

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

**FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION**

**April 18, 2023**

**TO:** Honorable Jeff Leach, Chair, House Committee on Judiciary & Civil Jurisprudence

**FROM:** Jerry McGinty, Director, Legislative Budget Board

**IN RE: HB791** by Harrison (Relating to state agency review of adopted rules.), **As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB791, As Introduced : a negative impact of (\$11,098,874) to the Health and Human Services Commission through the biennium ending August 31, 2025.

The bill's fiscal implications relating to civil litigation and revenue loss from expiring rules cannot be determined.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

**General Revenue-Related Funds, Five- Year Impact:**

<i>Fiscal Year</i>	<i>Probable Net Positive/(Negative) Impact to General Revenue Related Funds</i>
2024	(\$5,636,024)
2025	(\$5,462,850)
2026	(\$5,466,783)
2027	(\$5,470,758)
2028	(\$5,474,779)

**All Funds, Five-Year Impact:**

<i>Fiscal Year</i>	<i>Probable Savings/(Cost) from General Revenue Fund 1</i>	<i>Probable Savings/(Cost) from GR Match For Medicaid 758</i>	<i>Probable Savings/(Cost) from Federal Funds</i>	<i>Change in Number of State Employees from FY 2023</i>
2024	(\$2,708,003)	(\$2,928,021)	(\$2,969,977)	67.7
2025	(\$2,626,068)	(\$2,836,782)	(\$2,877,354)	67.7
2026	(\$2,627,939)	(\$2,838,844)	(\$2,879,446)	67.7
2027	(\$2,629,826)	(\$2,840,932)	(\$2,881,564)	67.7
2028	(\$2,631,739)	(\$2,843,040)	(\$2,883,704)	67.7

**Fiscal Analysis**

The bill would amend the Administrative Procedure Act to require state agencies to review adopted rules and publish an assessment of whether the rules continue to be justified. In addition, the publication requires an assessment of any cost a rule that is subject to Government Code Section 2001.0045. Government Code Section 2001.0045 requires the repeal or amendment of proposed rules in order to eliminate or reduce costs

imposed by the proposed rules.

If a state agency fails to complete a rule review, the bill would provide for unreviewed rules to be considered expired and unenforceable. The bill would allow any person injured by the continued enforcement of a rule that has expired to file a civil action for relief from the rule's continued enforcement. A plaintiff who prevails in the action is entitled to recover reasonable costs and attorney's fees from the state agency that adopted the rule.

### **Methodology**

State agencies anticipate this bill could have potentially significant costs associated with maintaining compliance, as well as with failing to maintain compliance. Among the anticipated costs are new personnel, technology, one-time costs from starting a program, legal fees, and potential revenue loss.

According to the Health and Human Services Commission (HHSC), additional staff are needed to come into compliance with rule reviews, including, but not limited to: conduct an estimated 250 rule reviews every four years; review public comments on rule changes; and perform financial analysis of rule changes. Given the potentially large volume of rules involved in review, this analysis assumes HHSC requires a total of 67.7 FTEs in fiscal year 2024 through 2028 to implement the provisions of the bill. Personnel related costs at HHSC, including salaries, overhead, and printing costs, are estimated to total \$8,606,001 in All Funds in fiscal year 2024 and \$8,340,204 in All Funds in fiscal year 2025.

HHSC indicates there is likely a significant but undetermined cost associated with bill pertaining to the expiration of rules that failed to complete a rule review, including, but not limited to, amending state contracts to account for the expired rules. The costs specified above do not assume such costs at HHSC.

In addition to the costs outlined by HHSC, there are other costs that cannot be determined at this time due to uncertainty about the number of individuals likely to seek civil action against the state and the amount individuals would be compensated.

### **Technology**

Technology costs at HHSC are estimated to total \$217,568 in fiscal year 2024 and \$35,455 in fiscal year 2025. Costs are primarily related to personnel costs.

### **Local Government Impact**

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

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts, 320 Texas Workforce Commission, 452 Department of Licensing and Regulation, 529 Health and Human Services Commission, 582 Commission on Environmental Quality, 601 Department of Transportation, 802 Parks and Wildlife Department

**LBB Staff:** JMc, KDw, THO, JCo, SZ