

SUBJECT: Special session for appointment of presidential electors

COMMITTEE: Elections — favorable, without amendment

VOTE: 7 ayes — Danburg, J. Jones, Denny, Hodge, Madden, Sadler, Truitt

0 nays

2 absent — Gallego, Wilson

WITNESSES: For — None

Against — None

On — Ann McGeehan, Secretary of State's Office

BACKGROUND: Art. 2, sec. 1 of the U.S. Constitution provides that the president and the vice president are to be chosen by electors. "Each State shall appoint, in such manner as the Legislature thereof may direct, a Number of Electors, equal to the Whole Number of Senators and Representatives to which the State may be entitled in the Congress . . ."

Texas Election Code, ch. 243 governs a contested election for presidential electors. In the event of an election contest, the governor presides over the contest and determines the outcome, declaring which slate of presidential elector candidates wins. The governor must declare which set of presidential elector candidates was elected no later than the seventh day before the Electoral College is required to convene. Election Code, ch. 192 requires the Electoral College to convene at the State Capitol at 2 p.m. on the first Monday after the second Wednesday in December following the general election, the date set by federal law (3 U.S.C. sec. 7).

3 U.S.C., sec. 5 provides that a state's final determination of any controversy or contest involving electors is conclusive if the determination is made pursuant to state laws in effect before the election and if the determination is made at least six days before the meeting of the electoral college. This is known as the "safe harbor" provision.

The Texas Constitution, Art. 4, sec. 8 authorizes the governor to convene the Legislature on extraordinary occasions. The governor's proclamation must state the specific purpose for which the Legislature is convened.

**DIGEST:**

HJR 45 would amend the Texas Constitution, Art. 4, sec. 8, by authorizing the governor to convene a special session of the Legislature to appoint presidential electors if the governor determined that it was reasonably likely that a final determination of the appointment of electors would not occur before the certification deadline. The Legislature could not consider any other subject during that special session.

The proposed amendment would be submitted to Texas voters at an election on November 6, 2001. The ballot proposal would read: "The constitutional amendment requiring the governor to call a special session for the appointment of presidential electors under certain circumstances."

**SUPPORTERS  
SAY:**

The national controversy over the razor-thin presidential election in 2000 and the subsequent recount in Florida has prompted a reexamination of voting procedures in Texas and other states. HJR 45 would provide clear guidelines for the governor to call a special session to choose electors in the event of an election contest such as the one in Florida. Currently, it is not clear whether the governor has the constitutional authority to call a special session for this specific purpose.

Because of the confusion, state and federal judicial proceedings, and legal skirmishing, the Florida dispute lasted 36 days. The Florida legislature met in a special session to appoint presidential electors, but ultimately did not do so. Not all legal scholars agreed on whether the Florida legislature had the authority to convene for such a purpose. A similar delay in Texas could result in the state losing its electoral votes. If Texas experienced an election contest and the final determination of electors was not determined by the date required by federal law, Congress would have to make the final decision.

HJR 45 would ensure that Texans would select the state's electors without running afoul of the federal cutoff dates. It also would ensure that any post-election actions in state courts would not interfere with the Legislature's use

of the “safe harbor” provision in federal law, which allows a final, conclusive determination of a state’s electors.

Special sessions are expensive, and the decision to convene one should not be taken lightly. HJR 45 would place a clear duty on the governor, if the likelihood existed that the appointment of electors would not occur before the deadline, to convene a special session for the Legislature to appoint Texas’ presidential electors.

OPPONENTS  
SAY:

HJR 45 is not needed because current statutory and constitutional law already authorizes the governor to preside over contests of presidential electors and to make the final determination, as well as to convene special sessions of the Legislature. This proposed amendment would not aid the resolution of a contested situation because the governor already has the authority to do both.

NOTES:

HB 281 by Garcia, relating to the selection of presidential electors by congressional district, was left pending by the House Elections Committee. HB 526 by Bailey and HB 639 by S. Turner, relating to the same topic, also have been referred to the Elections Committee. SB 211 by Barrientos, the companion bill to HB 281, has been referred to the Senate State Affairs Committee.