

BILL ANALYSIS

C.S.H.B. 2338

By: Bell

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

BACKGROUND AND PURPOSE

Interested parties contend that Congress at times overreaches the authority afforded to the federal government by the United States Constitution and that Texas should have a process by which to address such overreach. C.S.H.B. 2338 seeks to provide for such a process by establishing the Texas Sovereignty Act.

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. 2338 amends the Government Code to establish the 12-member Joint Legislative Committee on Constitutional Enforcement as a permanent joint committee of the Texas Legislature to review specified federal actions that challenge the state's sovereignty and that of the people for the purpose of determining if the federal action is unconstitutional. The bill sets out provisions relating to the committee's composition, the terms of committee members, the filling of committee vacancies, designation of committee joint chairs, and committee meetings. The bill authorizes the committee to review any applicable federal action to determine whether the action is an unconstitutional federal action, as defined by the bill, and establishes the factors the committee is required to consider when reviewing a federal action. The bill requires the committee, not later than the 180th day after the date the committee holds its first public hearing to review a specific federal action, to vote to determine whether the action is an unconstitutional federal action and authorizes the committee to determine that a federal action is an unconstitutional federal action by majority vote.

C.S.H.B. 2338 requires the committee to report its determination that a federal action is an unconstitutional federal action to the house of representatives and to the senate during the current legislative session if the legislature is convened when the committee makes the determination or the next regular or special legislative session if the legislature is not convened when the committee makes the determination. The bill requires each house of the legislature to vote on whether the federal action is an unconstitutional federal action and, if a majority of the members of each house determine that the federal action is an unconstitutional federal action, requires the determination to be sent to the governor for approval or disapproval as provided by the Texas Constitution regarding the approval or disapproval of bills. The bill establishes that a federal action is declared by the state to be an unconstitutional federal action on the day the governor approves the vote of the legislature making the determination or on the day the determination

would become law if presented to the governor as a bill and not objected to by the governor. The bill requires the secretary of state to forward official copies of the declaration to the president of the United States, the speaker of the U.S. House of Representatives, the president of the U.S. Senate, and to all members of the Texas congressional delegation with the request that the declaration of unconstitutional federal action be entered in the Congressional Record.

C.S.H.B. 2338 establishes that a federal action declared to be an unconstitutional federal action under the bill's provisions regarding such a legislative determination has no legal effect in Texas and prohibits such an action from being recognized by the state or a political subdivision of the state as having legal effect. The bill prohibits the state and a political subdivision of the state from spending public money or resources or incurring public debt to implement or enforce a federal action declared to be an unconstitutional federal action and authorizes a person authorized to enforce state laws to enforce those laws against a person who attempts to implement or enforce a federal action declared to be an unconstitutional federal action. The bill's provisions regarding the enforcement of the United States Constitution expressly do not prohibit a public officer who has taken an oath to defend the United States Constitution from interposing to stop acts of the federal government which, in the officer's best understanding and judgment, violate the United States Constitution. The bill requires Texas officials in federal, state, and local government to honor their oaths to preserve, protect, and defend the United States Constitution and to act to constitutionally defend the state and the people of Texas.

C.S.H.B. 2338 authorizes the attorney general to defend the state to prevent the implementation and enforcement of a federal action declared to be an unconstitutional federal action. The bill authorizes the attorney general to prosecute a person who attempts to implement or enforce a federal action declared to be an unconstitutional federal action and to appear before a grand jury in connection with such an offense. The bill expressly provides that such prosecutorial authority does not affect the authority derived from other law to prosecute the same offenses.

C.S.H.B. 2338 establishes that its provisions regarding the enforcement of the United States Constitution do not limit or alter the authority of the governor, the attorney general, a statewide elected official, a state or federal court, a judge or justice, a state or local appointed or elected official, or the governing body of a political subdivision of the state to issue a verbal or written opinion determining a federal action to be unconstitutional. The bill authorizes such an opinion to be referred to the committee for review.

C.S.H.B. 2338 amends the Civil Practice and Remedies Code to establish that any court in Texas has original jurisdiction of a proceeding seeking a declaratory judgment that a federal action effective in Texas is an unconstitutional federal action. The bill entitles a person to declaratory relief if the court determines that a federal action is an unconstitutional federal action and prohibits the court, in determining whether to grant declaratory relief to the person, from relying solely on the decisions of other courts interpreting the United States Constitution. The bill requires the court to rely on the plain meaning of the text of the United States Constitution and any applicable constitutional doctrine as understood by the framers of the constitution. The bill exempts relief sought under these bill provisions from statutory provisions relating to a court's refusal to render a declaratory judgment.

C.S.H.B. 2338 requires the speaker of the house of representatives and the lieutenant governor to appoint the initial committee members not later than the 30th day following the bill's effective date and 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, the speaker of the U.S. House of Representatives, the president of the U.S. Senate, and to all members of the Texas congressional delegation with the request that the bill be officially entered in the Congressional Record. The bill requires the speaker of the house of representatives and the lieutenant governor to forward official copies of the bill to the presiding officers of the legislatures of the several states not later than the 45th day following the bill's effective date.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2338 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

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. (a) This Act may be cited as the Texas Sovereignty Act.

