

BILL ANALYSIS

C.S.H.B. 98

By: Flynn

State & Federal Power & Responsibility, Select
Committee Report (Substituted)

BACKGROUND AND PURPOSE

As part of the Bill of Rights of the United States Constitution, the Tenth Amendment expresses the principle that the powers not delegated to the United States by the Constitution, nor prohibited by the Constitution to the states, are reserved to the states or to the people. Interested parties assert that the issue of power—and especially the great potential for a power struggle between the federal government and the state governments—was extremely important to the country's founders and that, in delegating only specific powers to the federal government, the founders ensured the states and the people, with few exceptions, were free to continue exercising their sovereign powers. It is further noted that when states and local communities take the lead on policy, the relationship between citizens and policymakers is likely to be more immediate, resulting in increased accountability on the part of the policymakers. C.S.H.B. 98 seeks to ensure the balance of power between the federal government and the State of Texas.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 98 amends the Government Code to establish the Joint Legislative Committee on Constitutional Powers and Enforcement as a permanent joint committee of the legislature for the purpose of determining whether a federal action is an unconstitutional federal action. The bill provides for the committee's composition, appointment of committee members by the speaker of the house of representatives and lieutenant governor, procedures for filling a vacancy on the committee, member terms, and limitations on membership. The bill requires the speaker of the house and the lieutenant governor to each designate one member of the committee as a joint chair of the committee, requires the committee to meet at the call of either joint chair, and provides for a quorum of members.

C.S.H.B. 98 authorizes the committee to review any federal action to determine whether the action is an unconstitutional federal action and requires the committee to vote to determine whether the action is an unconstitutional federal action not later than the 180th day after the date the committee holds its first public hearing to review a specific federal action. The bill specifies that such determination may be made by majority vote. The bill requires the committee to report to the governor and the attorney general each federal action that the committee determines to be an unconstitutional federal action and authorizes the committee to include in the report one or more effective and constitutional ways to prevent the application of the federal action in Texas.

The bill requires the committee, not later than December 1 of each even-numbered year, to submit a report to the speaker of the house of representatives and the lieutenant governor that lists each federal action determined by the committee to be an unconstitutional federal action since the committee's previous report. The bill requires the committee to include in the report one or more recommendations for effective and constitutional legislative responses to the federal action.

C.S.H.B. 98 authorizes the attorney general to represent the state or a political subdivision of the state in an action regarding the refusal or failure of the state or political subdivision to participate in the implementation or enforcement of an unconstitutional federal action.

C.S.H.B. 98 requires the speaker of the house of representatives and the lieutenant governor, not later than the 30th day following the bill's effective date, to appoint the initial members of the committee and, not later than the 45th day following the bill's effective date, to forward official copies of the bill to the presiding officers of the legislatures of the several states. The bill requires the secretary of state, not later than the 30th day following the bill's effective date, to forward official copies of the bill to the president of the United States, to the speaker of the House of Representatives and the president of the Senate of the Congress of the United States, and to all members of the Texas delegation to Congress with the request that the bill be officially entered in the Congressional Record.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 98 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. (a) This Act shall be known as the Texas Balance of Powers Act.

(b) The legislature finds that:

(1) The people of the several states comprising the United States of America created the federal government to be their agent for certain enumerated purposes and nothing more.

(2) The Tenth Amendment to the United States Constitution defines the total scope of federal power as including only those powers specifically delegated by the people to the federal government. Those powers not delegated to the federal government are reserved to the states or to the people themselves.

(3) Each power delegated to the federal government by the United States Constitution encompasses only that power

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. (a) This Act shall be known as the Texas Balance of Powers Act.

(b) The legislature finds that:

(1) The people of the several states comprising the United States of America created the federal government to be their agent for certain enumerated purposes and nothing more.

(2) The Tenth Amendment to the United States Constitution defines the total scope of federal power as including only those powers specifically delegated by the Constitution to the federal government. Those powers not explicitly delegated by the Constitution to the federal government are reserved to the states or to the people themselves.

(3) Each power delegated to the federal government by the United States Constitution encompasses only that power as

as it was understood at the time it was delegated, subject only to an expansion or limitation of that power by a subsequent amendment to the constitution.

(4) The United States Constitution authorizes the United States Congress to exercise only those powers enumerated in Section 8, Article I, of the constitution, as well as certain other powers delegated to Congress by subsequent amendments to the constitution.

