

- SUBJECT:** Requiring monthly report by the attorney general related to federal rules
- COMMITTEE:** State Affairs — favorable, without amendment
- VOTE:** 8 ayes — Paddie, Harless, Hunter, P. King, Metcalf, Raymond, Shaheen, Slawson
- 3 nays — Deshotel, Howard, Lucio
- 2 absent — Hernandez, Smithee
- WITNESSES:** For — Ed Heimlich, Informed Citizens; Tom Glass, Texas Constitutional Enforcement; James Quintero, Texas Public Policy Foundation
(*Registered, but did not testify*: Mark Borskey, Texas State Rifle Association; Jonathan Saenz, Texas Values; James Dickey)
- Against — (*Registered, but did not testify*: Clifford Sparks, City of Dallas; T.J. Patterson, City of Fort Worth; Jamaal Smith, City of Houston, Office of the Mayor Sylvester Turner; Christine Wright, City of San Antonio; Rick Ramirez, City of Sugar Land; and six individuals)
- On — (*Registered, but did not testify*: Thomas Albright, Office of the Attorney General; Thomas Parkinson)
- DIGEST:** HB 3046 would require the attorney general to provide a monthly written report that identified each rule adopted in the past month by a federal agency that was in response to a presidential executive order, violated the rights guaranteed by the U.S. Constitution, and was related to:
- pandemics or other health emergencies;
 - the regulation of natural resources;
 - the regulation of the agriculture industry;
 - the use of land;
 - the regulation of the financial sector as it relates to environmental, social, or governance standards; or

- the regulation of the constitutional right to keep and bear arms;
- the free exercise of religion, including the congregating of religious practitioners.

The report would also have to provide the status of any lawsuit filed against the federal government relating to a rule identified by another report, including whether a court has found the rule to violate the rights guaranteed to citizens by the U.S. Constitution.

The report would have to be provided to the governor, lieutenant governor, House speaker and each member of the Legislature

The bill would prohibit a state agency or political subdivision from cooperating with a federal agency in implementing a rule that the report indicated had been found by a court to violate constitutional rights.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.

**SUPPORTERS
SAY:**

HB 3046 would help to protect the rights guaranteed to Texas citizens by the U.S. Constitution by instituting a robust system of tracking and transparency with regard to presidential executive orders and related federal agency rules. The bill would be a timely response to the growing problem of the outsized role of federal government in American life and would fortify the doctrine of federalism by providing a tool for the state to assert its constitutional prerogatives and confront federal overreach.

HB 3046 would set clear priority on preventing any state resources from being used to violate citizens' constitutional rights, while at the same time ensuring that any action taken based on the attorney general's report would depend on a court ruling. Any risk to federal funds received by cities or other political subdivisions would not relieve those entities of their obligation to adhere to the laws of state from which their authority is derived. Complying with a federal rule that a court had found to violate constitutional rights also would place the state and its subdivisions and

agencies under threat of litigation.

**CRITICS
SAY:**

HB 3046 would allow the state attorney general to unilaterally make official pronouncements on the constitutionality of federal rules, which is not an appropriate action for the office. Assessing constitutionality should be left to the courts, and the attorney general is free to pursue litigation in the judicial system related to a federal rule that might be unconstitutional.

HB 3046 could place cities and other political subdivisions and state agencies in the position of violating federal law and agency rules, which could jeopardize access to federal grants and funds and invite litigation. The bill's requirement of non-compliance with federal rules found by a court to violate certain constitutional rights could be problematic because the state attorney general could incorrectly interpret a court ruling.

NOTES:

According to the Legislative Budget Board, the bill's fiscal impact on the state would be indeterminate since it is unknown what federal agency rules, or how many, may be considered by a court to violate federal constitutional rights, or the potential loss of federal funds that may or may not result from federal sanctions for not enforcing such rules.