

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 88TH LEGISLATIVE REGULAR SESSION

April 19, 2023

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

FROM: Jerry McGinty, Director, Legislative Budget Board

IN RE: HB1947 by Harrison (Relating to de novo review and interpretation of state laws and state agency rules by reviewing court judges and administrative law judges.), **As Introduced**

The fiscal implications of the bill cannot be determined because the decline in revenues and increased costs to the state that would be realized due to courts being required to rule in favor of individuals and entities challenging agency authority is unknown.

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

The bill would amend the Government Code by adding a new section titled De Novo Review of State Law Provisions by Reviewing Court Judge; Interpretation of Ambiguous State Law Provision. The bill would define “provision of state law” to mean a state statute; a rule a state agency adopts; or an opinion letter, manual, or other guidance document a state agency issues interpreting the meaning, scope, or effect of a state statute or state agency rule. The bill would require certain judges to review related provisions de novo and without deference to the state agency's interpretation. The bill would require an ambiguous provision of state law to be resolved in favor of limiting the authority of the state agency after a reviewing court judge applied all rules and canons of interpretation concerning the ambiguous provision of state law. The bill would add a new section in the Government Code titled De Novo Review of State Law Provision in Administrative Hearing; Interpretation of Ambiguous State Law Provision that would apply the same definitions and provisions to administrative law judges.

Although the Comptroller of Public Accounts (CPA) has identified General Revenue costs of \$138,000 as necessary to provide one FTE (Attorney IV) to cover anticipated increases in court challenges for the CPA, the CPA also estimates there would be an indeterminate fiscal impact to the state under the provisions of the bill. Based on information provided by the CPA, the requirements of the bill would have negative fiscal implications for tax revenue because a lack of ability to enforce binding rules and the resulting uncertainty are anticipated to diminish taxpayer compliance and revenue collection. According to the CPA, a loss in franchise tax revenue would be realized if taxpayers would be allowed to select the most favorable apportionment interpretation for their activity. The CPA estimates increasing declines in franchise tax revenue beginning in fiscal year 2025 following successful litigation to stay application of the CPA's rule for sourcing gross receipts for purposes of margin apportionment when taxpayers prefer a different standard. The anticipated loss to the Property Tax Relief Fund No. 304 would total \$0 in fiscal year 2024; \$65,000,000 in fiscal year 2025; \$100,000,000 in fiscal year 2026; \$140,000,000 in fiscal year 2027; and \$185,000,000 in fiscal year 2028. The CPA also estimates declines in net collections of other taxes as well as declines in school property tax collections which would result in negative implications for state foundation school program costs as courts would favor challenges to the CPA's Property Value Study; however, the total amount of the decline in all revenues cannot be estimated.

Based on information provided by the State Office of Administrative Hearings, it is assumed that costs associated with implementing the provisions of the bill could be absorbed using existing resources.

Based on information provided by the Office of Court Administration, it is assumed that costs to the state court

system could be absorbed using existing resources.

Local Government Impact

Although costs to the local court system are not anticipated to be significant, the fiscal implications of the bill to units of local government due to courts being required to rule in favor of local entities challenging agency authority cannot be determined at this time.

Source Agencies: 212 Office of Court Administration, Texas Judicial Council, 304 Comptroller of Public Accounts, 360 State Office of Administrative Hearings

LBB Staff: JMc, KDw, MW, JPa