

SUBJECT: Allowing the Legislature to override a veto after *sine die* adjournment

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 10 ayes — Solomons, Menendez, Cook, Farabee, Gallego, Geren,
Harless, Hilderbran, Lucio, Maldonado

1 nay — Swinford

4 absent — Craddick, Jones, Oliveira, S. Turner

WITNESSES: None

BACKGROUND: Texas Constitution, Art. 4, sec. 14 requires the governor, after receiving a bill enacted by the Legislature, to sign the bill or to forward a veto with objections to the house that originated the bill within 10 days (excluding Sundays), when the Legislature is in session. Otherwise, the bill becomes law without the governor's signature.

For bills sent to the governor during the final 10 days, not counting Sundays, of a regular or special session or after *sine die* adjournment, the governor has 20 days, counting Sundays, after adjournment to veto a bill or a line item in the appropriations bill.

The Legislature may override a veto by a two-thirds majority in both houses. Under the Constitution and legislative rules and precedent, the house in which the vetoed legislation originated votes first. The vote required for override in the originating house is two-thirds of the members present, while the vote required in the second house is two-thirds of the membership. For line-item vetoes, a vote of two-thirds of the members present in both houses is required to override.

If the Legislature has been called into special session and is meeting following the post-session veto deadline, it cannot vote to override the veto of a bill enacted during a previous session because the legislative process begins anew each session.

According to the Legislative Reference Library, the 13th Legislature in 1873 voted 16 times on bills vetoed by Gov. Edmund J. Davis, and

incomplete records show that 13 vetoes were overridden. In 1941, the 47th Legislature voted 10 times to override vetoes by Gov. W. Lee O'Daniel.

The last time a veto was overridden was in 1979, when the 66th Legislature voted to override Gov. William Clements' veto of HB 2153 by Bock, allowing Comal County to block hunting and fishing regulations issued by the Texas Department of Parks and Wildlife.

The last time the Legislature tried to override a governor's veto was during the fifth called session of the 71st Legislature in 1990. The Senate by 23-8 voted to override Gov. Clements' veto of SB 1 by Parker, a school finance bill. The House by 92-55 did not reach the necessary majority to override, and the veto was sustained.

DIGEST:

HJR 29 would amend the Constitution to require the Legislature to convene after the 20-day post-session deadline for filing veto proclamations to reconsider vetoes by the governor. The period for reconsidering vetoes would begin at 10 a.m. on the day after the veto deadline and could not be more than five consecutive days. Unless the Legislature had been called into special session by the governor, it could not consider any subject except the reconsideration of vetoes of bills or of line items in the appropriations bill. During the reconsideration session, the Legislature could override the veto of a bill or appropriation line item that the governor had returned within three days before or anytime after *sine die* adjournment of a session.

The proposal would be presented to the voters at an election on Tuesday, November 3, 2009. The ballot proposal would read: "The constitutional amendment to allow the legislature to override a veto of the governor following a legislative session."

**SUPPORTERS
SAY:**

HJR 29 would grant the Legislature an opportunity to exercise its authority under the Constitution to reconsider legislation vetoed by the governor following *sine die* adjournment. Texas is one of 17 states that allow only the governor to call a special session, while the remaining 33 states permit either the governor or the legislature to call a special or extraordinary session, which may include review of vetoed items. As such, the governor can kill measures approved by both chambers secure in the knowledge that the Legislature is powerless to challenge this decision. Providing this option to the Legislature would restore the authority to enact laws to the people's representatives, where it belongs, and would

reinforce constitutional checks and balances. It makes little sense for the Legislature to have the authority to override vetoes if it rarely has the opportunity to exercise that authority.

Rather than addressing contemporary debates between the governor and the Legislature, the proposed constitutional amendment would deal with general issues of accountability and balance of power. Existing constitutional requirements would remain unchanged, and overriding a veto still would be extremely difficult. The governor would retain the power to veto legislation, and the vote necessary to override a veto would remain a two-thirds majority in both chambers.

