SUBJECT: The Texas Liberty Preservation Act

COMMITTEE: Federalism and Fiscal Responsibility, Select — favorable, without amendment

VOTE: 3 ayes — Creighton, Burkett, Scott Turner

1 nay — Walle

1 absent — Lucio

WITNESSES: For — Dana Ambs; Glen Bartholomew; Steve Baysinger, Tenth Amendment Center; Jeremy Blosser; Jeffrey Gillum; Tom Glass, Libertarian Party of Texas; Amy Hedtke, North Texas Liberty Group; Chris Howe; Richard Lowe; Floyd Martin; Aubrey Mason; Clint Stutts; Heidi Thiess, City of League City (*Registered, but did not testify*: Bob Conlon, NETTP; Brent Connett, Texas Conservative Coalition; James De Garavilla; Heather Fazio, Texans for Accountable Government; Jennifer Hall; Barbara Harless, The Central Texas Friends of Liberty; Jay Jenson, NETTP; Paul Landers, Texas Motorcycle Rights Association; George Maguire; Rachel Maguire; Brandon Moore; Terri Williams, Texas Motorcycle Rights Association)

Against — Jon Roland

DIGEST: HB 149 would assert that secs. 1021 and 1022 of the National Defense Authorization Act (NDAA) for fiscal year 2012 violate portions of the federal law, the U.S. Constitution, and the Texas Constitution, and would be considered invalid and illegal in Texas.

Under HB 149, Texas' policy would be to refuse to implement or participate in the enforcement of secs. 1021 and 1022 of the NDAA. Any act to enforce those regulations would be illegal.

An official, agent, or employee of the United States or for a corporation providing services to the United States would commit a crime if they attempted to enforce a statute, regulation, or law of the United States that violated the bill's provisions. The penalty for violating this law would be a class A misdemeanor (up to one year in jail and/or a maximum fine of

$10,000).

A public officer or employee of Texas that attempted to enforce any U.S. law or regulation that violated the provisions of the bill would commit a class B misdemeanor (up to 180 days in jail and/or a maximum fine of $5,000).

The Texas Department of Public Safety (DPS) would have to report to the governor and the legislature any attempt by the federal government to implement secs. 1021 or 1022 of the NDAA through DPS or another state agency.

SUPPORTERS SAY:

Since the U.S. president, as part of the Authorization to Use Military Force (AUMF), authorized the detention of "covered persons," including citizens, without charge in 2001, the AUMF has been exponentially expanded. The National Defense Authorization Act, recently passed by the U.S. Congress, in secs 1021 and 1022 allows the indefinite incarceration of individuals, including American citizens, without trial, violating numerous provisions in the U.S. Constitution and other legal precedents.

Sec. 1021 (a) explicitly authorizes the president to detain indefinitely persons defined in (b)(2) as "al Qaeda, the Taliban, or associated forces that are engaged in hostilities against the United States or its coalition partners" for an indefinite period, which is defined in (c)(1) as detention "under the law of war until the end of hostilities. ..." The terms "associated forces" and "coalition partners" are vague and allow considerable latitude for interpretation. The language in sec. 1022 (b)(1) states that "the requirement to detain a person in military custody does not extend to citizens of the United States." Here the provision does not require the military detention of U.S. citizens, but it does not forbid such detentions, either. These sections pose a threat to the liberty of Texans and set a dangerous precedent.

Article VI of the U.S. Constitution provides that the laws of the U.S. federal government are the "supreme law of the land," so long as those laws are in accordance with the U.S. Constitution. Secs. 1021 and 1022 have the potential to violate too many constitutional guarantees to be in accordance with the Constitution.

The NDAA is embedded with defense spending, making it more difficult to oppose at the federal legislative level, and those powers could have devastating effects on our freedom, regardless of the current

administration's intent. This bill would be consistent with 19 other states that have already taken similar action to preserve their liberty. HB 149 would send the message to the federal government that, if these defilements of our freedom cannot be halted at the federal level, we Texans should stop the buck here.

OPPONENTS SAY:

This bill simply would be political symbolism. HB 149 would be unconstitutional, ineffectual, and violate the elementary legal concept of federal law supremacy. The attempt to nullify federal law with state law ultimately would be invalidated and therefore not carry any authority. Legislators should find constructive ways to protect their constituents and the state's citizens if they see potential harm. An unconstitutional bill cannot preserve Texans' constitutional rights.

The potential actions that HB 149 would seek to prevent are already illegal in Texas; therefore, the bill would not give any new authority to prevent the abuse of Texans' liberty.