

BILL ANALYSIS

C.S.H.B. 2926
By: Roberts
State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties point to instances in which the rules adopted by a state agency following the passage of legislation are outside of the legislature's intent and note the lack of recourse for the legislature other than to challenge an adopted rule in court. C.S.H.B. 2926 seeks to address this issue by enacting the Texas Legislative Review Act of 2017.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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.H.B. 2926 amends the Government Code to require a state agency, as defined for purposes of the Administrative Procedure Act, to file a copy of each rule, other than an emergency rule, with the officer or employee with whom bills are filed in each house of the legislature on the same day the agency files the rule with the secretary of state. The bill requires the rule, after filing, to be referred to a standing committee in the same manner as bills are referred, unless a house by rule provides for another manner of referral of agency rules. The bill requires each rule to be referred to a standing committee before the 10th day after the date the rule is filed with the appropriate officer or employee of each house.

C.S.H.B. 2926 authorizes the committee to which a rule is referred to elect to consider the rule at a committee meeting and vote on the question of whether to suspend the rule not later than the 30th day after the date the rule is referred to the committee. The bill requires a vote of at least two-thirds of the full membership of both committees to which a rule is referred to suspend the rule for the rule to be suspended. The bill establishes that if either committee elects not to consider a rule within the 30-day period or does not vote to suspend a rule, the rule is considered approved and may take effect, subject to the rule's effective date. The bill requires the committees, not later than the third day after the date a rule is suspended under the bill's provisions, to notify the state agency that adopted the rule of the suspension and to file notice of the suspension with the secretary of state for publication in the Texas Register.

C.S.H.B. 2926 requires the chair of each committee in which a rule is suspended when the legislature is in session to give written notice of the suspension to the presiding officer of the appropriate house not later than the fifth day after the date the rule is suspended and requires the members of that house to vote on the question of whether to uphold the committee's suspension of the rule not later than the 35th day after the date the rule is suspended in committee. The bill

requires the secretary of state to give written notice of a rule suspended in committee when the legislature is not in session to the presiding officer of the appropriate house during the first 10 days of the next regular legislative session and requires the members of that house to vote on the question of whether to uphold the committee's suspension of the rule not later than the 30th day after the date the notice is given. Unless a majority of the members of each house vote to uphold the committees' suspension, the suspension terminates and the rule may take effect, subject to the rule's effective date.

C.S.H.B. 2926 requires the presiding officer of each house, not later than the third day after the date a rule suspension is terminated, to notify the state agency that adopted the rule of the suspension's termination and to file notice of the termination with the secretary of state for publication in the Texas Register. The bill prohibits a rule adopted by a state agency that is suspended in both committees to which the rule is referred from taking effect unless either house of the legislature does not vote to uphold the committees' suspension. The bill prohibits an agency that adopted a rule that is suspended under the bill's provisions from enforcing a substantive provision of the suspended rule or adopting the rule or an emergency rule containing the substance of the suspended rule during the time the rule is suspended.

EFFECTIVE DATE

January 1, 2018, but only if the constitutional amendment authorizing the legislature to provide for legislative review or approval of state agency rules is approved by the voters.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2926 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. This Act may be cited as the Texas Legislative Review Act of 2017.

SECTION 2. Subchapter B, Chapter 2001, Government Code, is amended by adding Section 2001.0321 to read as follows:

Sec. 2001.0321. LEGISLATIVE APPROVAL OF PROPOSED RULES REQUIRED.

(a) A state agency shall file, on the same day it files notice with the secretary of state as required by Section 2001.023, a copy of each proposed rule, other than an emergency rule, with the officer or employee with whom bills are filed in each house of the legislature. After filing, the proposed rule shall be referred to a standing committee in the same manner as bills are referred, unless a house by rule provides for another manner of referral of agency rules. Each proposed rule must be referred to a standing committee before the 10th day after the date the rule is filed with the

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Subchapter B, Chapter 2001, Government Code, is amended by adding Section 2001.0361 to read as follows:

Sec. 2001.0361. LEGISLATIVE APPROVAL OF RULES.

(a) A state agency shall file, on the same day it files a rule with the secretary of state under Section 2001.036, a copy of each rule, other than an emergency rule, with the officer or employee with whom bills are filed in each house of the legislature. After filing, the rule shall be referred to a standing committee in the same manner as bills are referred, unless a house by rule provides for another manner of referral of agency rules. Each rule must be referred to a standing committee before the 10th day after the date the rule is filed with the appropriate officer or employee of each house.

appropriate officer or employee of each house.

(b) Not later than the 30th day after the date a proposed rule is referred to a committee, the committee shall consider the rule at a committee meeting and vote on the rule.

A proposed rule is approved by the unanimous vote of the committee's full membership.

If the committee does not approve a proposed rule by unanimous vote of the committee's full membership, the rule is suspended.

