

BILL ANALYSIS

C.S.H.B. 165

By: Larson

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

BACKGROUND AND PURPOSE

Recently, the United States Congress passed the National Defense Authorization Act for Fiscal Year 2012 and the National Defense Authorization Act for Fiscal Year 2014. Interested parties contend that certain sections of the acts are contrary to both the United States Constitution and the Texas Constitution because those sections have the potential to allow for indefinite detention of American citizens deemed to be associated forces of enemies in the War on Terror. It is widely held that loose definitions of terms such as "associated forces" set a dangerous precedent that may result in worse constitutional breaches in the future.

C.S.H.B. 165 seeks to enact the Texas Liberty Preservation Act to protect Texas citizens, who are also American citizens, from unconstitutional federal detention.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes 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. 165 amends the Government Code to specify that Sections 1021 and 1022 of the federal National Defense Authorization Act for Fiscal Year 2012, relating to affirmation of authority of the U.S. military to detain covered persons pursuant to the Authorization for Use of Military Force and to U.S. military custody for foreign al-Qaeda terrorists, and Section 1071(a) of the federal National Defense Authorization Act for Fiscal Year 2014, relating to the establishment of the Conflict Records Research Center, violate portions of federal law, the United States Constitution, and the Texas Constitution and, as such, are invalid and illegal in Texas. The bill establishes that it is the policy of this state to refuse to provide material support for or to participate in any way with the implementation of those federal provisions within Texas and that any act to enforce or attempt to enforce those laws in Texas is in violation of the bill's provisions.

C.S.H.B. 165 makes it a Class A misdemeanor, punishable by confinement for a maximum term of one year, a maximum fine of \$10,000, or both the confinement and the fine, for an official or employee of the United States to enforce or attempt to enforce a statute, a rule or regulation, an order, or any law of the United States in violation of the bill's provisions. The bill makes it a Class B misdemeanor, punishable by confinement for a maximum term of 180 days, a maximum fine of \$5,000, or both the confinement and the fine, for a public officer or employee of the state

to enforce or attempt to enforce a statute, a rule or regulation, an order, or any law of the United States in violation of the bill's provisions.

C.S.H.B. 165 requires the Department of Public Safety (DPS) to report to the governor and the legislature any attempt by the federal government to implement Section 1021 or Section 1022 of the federal National Defense Authorization Act for Fiscal Year 2012 or Section 1071(a) of the federal National Defense Authorization Act for Fiscal Year 2014 through DPS or another state agency.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 165 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

SECTION 1. (a) This Act shall be known as the Texas Liberty Preservation Act.

(b) The legislature finds that:

(1) the Tenth Amendment to the United States Constitution authorizes the United States federal government to exercise only those powers specifically delegated to it under Article I, Section 8, United States Constitution;

(2) the guaranty of the constitutional limitations on federal power is a matter of contract between the several states, including the State of Texas, and the federal government at the time the United States Constitution was ratified and subsequently amended by the Bill of Rights;

(3) Article VI, United States Constitution, provides that the laws of the United States federal government are the supreme law of the land only if those laws are adopted in accordance with the powers delegated to the federal government in the United States Constitution;

(4) the President of the United States has asserted that the Authorization for Use of Military Force (Pub. L. No. 107-40), enacted in 2001, authorizes the president to indefinitely detain, without charge, any person, including a citizen of the United States or a lawful resident alien, regardless of whether the person is apprehended inside or outside the borders of the United States;

(5) Sections 1021 and 1022 of the National Defense Authorization Act for Fiscal Year

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

2012 (Pub. L. No. 112-81) authorize:

(A) indefinite detention of persons apprehended within the United States without charge or trial;

(B) prosecution by military tribunals under the law of war for persons apprehended within the United States; and

(C) transfer of persons apprehended within the United States to foreign jurisdictions;

(6) in authorizing the actions described by Subdivision (5) of this subsection, Sections 1021 and 1022 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. No. 112-81) are inimical to the liberty, security, and well-being of the citizens of the State of Texas by violating:

