

BILL ANALYSIS

H.B. 422
By: Krause
State & Federal Power & Responsibility, Select
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties note that reconciling the tension created by the dual sovereignty of the state and federal government is an ongoing and always-evolving predicament and that the Ninth and Tenth Amendments to the U.S. Constitution are construed to reserve for the people and the states all power not prescribed to the federal government. These parties contend that while the U.S. Supreme Court has ruled that the role of constitutional nullification belongs expressly to the federal judiciary and not to the several states, legal precedents support the principle that the federal government may provide incentives to or penalties against a state to coerce it to act in a certain way, but the federal government cannot simply require a state to act that way. If the state is not required, and cannot be required, to assist the federal government in enforcing its laws, these parties further contend that the state could redefine the cooperative framework in which its entities operate in relation to enforcement of federal firearm regulation to actively mitigate the impact of federal regulations it deems too restrictive, prohibitive, or punitive. H.B. 422 seeks to address this issue by amending current state law relating to the enforcement of certain federal laws regulating firearms, firearm accessories, and firearm ammunition within Texas.

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

H.B. 422 amends the Penal Code to prohibit an agency of the state, a political subdivision of the state, and a law enforcement officer or other person employed by an agency or political subdivision of the state from contracting with or in any other manner providing assistance to a federal agency or official with respect to the enforcement of a federal statute, order, rule, or regulation purporting to regulate a firearm, a firearm accessory, or firearm ammunition if the statute, order, rule, or regulation imposes a regulation, such as a capacity or size limitation or a registration requirement, that does not exist under state law, unless the contract or agreement to provide assistance in the enforcement of a federal statute, order, rule, or regulation is in effect on August 31, 2015, and pertains to border security.

H.B. 422 prohibits the receipt of state grant funds by a political subdivision of the state that adopts a rule, order, ordinance, or policy under which the political subdivision requires the enforcement of any federal statute, order, rule, or regulation purporting to regulate a firearm, a firearm accessory, or firearm ammunition by imposing a regulation that does not exist under state law, or, by consistent actions, requires the enforcement of any such federal statute, order,

rule, or regulation. The bill requires the denial of state grant funds for such a political subdivision for the fiscal year following the year in which a final judicial determination in an action brought under the bill's provisions is made that the political subdivision intentionally required enforcement of any such federal statute, order, rule, or regulation. The bill authorizes any citizen residing in the jurisdiction of a political subdivision of the state to file a complaint with the attorney general if the citizen offers evidence to support an allegation that the political subdivision has adopted a rule, order, ordinance, or policy under which the political subdivision requires the enforcement of any such federal statute, order, rule, or regulation or that the political subdivision, by consistent actions, requires the enforcement of any such federal statute, order, rule, or regulation. The bill requires such a citizen to include with the complaint the evidence the citizen has that supports the complaint.

H.B. 422 authorizes the attorney general, if the attorney general determines that the complaint is valid, to file a petition for a writ of mandamus or apply for other appropriate equitable relief in a district court in Travis County or in a county in which the principal office of the political subdivision is located to compel the political subdivision to comply with the bill's provisions. The bill authorizes the attorney general to recover reasonable expenses incurred in obtaining such relief, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition costs. The bill specifies that an appeal of a suit brought under the bill's provisions is governed by the procedures for accelerated appeals in civil cases under the Texas Rules of Appellate Procedure and requires the appellate court to render its final order or judgment with the least possible delay. The bill requires the attorney general to defend any agency or political subdivision of the state that the federal government attempts to sue or prosecute for an action or omission consistent with the bill's requirements.

EFFECTIVE DATE

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