If a proposed rule is suspended in committee, the committee shall, not later than the third day after the date the rule is suspended:

(1) notify the state agency that proposed the rule of the suspension; and

(2) file notice of the suspension with the secretary of state for publication in the Texas Register.

(c) If a proposed rule is suspended in committee when the legislature is in session, the chair of the committee shall give written notice of the suspension to the presiding officer of the appropriate house not later than the fifth day after the date the rule is suspended. Not later than the 35th day after the date the proposed rule is suspended in committee, the members of that house shall vote on the rule.

If a majority of members of that house vote to approve the proposed rule, the rule is approved and the committee's suspension terminates. If a majority of members of that house do not vote to approve the proposed rule, the committee's suspension remains in effect.

(d) If a proposed rule is suspended in committee when the legislature is not in session, the secretary of state shall give written notice of the suspension to the presiding officer of the appropriate house during the first 10 days of the next regular legislative session. Not later than the 30th day after the date the notice is given, the members of that house shall vote on the proposed rule. If a majority of members of that house vote to approve the proposed rule, the rule is approved and the

(b) Not later than the 30th day after the date a rule is referred to a committee, the committee may elect to consider the rule at a committee meeting and vote on the question of whether to suspend the rule.

A rule may be suspended only if at least two-thirds of the full membership of both committees to which the rule is referred vote to suspend the rule.

If either committee elects not to consider the rule within the period of time provided by this subsection or does not vote to suspend the rule, the rule is considered approved and, subject to Section 2001.036, may take effect. If a rule is suspended under this subsection, the committees shall, not later than the third day after the date the rule is suspended:

(1) notify the state agency that adopted the rule of the suspension; and

(2) file notice of the suspension with the secretary of state for publication in the Texas Register.

(c) If a rule is suspended under Subsection (b) when the legislature is in session, the chair of each committee shall give written notice of the suspension to the presiding officer of the appropriate house not later than the fifth day after the date the rule is suspended. Not later than the 35th day after the date the rule is suspended in committee, the members of that house shall vote on the question of whether to uphold the committee's suspension of the rule. Unless a majority of the members of each house vote to uphold the committees' suspension, the suspension terminates and, subject to Section 2001.036, the rule may take effect.

(d) If a rule is suspended under Subsection (b) when the legislature is not in session, the secretary of state shall give written notice of the suspension to the presiding officer of each house during the first 10 days of the next regular legislative session. Not later than the 30th day after the date the notice is given, the members of each house shall vote on the question of whether to uphold the committee's suspension of the rule. Unless a majority of the members of each house

committee's suspension terminates. If a majority of members of that house do not vote to approve the proposed rule, the committee's suspension remains in effect.

(e) Not later than the third day after the date a suspension is terminated under Subsection (c) or (d), the presiding officer of the appropriate house shall:

(1) notify the state agency that proposed the rule of the suspension's termination; and

(2) file notice of the termination with the secretary of state for publication in the Texas Register.

(f) A state agency may adopt a proposed rule only if the rule:

(1) is approved by both committees to which it is referred as provided by Subsection (b);

(2) was suspended in committee in only one house of the legislature, and that house later votes to approve the rule; or

(3) was suspended in committee in both houses of the legislature, and both houses later vote to approve the rule.

(g) During the time a proposed rule is suspended under this section, the state agency that proposed the rule may not

adopt a rule or emergency rule containing the substance of the suspended rule.

SECTION 2. Section 2001.0321, Government Code, as added by this Act, applies only to a proposed state agency rule for which notice of the rule as proposed is first published in the Texas Register under Section 2001.023, Government Code, on or after the effective date of this Act. A rule for which notice is published before the effective date of this Act is governed by the law in effect when the notice was published, and the former law is continued in effect for that purpose.

SECTION 3. This Act takes effect January 1, 2018, but only if the constitutional amendment proposed by the 85th Legislature, Regular Session, 2017, authorizing the legislature to provide for legislative review or approval of state agency rules is approved by the voters. If that proposed constitutional amendment is

vote to uphold the committees' suspension, the suspension terminates and, subject to Section 2001.036, the rule may take effect.

(e) Not later than the third day after the date a suspension is terminated under Subsection (c) or (d), the presiding officer of each house shall:

(1) notify the state agency that adopted the rule of the suspension's termination; and

(2) file notice of the termination with the secretary of state for publication in the Texas Register.

(f) Notwithstanding Section 2001.036, a rule adopted by a state agency that is suspended in both committees to which the rule is referred under Subsection (b) may not take effect unless either house of the legislature does not vote to uphold the committees' suspension under Subsection (c) or (d).

(g) During the time a rule is suspended under this section, the state agency that adopted the rule may not enforce a substantive provision of the suspended rule or adopt a rule or emergency rule containing the substance of the suspended rule.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.

not approved by the voters, this Act has no effect.