

BILL ANALYSIS

C.S.S.B. 392
By: West
Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, in an action in which a party to the litigation files a petition, motion, or other pleading challenging the constitutionality of a state statute, the court, which has generally been interpreted to mean the clerk of the court, is required to serve notice of the constitutional question and a copy of the petition, motion, or other pleading that raises the challenge on the attorney general if the attorney general is not a party to or counsel involved in the litigation. There is concern that this requirement places an obligation on clerks to determine whether a complaint rises to a constitutional challenge. C.S.S.B. 392 seeks to address this issue by amending current law relating to service of notice on the attorney general concerning legal challenges to the constitutionality of state statutes.

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

C.S.S.B. 392 amends the Government Code to require a party that files a petition, motion, or other pleading challenging the constitutionality of a Texas statute to file with the court in which the action is pending a form the Office of Court Administration of the Texas Judicial System is required to adopt that indicates which pleading should be served on the attorney general by the court. The bill requires the court to serve notice of the constitutional challenge, rather than notice of the constitutional question, on the attorney general if the attorney general is not a party to or counsel involved in the litigation and removes the requirement that the notice identify the statute in question, state the basis for the challenge, and specify the petition, motion, or other pleading that raises the challenge.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.S.B. 392 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

SECTION 1. Section 402.010, Government Code, is amended.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as engrossed version.

SECTION 2. Section 402.010, Government Code, as amended by this Act, applies only to a petition, motion, or other pleading filed in litigation on or after the effective date of this Act. A pleading filed in litigation before the effective date of this Act is governed by the law applicable to the pleading immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

SECTION 2. Same as engrossed version.

SECTION 3. This Act takes effect September 1, 2013.