

# SENATE AMENDMENTS

2<sup>nd</sup> Printing

By: Roberts, Button, Parker, Kacal, et al.

H.B. No. 1290

A BILL TO BE ENTITLED

AN ACT

relating to the required repeal of a state agency rule before adoption of a new state agency rule.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter A, Chapter 2001, Government Code, is amended by adding Section 2001.0045 to read as follows:

Sec. 2001.0045. REQUIREMENT FOR NEW RULE. (a) In this section, "state agency" has the meaning assigned by Section 2001.006.

(b) Except as provided by Subsection (h), a state agency may not adopt a proposed rule unless on or before the effective date of the proposed rule the state agency repeals at least one state agency rule.

(c) Before a proposed rule subject to this section is first published or adopted, a state agency must prepare for the proposed rule a proposed rule reduction statement.

(d) The proposed rule reduction statement must:

(1) describe the rule proposed to be added and the rule proposed to be repealed;

(2) reasonably describe, with respect to the first five years the proposed rule would be in effect, whether:

(A) the proposed rule creates or eliminates a governmental program;

(B) implementation of the proposed rule requires

1 the creation of additional employee positions or the elimination of  
2 existing employee positions;

3 (C) implementation of the proposed rule requires  
4 an increase or decrease in future legislative appropriations to the  
5 state agency;

6 (D) the proposed rule requires an increase or  
7 decrease in fees paid to the state agency;

8 (E) the proposed rule expands, limits, or repeals  
9 another existing rule;

10 (F) the proposed rule increases or decreases the  
11 number of individuals subject to the rule's applicability; and

12 (G) the proposed rule positively or adversely  
13 affects this state's economy; and

14 (3) to the extent applicable, reasonably describe,  
15 with respect to the repealed rule, the information required under  
16 Subdivision (2).

17 (e) The comptroller shall adopt rules necessary to  
18 implement this section. The rules must require that the statement  
19 required under Subsection (d) be in plain language. The  
20 comptroller may prescribe a chart for use by a state agency in  
21 disclosing the information required under that subsection.

22 (f) A state agency's failure to comply with the requirements  
23 of Subsection (d) does not affect the legal status of a rule adopted  
24 under this chapter.

25 (g) This section applies to the adoption of an emergency  
26 rule.

27 (h) This section does not apply to the adoption of a rule:

1           (1) specifically required by the legislature;

2           (2) necessary to protect the health and safety of the  
3 residents of this state as authorized under the Health and Safety  
4 Code; or

5           (3) related to the essential knowledge and skills  
6 developed under Subchapter A, Chapter 28, Education Code, or high  
7 school graduation requirements adopted under Section 28.025,  
8 Education Code.

9           SECTION 2. Not later than October 1, 2017, the comptroller  
10 shall adopt the rules required under Section 2001.0045, Government  
11 Code, as added by this Act.

12           SECTION 3. Section 2001.0045, Government Code, as added by  
13 this Act, applies only to a rule proposed by a state agency on or  
14 after November 1, 2017. A rule proposed by a state agency before  
15 that date is governed by the law in effect immediately before the  
16 effective date of this Act, and the former law is continued in  
17 effect for that purpose.

18           SECTION 4. This Act takes effect September 1, 2017.

ADOPTED

MAY 23 2017

FLOOR AMENDMENT NO. 1

*Leta Spaw*  
Secretary of the Senate

BY:

*B. W. Kell*

1 Amend C.S.H.B. No. 1290 by Roberts (Senate committee  
2 report) as follows:

3 (1) Strike SECTION 1 of the bill (page 1, lines 23-61 to  
4 page 2, lines 1-14) and substitute the following:

5 SECTION 1. Subchapter A, Chapter 2001, Government Code, is  
6 amended by adding Section 2001.0045 to read as follows:

7 Sec. 2001.0045. REQUIREMENT FOR RULE INCREASING COSTS TO  
8 REGULATED PERSONS. (a) In this section, "state agency" means a  
9 department, board, commission, committee, council, agency,  
10 office, or other entity in the executive, legislative, or  
11 judicial branch of state government. This term does not include  
12 an agency under the authority of an elected officer of the  
13 state.

