Attorney general study of the effects of international agreements and entities on state law

HB 3647 by Kolkhorst (Lucio)

DIGEST: HB 3647 would have required the attorney general to conduct a study to determine whether Texas law or the authority of the Texas Legislature was or could be restricted, preempted, or otherwise directly affected by any existing or proposed compact, agreement or other arrangement between the United States, Texas, or a state political subdivision and a foreign governmental entity. The attorney general also would have been required to study whether international organizations or foreign or international bodies could directly affect Texas law or the authority of the Legislature and whether any of these entities had attempted to directly affect the law or policy of Texas or any of the state's governmental bodies. In conducting the study, the attorney general would have had to consider specified international agreements and organizations.

GOVERNOR'S REASON FOR VETO: "House Bill No. 3647 would require the Office of the Attorney General (OAG) to study whether international laws or agreements can impact or preempt Texas law or the authority of the Texas Legislature. This legislation is objectionable for several reasons. The international laws and agreements under scrutiny are federal law. As the State of Texas, we live under the umbrella of federal law and intend for our state laws to comply with it. If we believe federal law impacts Texas in an undesirable way, we should work with Congress and the president to remedy those concerns. There is no need for the OAG to spend state resources and time deciphering whether federal law preempts state law when it is the objective of the State of Texas to act in accordance with these laws."

RESPONSE: Rep. Lois Kolkhorst, the bill's author, said: "Ironically, the veto proclamation for HB 3647 actually makes the case for why the bill is necessary. The governor's reason for the veto cites international agreements as being federal law. This is only partially true. While the state lives under the umbrella of federal law and must comply with state laws, the question remains to be answered as to whether federal agreements with international organizations also impact Texas law.

"In fact, the idea for HB 3647 originated after I attended a budget hearing and questioned the state attorney general after he testified that he was being asked to review a great deal of proposed immigration bills filed in the Texas Legislature to determine if they violated federal law or international agreement. For instance, if an international trade agreement such as NAFTA determines that a state law written to stem the trend of illegal immigration is seen as a barrier to free trade because it hinders the free flow of labor, does that agreement equal an actual federal law? If an unelected appointee of the United States signs an agreement with the World Court about the death penalty issue, does that federal agreement with an international organization then supersede state law?

"The governor's veto intentionally ignores these broader questions. As more international agreements are signed, if the intent of those agreements is to bypass the U.S. Congress and the voting public, then it will indeed be necessary to spend state

resources deciphering whether international agreements do preempt state law. While it is the objective of the state of Texas to act in accordance with federal laws, if unelected appointees within the federal government's various branches sign agreements with international organizations, the fact remains that there is no concrete legal determination today as to whether those agreements supersede Texas law. The report required in HB 3647 would be the first step in answering this question for all Texas citizens."

Sen. Eddie Lucio, the Senate sponsor, had no comment on the veto.

NOTES: HB 3647 was analyzed in Part Five of the May 7 *Daily Floor Report*.