STATE OF OKLAHOMA

2nd Session of the 55th Legislature (2016)

SENATE BILL 881 By: Brecheen

AS INTRODUCED

An Act relating to Article V of the United States Constitution; specifying application of act; defining terms; specifying qualifications to serve as delegate or alternate delegate to Article V convention; providing for appointment of delegates and alternate delegates; providing for chairperson; requiring Legislature to adopt resolution to provide instructions; allowing amendment thereof; specifying circumstances under which and in which order alternate delegates serve; providing for recall of delegates or alternate delegates; specifying circumstances under which vote is void; providing for forfeiture of appointment under certain circumstances; specifying circumstances under which application for Article V convention not effective; prohibiting certain actions and providing penalties; providing for venue and duties of prosecution; providing for mileage and travel expenses; requiring certain oath; creating Article V convention delegate advisory group; providing for membership and duties thereof; requiring certain determinations; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 26.43 of Title 75, unless there is created a duplication in numbering, reads as follows:

This act shall apply whenever a convention is called pursuant to Article V of the United States Constitution.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 26.44 of Title 75, unless there is created a duplication in numbering, reads as follows:

As used in this act:

1. "Advisory group" means the Article V convention delegate advisory group established in Section 14 of this act;

2. "Alternate delegate" means an individual appointed as an alternate delegate as provided by law;

3. "Article V convention" means a convention for proposing amendments to the Constitution of the United States called for by the states under Article V of the Constitution of the United States;

4. "Chamber" means either the Senate or the House of Representatives;

5. "Delegate" means an individual appointed as provided by law to represent this state at an Article V convention;

6. "House of Representatives" means the Oklahoma State House of Representatives; and

7. "Senate" means the Oklahoma State Senate.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 26.45 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. An individual shall satisfy the following to be appointed as a delegate to an Article V convention:

1. The individual shall reside in this state;

2. The individual shall be a registered voter of this state;

3. The individual shall be at least eighteen (18) years of age;

4. The individual shall not be registered or required to be registered as a lobbyist under the Rules of the Ethics Commission; and

5. The individual shall not hold any federal office.

B. An individual appointed as an alternate delegate shall have the same qualifications as a delegate as provided under subsection A of this section.

C. Whenever an Article V convention is called, the Legislature shall appoint the five (5) delegates allocated to represent this state and an equal number of alternate delegates. If the Legislature is not in session during the time during which delegates to an Article V convention shall be appointed, the Governor shall call the Legislature into special session under Section 27A of Article V of the Oklahoma Constitution for the purpose of appointing delegates and alternate delegates.

D. The delegates provided for by subsection C of this section shall be appointed as follows:

1. Two delegates shall be appointed by majority vote of the Senate where at least one delegate appointed pursuant to this

paragraph shall be a member of the Senate at the time of appointment;

2. Two delegates shall be appointed by majority vote of the House of Representatives where at least one delegate appointed pursuant to this paragraph shall be a member of the House of Representatives at the time of appointment; and

3. One delegate shall be appointed by receiving, in each chamber, the vote of a majority of all the members elected to that chamber.

E. The alternate delegates provided for by subsection C of this section shall consist of a first alternate delegate, second alternate delegate, third alternate delegate, fourth alternate delegate, and fifth alternate delegate who shall be appointed as follows:

1. The first alternate delegate shall be appointed by receiving, in each chamber, the vote of a majority of all the members elected to that chamber;

2. The second and fifth alternate delegate shall be appointed by majority vote of the Senate; and

3. The third and fourth alternate delegate shall be appointed by majority vote of the House of Representatives.

F. The delegates appointed pursuant to subsection D of this section shall elect from amongst the delegates a chairperson. Such delegate shall serve as chairperson for as long as such person is a

delegate or until a new chairperson is elected at any time as provided for by this subsection. Such chairperson shall report to the Legislature on all matters pertaining to the activities of the delegates and the Article V convention.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 26.46 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. At the time delegates and alternative delegates are appointed, the Legislature shall adopt a joint resolution to provide instructions to the delegates and alternate delegates regarding the following:

