

SUBJECT: Rules of statutory construction

COMMITTEE: State Affairs— favorable, without amendment

VOTE: 8 ayes —Wolens, S. Turner, Brimer, Carter, Hunter, D. Jones, McCall, Ramsay
0 nays
7 absent — Alvarado, Counts, Craddick, Danburg, Hilbert, Longoria, Stiles

SENATE VOTE: On final passage, March 26 — 31-0

WITNESSES: (*On House companion bill, HB 1846 by Wolens*):
For — None
Against — None
On — Steven Collins, Texas Legislative Council

BACKGROUND : The Code Construction Act, chapter 311 of the Government Code, explains how the Statutes and Codes of Texas should be interpreted generally.

The Code Construction Act also provides that when two or more bills or amendments are in irreconcilable conflict, the statute latest in enactment prevails.

DIGEST: SB 884 would add to the Code Construction Act the following definitions:

- “May” creates discretionary authority or grants permission;
- “Shall” imposes a duty;
- “Is entitled to” creates or recognizes a right;
- “May not” imposes a prohibition and would be synonymous with “Shall not.”
- “Is not entitled to” negates a right, and
- “Is not required to” negates a duty or condition precedent.

The definitions would apply unless the context requires a different meaning or a different meaning is expressly provided by statute.

SB 898 would also establish that the date of enactment of a statute would be the date of the last legislative vote on the statute. If the journals or other legislative records failed to disclose which of two or more bills was later in enactment, the date of enactment would be (in order of priority):

- 1) the date on which the last presiding officer signed the bill;
- 2) the date on which the governor signed the bill, or
- 3) the date on which the bill became law by operation of law.

SB 898 would add the provisions governing irreconcilable statutes or amendments to chapter 312 of the Government Code concerning construction of laws.

SB 898 would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

**SUPPORTERS
SAY:**

The additions made to the Code Construction Act by SB 898 are necessary to clear up ambiguities in the current law.

By clearly setting out definitions for may, shall, and other words of prescription or proscription, those words that are often used in statutes would have clear meanings. The definitions set out are exactly those used by the Texas Legislative Council when drafting bills. A recent case, *Sharpstown Civil Association v. Maxicare Home Services, Inc.*, No. H-94-1592 (S.D. Tex. 1995), demonstrated the need to clearly define such standards. In that case, the court determined that the term “may not” was permissive rather than prohibitive.

Resolving irreconcilable statutes or amendments can become very difficult if the legislative records fail to establish which statute is later in enactment. By giving three additional ways to determine which statute is later in enactment, it will be easier to ascertain which statute should control in cases of conflict.

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OPPONENTS No apparent opposition.
SAY: