

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Judiciary

BILL: CS/SB 1528
INTRODUCER: Judiciary Committee and Senator Evers
SUBJECT: Commission on Federalism
DATE: April 9, 2015 REVISOR: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Davis</u>	<u>Cibula</u>	<u>JU</u>	<u>Fav/CS</u>
2.	_____	_____	<u>GO</u>	_____
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Technical Changes

I. Summary:

CS/SB 1528 creates a seven-member Commission on Federalism. The commission begins meeting in January 2016 and is authorized to evaluate any federal law, agency policy, mandate, or executive order to determine if it violates the principle of federalism. If the commission determines that a violation has occurred, specific follow-up actions are authorized to gather additional information or communicate the commission’s concerns. The commission is authorized to recommend to the Governor that he or she call a special session of the Legislature to respond to the evaluated action.

The commission is required to maintain on the Legislature’s website each federal law, agency policy, mandate, or executive order evaluated, any action taken, and any response received by a federal government entity. The commission is required to electronically submit a report to the Governor and Legislature twice each year.

II. Present Situation:

In colonial America, the individual states existed separately and before the Federal Government was formed. Through the United States Constitution the states delegated power to the Federal Government while at the same time, reserving power to themselves. The defining line between state and federal power is the Tenth Amendment to the United States Constitution, which provides:

The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.¹

This division of authority between the federal and state governments is known as federalism. Certain limited powers are entrusted solely to the Federal Government while other powers are reserved to the states, and yet other powers may be exercised concurrently by the state and federal governments.² The concept of dual sovereignty, or two governments existing within the same territorial boundaries, has been the subject of much discussion, disagreement, and litigation.

James Madison noted, in discussing the dual establishment of a federal government and state governments, that a “double security arises to the rights of the people. The different governments will control each other, at the same time that each will be controlled by itself.”³

Federalism, however, has often led to differing opinions as to whether one government is encroaching upon the powers held by the other government. The U.S. Supreme Court has stated:

One fairly can dispute whether our federalist system has been quite as successful in checking government abuse as Hamilton promised, but there is no doubt about the design. If this “double security” is to be effective, there must be a proper balance between the States and the Federal Government. These twin powers will act as mutual restraints only if both are credible. In the tension between federal and state power lies the promise of liberty.⁴

The state does not currently have a formal mechanism for measuring whether federal laws encroach upon the state’s sovereign authority.

III. Effect of Proposed Changes:

This bill creates the Commission on Federalism to evaluate whether a federal law, agency policy, mandate, or executive order is properly authorized under the United States Constitution or whether it violates the principle of federalism.

Meeting Requirements

The commission is required to hold its initial meeting in January 2016 and meet six times annually unless additional meetings are approved by the President of the Senate and the Speaker of the House of Representatives. Staff will be assigned by those leaders to assist the commission.

Membership

The seven members of the commission are:

¹ U.S. Const. amend. X.

² 16A AM. JUR. 2D CONSTITUTIONAL LAW s. 214 (2015).

³ *The Federalist No. 51*, p. 57 B. F. Wright ed. 1961. In this paper, Madison wrote to the people of New York defending the checks and balances system in the Constitution.

⁴ *Gregory v. Ashcroft*, 501 U.S. 452, 459 (1991).

- The President of the Senate or his or her designee, who will be the co-chair of the commission;
- A Senate member appointed by the President of the Senate;
- The Speaker of the House of Representatives or his or her designee, who will also serve as co-chair;
- Two members of the House of Representatives who will be appointed by the Speaker;
- The Minority Leader of the Senate or his or her designee; and
- The Minority Leader of the House of Representatives or his or her designee.

If a vacancy occurs, it shall be filled in the same manner as the original appointment. Members are entitled to receive reimbursement for per diem and travel expenses as provided by statute.

Duties

If a majority of the commission agrees, it may evaluate a federal law, agency policy, mandate, or executive order. To facilitate its evaluation, the commission is authorized to request pertinent information from a member of the Florida Congressional Delegation. If a majority of the commission determines that a federal law, agency policy, mandate, or executive order is not authorized under the doctrine of federalism, a co-chair may:

- Request information about the law or assistance from the Florida Congressional Delegation in communicating with a federal government entity about the federal law;
- Give written notice of an evaluation of the law to the federal entity responsible for adopting or administering the law and request that the government entity respond to the commission's evaluation by a specific date;
- Request a meeting, either in person or by electronic means, with the federal government entity responsible or a member of Congress to discuss the evaluated law and a possible remedy;
- Correspond with another state's presiding legislative officers or with a government entity of another state which has similar powers and duties of the commission and coordinate the evaluation of and a response to the federal law.

If a majority of the commission agrees, it may recommend to the Governor that he or she call a special session to respond to the evaluated law.

The commission is required to maintain on the Legislature's website the following information:

- Each federal law, agency policy, mandate, or executive order evaluated by the commission;
- Any action taken by a co-chair upon the finding that a federal law, agency policy, mandate, or executive order is not an authorized federal action; and
- Any response to an evaluation received from a federal government entity, official, or employee.

Evaluation

When evaluating a federal law, agency policy, mandate, or executive order, the commission must determine whether the federal action:

- Is authorized by any of the express enumerated powers contained in the United States Constitution and amendments; or
- Violates the principle of federalism, based upon specified criteria.

Sources

When evaluating a federal action, the commission must rely on:

- The text of the United States Constitution and ratified amendments;
- The meaning of the text of the United States Constitution and amendments ratified at the time of drafting and ratification; and
- A primary source document directly relevant to the drafting, ratification, or initial implementation of the United States Constitution and duly ratified amendments or a primary source document created by a person who was directly involved in the drafting, adoption, ratification, or initial implementation of the Constitution and duly ratified amendments.

The commission may rely on other relevant sources such as federal court decisions, but is not bound by a federal court opinion.

Reporting Requirement

The commission must electronically submit a report to the Governor and the Legislature on or by May 20 and October 20 of each year. The report must summarize any lawful action taken by the commission and any action taken by or communication received from the following persons or entities in response to an action by the commission:

- A member of the Florida Congressional Delegation;
- A congressional member from another state; or
- A federal government entity, official, or employee.

Effective Date

The bill takes effect on July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

This bill does not appear to have an impact on cities or counties and as such, does not appear to be a mandate for constitutional purposes.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates section 11.9006, Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Judiciary on April 7, 2015:

The changes to the committee substitute are essentially technical, not substantive changes. The original bill contained a drafting inconsistency. Under section (3), Duties, the commission is authorized to evaluate a “federal law.” In paragraph (3)(c), however, a reference is made to the commission finding that “a federal law, agency, policy, mandate, or executive order” is not authorized. The committee substitute replaces the term “federal law” with the terms “federal law, agency policy, mandate, or executive order” to make the references consistent throughout the bill.

B. Amendments:

None.