1. The rules of procedure; and

2. Any other matter relating to the Article V convention that the Legislature considers necessary.

B. The Legislature may amend the instructions at any time by joint resolution.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 26.47 of Title 75, unless there is created a duplication in numbering, reads as follows:

An alternate delegate shall act in the place of a delegate when a delegate is absent from the Article V convention or shall replace a delegate if a delegate vacates the office. An alternate delegate shall act in the place of or replace a delegate in such order of sequence:

1. First alternate delegate;

2. Second alternate delegate;

3. Third alternate delegate;

4. Fourth alternate delegate; and

5. Fifth alternate delegate.

At the time that an alternate delegate is needed to act in the place of or to replace a delegate, the alternate delegate in the order of sequence not already acting in the place of or replacing a delegate shall act in the place of the delegate.

SECTION 6. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 26.48 of Title 75, unless there is created a duplication in numbering, reads as follows:

The Legislature, Senate or House of Representatives, respectively, may recall any delegate or alternate delegate it has appointed and replace such delegate or alternate delegate with an individual appointed under this act at any time.

SECTION 7. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 26.49 of Title 75, unless there is created a duplication in numbering, reads as follows:

Notwithstanding any other provision of law to the contrary, no delegate or alternate delegate to an Article V convention or to any process which seeks to propose amendments to the Constitution of the United States called for by the states under Article V of the Constitution of the United States shall be appointed unless such

delegate or alternate delegate is appointed as provided for by this act and this act shall be the only means by which this state participates in an Article V convention or such process.

SECTION 8. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 26.50 of Title 75, unless there is created a duplication in numbering, reads as follows:

A vote cast by a delegate or an alternate delegate at an Article V convention shall be void if it is outside of the scope of:

1. The instructions established by a joint resolution adopted under Section 4 of this act; or

2. The limits placed by the Legislature in a joint resolution that calls for an Article V convention for the purpose of proposing amendments to the Constitution of the United States on the subjects and amendments that may be considered by the Article V convention.

SECTION 9. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 26.51 of Title 75, unless there is created a duplication in numbering, reads as follows:

A delegate or alternate delegate forfeits his or her appointment if he or she votes or attempts to vote outside of the scope of:

1. The instructions established by a joint resolution adopted under Section 4 of this act; or

2. The limits placed by the Legislature in a joint resolution that calls for an Article V convention for the purpose of proposing

amendments to the Constitution of the United States on the subjects and amendments that may be considered by the Article V convention.

SECTION 10. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 26.52 of Title 75, unless there is created a duplication in numbering, reads as follows:

The application of the Legislature to call an Article V convention for proposing amendments to the Constitution of the United States ceases to be a continuing application and shall be treated as having no effect if all of the delegates and alternate delegates vote or attempt to vote outside of the scope of:

1. The instructions established by a joint resolution adopted under Section 4 of this act; or

2. The limits placed by the Legislature in a joint resolution that calls for an Article V convention for the purpose of proposing amendments to the Constitution of the United States on the subjects and amendments that may be considered by the Article V convention.

SECTION 11. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 26.53 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. A delegate or alternate delegate shall be guilty of a felony if he or she knowingly or intentionally votes or attempts to vote outside of the scope of:

1. The instructions established by a joint resolution adopted under Section 4 of this act; or

2. The limits placed by the Legislature in a joint resolution that calls for an Article V convention for the purpose of proposing amendments to the Constitution of the United States on the subjects and amendments that may be considered by the Article V convention.

Upon conviction of a violation of this section, a delegate or alternative delegate shall be punished by imprisonment in the State Penitentiary for not less than one (1) year. If such delegate or alternate delegate is a member of the Legislature, the House of the Legislature of which the delegate or alternate delegate is a member may consider proceedings to expel the member pursuant to the provisions of Section 30 of Article V of the Oklahoma Constitution.

B. Venue of prosecutions under this section shall be in the county of the defendant's residence.

C. The Attorney General and the appropriate district attorney are authorized to prosecute violations of this section.

SECTION 12. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 26.54 of Title 75, unless there is created a duplication in numbering, reads as follows:

A delegate or alternate delegate shall be entitled to receive the same mileage and travel expenses paid to legislative members of interim study committees, but shall not be entitled to a salary or per diem for service as a delegate or alternate delegate. All funds necessary to pay expenses under this section shall be paid from funds appropriated to the Legislature.

