

BILL ANALYSIS

C.S.H.B. 1379

By: Toth

Federalism & Fiscal Responsibility, Select
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties report that the receipt of federal funds is often contingent on conforming state laws to the federal laws, rules, and regulations that administer the associated federal programs. These parties further note that nearly half of the biennial budget is comprised of federal funds and, as federal programs continue to expand alongside increasing federal debt, there is concern about the status of federal funding and whether Texas ultimately has the flexibility in its budget to autonomously meet the state's needs without jeopardizing the state economy.

Interested parties contend that allowing the Texas attorney general to investigate coercive conditions associated with federally funded programs could assist the state in maintaining its freedom to accept federal programs without coercion or strings attached. Such parties propose that if coercive conditions are found, Texas should retain the right to request a refund of all state funds paid into the federal program so that a locally funded program may better fulfill the needs of Texas citizens. C.S.H.B. 1379 seeks to implement these recommendations by establishing a method of investigating which federal funding programs have coercive conditions attached to them and, under certain circumstances, by providing for state remedies relating to those coercive federal programs.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Office of State-Federal Relations in SECTION 4 of this bill.

ANALYSIS

C.S.H.B. 1379 amends the Government Code to require the attorney general and the Legislative Budget Board, not later than December 1 of each even-numbered year, to jointly identify each coercive federal funding program from which Texas received more than \$100 million during a state fiscal year in the preceding state fiscal biennium and to prepare and submit a report to the legislature listing those coercive federal funding programs and the coercive conditions associated with each program. The bill authorizes the attorney general, to the extent authorized by law, to bring an action to enjoin enforcement of a coercive condition and to recover reasonable expenses incurred in obtaining such relief and to sue for appropriate relief if the federal government rejects a request by the state for a waiver of one or more provisions of a coercive federal funding program or attempts to condition the continued receipt of federal money under an existing federal funding program on the state's expansion of such a program that the legislature has determined is not in this state's best interest to expand. The bill requires a state agency or state officer, as applicable, during the pendency of such an action, to apply for and administer all programs, including a coercive federal funding program, that result in the receipt of federal money by the state in a manner that complies with federal law. The bill requires the governor to consult with the governors of other states to develop a coordinated approach to issues relating to coercive federal funding programs.

C.S.H.B. 1379 requires the Office of State-Federal Relations, when informing the governor and

the legislature of federal programs that may be carried out in the state or that affect state programs, to also identify programs that may be defined as coercive federal funding programs. The bill requires the office, in its annual report to the governor and all members of the legislature, to list all conditions attached to federal funding programs in a format that clearly identifies each condition that may be a coercive condition and to include the office's strategy for ensuring receipt of an equitable share of federal funds from all funding programs while resisting compliance with coercive conditions. The bill requires the office to coordinate with the Legislative Budget Board (LBB) regarding the effect of coercive conditions on the state's ability to remain responsive to the preferences of its residents.

C.S.H.B. 1379 vests in the office primary responsibility for monitoring, coordinating, and reporting on the state's efforts to resist compliance with coercive conditions placed on federal formula funds. The bill requires the office to serve as the state's clearinghouse for information on coercive conditions, if any, placed on federal formula funds and to resist compliance with coercive conditions placed on federal formula funds while analyzing proposed and pending federal and state legislation to determine any potentially significant negative effects on the state's ability to receive an equitable share of federal formula funds. The bill requires the office to make recommendations for coordination between state agencies and agencies of other states, in addition to between multiple state agencies and between state agencies and local governmental entities, and specifies that such coordination includes coordinated resistance against compliance with coercive conditions placed on federal formula funds.

C.S.H.B. 1379 requires the office to include in its annual comprehensive report to the legislature an assessment of the effectiveness of the state's efforts to resist compliance with coercive conditions placed on federal formula funds, and specifies that the report must include an analysis of the effect that the conditions imposed by the 10 coercive federal funding programs that have the greatest effect on the state budget have on the ability of the state and its political subdivisions to implement policies and programs to deliver necessary and beneficial services to state residents. The bill also requires the report to include recommendations developed in consultation with the LBB, the Governor's Office of Budget, Planning, and Policy and the comptroller of public accounts for any state legislative or administrative action necessary to resist compliance with coercive conditions placed on federal formula funds.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1379 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Subtitle C, Title 10, Government Code, is amended by adding Chapter 2116 to read as follows:

CHAPTER 2116. CONTROL OF CONDITIONAL FEDERAL FUNDS

Section 2116.001. DEFINITIONS. In this chapter:

(2) "Coercive conditions" are conditions in coercive federal funding programs that

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Subtitle C, Title 10, Government Code, is amended by adding Chapter 2116 to read as follows:

CHAPTER 2116. COERCIVE CONDITIONS ON RECEIPT OF FEDERAL MONEY

Sec. 2116.001. DEFINITIONS. In this chapter:

(1) "Coercive condition" in relation to federal funding means a condition that is

pertain to matters other than the manner in which the federal funds are to be spent, such as conditions that pertain to how the state must spend its own revenue, or that pertain to collateral state policies.

