

## **BILL ANALYSIS**

Senate Research Center  
86R10901 YDB-F

S.B. 2371  
By: Hughes  
State Affairs  
4/7/2019  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Two judicial doctrines, known as “Chevron deference” and “Auer deference,” require courts to defer to agencies’ interpretations of law rather than decide all questions of law de novo (without deference). The Chevron doctrine provides that when litigants challenge agency decisions in court, judges must defer to an agency’s interpretation of a statute the agency administers whenever the law at issue is ambiguous and the agency’s interpretation of the statutory ambiguity is reasonable. Under the Auer doctrine, courts defer to an agency’s interpretation of its own regulations unless that interpretation is plainly erroneous or inconsistent with the regulation. Although the Supreme Court of Texas (supreme court) has never expressly adopted the Chevron doctrine, Texas courts use a similar analysis. The supreme court has also endorsed a version of the Auer doctrine. The legislature need not wait for the supreme court to revisit these deference doctrines. It can and should put an end to them itself.

S.B. 2371 eliminates the application of the Chevron and Auer doctrines in Texas by expressly prohibiting state courts from deferring to a state agency’s interpretation of a statute or regulation the agency administers and implements.

As proposed, S.B. 2371 amends current law relating to judicial deference regarding an interpretation of law by a state agency.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter C, Chapter 311, Government Code, by adding Section 311.0231, as follows:

Sec. 311.0231. PROHIBITED DEFERENCE TO AGENCY CONSTRUCTION. Prohibits a court, notwithstanding Section 311.023(6) (relating to authorizing a court, in construing a statute, to consider administrative construction of the statute) or any other law, from giving deference to any construction of a statute by the state agency responsible for the statute's administration or implementation.

SECTION 2. Amends Subchapter B, Chapter 2001, Government Code, by adding Section 2001.042, as follows:

Sec. 2001.042. JUDICIAL REVIEW OF AGENCY RULEMAKING. Prohibits a court, notwithstanding any other law, in a judicial proceeding in this state, including an action subject to Section 2001.038 (Declaratory Judgement), from giving deference to a legal determination made by a state agency regarding the construction, validity, or applicability of a rule adopted by the state agency responsible for the rule's administration or implementation.

SECTION 3. Amends Subchapter G, Chapter 2001, Government Code, by adding Section 2001.1721, as follows:

Sec. 2001.1721. JUDICIAL REVIEW OF QUESTION OF LAW. (a) Requires the reviewing court, in any matter brought under this subchapter (Contested Cases: Judicial Review), to decide all questions of law by trial de novo, including the interpretation of constitutional provisions, statutory provisions, or rules adopted by a state agency, without giving deference to any legal determination by a state agency.

(b) Provides that notwithstanding any other law, this section applies in an action for judicial review of a contested case that is authorized by law and other court actions authorized by law that involve a state agency's construction of a constitutional provision or statutory provision or a rule adopted by a state agency.

(c) Prohibits a law from exempting an action from the application of this section except by specific reference to this section.

SECTION 4. Makes application of this Act prospective.

SECTION 5. Effective date: September 1, 2019.