

- SUBJECT:** Requiring study by attorney general of international law effects on Texas
- COMMITTEE:** State Sovereignty, Select — favorable, without amendment
- VOTE:** 4 ayes — Creighton, Branch, Darby, Pitts
- 0 nays
- 3 absent — Martinez Fischer, S. Miller, Thompson
- WITNESSES:** For — (*Registered, but did not testify:* Robert Cash, Texas Fair Trade Coalition; Rick Levy, Texas AFL-CIO; Tony McDonald, Young Conservatives of Texas)
- Against — Frank Conde, North America’s Corridor Coalition
- DIGEST:** CSHB 3647 would require the attorney general to conduct a study to determine whether Texas law or the authority of the Texas Legislature was or could be restricted, nullified, superseded, preempted, or otherwise directly affected by: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;
 - any international organization acting in coordination with a federal, state, or local government, or with a stated purpose of influencing governmental action or public policy; or
 - any foreign or international body acting in connection with or under the authority of a compact, agreement, or other arrangement by means of legislative, administrative, judicial, or other action.
- The attorney general also would be required to investigate and report on whether any of the entities described above had attempted in any way to restrict, nullify, supersede, preempt, or otherwise directly affect the law or policy of this state or the authority of a governmental body at any level in Texas. In conducting the study, the attorney general also would consider the following organizations and agreements and any entities connected to them:

- North American Free Trade Agreement (NAFTA);
- Security and Prosperity Partnership of North America;
- World Trade Organization;
- World Health Organization (WHO);
- United Nations; and
- North America's SuperCorridor Coalition, Inc.

In conducting the study, the attorney general could arrange to make use of resources and personnel of a public law school. The attorney general would be required to produce and distribute the report to each member of the Legislature no later than December 1, 2012.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

**SUPPORTERS
SAY:**

Government and government agencies are becoming less accountable to the electorate, causing Americans to feel increasingly removed from their governmental institutions. Government is also becoming increasingly influenced by large multinational bodies and treaties that are not accountable to American voters.

HB 1129 would direct the attorney general of Texas to study the extent to which international organizations have affected state laws. The study would be tailored to focus on agreements and mandates imposed on Texas outside of the traditional treaty system. Among other topics, the study could cover:

- the WHO influencing guidelines followed by the Texas Department of State Health Services, in conflict with state laws;
- the UN Panel on Climate Change influencing EPA guidelines, which are then pushed onto the Texas Commission on Environmental Quality, in conflict with state laws;
- NAFTA requiring that Texas allow overweight and unsafe trucks from Mexico into Texas;
- the World Court attempting to intervene in the execution of a convicted murderer-rapist in Texas in 2008; and
- the UN Agenda 21 program, which pushes "smart growth" initiatives on environmental, land, and property rights policies that affect Texas via federal agreements.

Many of these problems stem from misuse of the administrative rulemaking authority enjoyed by certain state agencies. Often, without legislative direction, agencies adopt rules promulgated by transnational bodies. Agencies often defend their bypassing of elected lawmakers by pointing to international agreements. These rules are seldom tailored to the specific situations or needs of the people of Texas. They are adopted in Texas by unelected bureaucrats and written by unelected bureaucrats at least a continent away.

Texas needs to study this issue to help determine where the lines exist between international, federal, and state laws. For example, the study could help answer whether the federal government had the authority to direct the Texas Legislature or a Texas court to change or harmonize existing laws or judicial rules to reflect decisions made by international groups or agreements.

This bill passed the House in both 2007 and 2009. Each time it has enjoyed bipartisan support. It passed the House in 2009 on the Local and Consent Calendar. While the bill was vetoed in 2007, the need to study and define state's rights is more important than ever. Since the veto, further research has shown that although congressionally ratified treaties are appropriate, the real issue is executive branch bureaucrats making agreements outside of traditional congressional mechanisms. These workarounds prevent the state's representatives at the federal level from adequately overseeing the effects of these international agreements. The study would help identify where these new structures had infringed on state law.

To minimize the attorney general's workload, the bill would allow a public law school to assist with the study's information gathering and drafting. According to the LBB's fiscal note, the bill would have no significant fiscal implication on the state.

**OPPONENTS
SAY:**

This bill would require the Office of the Attorney General (OAG) to study whether international laws or agreements could impact or preempt Texas law or the authority of the Texas Legislature. However, the international laws and agreements this legislation would scrutinize are federal law. Texas lives under the umbrella of federal law and state law should comply with it. If the state believes federal law impacts Texas in an undesirable way, it should work with Congress and the president to remedy those concerns. The OAG should not have to spend state time and resources

attempting to determine whether federal law preempts state law when Texas intends to act in accordance with these laws. This was the basis of the governor's veto of a similar bill in 2007, and these reasons remain valid today.

NOTES:

A similar bill, HB 3647 by Kolkhorst, was enacted by the 80th Legislature during its 2007 regular session, but was vetoed by Gov. Perry. Another similar bill, HB 4440 by Kolkhorst, passed the House on the Local, Consent, and Resolutions Calendar, but died in the Senate State Affairs Committee during the 2009 regular session.