(5) The power delegated to the United States Congress to regulate commerce among the several states under Section 8, Article I, of the United States Constitution was not intended by its drafters or understood by those who ratified it as an authorization for the federal government to assume vast powers not directly related to interstate commerce, many of which infringe on the sovereignty of the states and the liberties of the people. Under color of the Commerce Clause, the legislative, executive, and judicial branches of the federal government have adopted and implemented countless measures not authorized by the language or original intent of the clause, many of which usurp the duties and responsibilities reserved to the states by the Tenth Amendment.

(6) The power delegated to the United States Congress to make all necessary and proper laws under Section 8, Article I, of the United States Constitution was not intended by its drafters or understood by those who ratified it to be a delegation of unlimited power to the federal government to do anything it considers necessary and proper. Instead, the Necessary and Proper Clause was intended and understood to authorize Congress to only enact laws actually necessary and proper to execute a power specifically vested in the federal government by the constitution, without which the vested power would be impossible to exercise.

it was understood at the time it was delegated, subject only to an expansion or limitation of that power by a subsequent amendment to the Constitution.

(4) The United States Constitution authorizes the United States Congress to exercise only those powers enumerated in Section 8, Article I, of the Constitution, as well as certain other powers delegated to Congress by subsequent amendments to the Constitution. Article VI of the Constitution makes supreme the Constitution and federal laws enacted pursuant to the Constitution, further requiring that public officials at all levels and in all branches of government support the Constitution.

(5) Paragraph 3, Section 8, Article I, of the United States Constitution delegates to the United States Congress only the specific power to regulate commerce with "foreign nations, and among the several states, and with Indian tribes." This provision was never intended to authorize the federal government to assume any power beyond the regulation of transactions in those three specific categories. Through vastly distorted interpretations of the meaning of the Commerce Clause not authorized by the Constitution or an amendment to the Constitution, the legislative, executive, and judicial branches of the federal government have adopted and implemented countless measures not authorized by the language or original intent of the clause, many of which usurp the duties and responsibilities reserved to the states by the Tenth Amendment.

(7) The final paragraph of Section 8, Article I, of the United States Constitution delegates to the United States Congress the limited power to make laws "necessary and proper" to carry into execution the powers delegated by the Constitution to the United States government. Using this clause to expand federal power beyond specifically enumerated powers granted by the Constitution violates the plain language and original intent of that clause.

(7) The power delegated to the United States Congress to provide for the general welfare of the United States under Section 8, Article I, of the United States Constitution was not intended by its drafters or understood by those who ratified it to authorize Congress to enact any legislation that it considers good or desirable. Instead, the General Welfare Clause was intended and understood to ensure that Congress, when exercising an enumerated power, does so in a manner that serves all citizens well and equally.

(8) In addition to the limitations imposed on the power of the federal government by the United States Constitution as originally ratified, the powers delegated to the federal government were further restricted at the insistence of the people through the ratification of the Bill of Rights. As such, this state specifically rejects any federal claim that any provision of the Bill of Rights authorizes new or expanded authority that may be exercised by the federal government.

(9) No authority has ever been delegated to the federal government to preempt state legislation, interfere with internal state affairs reserved to the states, regulate state courts in matters of state substantive law or procedure, or otherwise act in a manner that interferes with the balance of powers between the states and the federal government established by the United States Constitution.

(10) The constitutional limitation on the scope of federal power and the reservation of other powers to the states or to the people are matters of contract between this state and its people, and the United States, as of the date this state was admitted to the United States of America.

(11) The federal government has acted in a manner inconsistent with the language, intent, and spirit of the United States Constitution in direct violation of the constitution and the contract between this state and its people, and the United States. This state rejects the unauthorized and excessive abuse of power by the federal

(6) Paragraph 1, Section 8, Article I, of the United States Constitution delegates to the United States Congress the power to pay the debts and provide for the common defense and general welfare of the United States. The General Welfare Clause was intended and understood to ensure that Congress, when exercising an enumerated power, does so in a manner that serves all states generally, and no state or person singularly.

No equivalent provision.

No equivalent provision.

(8) The constitutional limitation on the scope of federal power and the reservation of other powers to the states or to the people are matters of contract between this state and its people, and the United States, as of the date this state was admitted to the United States of America.

(9) The federal government has acted in a manner inconsistent with the language, intent, and spirit of the United States Constitution in direct violation of the Constitution and the contract between this state and its people, and the United States. This state rejects the unauthorized and excessive abuse of power by the federal

government that infringes on the rights of this state and its people and that unconstitutionally undermines, diminishes, and disregards the balance of powers between the states and the federal government established by the constitution.

