

BILL ANALYSIS

Senate Research Center
85R1922 KLA-F

S.B. 806
By: Creighton
Finance
3/30/2017
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 806 would significantly increase transparency on the federal government's coercion of the state through the manipulation of federal fiscal assistance to the states. This measure seeks to "operationalize" Justice O'Connor's dissent in *South Dakota v. Dole* (1987) and the Medicaid portion of the Supreme Court's ruling in *NFIB v. Sebelius* (2012).

S.B. 806 would require the state's budget bureau or fiscal board to identify all the conditions attached to significant sources of federal funds in the state budget, and categorize them according to whether the conditions affect how the federal funds are spent, or instead affect what the state does with its own funds and regulatory authority. If enacted, by operation of law it designates conditions attached to matters other than how the federal funds are to be spent as coercive conditions for purposes of state law, and declares it the policy of the state to resist all such conditions and to work together with other states to end such federal programs.

ANALYSIS

Report. S.B. 806 amends Chapter 322, Government Code, to require the Legislative Budget Board to prepare a report concerning federal money provided, or to be provided, to this state that is: included as a method of finance in the general appropriations act for a state fiscal biennium that becomes law; and subject to a coercive federal condition.

Interstate Coordination. S.B. 806 establishes that it is the policy of Texas to collaborate with other states to terminate states' participation in any federal program under which states receive federal money subject to a coercive federal condition and, if necessary, substitute a state program that reflects the preferences of residents of the affected state. The bill requires the governor to consult with the governors of other states to develop a coordinated approach consistent with the policy for addressing issues relating to federal money subject to a coercive federal condition that is provided to the states by the federal government.

Representation. S.B. 806 establishes that it is the policy of Texas that the provision to this state by the federal government of federal money that is subject to a coercive federal condition is: unconstitutional under the United States Constitution; incompatible with the structure of the relationship between the federal government and states as outlined in the United States Constitution; and incompatible with the guarantee in the United States Constitution of a democratic representative form of government for the states. Consistent with the policy of this state, the attorney general may file an action in the name of this state in a federal court to enjoin the enforcement of a coercive federal condition applicable to federal money this state receives.

As proposed, S.B. 806 amends current law relating to a report concerning, and actions by certain state officers regarding, federal money provided to this state that is subject to a coercive federal condition.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 322, Government Code, by adding Section 322.0083, as follows:

Sec. 322.0083. REPORT ON FEDERAL MONEY SUBJECT TO COERCIVE FEDERAL CONDITION. (a) Defines "coercive federal condition."

(b) Requires the Legislative Budget Board (LBB) to prepare a report concerning federal money provided, or to be provided, to this state that is included as a method of finance in the general appropriations act (GAA) for a state fiscal biennium that becomes law and is subject to a coercive federal condition.

(c) Requires the report to include certain information relating to sources of federal money and associated federal conditions.

(d) Requires the LBB to provide the required report to the legislature, the governor, and the attorney general not later than the 90th day after the last day of the regular or special legislative session during which the legislature enacts the GAA on which the report is based.

SECTION 2. Amends Subchapter F, Chapter 401, Government Code, by adding Section 401.106, as follows:

Sec. 401.106. INTERSTATE COORDINATION REGARDING FEDERAL MONEY SUBJECT TO COERCIVE FEDERAL CONDITION. (a) Defines "coercive federal condition."

(b) Provides that it is the policy of this state that this state should collaborate with other states to terminate states' participation in any federal program under which states receive federal money subject to a coercive federal condition and, if necessary, substitute a state program that reflects the preferences of residents of the affected state.

(c) Requires the governor to consult with the governors of other states to develop a coordinated approach consistent with the policy under Subsection (b) for addressing issues relating to federal money subject to a coercive federal condition that is provided to the states by the federal government.

SECTION 3. Amends Subchapter B, Chapter 402, Government Code, by adding Section 402.0211, as follows:

Sec. 402.0211. REPRESENTATION OF STATE IN MATTERS INVOLVING FEDERAL MONEY SUBJECT TO COERCIVE FEDERAL CONDITION. (a) Defines "coercive federal condition."

(b) Provides that it is the policy of this state that the provision to this state by the federal government of federal money that is subject to a coercive federal condition is unconstitutional under the United States (US) Constitution, incompatible with the structure of the relationship between the federal government and states as outlined in the US Constitution, and incompatible with the guarantee in the US Constitution of a democratic representative form of government for the states.

(c) Authorizes the attorney general, consistent with the policy of this state provided by Subsection (b), to file an action in the name of this state in a federal court to enjoin the enforcement of a coercive federal condition applicable to federal money this state receives.

SECTION 4. Requires the LBB, notwithstanding Section 322.0083(d), Government Code, as added by this Act, to provide the initial report required by that section to the legislature, the governor, and the attorney general not later than:

(1) September 1, 2017, if the legislature enacts the GAA for the state fiscal biennium beginning September 1, 2017, during the 85th Regular Session and the GAA becomes law; or

(2) the 90th day after the last day of a special legislative session of the 85th Legislature during which that legislature enacts the GAA for the state fiscal biennium beginning September 1, 2017, if that GAA becomes law.

SECTION 5. Effective date: upon passage or September 1, 2017.