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Via Hand Delivery

August 13, 2018

The Honorable Greg Abbott
Governor of the State of Texas
Texas State Capitol
1100 Congress Avenue, Room 2S.1
Austin, Texas 78701

Dear Governor Abbott:

The purpose of this letter is to respectfully seek clarification as to the expectations of the Office of the Governor as expressed by the June 22, 2018 letter to agency commissioners; and to communicate concerns shared by some lawmakers and state agencies regarding the purpose of the letter and the practicality of its execution.

Rule 3, Section 35(13), Texas House Rules, 85th Legislature, grants the House Committee on State Affairs legislative oversight jurisdiction over the Office of the Governor. As chair of that committee, there is a fiduciary responsibility to convey apprehensions that have been expressed over the proposal in the June 22nd letter.

The letter highlights a 1981 executive order by President Reagan and asserts that our state should emulate the federal government in order to run more efficiently. This citation raises several concerns. While the federal constitution vests the executive power of the federal government in the Office of the President of the United States through Article II, § 1, the drafters of the Texas Constitution chose to disseminate executive power across several elected offices and grant each limited and defined powers.

Questions have been raised about which statute or court decision grants the Office of the Governor powers that are presumed to exist by the June 22nd letter. In trying to understand the purpose and intent of the letter, it is important to underscore that nothing in our state's constitution or statutes gives the Office of the Governor the power to veto or delay the proposal of a rule, whether by act or omission.

Under the Texas Government Code § 2001.032 the legislature already acted to provide for oversight of rule proposals, as this provision requires state agencies to submit rule proposals to the Office of the Lieutenant Governor and the Office of the Speaker of the House before publication in the Texas Register.



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Although historically the governor's office has assisted in discussions for major rule proposals, it is an informal conference of experts or interested persons that is advisory only, as provided for by Texas Government Code § 2001.031. While there may be opportunities to improve this system by amending Chapter 2001, such reforms can be accomplished only through an act of the Texas Legislature.

An additional concern that has been expressed is that the process described by the June 22nd letter could potentially create an obstructive bureaucratic system within the Office of the Governor over agency rulemaking. Your office informed my staff that the governor's general counsel will be the sole individual overseeing the review of all proposed rules from the 20-25 appointed agency executives who received the letter. This task seems unrealistic for any individual to undertake, even if that person were a subject-matter expert in the operations of all state agencies that have been asked to participate.

Moreover, the letter does not indicate an expected response time, creating reservations regarding the possibility that a proposed rule could be left in a bureaucratic indeterminate state with no clear timeframe for implementation. Also, the letter does not explain the consequence if an agency chooses not to wait for gubernatorial review to be completed prior to publishing a proposed rule.

In the interest of abiding by the Texas Constitution and the acts of the Texas Legislature, I sincerely hope that your office will consider these issues and this request for clarification.

Respectfully,

A handwritten signature in black ink, appearing to read "Byron Cook", with a long horizontal flourish extending to the right.

Byron Cook

Cc: Honorable Members of the House Committee on State Affairs