(1) "Coercive federal funding program" means a program under which the federal government transfers funds to state agencies, or to persons or local entities through state agencies, to which the federal government has attached coercive conditions, provided that federal programs that offer to return to the state a pro-rata share of the state residents' tax contributions to the federal program if the state refuses to comply with the conditions attached to such program, is not a coercive federal funding program.

Section 2116.002. COORDINATED MULTI-STATE REJECTION OF COERCIVE FEDERAL FUNDING PROGRAMS. (a) The attorney general shall annually prepare a comprehensive report to the legislature designating all the coercive federal funding programs that deliver more than \$100 million yearly to the state,

and detailing the coercive conditions therein.

(b) Where feasible, the attorney general shall sue to enjoin enforcement of coercive conditions in coercive federal funding programs. In any case where the federal government rejects a state plan or application for funds under a coercive federal funding program, because of the state's refusal to comply with any coercive condition, the attorney shall sue for relief.

placed on the receipt by this state or a political subdivision of this state of federal money to be provided under a federal program that requires:

(A) the amendment, enactment, or adoption of a state or local law, regulation, or order the subject of which is unrelated to how the money is to be spent; or

(B) a particular use of state or local revenue.

(2) "Coercive federal funding program" means a program that involves a transfer of federal money to this state or a political subdivision of this state by the federal government the receipt of which is subject to a coercive condition. The term does not include a federal program that returns to this state a pro-rata share of this state's residents' total tax contributions to the program if this state refuses to comply with the conditions attached to the program.

Sec. 2116.002. IDENTIFICATION OF COERCIVE FEDERAL FUNDING PROGRAMS; REPORT. Not later than December 1 of each even-numbered year, the attorney general and the Legislative Budget Board jointly shall:

(1) identify each coercive federal funding program from which this state received more than \$100 million during a state fiscal year in the preceding state fiscal biennium; and

(2) prepare and submit a report to the legislature that lists the coercive federal funding programs described by Subdivision (1) and the coercive conditions associated with each of those programs.

Sec. 2116.003. SUIT TO ENJOIN ENFORCEMENT OF OR TO CONTEST COERCIVE CONDITION. (a) The attorney general may, to the extent authorized by law:

(1) bring an action to enjoin the enforcement of a coercive condition and recover reasonable expenses incurred in obtaining injunctive relief under this section; and

(2) sue for appropriate relief if the federal government:

(A) rejects a request by this state for a waiver of one or more provisions of a coercive federal funding program identified

under Section 2116.002; or

(B) attempts to condition the continued receipt of federal money under an existing federal funding program on this state's expansion of that funding program, if the legislature has determined that it is in this state's best interest not to expand the funding program.

(See Subsec. (c) below.)

(c) The governor shall work with governors of other states to develop a coordinated approach with respect to all such coercive federal funding programs.

(c) Agencies and officers of the state shall implement all coercive federal funding programs without regard to any conditions designated as coercive conditions under this section. Applications for federal approval of state programs shall make no reference to any coercive condition. This subsection shall go into effect when a substantially similar requirement has been adopted in 20 other states.

SECTION 2. Section 751.001, Subchapter A, Chapter 751, Title 7, Government Code, is amended by adding subsection 5 to read as follows:

(5) "Coercive federal funding program" and "coercive conditions" have the meanings ascribed to them in Section 2116.001.

(b) During the pendency of an action brought by the attorney general as authorized under this section, a state agency or state officer, as applicable, shall apply for and administer all programs that result in the receipt of federal money by this state, including a coercive federal funding program, in a manner that complies with federal law.

Sec. 2116.004. MULTISTATE RESPONSE TO COERCIVE FEDERAL FUNDING PROGRAMS.

The governor shall consult with the governors of other states to develop a coordinated approach to issues relating to coercive federal funding programs.

(See Subsec. (b) above.)

SECTION 2. Section 751.001, Government Code, is amended to read as follows:

Sec. 751.001. DEFINITIONS. In this chapter:

(1) "Board" means the Office of State-Federal Relations Advisory Policy Board.

