

SUBJECT: Constitutionally allowing governor to retain authority when outside state

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 10 ayes — Cook, Giddings, Craddick, Farrar, Frullo, Geren, Harless, Huberty, Menéndez, Oliveira

0 nays

3 absent — Hilderbran, Smithee, Sylvester Turner

WITNESSES: For — None

Against — None

On — (*Registered, but did not testify*: Christopher Burnett, Office of the Governor)

BACKGROUND: Tex. Const., Art. 4, sec. 16(c) specifies that when the governor is absent from Texas the lieutenant governor shall exercise the powers of the governor until the governor returns. The lieutenant governor also assumes the governor's office when the governor is temporarily unable or disqualified to serve or when impeached. Art. 4, sec. 16(d) provides for the lieutenant governor to become governor for the remainder of the governor's term should the governor refuse to serve or become unable to serve.

Art. 4, sec. 17 provides for the temporary transfer of the governor's powers to the president pro tempore of the Senate if the lieutenant governor, while acting as governor, is absent from the state or is otherwise unable or not qualified to serve as governor.

DIGEST: HJR 71 would amend Tex. Const., Art. 4, sec. 16(c) to provide for the temporary transfer of authority from the governor to the lieutenant governor when the governor was "unavailable as provided by law," rather than when absent from the state. The proposed amendment also would specify that the lieutenant governor would exercise the governor's powers until the governor was "available." HJR 71 also would specify that in the event the Legislature did not enact a statute providing a different

definition, "unavailable" would mean absent from the state.

HJR 71 would also amend the language of Art. 4, sec. 17 to transfer the governor's powers to the president pro tempore of the Senate when the lieutenant governor was "unavailable as provided by law," rather than when absent from the state. The proposed amendment would define "unavailable" to mean absent from the state unless the Legislature provided a different definition.

The amendment would specify that the lieutenant governor would serve the remainder of the former governor's term provided by Art. 4, sec. 16(d) if the governor's inability to serve were permanent.

The proposal would be presented to the voters at an election on Tuesday, November 5, 2013. The ballot proposal would read: "The constitutional amendment providing that the governor, and the lieutenant governor when acting as governor, retain executive authority unless unavailable as provided by law."

**SUPPORTERS
SAY:**

HRJ 71 would propose a constitutional amendment that would allow the Legislature to enact laws determining when the governor was considered "unavailable as provided by law." The Legislature should have this ability because it allows for flexibility and for keeping the definition of "unavailable" up to date. This is appropriate because modern electronic communication technologies make it easy for the governor to keep in touch and make decisions even when outside of Texas.

**OPPONENTS
SAY:**

HRJ 71 inappropriately would permit the governor to exercise authority when he or she was not physically present in Texas. Because the governor should not have this authority when outside the state, the specific language in the Constitution requiring the governor to transfer his or her powers when absent from Texas should remain unchanged.

NOTES:

HB 829 by S. Thompson, the enabling legislation for HJR 71, which would provide a definition of when the governor was considered unavailable, has been placed on today's calendar.

The identical companion bill, SJR 122 by Huffman, was reported favorably by the Senate Committee on State Affairs on March 26.