SUBJECT: Removal of expired or invalid state agency rules

COMMITTEE: State Affairs — favorable, without amendment

VOTE: 11 ayes — Wolens, S. Turner, Brimer, Counts, Craddick, Danburg, Hunter,
                Longoria, McCall, McClendon, Merritt

                0 nays

                4 absent — Bailey, Hilbert, D. Jones, Marchant

WITNESSES: For — Charles Spain

                Against — None

                On — *Registered but not testifying:* Dan Procter, Office of Secretary of
                State, Texas Register Section

BACKGROUND: The statute establishing each state agency includes a requirement that the
                agency cease to exist as of a certain date if the Legislature does not enact
                legislation to extend its existence. The Sunset review process for
                determining whether an agency should continue is outlined in Government
                Code, chapter 325. Under sec. 325.017, includes the procedures taken if a
                state agency is abolished by the Sunset process. An agency abolished in an
                odd-numbered year continues in existence until September 1 of the following
                year to conclude its business before ceasing all activities.

                Government Code, chapter 2001, the Texas Administrative Procedure Act, in
                subchapter B, includes the notice and comment and other procedures that
                agencies must follow in their rulemaking process, including judicial review.
                Government Code, chapter 2002, subchapter C directs the secretary of state
                to compile state agency rules into a Texas Administrative Code. The
                secretary may omit a rule from the code if its application is local or limited.
                The secretary may omit other information if publication would be
                cumbersome, expensive, or otherwise inexpedient or if the agency requests
                its omission and makes the information available in other form.

DIGEST: HB 1430 would amend Government Code, section 325.017to provide that unless the law provides otherwise, the rules adopted by a state agency abolished under the Sunset Act would expire at the same time the agency's one-year concluding period ended.

HB 1430 also would add sec. 2002.058 to the Government Code, requiring the secretary of state, after a state agency has been abolished, to remove that agency's rules from the administrative code, unless the law provides otherwise. If the Legislature transferred abolished agency's rules to another state agency, the secretary would have to transfer the rules to the appropriate place in the code.

A state agency would have to repeal rules declared invalid by a final court judgement, but a judgement would not be considered final as long as it still could be reversed by an appellate court.

HB 1403 would take effect September 1, 2001.

SUPPORTERS SAY: HB 1403 would establish a procedure for removing invalid or obsolete rules and give the secretary of state the authority needed to clean up the Texas Administrative Code. People referencing the code can be misled into believing an invalid rule is still applicable or that an abolished agency still exists. The bill would

HB 1430 would save time and avoid confusion for those who need to reference the code for agency rules. If a rule has been transferred to a new agency, it should not be in the code under the old agency's rules. When rules for an abolished agency are transferred to new agencies, they sometimes fail to take official action to adopt the rules as their own. The agency may keep using the old rules as listed under the abolished agency and just amend the rules as needed.

Government Code, sec. 2001.039 requires state agencies to review, amend, repeal, or re-adopt their rules no later than the rule's fourth anniversary and every four years after that. Rather than have to wait as long as four years for an agency to clean up rules inherited from an abolished agency, HB 1430

would ensure that the rules were transferred to their proper place in the code by requiring the secretary of state, the publisher of the code, to perform this duty.

HB 1430 also would help eliminate confusion in the code by requiring state agencies specifically to repeal rules declared invalid by a final court judgement. Otherwise, someone using the code may be unaware that a rule no longer is valid.

OPPONENTS
SAY:

No apparent opposition.