

SUBJECT: Rulemaking by state agencies

COMMITTEE: Government Efficiency and Reform — committee substitute recommended

VOTE: 6 ayes — Harper-Brown, Perry, Capriglione, Stephenson, Scott Turner, Vo
0 nays
1 absent — Taylor

WITNESSES: For — (*Registered, but did not testify:* Kathy Barber, NFIB Texas; Jon Fisher, Associated Builders and Contractors of Texas)
Against — None

BACKGROUND: The Administrative Procedure Act (Government Code, ch. 2001) governs rulemaking procedures for state agencies.
Sec. 2001.038 enables a person to file an action for relief in Travis County district court when it is alleged that an administrative rule issued by a state agency adversely affects that person.

DIGEST: CSHB 2851 would amend Government Code, ch. 2001, subch. B to specify that the rules adopted by a state agency would be required to fulfill a purpose established by the constitutional or statutory law governing that agency and would have to be within the agency's authority to adopt.
The bill would take effect September 1, 2013.

SUPPORTERS SAY: CSHB 2851 would make clear in statute that state agency rules must fulfill a purpose based on statutory authority. The interim study released January 13 by the Government Efficiency and Reform Committee found that state agencies do not always adhere closely enough to the Administrative Procedure Act in the rulemaking process, resulting in the adoption of rules that can exceed the intent of governing statutes. The bill would add clarifying language to the act to address these issues.

The bill would explicitly require state agencies to adopt only rules that fit within the intent of their governing statutes. Nowhere in state statutes are agencies specifically prohibited from going outside the bounds of the statutes that enable them. The language in the bill would codify something that is implied but not always adhered to by state agencies when they make their rules.

**OPPONENTS
SAY:**

State agencies already are not permitted to adopt rules that operate outside the statutory law governing the agency. If an agency issues a rule outside the authority of its enabling statute, an individual adversely affected by that rule may file suit in district court and allege that the agency is operating outside of its statutory authority. Also, the requirement for a rule to fulfill a purpose is vague, and it is unclear how courts might interpret this language.