

## **BILL ANALYSIS**

H.B. 4293  
By: Branch  
Judiciary & Civil Jurisprudence  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Currently, a federal statute and related rules require adequate notice to the attorney general of constitutional challenges to Texas statutes raised in federal courts. Current state law, however, is not as comprehensive with respect to constitutional challenges asserted within the state court system. Consequently, the Office of the Attorney General has been unaware of several constitutional challenges to state statutes until the relevant state-court litigation has substantially progressed.

H.B. 4293 requires a party asserting a challenge the validity of a state statute or a rule adopted by a state agency to give written notice of the challenge to the attorney general.

### **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. 4293 amends the Government Code to require the party asserting a challenge, in an action, suit, or proceeding, whether original or appellate, a party or amicus curiae asserting the challenge to the validity of a state statute or a rule adopted by a state agency to give written notice of the challenge to the attorney general if the state, a state agency, or a state officer or employee in the officer's or employee's official capacity is not a party to the action, suit, or proceeding. The bill provides that an action, suit, or proceeding in which notice to the attorney general is required under the bill's provisions is an action, suit, or proceeding in which a party or amicus curiae asserts that a state statute or rule conflicts with the constitution of the United States or of this state; federal law or is preempted by federal law; or a statute of this state, in the case of a challenge to a rule of a state agency. The bill requires the notice to identify the challenged statute or rule, the nature of the challenge, the court in which the challenge is pending, and the style and number of the action, suit, or proceeding in which the challenge is pending.

H.B. 4293 requires a notice, at the time the pleading or other document challenging the validity of a statute or rule is filed, to be sent to the attorney general by certified or registered mail, or electronically to an e-mail address designated by the attorney general for purposes of this section and to be filed with the court in which the challenge is asserted. The bill requires the court in which the challenge is asserted to give notice of the challenge to the attorney general if a party or amicus curiae challenging the validity of a state statute or rule fails to give notice to the attorney general. The bill requires the notice given to the attorney general by a court to comply with the notice requirements. The bill authorizes the court to reject, but not to sustain, a challenge before the attorney general has received notice and the state has been allowed to proceed, if it so chooses. The bill authorizes the state, in an action, suit, or proceeding that challenges the validity of a state statute or rule to intervene for the presentation of evidence otherwise admissible under the rules of evidence and for briefing and argument on the question of the

validity of the challenged statute or rule. The bill requires the court to grant a motion of the state to intervene if the motion is filed not later than the 60th day after the date the attorney general receives notice. The bill clarifies that provisions regarding challenges to the validity of a state statute and the state's intervention do not constitute a waiver of sovereign immunity.

H.B. 4293 defines "state agency" to mean a board, commission, department, office, court, or other agency that is in the executive or judicial branch of the government of this state, was created by the constitution or a statute of this state, and has statewide jurisdiction.

#### **EFFECTIVE DATE**

On passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.