(2) "Coercive condition" has the meaning assigned by Section 2116.001.

(3) "Coercive federal funding program" has the meaning assigned by Section 2116.001.

(4) [~~(2)~~] "Director" means the director of the Office of State-Federal Relations.

(5) [~~(3)~~] "Office" means the Office of State-Federal Relations.

(6) [~~(4)~~] "State agency" means a state board, commission, department, institution, or officer having statewide jurisdiction, including a state college or university.

SECTION 3. Section 751.005, Subchapter A, Chapter 751, Title 7, Government Code, is amended to read as follows:

Sec. 751.005. GENERAL POWERS AND DUTIES OF OFFICE. (a) The office shall exercise the powers and carry out the duties prescribed by this section in order to act as a liaison from the state to the federal government.

(b) The office shall:

(1) help coordinate state and federal programs dealing with the same subject;
(2) inform the governor and the legislature of federal programs that may be carried out in the state or that affect state programs, with particular attention to programs that may be coercive federal funding programs;

(3) provide federal agencies and the United States Congress with information about state policy and state conditions on matters that concern the federal government;

(4) provide the legislature with information useful in measuring the effect of federal actions on the state and local programs;

(5) prepare and supply to the governor and all members of the legislature an annual report that:

(A) describes the office's operations;

(B) contains the office's priorities and strategies for the following year;

(C) details projects and legislation pursued by the office;

(D) discusses issues in the following congressional session of interest to this state; ~~and~~

(E) contains an analysis of federal funds availability and formulae;

(F) sets forth a catalogue of all the conditions attached to federal funding programs, in a format that clearly designates coercive conditions as such; and

(G) contains the office's strategy for ensuring that the state regains freedom of choice in fact with respect to coercive federal funding programs, by resisting compliance with coercive conditions while ensuring receipt of an equitable share of federal funds under such programs;

(6) notify the governor, the lieutenant governor, the speaker of the house of representatives, and the legislative standing

SECTION 3. Section 751.005(b), Government Code, is amended to read as follows:

(b) The office shall:

(1) help coordinate state and federal programs dealing with the same subject;

(2) inform the governor and the legislature of federal programs that may be carried out in the state or that affect state programs and identify which of those programs may be defined as a coercive federal funding program;

(3) provide federal agencies and the United States Congress with information about state policy and state conditions on matters that concern the federal government;

(4) provide the legislature with information useful in measuring the effect of federal actions on the state and local programs;

(5) prepare and supply to the governor and all members of the legislature an annual report that:

(A) describes the office's operations;

(B) contains the office's priorities and strategies for the following year;

(C) details projects and legislation pursued by the office;

(D) discusses issues in the following congressional session of interest to this state; ~~and~~

(E) contains an analysis of federal funds availability and formulae;

(F) lists all conditions attached to federal funding programs, in a format that clearly identifies each condition that may be a coercive condition; and

(G) contains the office's strategy for ensuring that this state receives an equitable share of federal money from all federal funding programs while resisting compliance with coercive conditions;

(6) notify the governor, the lieutenant governor, the speaker of the house of representatives, and the legislative standing

committees in each house with primary jurisdiction over intergovernmental affairs of federal activities relevant to the state and inform the Texas congressional delegation of state activities;

(7) conduct frequent conference calls with the lieutenant governor and the speaker of the house of representatives or their designees regarding state-federal relations and programs;

(8) respond to requests for information from the legislature, the United States Congress, and federal agencies;

(9) coordinate with the Legislative Budget Board regarding the effects of federal funding on the state budget and the impact of coercive conditions on the state's ability to remain responsive to the preferences of its residents; and

(10) report to, and on request send appropriate representatives to appear before, the legislative standing committees in each house with primary jurisdiction over intergovernmental affairs.

(c) The office may maintain office space at locations inside and outside the state as chosen by the office.

(d) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1083, Sec. 25(63), eff. June 17, 2011.

(e) The report required under Subsection (b)(5) must include an evaluation of the performance of the office based on performance measures that are developed by the board.

SECTION 4. Section 751.022, Subchapter A, Chapter 751, Title 7, Government Code, is amended to read as follows:

Sec. 751.022. POWERS AND DUTIES.

(a) The office has primary responsibility for monitoring, coordinating, and reporting on the state's efforts to restore freedom of choice with respect to coercive federal funding programs and ensure receipt of an equitable share of federal formula funds.

