

## **BILL ANALYSIS**

C.S.H.B. 796  
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State Affairs  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The bill author has informed the committee that the federal government too often overreaches the authority afforded it by the U.S. Constitution. C.S.H.B. 796 seeks to establish a standing committee of the legislature to study the constitutionality of federal actions and to provide for state and local resistance against unconstitutional federal actions.

### **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. 796 sets out legislative findings relating to the authority of the legislature or a state court to declare certain federal actions to be unconstitutional federal actions, including the effect and enforcement of such a declaration. Accordingly, the bill amends the Government Code to provide for a joint legislative committee on constitutional enforcement and amends the Civil Practice and Remedies Code, with respect to the Uniform Declaratory Judgments Act, to provide for declarations relating to unconstitutional acts of the federal government.

#### **Legislative Findings**

C.S.H.B. 796, which provides that it may be cited as the Texas Sovereignty Act, sets out the following as legislative findings:

- the formation of the United States of America by the people of the several states and the creation of the federal government to be the agent of the people for certain enumerated powers;
- the confirmation through the Tenth Amendment of the U.S. Constitution of 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;
- the constitutional limitation of each power delegated to the federal government by the U.S. Constitution and the requirement for an amendment to the U.S. Constitution as ratified by the states to expand or limit a constitutionally delegated power;
- the authorization by the U.S. Constitution of the U.S. Congress to exercise only the specific powers enumerated in the U.S. Constitution, and other powers as may be delegated to Congress through amendments to the Constitution as ratified by the states;

- the supremacy, through Article VI of the U.S. Constitution, of the Constitution and federal laws enacted pursuant to the U.S. Constitution, further requiring that public officials at all levels and in all branches of government support the U.S. Constitution;
- the limitation of the power delegated to the U.S. Congress to regulate commerce among the several states under the U.S. Constitution to federal regulation of actual commerce between the states and among foreign nations, the reservation of regulation of intrastate commerce to the states and the people of the states, and the constraints on the legislative, executive, and judicial branches of the federal government by the Commerce Clause of the U.S. Constitution;
- the power delegated to the U.S. Congress to make all necessary and proper federal laws under the U.S. Constitution allowing 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;
- the power delegated to the U.S. Congress to provide for the general welfare of the United States under the U.S. Constitution in the General Welfare Clause constitutionally constraining Congress when exercising a delegated power to act in a manner that serves the states and the people of the states well and uniformly; and
- provisions of the Texas Constitution providing that the state and the people of the state retain the sovereign power to regulate the affairs of Texas, subject only to the U.S. Constitution.

The bill provides the following:

- the federal government does not have the power to take any legislative, executive, or judicial action that violates the U.S. Constitution;
- the contract with the state has been wilfully violated by the federal government and must be constitutionally restored; and
- the Texas Sovereignty 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 U.S. Constitution and its ratified amendments against any federal action that, as follows:
  - would unconstitutionally undermine, diminish, or disregard the balance of powers between the sovereign states and the federal government established by the U.S. Constitution and its ratified amendments; or
  - is outside the scope of the power delegated to the federal government by the U.S. Constitution.

## **Establishment of Joint Legislative Committee on Constitutional Enforcement**

### Committee Established

C.S.H.B. 796 amends the Government Code to establish the Joint Legislative Committee on Constitutional Enforcement as a permanent joint committee of the legislature to review federal actions that challenge the sovereignty of the state and of the people for the purpose of determining if the federal action is unconstitutional.

### Composition and Administration

C.S.H.B. 796 sets out the composition and administration of the committee as follows:

- establishes that the committee consists of the following 12 members:
  - six members of the house of representatives appointed by the speaker of the house; and
  - six members of the senate appointed by the lieutenant governor;
- prohibits more than four house members of the committee from being members of the same political party, and prohibits more than four senate members of the committee from being members of the same political party;
- establishes that committee members serve two-year terms beginning with the convening of each regular legislative session;

- requires the appropriate appointing officer, if a vacancy occurs, to appoint a member of the house or senate, as appropriate, to serve for the remainder of the unexpired term;
- requires the speaker of the house and the lieutenant governor to each designate one member of the committee as a joint chair of the committee;
- requires the committee to meet at the call of either joint chair; and
- establishes that a majority of the members of the committee constitutes a quorum.

#### Committee Review of Federal Actions

C.S.H.B. 796 authorizes the committee to review any federal action to determine whether the action is an unconstitutional federal action. The bill defines the following terms:

- "federal action" as including a federal law, a federal agency rule, policy, or standard, an executive order of the U.S. president, an order or decision of a federal court, and the making or enforcing of a treaty; and
- "unconstitutional federal action" as a federal action enacted, adopted, or implemented without authority specifically delegated to the federal government by the people and the states through the U.S. Constitution.