HJR 29 would not grant unreasonable powers to the Legislature. It would limit the length and scope of any veto session. Unless the governor had called a special session that coincided with the period for reconsidering vetoes, the Legislature could conduct no other legislative business during a session convened solely to reconsider vetoes.

The Legislature must consider a large volume of complex legislation each session, and it often is difficult to reach agreement until the very end of the session. As a result, much of the legislation is enacted so late in the session that the governor can wait nearly three weeks after the session ends before deciding to veto legislation, too late for the Legislature to attempt to override the veto. HJR 29 effectively would give lawmakers additional time to complete that challenging task. Just as legislators could reach compromises and build alliances to override vetoes, the governor also would have the opportunity to convince legislators not to override a veto. All of this would be accomplished within the constitutional system of checks and balances.

Bills that survive the winnowing of the legislative process — only to be vetoed — should not have to wait until the next regular session for consideration. The same members who passed the original legislation should have the opportunity to address the veto.

The experience in Congress and in other states shows that veto overrides remain extremely rare. HJR 29 merely would grant Texas lawmakers the opportunity to “get into the game” with regard to challenging a governor’s veto.

Making a veto session mandatory would help maintain the independence of the Texas Legislature by removing the decision to call the session from the discretion of the governor or the legislative leadership.

Veto sessions are common practice in the rest of the country. Eleven states (Alaska, Connecticut, Hawaii, Louisiana, Missouri, Montana, New Jersey, North Carolina, Utah, Virginia, and Washington) have specific state constitutional provisions that allow their legislatures to reconvene after the normal session to consider bills vetoed by the governor. In addition, seven states (Florida, Georgia, Indiana, Mississippi, Nevada, Oregon, and South Carolina) permit their legislatures to take up vetoed bills in subsequent regular or special sessions.

Changing the rules on considering legislation or extending the session still would require a constitutional amendment and would not resolve the problem of *sine die* vetoes. Some legislation always would be passed in the final 10 days of a session, regardless of the session's length, allowing the governor to veto legislation after the Legislature had gone.

OPPONENTS
SAY:

HJR 29 further would weaken the office of the governor of Texas, who constitutionally has limited authority. The ability to veto legislation after *sine die* adjournment and call special sessions are among the few strong powers of the office. Quarrels between legislators and governors can be resolved without amending the Constitution.

The Legislature could recapture its ability to respond to vetoes if it did not send all bills to the governor in the final 10 days of the session. The 80th Legislature sent 1,226 of 1,481 bills (83 percent) to the governor in the final 10 days (excluding Sundays) of the 2007 regular session. If the Legislature believes that a bill may be vetoed and a sufficient majority wants the opportunity to override, then it should enact the bill early enough in the session to allow that vote to be taken.

OTHER
OPPONENTS
SAY:

HJR 29 would require the Legislature to convene for the limited purpose of overriding vetoes after a session had adjourned *sine die*, even if the necessary majority did not desire to override. Even when the governor vetoes a bill early enough in a session to allow a vote to override, the Legislature rarely decides to vote on that issue. A more flexible alternative would be a constitutional amendment to change current limits on when non-emergency legislation could be considered to allow bills to reach the

governor earlier in the regular session or to extend the number of days in a session, if needed, to override vetoes.

NOTES:

Rep. Elkins is expected to offer a floor amendment that would require the Legislature to return on the next Tuesday after the governor's veto deadline and would limit the veto session to no more than three days, rather than five days.

The companion measure, SJR 14 by Wentworth, has been referred to the Senate State Affairs Committee.

During the 2007 regular session the House adopted HJR 59 by Elkins, a similar proposed constitutional amendment, by 109-29, but it died in the Senate State Affairs Committee.

According to the fiscal note, a five-day special session would cost \$100,000 for the per diem for legislators and other incidental expenses.