

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION

May 6, 2017

TO: Honorable Drew Darby, Chair, House Committee on State & Federal Power & Responsibility, Select

FROM: Ursula Parks, Director, Legislative Budget Board

IN RE: HB2338 by Bell (Relating to the Texas Sovereignty Act.), **Committee Report 1st House, Substituted**

No significant fiscal implication to the State is anticipated.

The bill would amend sections of the Government Code and the Civil Practice and Remedies Code to create the joint legislative committee on constitutional enforcement, which would consist of six members of the House and six members of the Senate. The bill would authorize the committee to examine the constitutionality of federal actions, and report to the House of Representatives and the Senate regarding any federal action that might be unconstitutional. The Legislature would then vote on the constitutionality of the action. Any federal action determined to be unconstitutional would have no force or effect in the state, and the bill would authorize the Attorney General (OAG) to represent the state in any action arising from a decision not to recognize or abide by an action determined to be unconstitutional. The OAG would be authorized to prosecute a person for abuse of office or other offenses who attempts to implement or enforce a federal action declared to be unconstitutional. The bill would require a state court to grant declaratory relief from any federal action the court determines is unconstitutional.

According to the OAG, The fiscal impact to the OAG is indeterminate and contingent upon the process established within the bill. If there are no legislative determinations on constitutionality, if the legislative determinations result in federal action to relieve the constitutionality of the federal action, if a court were to finally rule on the constitutionality of a federal action, or if the government officials and employs adhere to the legislative determination on constitutionality, then there will be no cost to the OAG.

If the conditions and process described within the bill are met to require an OAG action, the bill could have a significant impact on the OAG Criminal Prosecutions division if there are numerous legislative determinations on the constitutionality of certain federal actions and if government officials or employees violate the legislative determination. If this law were to take effect, the first opportunity for a legislative determination on the constitutionality of a federal action would likely occur during the 86th Legislative Session with a potential first criminal case resulting from the passage of this bill occurring during FY 2020 or FY 2021. However, the bill would give the OAG discretion on which cases to defend.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 302 Office of the Attorney General, 307 Secretary of State

LBB Staff: UP, CL, SD