

- SUBJECT:** Notice to attorney general of constitutional challenges to state statutes
- COMMITTEE:** Judiciary and Civil Jurisprudence — favorable, without amendment
- VOTE:** 8 ayes — Smithee, Farrar, Clardy, Hernandez, Laubenberg, Schofield, Sheets, S. Thompson
- 0 nays
- 1 absent — Raymond
- SENATE VOTE:** On final passage, May 12 — 30-0
- WITNESSES:** For — (*Registered, but did not testify:* Debby Valdez, Guardianship Reform Advocates for the Disabled and Elderly)
- Against — (*Registered, but did not testify:* William Squires, Bexar County District Attorney’s Office)
- On — David Slayton, Office of Court Administration, Texas Judicial Council; Benjamin Dower, Office of the Attorney General; Robert Kepple, Texas District and County Attorneys Association
- BACKGROUND:** Government Code, sec. 402.010 requires courts to provide notice to the attorney general when a petition, motion, or other pleading challenging the constitutionality of a statute of this state is filed. The court must wait 45 days after this notice is provided before entering a final judgment holding a state statute unconstitutional.
- In *Ex Parte Lo*, 424 S.W.3d 10 (Tex. Crim. App. 2013), the Texas Court of Criminal Appeals held that these provisions violated the separation of powers provision in Tex. Const., Art. 2.
- DIGEST:** SJR 8 would propose an amendment to the Texas Constitution that would authorize the Legislature to require courts to give notice to the attorney general of constitutional challenges to state statutes and to prescribe a

period after that notice during which the court could not enter a judgment holding a statute unconstitutional.

The resolution also would establish a temporary provision that Government Code, sec. 402.010 would be validated and effective on approval of the constitutional amendment and would apply only to a petition, motion, or other pleading filed on or after January 1, 2016. This provision would expire January 2, 2016.

The proposal would be presented to the voters at an election on November 3, 2015. The ballot would read: “The constitutional amendment authorizing the legislature to require a court to provide notice to the attorney general of a challenge to the constitutionality of a state statute and authorizing the legislature to prescribe a waiting period before the court may enter a judgment holding the statute unconstitutional.”

**SUPPORTERS
SAY:**

SJR 8 is necessary to ensure that the state’s chief attorney has opportunity to defend the laws of this state from constitutional challenges. The proposed amendment would not restrict the ability of courts to strike down laws enacted by the Legislature on constitutional grounds. It simply would provide the state with ample opportunity to defend those laws.

The proposed amendment would not change the authority of the attorney general’s office over criminal matters. It simply would provide the attorney general with notice so that the attorney general could offer assistance or file amicus briefs to defend the state law from constitutional challenge.

An amendment could resolve any issues related to the role of the attorney general’s office in constitutional challenges in criminal cases. It would clarify that notice given to the attorney general in criminal cases under the proposed constitutional amendment was for the purpose of an offer of assistance or amicus support by the attorney general.

**OPPONENTS
SAY:**

The constitutional amendment proposed by SJR 8 could create confusion regarding the attorney general’s role in criminal cases. Under current law,

the attorney general, with a few statutory exceptions that require the consent of local prosecutors, is not authorized to represent the state in criminal cases. Because of this lack of authority, it would be unnecessary to provide notice to the attorney general in those cases. If prosecutors feel that they need the attorney general's assistance in a pending case, they easily can request assistance.

NOTES: The author plans to offer a floor amendment that would specify that notice given to the attorney general in criminal cases under the proposed constitutional amendment would be for the purpose of an offer of assistance or amicus support by the attorney general.