(A) the Texas Constitution;

(B) the limits of federal power authorized by Article I, Section 8, United States Constitution;

(C) the legal doctrine of Posse Comitatus under 18 U.S.C. Section 1385 by authorizing the armed forces of the United States to police the United States; and

(D) the following provisions of the United States Constitution:

(i) Article I, Section 9, Clause 2 (ensuring the right to seek a habeas corpus);

(ii) the First Amendment (ensuring the right to petition the federal government for the redress of grievances);

(iii) the Fourth Amendment (ensuring the right to be free from unreasonable search and seizure);

(iv) the Fifth Amendment (requiring capital or infamous crimes to be brought before a grand jury before charging the defendant and prohibiting deprivation of life, liberty, or property without due process of law);

(v) the Sixth Amendment (ensuring the right to a speedy trial by an impartial jury in the state or district where the offense was alleged to have been committed, the right to be informed of the nature and cause of accusations and charges levied, the right to retain legal counsel, and the right to confront witnesses);

(vi) the Eighth Amendment (prohibiting excessive bail and fines and prohibiting cruel and unusual punishment); and

(vii) the Fourteenth Amendment (prohibiting deprivation of life, liberty, or property without due process of law);

(7) Section 1071(a) of the National Defense Authorization Act for Fiscal Year 2014

(Pub. L. No. 113-66) authorizes the Secretary of Defense of the United States to create the Conflict Records Research Center, which will establish a database to facilitate research and analysis of records captured from countries, organizations, and individuals "now or once hostile to the United States";

(8) the Conflict Records Research Center has access to information that was unconstitutionally collected by the National Security Agency and the Department of Defense; and

(9) the actions authorized by Sections 1021 and 1022 of the National Defense Authorization Act for Fiscal Year 2012 (Pub. L. No. 112-81) and Section 1071(a) of the National Defense Authorization Act for Fiscal Year 2014 (Pub. L. No. 113-66) and the enforcement of those actions are illegal within this state.

SECTION 2. Chapter 421, Government Code, is amended by adding Subchapter G to read as follows:

SUBCHAPTER G. TEXAS LIBERTY PRESERVATION ACT

Sec. 421.101. CERTAIN PORTIONS OF THE FEDERAL NATIONAL DEFENSE AUTHORIZATION ACTS OF 2012 AND 2014 INVALID.

Sec. 421.102. POLICY; VIOLATION OF SUBCHAPTER.

Sec. 421.103. OFFENSES; PENALTIES.

(a) A person who is an official, agent, or employee of the United States or an employee of a corporation providing services to the United States commits an offense if the person enforces or attempts to enforce a statute, a rule or regulation, an order, or any law of the United States in violation of this subchapter.

(b) An offense under Subsection (a) is a Class A misdemeanor punishable by confinement for a term not to exceed one year, a fine of not more than \$10,000, or both the confinement and the fine.

(c) A person who is a public officer or employee of this state commits an offense if that person enforces or attempts to enforce a statute, a rule or regulation, an order, or any

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(b) An offense under Subsection (a) is a Class A misdemeanor punishable by confinement for a term not to exceed one year, a fine of not more than \$10,000, or both the confinement and the fine.

(c) A person who is a public officer or employee of this state commits an offense if that person enforces or attempts to enforce a statute, a rule or regulation, an order, or any

law of the United States in violation of this subchapter.

(d) An offense under Subsection (c) is a Class B misdemeanor punishable by confinement for a term not to exceed 180 days, a fine of not more than \$5,000, or both the confinement and the fine.

Sec. 421.104. REPORT.

SECTION 3. 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, 2015.

law of the United States in violation of this subchapter.

(d) An offense under Subsection (c) is a Class B misdemeanor punishable by confinement for a term not to exceed 180 days, a fine of not more than \$5,000, or both the confinement and the fine.

Sec. 421.104. REPORT.

SECTION 3. Same as introduced version.