention of states, 34 other states could apply. We need to be prepared for such a possibility.

Who are the delegates and how are they appointed?

- When a Convention of States is called, the Texas Legislature shall convene as quickly as possible to appoint delegates.
- The list of delegates and alternate delegates will be comprised of members of the Texas House and Senate.
- The legislature shall appoint five delegates and five alternate delegates—three of each from the House, and two of each from the Senate.

How are these delegates given direction, and how do we hold them accountable?

- At the time delegates are appointed, the legislature shall adopt instructions to the delegates to govern their actions at the Article V convention.
- Each delegate and alternate delegate is required to take an oath stating that they will:
  - o operate within the confines of the authority granted to them by Texas law,
  - o not vote to approve a proposed amendment not authorized by the Texas Legislature in its application to call the convention, and
  - o faithfully abide by and execute any instructions adopted by the Texas Legislature.

- A delegate who casts a vote determined to be an unauthorized vote (i.e., one not sanctioned by the instructions of the legislature) is disqualified to continue serving, and their vote is considered invalid.
  - o These would include votes that are contrary to the instructions adopted by the legislature or those which exceed the scope of the Article V convention of states as authorized by the legislature in its application of the convention.
  - o The legislature has total authority to recall any delegate.

S.B. 21 amends current law relating to the qualifications, duties, and limitations of Texas delegates to a convention called under Article V of the United States Constitution.

### **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 Subtitle Z, Title 3, Government Code, by adding Chapter 393, as follows:

#### CHAPTER 393. DELEGATES TO FEDERAL ARTICLE V CONVENTIONS

##### SUBCHAPTER A. GENERAL PROVISIONS

Sec. 393.001. DEFINITIONS. Defines "alternate delegate," "Article V convention," "delegate," and "unauthorized vote."

Sec. 393.002. RULES AND PROCEDURES. (a) Requires the legislature by concurrent resolution to provide necessary rules and procedures to implement this chapter.

(b) Provides that a legislative action relating to the appointment or recall of a delegate or alternate delegate (alternate), the filling of a vacancy in the office of a delegate or alternate, or the determination of an unauthorized vote may be accomplished through a resolution adopted by the house that takes the action.

##### SUBCHAPTER B. DELEGATES AND ALTERNATE DELEGATES

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

(b) Requires the legislature, except as provided by Subsection (c), to appoint five delegates and five alternates to the convention, with the house of representatives required to appoint three members of the house as delegates and three members as alternates, and the senate required to appoint two members of the senate as delegates and two members as alternates.

(c) Requires the legislature, if the number of delegates allocated to represent the state at the convention is determined by agreement among the states to be a number other than five, to appoint the allocated number of delegates and an equal number of alternates using certain methods based on whether the allocated number of delegates is an even or an odd number.

(d) Provides that service as a delegate or alternate is an additional duty of the member's legislative office.

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

Sec. 393.052. VACANCY. (a) Provides that an alternate automatically fills a vacancy in the office of the alternate's paired delegate unless the office of the alternate is simultaneously vacated.

(b) Requires the house that appointed a delegate or alternate, except as provided by Subsection (a), to fill a vacancy in the office of the delegate or alternate as soon as possible after the vacancy occurs.

Sec. 393.053. RECALL. (a) Authorizes the house that appointed a delegate or alternate to recall the delegate or alternate.

(b) Requires that a vacancy created by the recall of a delegate or alternate be filled in the manner provided by Section 393.052.

Sec. 393.054. COMPENSATION; REIMBURSEMENT OF EXPENSES. (a) Provides that a delegate or alternate is not entitled to compensation for service as a delegate or alternate.

(b) Provides that a delegate or alternate is entitled 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.

Sec. 393.055. OATH. (a) Requires an individual appointed as a delegate or alternate to take an oath before voting or taking an action as a delegate or alternate of this state. Sets forth the text of the oath.

(b) Requires each delegate and alternate to file the executed oath with the Texas secretary of state.

Sec. 393.056. PROHIBITION ON ACCEPTANCE OF BENEFIT. 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 under Chapter 305 (Registration of Lobbyists) or under other law.

#### SUBCHAPTER C. DUTIES OF DELEGATES AND ALTERNATE DELEGATES

Sec. 393.101. INSTRUCTIONS TO DELEGATES AND ALTERNATE DELEGATES.

(a) Requires the legislature by joint resolution to adopt instructions to the delegates and alternates to govern the actions of those officers at the convention.

(b) Prohibits the legislature from adopting instructions for a convention called following an application by the legislature to the United States Congress for the convention that authorize a delegate or alternate 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) Authorizes the legislature to amend the instructions at any time by joint resolution.

Sec. 393.102. DUTY OF ALTERNATE DELEGATE. Requires an alternate to act in the place of the alternate's paired delegate when the delegate is absent from the convention.

Sec. 393.103. UNAUTHORIZED VOTE. (a) Prohibits a delegate or alternate from casting an unauthorized vote.

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

(c) Establishes that a vote determined to be an unauthorized vote is invalid.

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

(e) Requires the presiding officer of the house that determined that a delegate or alternate has cast an unauthorized vote to promptly notify the head of the state delegation and the presiding officer of the convention of the unauthorized vote and disqualification.

Sec. 393.104. OVERSIGHT COMMITTEE. (a) Requires the legislature to appoint an Article V Oversight Committee (committee) at the time the delegates and alternates are appointed under Section 393.051.

(b) Provides that the committee consists of certain members.

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

(d) Requires the members of the committee, if the legislature is not convened in regular or special session at any time during which a convention is convened, to meet at the call of either joint chair at the State Capitol and determine whether a vote cast by a delegate or alternate delegate is an unauthorized vote for the purposes of Section 393.103.

(e) Provides that a vote cast by a delegate or alternate 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) Provides that the committee is not authorized to take any action when the legislature is convened in regular or special session.

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