

By: Flynn

H.B. No. 74

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 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 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

1 Constitution. Article VI of the Constitution makes supreme the
2 Constitution and federal laws enacted pursuant to the Constitution,
3 further requiring that public officials at all levels and in all
4 branches of government support the Constitution.

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

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

26 (7) The final paragraph of Section 8, Article I, of the
27 United States Constitution delegates to the United States Congress

1 the limited power to make laws "necessary and proper" to carry into
2 execution the powers delegated by the Constitution to the United
3 States government. Using this clause to expand federal power beyond
4 specifically enumerated powers granted by the Constitution
5 violates the plain language and original intent of that clause.

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

11 (9) The federal government has acted in a manner
12 inconsistent with the language, intent, and spirit of the United
13 States Constitution in direct violation of the Constitution and the
14 contract between this state and its people, and the United States.
15 This state rejects the unauthorized and excessive abuse of power by
16 the federal government that infringes on the rights of this state
17 and its people and that unconstitutionally undermines, diminishes,
18 and disregards the balance of powers between the states and the
19 federal government established by the Constitution.

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

27 (d) This Act serves as notice from this state to the federal

1 government to cease and desist any and all unconstitutional
2 activities that are outside the scope of the power delegated to it
3 by the United States Constitution, including those activities that
4 unconstitutionally undermine, diminish, or disregard the balance
5 of powers between the states and the federal government established
6 by the Constitution.

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

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

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

19 CHAPTER 393. ENFORCEMENT OF THE CONSTITUTION

20 Sec. 393.001. DEFINITIONS. In this chapter:

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

23 (2) "Federal action" includes:

24 (A) a federal law;

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

26 (C) an executive order of the president of the

27 United States;

1 (D) an order of a federal court; and

2 (E) the making or enforcing of a treaty.

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

7 Sec. 393.002. JOINT LEGISLATIVE COMMITTEE ON
8 CONSTITUTIONAL POWERS AND ENFORCEMENT. (a) The Joint Legislative
9 Committee on Constitutional Powers and Enforcement is established
10 as a permanent joint committee of the legislature.

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

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

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

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

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

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

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

27 (g) The committee shall meet at the call of either joint

1 chair.

2 (h) A majority of the members of the committee constitute a
3 quorum.

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

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

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

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

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

26 Sec. 393.004. ATTORNEY GENERAL ACTION. The attorney
27 general may represent this state or a political subdivision of this

1 state in an action regarding the refusal or failure of the state or
2 the political subdivision to participate in the implementation or
3 enforcement of an unconstitutional federal action.

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

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

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

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

21 SECTION 4. This Act takes effect immediately if it receives
22 a vote of two-thirds of all the members elected to each house, as
23 provided by Section 39, Article III, Texas Constitution. If this
24 Act does not receive the vote necessary for immediate effect, this
25 Act takes effect September 1, 2017.