

BILL ANALYSIS

Senate Research Center
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S.B. 1162
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

This bill requires litigants in all Texas state courts to notify the attorney general when the constitutionality of a Texas statute, rule, or regulation is challenged. Although a more limited—and somewhat confusing—version of this requirement exists in the state's codification of the Uniform Declaratory Judgments Act, this bill is broader in scope and is limited to suits in which the plaintiff is seeking declaratory relief.

As proposed, S.B. 1162 amends current law relating to notice to the attorney general of an action, suit, or proceeding challenging the validity of a Texas statute or rule.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter A, Chapter 402, Government Code, by adding Section 402.010, as follows:

Sec. 402.010. CHALLENGES TO VALIDITY OF STATE STATUTE OR RULE. (a) Defines "state agency."

(b) Requires the party asserting the challenge, in an action, suit, or proceeding, whether original or appellate, in which a party or amicus curiae asserts a challenge to the validity of a state statute or a rule adopted by a state agency, to give written notice of the challenge to the attorney general if the state, a state agency, or a state officer or employee in the officer's or employee's official capacity is not a party to the action, suit, or proceeding.

(c) Provides that an action, suit, or proceeding in which notice to the attorney general is required under this section is an action, suit, or proceeding in which a party or amicus curiae asserts that a state statute or rule conflicts with the constitution of the United States or of this state; with federal law or is preempted by federal law; or with a statute of this state, in the case of a challenge to a rule of a state agency.

(d) Requires that the notice required by Subsection (b) identify the challenged statute or rule; the nature of the challenge; the court in which the challenge is pending; and the style and number of the action, suit, or proceeding in which the challenge is pending.

(e) Requires that the notice required by Subsection (b), at the time the pleading or other document challenging the validity of a statute or rule is filed, be:

(1) sent to the attorney general by certified or registered mail, or electronically to an e-mail address designated by the attorney general for purposes of this section; and

(2) filed with the court in which the challenge is asserted.

(f) Requires the court in which the challenge is asserted, if a party or amicus curiae challenging the validity of a state statute or rule fails to give notice to the attorney general as required by this section, to give notice of the challenge to the attorney general. Requires that the notice given to the attorney general by a court under this subsection comply with the notice requirements of Subsection (d) and be given in the manner required by Subsection (e)(1). Provides that the court is authorized to reject, but is prohibited from sustaining, a challenge to which this section applies before the attorney general has received notice under this section and the state has been allowed to proceed, if it so chooses, under Subsection (g).

(g) Authorizes the state to intervene, in an action, suit, or proceeding to which this section applies, for the presentation of evidence otherwise admissible under the rules of evidence and for briefing and argument on the question of the validity of the challenged statute or rule. Requires the court to grant a motion of the state to intervene if the motion is filed not later than the 60th day after the date the attorney general receives notice under this section.

(h) Provides that this section and the state's intervention under this section do not constitute a waiver of sovereign immunity.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2009.