C.S.H.B. 796 requires the committee, when reviewing a federal action, to consider the plain reading and reasoning of the text of the U.S. Constitution and the understood definitions at the time of the framing and construction of the U.S. Constitution by our forefathers before making a final declaration of constitutionality, as demonstrated by the following:

- the ratifying debates in the several states;
- the understanding of the leading participants at the constitutional convention;
- the understanding of the doctrine in question by the constitutions of the several states in existence at the time the U.S. Constitution was adopted;
- the understanding of the U.S. Constitution by the first U.S. Congress;
- the opinions of the first chief justice of the U.S. Supreme Court;
- the background understanding of the doctrine in question under the English Constitution of the time; and
- the statements of support for natural law and natural rights by the framers and the philosophers admired by the framers.

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. The bill authorizes the committee to determine that a federal action is an unconstitutional federal action by majority vote.

#### Legislative Determination

C.S.H.B. 796 requires the committee, if the committee determines that a federal action is an unconstitutional federal action, to report the determination to the house of representatives and to the senate as follows:

- during the current session of the legislature if the legislature is convened when the committee makes the determination; or
- during the next regular or special session of the legislature if the legislature is not convened when the committee makes the determination.

C.S.H.B. 796 requires each house of the legislature to vote on whether the federal action is an unconstitutional federal action. If a majority of the members of each house determine that the federal action is an unconstitutional federal action, the determination must be sent to the governor for approval or disapproval as provided by the Texas Constitution regarding bills. The bill establishes that a federal action is declared by the state to be an unconstitutional federal action on either of the following days:

- the day the governor approves the vote of the legislature making the determination; or

- 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 U.S. president, to the speaker of the U.S. 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 the declaration of unconstitutional federal action be entered in the Congressional Record.

#### Other Determinations of Unconstitutional Federal Acts

C.S.H.B. 796 expressly does 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 an opinion issued by any such individuals to be referred to the committee for review.

#### Effect of Declared Unconstitutional Federal Action

C.S.H.B. 796 establishes that a federal action declared to be an unconstitutional federal action has no legal effect in Texas and may not be 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. The bill authorizes a person authorized to enforce state laws to enforce those laws, including statutory provisions relating to official oppression, against a person who attempts to implement or enforce a federal action declared to be an unconstitutional federal action.

C.S.H.B. 796 expressly does not prohibit a public officer who has taken an oath to defend the U.S. Constitution from interposing to stop acts of the federal government which, in the officer's best understanding and judgment, violate the U.S. Constitution. The bill requires Texas officials in federal, state, and local government to honor their oaths to preserve, protect, and defend the U.S. Constitution and to act to constitutionally defend the state and the people of Texas.

#### Authority of Attorney General

C.S.H.B. 796 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.

#### **Declarations Relating to Unconstitutional Acts of the Federal Government**

C.S.H.B. 796 amends the Civil Practice and Remedies Code, with respect to the Uniform Declaratory Judgments Act, to grant any court in Texas 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. The bill does the following with respect to a court's determination on whether to grant declaratory relief to a person:

- prohibits the court from relying solely on the decisions of other courts interpreting the U.S. Constitution; and
- requires the court to rely on the plain meaning of the text of the U.S. Constitution and any applicable constitutional doctrine as understood by the framers of the constitution.

The bill makes statutory provisions relating to a court's authority to refuse to render or enter a declaratory judgment or decree if the judgment or decree would not terminate the uncertainty or controversy giving rise to the proceeding inapplicable to the declaratory relief sought under the bill's provisions.

## **Procedural Provisions**

C.S.H.B. 796 requires the speaker of the house of representatives and the lieutenant governor, not later than the 30th day following the bill's effective date, to appoint the initial members of the committee. The bill requires the secretary of state, not later than that date, to forward official copies of the enacted bill to the U.S. president, to the speaker of the U.S. 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 the enacted bill be officially entered in the Congressional Record. The bill requires the speaker of the house of representatives and the lieutenant governor, not later than the 45th day following the bill's effective date, to forward official copies of the enacted bill to the presiding officers of the legislatures of the several states.

## **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2025.

## **COMPARISON OF INTRODUCED AND SUBSTITUTE**

C.S.H.B. 796 differs from the introduced by amending the caption, by conforming to certain bill drafting conventions in minor or nonsubstantive ways, and by including a Texas Legislative Council draft number in the footer.