SECTION 1. Same as introduced version.

(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 powers delegated by the states and the people to the federal government through the United States Constitution.

(2) The Tenth Amendment to the United States Constitution confirms the intent and understanding of the people of the United States that all powers not delegated to the United States by the Constitution, or prohibited by it to the states, are reserved to the states respectively, or to the people.

(3) Each power delegated to the federal government by the United States Constitution is constitutionally limited to that power as it was understood and exercised at the time it was delegated. An amendment to the Constitution as ratified by the states is required to expand or limit a constitutionally delegated power.

(4) The United States Constitution authorizes the United States Congress to exercise only those specific powers enumerated in Section 8, Article I, United States Constitution, and those other powers as may be delegated to Congress through amendments to the Constitution as ratified by the states.

(5) Article VI, United States 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.

(6) The power delegated to the United States Congress to regulate commerce among the several states under Section 8, Article I, United States Constitution, is

limited to federal regulation of actual commerce between the states and among foreign nations. Regulation of intrastate commerce is reserved to the states and to the people of the states. The Commerce Clause of the Constitution constrains the legislative, executive, and judicial branches of the federal government.

(7) The power delegated to the United States Congress to make all necessary and proper federal laws under Section 8, Article I, United States Constitution, allows Congress to enact only those laws necessary and proper to execute the constitutionally delegated powers vested in the federal government, all other powers being reserved to the states and to the people of the states.

(8) The power delegated to the United States Congress to provide for the general welfare of the United States under Section 8, Article I, United States Constitution, in the General Welfare Clause constitutionally constrains Congress when exercising a delegated power to act in a manner that serves the states and the people of the states well and uniformly.

(9) Sections 1 and 2, Article I, Texas Constitution, provide that this state and the people of this state retain the sovereign power to regulate the affairs of Texas, subject only to the United States Constitution.

(c) The federal government does not have the power to take any legislative, executive, or judicial action that violates the United States Constitution.

(d) The contract with the State of Texas has been willfully violated by the federal government and must be constitutionally restored.

(e) This Act calls on all officials in federal, state, and local government, in all branches and at all levels, to honor their oaths to preserve, protect, and defend the United States Constitution and its ratified amendments against any federal action that:

(1) would unconstitutionally undermine, diminish, or disregard the balance of powers between the sovereign states and the federal government established by the United States Constitution and its ratified amendments; or

(2) is outside the scope of the power delegated to the federal government 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 UNITED STATES CONSTITUTION

Sec. 393.001. DEFINITIONS.

Sec. 393.002. JOINT LEGISLATIVE COMMITTEE ON CONSTITUTIONAL ENFORCEMENT.

Sec. 393.003. COMMITTEE REVIEW OF FEDERAL ACTION.

Sec. 393.004. LEGISLATIVE DETERMINATION.

Sec. 393.005. OTHER DETERMINATIONS OF UNCONSTITUTIONAL FEDERAL ACTS.

Sec. 393.006. EFFECT OF DECLARED UNCONSTITUTIONAL FEDERAL ACTION.

Sec. 393.007. AUTHORITY AND DUTY OF ATTORNEY GENERAL. (a) The attorney general shall defend the state and its citizens to prevent the implementation and enforcement of a federal action declared to be an unconstitutional federal action.

(b) The attorney general may prosecute a person who attempts to implement or enforce a federal action declared to be an unconstitutional federal action using Section 39.03, Penal Code, or another provision of law.

(c) The attorney general may appear before a grand jury in connection with an offense the attorney general is authorized to prosecute under Subsection (b).

(d) The authority to prosecute prescribed by this chapter does not affect the authority derived from other law to prosecute the same offenses.

SECTION 3. Chapter 37, Civil Practice and Remedies Code, is amended.

SECTION 4. (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

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Sec. 393.001. DEFINITIONS.

Sec. 393.002. JOINT LEGISLATIVE COMMITTEE ON CONSTITUTIONAL ENFORCEMENT.

Sec. 393.003. COMMITTEE REVIEW OF FEDERAL ACTION.

Sec. 393.004. LEGISLATIVE DETERMINATION.

Sec. 393.005. OTHER DETERMINATIONS OF UNCONSTITUTIONAL FEDERAL ACTS.

Sec. 393.006. EFFECT OF DECLARED UNCONSTITUTIONAL FEDERAL ACTION.

Sec. 393.007. AUTHORITY OF ATTORNEY GENERAL. (a) The attorney general may defend the state to prevent the implementation and enforcement of a federal action declared to be an unconstitutional federal action.

(b) The attorney general may prosecute a person who attempts to implement or enforce a federal action declared to be an unconstitutional federal action using Section 39.03, Penal Code, or another provision of law.

(c) The attorney general may appear before a grand jury in connection with an offense the attorney general is authorized to prosecute under Subsection (b).

(d) The authority to prosecute prescribed by this chapter does not affect the authority derived from other law to prosecute the same offenses.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.

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 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, 2017.

SECTION 5. Same as introduced version.