(b) The office shall:

(1) serve as the state's clearinghouse for information on federal formula funds and coercive conditions attached thereto;

(2) prepare reports on federal funds and

committees in each house with primary jurisdiction over intergovernmental affairs of federal activities relevant to the state and inform the Texas congressional delegation of state activities;

(7) conduct frequent conference calls with the lieutenant governor and the speaker of the house of representatives or their designees regarding state-federal relations and programs;

(8) respond to requests for information from the legislature, the United States Congress, and federal agencies;

(9) coordinate with the Legislative Budget Board regarding the effects of federal funding on the state budget and the effect of coercive conditions on this state's ability to remain responsive to the preferences of its residents; and

(10) report to, and on request send appropriate representatives to appear before, the legislative standing committees in each house with primary jurisdiction over intergovernmental affairs.

SECTION 4. Section 751.022, Government Code, is amended to read as follows:

Sec. 751.022. POWERS AND DUTIES.

(a) The office has primary responsibility for monitoring, coordinating, and reporting on the state's efforts to:

(1) ensure receipt of an equitable share of federal formula funds; and

(2) resist compliance with coercive conditions placed on federal formula funds.

(b) The office shall:

(1) serve as this [the] state's clearinghouse for information on federal formula funds and on the coercive conditions, if any, placed on those funds;

(2) prepare reports on federal funds and

earned federal formula funds;

(3) analyze proposed and pending federal and state legislation to determine whether the legislation would have a significant negative effect on the state's ability to maintain freedom of choice with respect to coercive federal funding programs and [to] receive an equitable share of federal formula funds;

(4) make recommendations for coordination between state agencies and local governmental entities, between state agencies and agencies of other states, and between state agencies, particularly with respect to formulating strategies for escaping restrictions imposed by coercive federal funding programs; and

(5) adopt rules under the rule-making procedures of the administrative procedure law, Chapter 2001, Government Code, as necessary to carry out the responsibilities assigned by this subchapter.

(c) The office shall annually prepare a comprehensive report to the legislature on the effectiveness of the state's efforts to escape restrictions imposed by coercive federal funding programs and ensure a receipt of an equitable share of federal formula funds for the preceding federal fiscal year. The report must include:

(1) an executive summary that provides an overview of the major findings and recommendations included in the report;

(2) a comparative analysis of the state's receipt of federal formula funds relative to other states, prepared using the best available sources of data;

(3) an analysis of federal formula funding trends that may have a significant effect on resources available to the state; [and]

(4) recommendations as to what policies and programs the state could implement if it were not subject to the restrictions imposed by the ten largest coercive federal funding programs in the state budget, and were able to receive an equitable share of federal funding under such programs; and

(5) recommendations, developed in consultation with the Legislative Budget Board, the Governor's Office of Budget and Planning, and the comptroller, for any state

earned federal formula funds;

(3) analyze proposed and pending federal and state legislation to determine whether the legislation would have a significant negative effect on the state's ability to receive an equitable share of federal formula funds and to resist compliance with coercive conditions placed on federal formula funds;

(4) make recommendations for coordination, including the coordinated resistance against compliance with coercive conditions placed on federal formula funds, between:

(A) state agencies and local governmental entities;

(B) [and between] state agencies; and

(C) state agencies and the agencies of other states; and

(5) adopt rules under the rule-making procedures of the administrative procedure law, Chapter 2001, Government Code, as necessary to carry out the responsibilities assigned by this subchapter.

(c) The office shall annually prepare a comprehensive report to the legislature on the effectiveness of this [the] state's efforts to ensure a receipt of an equitable share of federal formula funds and to resist compliance with coercive conditions placed on federal formula funds for the preceding federal fiscal year. The report must include:

(1) an executive summary that provides an overview of the major findings and recommendations included in the report;

(2) a comparative analysis of the state's receipt of federal formula funds relative to other states, prepared using the best available sources of data;

(3) an analysis of federal formula funding trends that may have a significant effect on resources available to the state; [and]

(4) an analysis of the effect that the conditions imposed by the 10 coercive federal funding programs that have the greatest effect on the state budget have on the ability of this state and political subdivisions of this state to implement policies and programs to deliver necessary and beneficial services to residents of this state; and

(5) recommendations, developed in consultation with the Legislative Budget Board, the Governor's Office of Budget, [and] Planning, and Policy, and the

legislative or administrative action necessary to escape restrictions imposed by coercive federal funding programs and increase the state's receipt of federal formula funds.

SECTION 5. EFFECTIVE DATE. 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, 2011.

comptroller, for any state legislative or administrative action necessary to increase this [the] state's receipt of federal formula funds and to resist compliance with coercive conditions placed on federal formula funds

SECTION 5. 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, 2013.