

By: Flynn

H.B. No. 98

A BILL TO BE ENTITLED

AN ACT

relating to the Texas Balance of Powers Act.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

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 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.

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

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

23 (7) The power delegated to the United States Congress
24 to provide for the general welfare of the United States under
25 Section 8, Article I, of the United States Constitution was not
26 intended by its drafters or understood by those who ratified it to
27 authorize Congress to enact any legislation that it considers good

1 or desirable. Instead, the General Welfare Clause was intended and
2 understood to ensure that Congress, when exercising an enumerated
3 power, does so in a manner that serves all citizens well and
4 equally.

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

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

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

25 (11) The federal government has acted in a manner
26 inconsistent with the language, intent, and spirit of the United
27 States Constitution in direct violation of the constitution and the

1 contract between this state and its people, and the United States.
2 This state rejects the unauthorized and excessive abuse of power by
3 the federal government that infringes on the rights of this state
4 and its people and that unconstitutionally undermines, diminishes,
5 and disregards the balance of powers between the states and the
6 federal government established by the constitution.

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

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

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

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

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

1 Sec. 393.001. DEFINITIONS. In this chapter:

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

4 (2) "Federal action" includes:

5 (A) a federal law;

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

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

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

13 Sec. 393.002. JOINT LEGISLATIVE COMMITTEE ON
14 NULLIFICATION. (a) The joint legislative committee on
15 nullification is established as a permanent joint committee of the
16 legislature.

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

18 (1) the speaker of the house of representatives;

19 (2) the lieutenant governor;

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

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

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

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

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

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

8 (g) The committee shall meet at the call of either joint
9 chair.

10 (h) A majority of the members of the committee constitute a
11 quorum.

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

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

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

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

26 Sec. 393.004. LEGISLATIVE VOTE FOLLOWING COMMITTEE
27 DETERMINATION. (a) If the committee determines that a federal

1 action is an unconstitutional federal action, each house of the
2 legislature shall, during the next regular legislative session,
3 vote on whether to nullify the action. An unconstitutional federal
4 action is nullified if a majority of the members of each house of
5 the legislature vote for nullification.

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

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

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

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

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

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

27 (b) Not later than the 45th day following the effective date

1 of this Act, the speaker of the house of representatives and the
2 lieutenant governor shall, as the joint chairs of the Joint
3 Legislative Committee on Nullification established under Section
4 393.002, Government Code, as added by this Act, forward official
5 copies of this Act to the presiding officers of the legislatures of
6 the several states.

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