

Requiring state agencies to cite legislation authorizing rules

HB 462 by Dale (Zaffirini)

DIGEST:	HB 462 would have required state agencies to give notice of a proposed rule to the authors and sponsors of the legislation under which the rule would be adopted. Notice would have been given on the same day the agency filed notice of its intention to adopt the rule with the Secretary of State for publication in the Texas Register. The bill would have required that the notice filed with the Secretary of State include the bill number of the legislation that enacted the statutory or other authority providing the basis for the proposed rule.
GOVERNOR'S REASON FOR VETO:	“Agency rulemaking is an executive branch function, not a legislative function. Transparency in rulemaking is important, but it should not come at the expense of legislative encroachment on executive branch authority. Additionally, House Bill 462 has the potential to slow down the executive rulemaking process rather than enhance it.”
RESPONSE:	<p>Rep. Tony Dale, the bill’s author, said: “I respectfully disagree with the governor’s veto. I filed this bill to promote accountability and transparency at state executive agencies and to require state agencies to cite their legal authority when rulemaking. It is not always clear under what legal authority state agencies promulgate rules that will have the effect of law.</p> <p>“HB 462 had two components. First, the bill would have required state agencies to cite what legal authority they have to create new rules. The second part of the bill would have required the agency to provide notice of the proposed rule and the statutory authority under which the proposed rule is adopted to the author, joint author, sponsor and joint sponsor of the bill.</p> <p>“I would have welcomed the opportunity to work with the governor’s office on any concerns they had with HB 462 prior to the veto. In his veto statement, the governor said, “Agency rulemaking is an executive branch function, not a legislative function.” While this is true, it should be recognized that agency rulemaking is authorized by the Legislature as a delegated authority and it is in the purview of the legislature to weigh in on such issues.</p> <p>“During the 84th legislative session, a total of 1,322 bills were passed. Of those 1,322 bills, 126 authorized rulemaking at state agencies. According to the Secretary of State’s office, during the 2015-16 biennium, 12,528 rules were adopted by executive agencies. The governor was concerned that HB 462 had the potential to</p>

slow down the executive rulemaking process rather than enhance it. If state agencies are adopting 10 times the number of rules in a biennium than the number of laws passed during a session, perhaps rule making should move at a more deliberate pace.

“I urge future legislatures to adopt legislation improving rulemaking transparency. I also caution future legislatures to be wary of granting rulemaking authority to agencies, as those adopting the rules are not elected officials.”

Sen. Judith Zaffirini, the Senate sponsor, had no comment on the veto.

NOTES:

HB 462 passed on the Local, Consent, and Resolutions Calendar and was not analyzed in a *Daily Floor Report*.