(c) In accordance with the United States Constitution, the federal government is denied by this state the power to take any legislative, executive, or judicial action that violates the constitution, specifically including those actions that unconstitutionally undermine, diminish, or disregard the balance of powers between the states and the federal government established by the constitution.

(d) This Act serves as notice from this state to the federal government to cease and desist any and all unconstitutional activities that are outside the scope of the power delegated to it by the United States Constitution, including those activities that unconstitutionally undermine, diminish, or disregard the balance of powers between the states and the federal government established by the constitution.

No equivalent provision.

(e) This state and its people retain their sovereign power to regulate the affairs of this state, subject only to the limitations prescribed by the United States Constitution.

SECTION 2. Subtitle Z, Title 3, Government Code, is amended by adding Chapter 393 to read as follows:

CHAPTER 393. NULLIFICATION OF CERTAIN UNCONSTITUTIONAL FEDERAL LAWS, RULES, EXECUTIVE ORDERS, AND OTHER ACTIONS

government that infringes on the rights of this state and its people and that unconstitutionally undermines, diminishes, and disregards the balance of powers between the states and the federal government established by the Constitution.

(c) In accordance with the United States Constitution, the federal government is denied by this state the power to take any legislative, executive, or judicial action that violates the Constitution, specifically including those actions that unconstitutionally undermine, diminish, or disregard the balance of powers between the states and the federal government established by the Constitution.

(d) This Act serves as notice from this state to the federal government to cease and desist any and all unconstitutional activities that are outside the scope of the power delegated to it by the United States Constitution, including those activities that unconstitutionally undermine, diminish, or disregard the balance of powers between the states and the federal government established by the Constitution.

(e) This Act calls on all state and local officials, especially members of law enforcement, prosecutors, members of local governing bodies, the attorney general, and the governor to honor their oath to preserve, protect, and defend the United States Constitution, based on the original intent of that document unless modified by subsequent constitutional amendment, and as such to stop unconstitutional federal actions.

(f) This state and its people retain their sovereign power to regulate the affairs of this state, subject only to the limitations prescribed by the United States Constitution.

SECTION 2. Subtitle Z, Title 3, Government Code, is amended by adding Chapter 393 to read as follows:

CHAPTER 393. ENFORCEMENT OF THE CONSTITUTION

Sec. 393.001. DEFINITIONS. In this chapter:

(1) "Committee" means the joint legislative committee on nullification.

(2) "Federal action" includes:

(A) a federal law;

(B) a federal rule, policy, or standard; and

(C) an executive order of the president of the United States.

(3) "Unconstitutional federal action" means a federal action enacted, adopted, or implemented without authority specifically delegated to the federal government by the people through the United States Constitution.

Sec. 393.002. JOINT LEGISLATIVE COMMITTEE ON NULLIFICATION.

(a) The joint legislative committee on nullification is established as a permanent joint committee of the legislature.

(b) The committee consists of the following 14 members:

(1) the speaker of the house of representatives;

(2) the lieutenant governor;

(3) six members of the house of representatives appointed by the speaker of the house; and

(4) six members of the senate appointed by the lieutenant governor.

(c) Not more than four house members of the committee, including the speaker of the house, and four senate members of the committee, including the lieutenant governor, may be members of the same political party.

(d) Members of the committee serve two-year terms beginning with the convening of each regular legislative session.

(e) If a vacancy occurs on the committee, the appropriate appointing officer shall appoint a member of the house or senate, as appropriate, to serve for the remainder of the unexpired term.

(f) The speaker of the house and the lieutenant governor are joint chairs of the committee.

Sec. 393.001. DEFINITIONS. In this chapter:

(1) "Committee" means the Joint Legislative Committee on Constitutional Powers and Enforcement.

(2) "Federal action" includes:

(A) a federal law;

(B) a federal agency rule, policy, or standard;

(C) an executive order of the president of the United States;

(D) an order of a federal court; and

(E) the making or enforcing of a treaty.

(3) "Unconstitutional federal action" means a federal action enacted, adopted, or implemented without authority specifically delegated to the federal government by the people and the states through the United States Constitution.

Sec. 393.002. JOINT LEGISLATIVE COMMITTEE ON CONSTITUTIONAL POWERS AND ENFORCEMENT.

(a) The Joint Legislative Committee on Constitutional Powers and Enforcement is established as a permanent joint committee of the legislature.

(b) The committee consists of the following 14 members:

(1) seven members of the house of representatives appointed by the speaker of the house; and

(2) seven members of the senate appointed by the lieutenant governor.

(c) Not more than four house members of the committee and four senate members of the committee may be members of the same political party.

(d) Members of the committee serve two-year terms beginning with the convening of each regular legislative session.