SECTION 13. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 26.55 of Title 75, unless there is created a duplication in numbering, reads as follows:

Each delegate and alternate delegate shall, after appointment and before the delegate or alternate delegate shall exercise any function as a delegate or alternate delegate, execute an oath in writing that the delegate or alternate delegate shall:

1. Support the Constitution of the United States and the Constitution of Oklahoma;

2. Faithfully abide by and execute any instructions to delegates and alternate delegates adopted by the Legislature and as may be amended by the Legislature at any time; and

3. Otherwise faithfully discharge the duties of delegate or alternate delegate.

The executed oath shall be filed with the Secretary of State. After the oath is filed with the Secretary of State, the Governor shall issue a commission to the delegate or alternate delegate.

SECTION 14. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 26.56 of Title 75, unless there is created a duplication in numbering, reads as follows:

A. The Article V convention delegate advisory group is established. The advisory group shall consist of the Chief Justice of the Supreme Court of Oklahoma, the Chief Judge of the Court of Civil Appeals of Oklahoma, and the presiding judge of the judicial

district that includes Oklahoma County. The Chief Justice of the Supreme Court of Oklahoma shall be the chairperson of the advisory group. The advisory group shall meet upon the call of the chairperson. The advisory group shall establish policies and procedures that the advisory group determines necessary to carry out its duties under this section.

B. Upon the request of a delegate or alternate delegate, the advisory group shall advise the delegate or alternate delegate whether there is reason to believe that an action or an attempt to take an action by a delegate or alternate delegate would:

1. Violate the instructions established by a joint resolution adopted under Section 4 of this act; or

2. Exceed the limits placed by the Legislature in a joint resolution that calls for an Article V convention for the purpose of proposing amendments to the Constitution of the United States on the subjects and amendments that may be considered by the Article V convention.

C. The advisory group may render an advisory determination under this section in any summary manner considered appropriate by the advisory group.

D. The advisory group shall render an advisory determination under subsection B of this section within twenty-four (24) hours after receiving a request for a determination. The advisory group shall transmit a copy of an advisory determination under this

section in the most expeditious manner possible to the delegate or alternate delegate who requested the advisory determination.

E. If the advisory group renders an advisory determination under this section, the advisory group may also take an action permitted under subsection F of this section.

F. 1. On its own motion or upon request of the President Pro Tempore of the Senate, the Speaker of the House of Representatives or the Attorney General, the advisory group shall advise the Attorney General whether there is reason to believe that a vote or attempt to vote by a delegate or alternate delegate has:

a. violated the instructions established by a joint resolution adopted under Section 4 of this act, or

b. exceeded the limits placed by the Legislature in a joint resolution that calls for an Article V convention for the purpose of proposing amendments to the Constitution of the United States on the subjects and amendments that may be considered by the Article V convention.

2. The advisory group shall issue the advisory determination under this subsection by one of the following summary procedures:

a. without notice or an evidentiary proceeding, or

b. after a hearing conducted by the advisory group.

3. The advisory group shall render an advisory determination under this subsection within twenty-four (24) hours after receiving a request for an advisory determination.

4. The advisory group shall transmit a copy of an advisory determination under this subsection in the most expeditious manner possible to the Attorney General.

5. Immediately upon receipt of an advisory determination under this subsection that finds a vote or attempt to vote by a delegate or alternate delegate is a violation described in subparagraph a of paragraph 1 of subsection F of this section or is in excess of the authority of the delegate or alternate delegate as described in subparagraph b of paragraph 1 of subsection F of this section, the Attorney General shall inform the delegates, alternate delegates, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Article V convention that:

a. the vote or attempt to vote did not comply with Oklahoma law, is void, and has no effect, and

b. the credentials of the delegate or alternate delegate who is the subject of the determination are revoked.

SECTION 15. This act shall become effective November 1, 2016.

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