

- SUBJECT:** Prohibiting agencies from imposing unauthorized costs through rulemaking
- COMMITTEE:** State Affairs — favorable, without amendment
- VOTE:** 8 ayes — Marchant, Madden, J. Davis, B. Cook, Elkins, Gattis, Goodman, Lewis
- 0 nays
- 1 absent — Villarreal
- WITNESSES:** For — (*Registered, but did not testify:*) Amy Beneski, Texas Association of School Administrators and Texas Association of School Boards; Dan Dodson, Texas Environmental Equity Alliance; Floyd Ivy, Thomas McIntire, and John Sumner, Texas Licensed Child Care Association; Mark Mendez, Tarrant County Commissioners Court; Donald Lee, Texas Conference of Urban Counties; Michele Molter, Texas Apartment Association
- Against — None
- BACKGROUND:** Government Code, sec. 2001.023 requires a state agency to give at least 30 days' notice of its intention to adopt a rule before doing so. The agency also must notify the secretary of state for publication in the *Texas Register*. Sec. 2001.024 specifies the content of the notice. Among other requirements, the notice must include a fiscal note showing the additional estimated cost, reduction in cost, loss or increase in revenue, or absence of cost or revenue impact on state and local governments due to enforcing or administering the rule. The notice also must include a note that identifies the public benefits expected from the rule's adoption and the probable economic cost to people who must comply with the rule.
- DIGEST:** HB 426 would prohibit an agency from adopting a rule, the notice for which projects additional costs to local governments that enforce or administer the rule or to people who must comply with the rule, unless the Legislature expressly authorized the agency to adopt such a rule. An agency order finally adopting such a rule would have to refer to the law authorizing the rule.

The bill would take effect September 1, 2003, and would apply only to rules for which an agency gave notice on or after December 1, 2003.

**SUPPORTERS
SAY:**

HB 426 would give the Legislature necessary oversight to ensure that the implementation of laws does not result in unintended costs to constituents. The Legislature often enacts laws with no intention of creating costs for local governments or those regulated, but an agency responsible for implementing a law may adopt rules that impose costs and fees. Higher fees, a form of taxation, eventually are born by property taxpayers and by entities that do business in the state. Only lawmakers who are directly accountable to the electorate should make decisions that impose higher costs.

In cases when legislators agree to impose costs on political subdivisions or the private sector to achieve a policy goal, HB 426 would require legislators to be more deliberate about those costs by specifying them in statute. The bill would increase legislators' accountability to the public by requiring them to take responsibility for the burden of regulatory compliance on constituents, rather than allowing legislators to blame the regulatory bureaucracy. In so doing, it would help limit the role of government.

Political subdivisions of the state are having trouble balancing their budgets, as is state government. This bill would provide budgetary relief by limiting the authority of the bureaucracy to impose unfunded mandates without specific authorization by the Legislature.

Floor amendments will address any concern that existing agency rules could be affected by this legislation if brought up for revision and will clarify how an agency could comply with federal requirements requiring conforming rule changes.

**OPPONENTS
SAY:**

HB 426 would overly restrict agencies' rulemaking authority. The Legislature sets policy goals in statute but relies on state agencies' technical expertise to implement and achieve those goals. Because of this division of labor, legislators are not always fully aware of the costs of successful implementation. The Legislature should not limit agencies' ability to do their jobs by requiring that the Legislature specifically authorize every rule that might have an economic impact. Many rules, particularly those promulgated

by regulatory agencies, have an unforeseen economic impact. Prohibiting their promulgation could prevent effective regulation.

Agencies adopt rules in response not only to state law but also to federal laws and regulations. HB 426 could be interpreted as requiring the Legislature to grant an agency specific authority to adopt any rule with an economic impact, even if the rule were adopted to conform with federal regulations. Requiring state lawmakers to act before an agency could comply with federal government regulations is infeasible with a part-time Legislature and could compromise agencies' ability to conform with federal requirements.

The bill also could apply to an amendment of an existing rule. Even if the amendment involved no additional costs to local governments or regulated people, the existing rule could be prohibited if it had an original cost impact, thus undoing existing regulation.

NOTES:

The companion bill, SB 1766 by Deuell, has been referred to the Senate Government Organization Committee.