

BILL ANALYSIS

C.S.H.B. 139
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State Affairs
Committee Report (Substituted)

BACKGROUND AND PURPOSE

During the COVID-19 pandemic, it became difficult for the legislature to monitor the agency implementation of non-pandemic-related legislation. This is partly due to the fact that state agencies are not required to provide notice to the bill author and sponsor when they promulgate rules for their legislation. C.S.H.B. 139 seeks to require an agency to notify the primary author and primary sponsor of a piece of legislation when they post rules to the Texas Register regarding legislation that has passed in the last four years if the author or sponsor is a current member of the legislature.

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. 139 amends the Government Code to require the notice filed with the secretary of state by a state agency regarding a proposed rule to include as part of the statement indicating the relevant rulemaking authority, if applicable, the bill number for the legislation that enacted the statutory authority under which the rule is proposed to be adopted, if the legislation was enacted during the four-year period preceding the date notice of the proposed rule is given. The bill establishes that the failure to include that information in the notice of a proposed rule does not invalidate a rule adopted by a state agency or an action taken by the agency under that rule.

C.S.H.B. 139 requires a state agency proposing a rule under statutory authority that specifically authorizes the agency to adopt the rule and that became law during the preceding four-year period to provide notice of the proposed rule to the primary author and the primary sponsor of the legislation that enacted the statutory authority, if the primary author or primary sponsor is a current member of the legislature, not later than the third day after the date on which the agency files the requisite notice with the secretary of state. The notice must be provided electronically to the legislator's designated Capitol email address or to another email address provided to the agency for the purpose of receiving the notice. The bill establishes that failure to provide the notice does not invalidate a rule adopted by a state agency or an action taken by the agency under that rule.

C.S.H.B. 139, effective September 1, 2023, establishes that a state agency's failure to publish a summary of a proposed rule on the agency's website written in plain language in both English and Spanish does not invalidate a rule adopted by the agency or an action taken by the agency under that rule.

C.S.H.B. 139 applies only to a proposed rule for which notice is filed with the secretary of state on or after the bill's effective date.

EFFECTIVE DATE

Except as otherwise provided, on passage, or, if the bill does not receive the necessary vote, September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 139 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute includes a provision absent from the introduced establishing that, effective September 1, 2023, a state agency's failure to publish a summary of a proposed rule on the agency's website written in plain English and Spanish does not invalidate a rule adopted by the agency or an action taken by the agency under that rule. The substitute updates the bill's effective date to reflect the fact that this provision takes effect September 1, 2023, with no possibility of immediate effect unlike the remainder of the bill's provisions.

While both the introduced and the substitute require the notice regarding a proposed rule to include as part of the statement indicating the relevant rulemaking authority, if applicable, the bill number for the legislation that enacted the statutory authority under which the rule is proposed to be adopted, the substitute includes language not in the introduced conditioning the applicability of this requirement on that legislation having been enacted during the four-year period preceding the date notice of the proposed rule is given. The substitute includes a provision absent from the introduced establishing that failure to include that information in the notice of a proposed rule does not invalidate a rule adopted by a state agency or an action taken by the agency under that rule.

The substitute revises the provision in the introduced requiring the notice of a proposed rule to be provided to each person who was a primary author or sponsor of the applicable legislation if that person is a current member of the legislature to clarify that notice has to be provided only to the one primary author and the one primary sponsor of the legislation, if applicable.