(e) If a vacancy occurs on the committee, the appropriate appointing officer shall appoint a member of the house or senate, as appropriate, to serve for the remainder of the unexpired term.

(f) The speaker of the house and the lieutenant governor shall each designate one member of the committee as a joint chair of the committee.

- (g) The committee shall meet at the call of either joint chair.
(h) A majority of the members of the committee constitute a quorum.

Sec. 393.003. COMMITTEE REVIEW OF FEDERAL ACTION. (a) The committee may review any federal action to determine whether the action is an unconstitutional federal action.

(b) Not later than the 180th day after the date the committee holds its first public hearing to review a specific federal action, the committee shall vote to determine whether the action is an unconstitutional federal action.

(c) The committee may determine that a federal action is an unconstitutional federal action only by majority vote of the total membership of the committee.

(d) A federal action determined by the committee to be an unconstitutional federal action has no legal effect in this state unless and until the legislature refuses or fails to nullify the action under Section 393.004.

No equivalent provision.

- (g) The committee shall meet at the call of either joint chair.
(h) A majority of the members of the committee constitute a quorum.

Sec. 393.003. COMMITTEE REVIEW OF FEDERAL ACTION. (a) The committee may review any federal action to determine whether the action is an unconstitutional federal action.

(b) Not later than the 180th day after the date the committee holds its first public hearing to review a specific federal action, the committee shall vote to determine whether the action is an unconstitutional federal action.

(c) The committee may determine that a federal action is an unconstitutional federal action by majority vote.

(d) The committee shall report to the governor and the attorney general each federal action that the committee determines to be an unconstitutional federal action. The committee may include in the report one or more effective and constitutional ways to prevent the application of the federal action in this state.

(e) Not later than December 1 of each even-numbered year, the committee shall submit a report to the speaker of the house of representatives and the lieutenant governor that lists each federal action determined by the committee to be an unconstitutional federal action since the committee's previous report. The committee shall include in the report one or more recommendations for effective and constitutional legislative responses to the federal action.

Sec. 393.004. ATTORNEY GENERAL ACTION. The attorney general may represent this state or a political subdivision of this state in an action regarding the refusal or failure of the state or the political subdivision to participate in the implementation or enforcement of an unconstitutional federal action.

Sec. 393.004. LEGISLATIVE VOTE FOLLOWING COMMITTEE DETERMINATION.

(a) If the committee determines that a federal action is an unconstitutional federal action, each house of the legislature shall, during the next regular legislative session, vote on whether to nullify the action. An unconstitutional federal action is nullified if a majority of the members of each house of the legislature vote for nullification.

(b) The legislature may not vote to nullify a federal action unless the committee has determined that the action is an unconstitutional federal action.

(c) A nullified unconstitutional federal action has no legal effect in this state and may not be recognized by this state or a political subdivision of this state as having legal effect.

(d) This state shall prevent the implementation and enforcement of a nullified unconstitutional federal action within the boundaries of this state.

No equivalent provision.

SECTION 3. (a) Not later than the 30th day following the effective date of this Act:

(1) the speaker of the house of representatives and the lieutenant governor shall appoint the initial members of the Joint Legislative Committee on Nullification established under Section 393.002, Government Code, as added by this Act; and

(2) the secretary of state shall forward official copies of this Act to the president of the United States, to the speaker of the House of Representatives and the president of the Senate of the Congress of the United States, and to all members of the Texas delegation to Congress with the request that this Act be officially entered in the Congressional Record.

(b) Not later than the 45th day following the effective date of this Act, the speaker of the house of representatives and the lieutenant governor shall, as the joint chairs of the Joint Legislative Committee on Nullification established under Section 393.002, Government Code, as added by this Act, forward official copies of this Act to the presiding officers of the legislatures of the several states.

SECTION 3. (a) Not later than the 30th day following the effective date of this Act:

(1) the speaker of the house of representatives and the lieutenant governor shall appoint the initial members of the Joint Legislative Committee on Constitutional Powers and Enforcement established under Section 393.002, Government Code, as added by this Act; and

(2) the secretary of state shall forward official copies of this Act to the president of the United States, to the speaker of the House of Representatives and the president of the Senate of the Congress of the United States, and to all members of the Texas delegation to Congress with the request that this Act be officially entered in the Congressional Record.

(b) Not later than the 45th day following the effective date of this Act, the speaker of the house of representatives and the lieutenant governor shall forward official copies of this Act to the presiding officers of the legislatures of the several states.

SECTION 4. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

SECTION 4. Same as introduced version.