14 (b) Except as provided by Subsection (c), a state agency  
15 may not adopt a proposed rule for which the fiscal note for the  
16 notice required by Section 2001.024 states that the rule imposes  
17 a cost on any regulated person, including another state agency,  
18 a special district, and a local government, unless on or before  
19 the effective date of the proposed rule the state agency on or  
20 before the effective date of the proposed rule the agency:

21 (1) repeals a rule that imposes a cost on the person  
22 that is equal to or greater than the cost imposed on the person  
23 by the proposed rule; or

24 (2) amends a rule to decrease the costs imposed on  
25 the person by an amount that is equal to or greater than the  
26 cost imposed on the person by the proposed rule; and

27 (c) This section does not apply to a rule that:

28 (1) relates to state agency procurement;

29 (2) is amended to:

1                   (A) reduce the burden or responsibilities  
2 imposed on a regulated person by the rule; or

3                   (B) decrease the person's cost for compliance  
4 with the rule;

5                   (3) is adopted in response to a natural disaster;

6                   (4) is adopted by the Department of Family and  
7 Protective Services; or

8                   (5) is necessary to receive a source of Federal funds.

9                   (d) Each state agency that adopts a rule subject to this  
10 section shall comply with the requirements imposed by Subchapter  
11 B and Chapter 2002 for publication in the Texas Register.

12                   (2) Insert the following properly numbered SECTIONS and  
13 renumber subsequent SECTIONS accordingly:

14                   SECTION \_\_\_\_\_. Subchapter B, Chapter 2001, Government  
15 Code, is amended by adding Section 2001.0221 to read as follows:

16                   Sec. 2001.0221. GOVERNMENT GROWTH IMPACT STATEMENTS.

17 (a) A state agency shall prepare a government growth impact  
18 statement for a proposed rule.

19                   (b) A state agency shall reasonably describe in the  
20 government growth impact statement whether, during the first  
21 five years that the rule will be in effect:

22                   (1) the rule creates or eliminates a government  
23 program;

24                   (2) implementation of the rule requires the creation  
25 of new employee positions or the elimination of existing  
26 employee positions;

27                   (3) implementation of the rule requires an increase  
28 or decrease in future legislative appropriations to the agency;

29                   (4) the rule requires an increase or decrease in fees  
30 paid to the agency;

31                   (5) the rule creates a new regulation;

1           (6) the rule expands, limits, or repeals an existing  
2 regulation;

3           (7) the rule increases or decreases the number of  
4 individuals subject to the rule's applicability; and

5           (8) the rule positively or adversely affects the  
6 state's economy.

7           (c) The comptroller shall adopt rules to implement this  
8 section. The rules must require that the government growth  
9 impact statement be in plain language. The comptroller may  
10 prescribe the use of a chart that a state agency may use to  
11 disclose the items required under Subsection (b).

12           (d) Each state agency shall incorporate the impact  
13 statement into the notice required by Section 2001.024.

14           (e) This section applies to the adoption of an emergency  
15 rule.

16           (f) Failure to comply with this section does not impair  
17 the legal effect of a rule adopted under this chapter.

18           SECTION \_\_\_\_\_. Not later than October 1, 2017, the  
19 comptroller of public accounts shall adopt rules under Section  
20 2001.0221(c), Government Code, as added by this Act.

21           SECTION \_\_\_\_\_. Section 2001.0221, Government Code, as  
22 added by this Act, applies only to a proposed rule for which the  
23 notice required under Section 2001.023(b), Government Code, is  
24 filed on or after November 1, 2017.

25           SECTION \_\_\_\_\_. Section 2001.0045, Government Code, as  
26 added by this Act, applies only to a rule proposed by a state  
27 agency on or after the effective date of this Act. A rule  
28 proposed before that date is governed by the law in effect on  
29 the date the rule was proposed, and the former law is continued  
30 in effect for that purpose.

31           (3) Strike SECTION 2 of the bill.

ADOPTED

*L. W. Kelleher*

FLOOR AMENDMENT NO. 2

MAY 23 2017

BY: \_\_\_\_\_

*Leta Spaw*  
Secretary of the Senate

1 Amend Amendment No. 1 by ~~Kirkhorst~~ to H.B. No. 1290 (senate  
2 committee report), in added Subsection 2001.0045(c), Government  
3 Code as follows:

4 (1) On page 2, line 7, strike "or".

5 (2) On page 2, line 8, strike "(5) is necessary to receive  
6 a source of Federal funds." and insert the following:

7 "(5) is necessary to receive a source of federal funds or  
8 to comply to with federal law; or

9 (6) is necessary to protect water resources of this state  
10 as authorized by the Water Code."

Amend Floor Amendment No. 1 by Kolchorst to HB 1290 (Senate committee report) as follows:

- (1) On page 2, line 7 strike "or";
- (2) On page 2, line 8 strike "." and substitute ":";
- (3) On page 2, between lines 8 and 9 insert the following:  
"~~(7)~~ is adopted by the Department of Motor Vehicles;  
or  
~~(8)~~ is adopted by a self-directed semi-independent  
agency."

**ADOPTED**  
VV  
MAY 23 2017  
*Lately Spaw*  
Secretary of the Senate



**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**May 24, 2017**

**TO:** Honorable Joe Straus, Speaker of the House, House of Representatives

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB1290** by Roberts (Relating to the required repeal of a state agency rule before adoption of a new state agency rule. ), **As Passed 2nd House**

**No significant fiscal implication to the State is anticipated.**

The bill would amend the Government Code to restrict a state agency from adopting a proposed rule for which the fiscal note for the notice of the proposed rule states that the rule imposes a cost on any regulated person, including another state agency, a special district and a local government, unless on or before the effective date of the proposed rule the state agency repeals a rule that would decrease total costs on the person in an amount equal to or greater than the cost imposed by the proposed rule, or the agency amends a rule which would decrease the total costs on the person in an amount equal to or less than the proposed rule.

The bill would apply the restriction to a "state agency" that is a department, board, commission, committee, council, agency, office, or other entity in the executive, legislative, or judicial branch of state government. "State agency" would not include an agency under the authority of an elected officer of the state. The restriction would not apply to certain rules specified in the bill.

The bill would amend Chapter 2001, Government Code, to require a state agency to prepare a government growth impact statement for a proposed rule. The bill would specify information to be included in the impact statements. The bill would require the Comptroller of Public Accounts to adopt rules relating to the impact statements. A state agency would be required to incorporate the impact statement into the notice of the proposed rule required under Section 2001.024.

The bill would take effect on September 1, 2017.

This analysis assumes that costs to implement the provisions of the bill could be absorbed within existing resources.

## Local Government Impact

No significant fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts, 307 Secretary of State, 360 State Office of Administrative Hearings, 405 Department of Public Safety, 451 Department of Banking, 452 Department of Licensing and Regulation, 458 Alcoholic Beverage Commission, 503 Texas Medical Board, 537 State Health Services, Department of, 551 Department of Agriculture, 582 Commission on Environmental Quality, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration, 781 Higher Education Coordinating Board

**LBB Staff:** UP, KK, NV, LCO, CL, AG, MSO, EK, RD, ASa, WP

**LEGISLATIVE BUDGET BOARD**  
**Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**  
**Revision 1**

**May 22, 2017**

**TO:** Honorable Lois W. Kolkhorst, Chair, Senate Committee on Administration

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB1290** by Roberts (Relating to the required repeal of a state agency rule before adoption of a new state agency rule.), **As Engrossed**

<p><b>No significant fiscal implication to the State is anticipated.</b></p>
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The bill would amend Chapter 2001 of the Government Code to restrict a state agency from adopting a proposed rule unless on or before the effective date of the proposed rule, the state agency repeals at least one state agency rule. The bill would require a state agency to prepare a proposed rule reduction statement relating to the effect of the proposed rule and repeal of the existing rule. The bill would specify information to be included in the statements. The bill would require the Comptroller of Public Accounts to adopt rules relating to the statements not later than October 1, 2017.

The provisions of the bill would apply to a "state agency" as defined by Section 2001.006 of the Government Code. The provisions would not apply to the adoption of a rule specifically required by the legislature; a rule necessary to protect the health and safety of the residents of this state as authorized under the Health and Safety Code; or rules related to the essential knowledge and skills developed under Subchapter A, Chapter 28, Education Code, or high school graduation requirements adopted under Section 28.025, Education Code.

This analysis assumes that any additional work resulting from implementation of the bill could be absorbed within state agencies' existing resources.

To the extent that the bill only addresses rulemaking procedure rather than modify, add, or abolish a tax or fee, the bill would not have a direct revenue implication. However, the Comptroller indicates that the requirements of the bill could delay implementation of other legislative changes and reduce guidance to taxpayers regarding new and existing law, and may therefore result in delayed or reduced revenue collections.

## **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts, 307 Secretary of State, 360 State Office of Administrative Hearings, 405 Department of Public Safety, 451 Department of Banking, 452 Department of Licensing and Regulation, 458 Alcoholic Beverage Commission, 503 Texas Medical Board, 537 State Health Services, Department of, 551 Department of Agriculture, 582 Commission on Environmental Quality, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration, 781 Higher Education Coordinating Board

**LBB Staff:** UP, KK, NV, LCO, CL, AG, MSO, EK, RD, ASa

**LEGISLATIVE BUDGET BOARD  
Austin, Texas**

**FISCAL NOTE, 85TH LEGISLATIVE REGULAR SESSION**

**March 21, 2017**

**TO:** Honorable Byron Cook, Chair, House Committee on State Affairs

**FROM:** Ursula Parks, Director, Legislative Budget Board

**IN RE: HB1290** by Roberts (Relating to the required repeal of a state agency rule before adoption of a new state agency rule.), **As Introduced**

<b>No significant fiscal implication to the State is anticipated.</b>
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The bill would amend the Government Code to restrict a state agency from adopting a proposed rule unless on or before the effective date of the proposed rule, the state agency repeals at least one state agency rule. The bill would apply the restriction to a "state agency" as defined by Section 2001.006 of the Government Code. The restriction would not apply to the adoption of a rule specifically required by the legislature or to a rule necessary to protect the health and safety of the residents of this state as authorized under the Health and Safety Code.

Based on the analyses of several agencies, any additional work resulting from implementation of the bill could be absorbed within existing resources.

To the extent that the bill only addresses rulemaking procedure rather than modify, add, or abolish a tax or fee, the bill would not have a direct revenue implication. However, the Comptroller indicates that the requirements of the bill could delay implementation of other legislative changes and reduce guidance to taxpayers regarding new and existing law, and may therefore result in delayed or reduced revenue collections.

**Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 304 Comptroller of Public Accounts, 307 Secretary of State, 360 State Office of Administrative Hearings, 405 Department of Public Safety, 451 Department of Banking, 452 Department of Licensing and Regulation, 458 Alcoholic Beverage Commission, 503 Texas Medical Board, 537 State Health Services, Department of, 551 Department of Agriculture, 582 Commission on Environmental Quality, 710 Texas A&M University System Administrative and General Offices, 720 The University of Texas System Administration, 781 Higher Education Coordinating Board

**LBB Staff:** UP, AG, NV, LCO, MSO, EK, RD, ASa