

## **BILL ANALYSIS**

Senate Research Center

S.B. 522  
By: Estes  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Administrative Procedures Act (APA) governs procedures in contested case hearings before state agencies. Currently, several differences exist between the APA and the Texas Rules of Civil Procedure, which govern procedures in traditional courts, concerning when an agency decision can be appealed. These differences make the APA confusing and difficult for even experienced administrative lawyers to apply, especially with regard to motions for rehearing and suits for judicial review.

Additionally, when an agency initiates a proceeding against a person subject to its regulation, it is required to give notice of "the particular sections of the statutes and rules involved" before the contested case is tried. Unfortunately, agencies often have failed to give adequate notice of the grounds for contested cases, either by failing to comply with the statute or by justifying decisions based on statutes and rules that were never disclosed before the hearing. As a result, many businesses, professionals, and other people have been disciplined for violating statutes or rules that were never disclosed before the hearing and which they had no opportunity to defend against. This is contrary to due process of law.

This bill amends the APA to make its deadlines for motions for rehearing align more closely with the Texas Rules of Civil Procedure and thereby reduce the confusion and lack of clarity that has resulted from the differences. It would also provide that an agency's failure to give notice of the particular sections of the statutes and rules involved in a contested case is a reversible error, meaning that failure to do so would result in the decision being reversed.

As proposed, S.B. 522 amends current law relating to contested cases held under the Administrative Procedure Act.

### **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 Section 2001.052, Government Code, as follows:

Sec. 2001.052. CONTENTS OF NOTICE. (a) Requires that notice of a hearing in a contested case include certain information, including a short, plain statement of the factual matters asserted.

(b) Authorizes an initial notice to be limited to a statement of the issues involved, if a state agency or other party is unable to state factual matters in detail at the time notice under this section is served. Requires that a more definite and detailed statement of the facts be furnished not less than 10 days before, rather than not less than three days before, the date set for the hearing, on timely written application. Requires a state agency that intends to rely on a section of a statute or rule not previously referenced in the notice of hearing to amend the notice to refer to the section of such statute or rule not less than 10 days before the date set

for the hearing in a proceeding concerning the grant, denial, revocation, suspension, annulment, withdrawal, or renewal of a license.

(c) Provides that, in a suit for judicial review of a final decision of a state agency in a contested case, an agency's failure to comply with Subsection (a)(3) (relating to the notice including a reference to certain statutes and rules) or Subsection (b) constitutes substantial prejudice to the rights of the appellant under Section 2001.174(2) (relating to reversing or remanding a case for further proceedings if substantial rights of the appellant have been prejudiced).

SECTION 2. Amends Section 2001.054, Government Code, as follows:

(a)-(b) Makes no change to these subsections.

(c) Authorizes summary suspension of a license to be ordered pending proceedings for revocation or other action if an agency finds that an imminent peril to the public health, safety or welfare imperatively requires emergency action, established by a factual and legal basis. Provides that such an order is final and appealable to a Travis County district court upon entry.

(d) Makes no change to this subsection.

(e) Provides that an agency's failure to comply with Subsection (c) constitutes substantial prejudice to the rights of a license holder under Section 2001.174(2).

SECTION 3. Amends Sections 2001.141(a) and (e), Government Code, as follows:

(a) Requires that a decision, rather than a decision or order, of a state agency that may become final under Section 2001.144, that is adverse to any party in a contested case, be in writing and signed by a person authorized by law to sign the agency decision, rather than being in writing or stated in the record. Makes a nonsubstantive change.

(e) Requires that the decision include a ruling on each proposed finding or conclusion, if a party submits under a state agency rule proposed findings of fact or conclusion of law.

SECTION 4. Amends Section 2001.142, Government Code, as follows:

Sec. 2001.142. NOTIFICATION OF DECISIONS AND ORDERS. (a) Requires a state agency to notify each party to a contested case of any decision or order of the agency by certified or registered mail sent to the last known address of the party or to the party's attorney of record, or by electronic means to the current e-mail address or telecopier number of the party or the party's attorney of record, rather than requiring a party in a contested case to be notified either personally or by first class mail of any decision or order.

(b) Requires a state agency to send a copy of the decision or order to each party in accordance with Subsection (a), when a decision in a contested case that may become final under Section 2001.144 is signed or when an order ruling on a motion for rehearing is signed. Requires the state agency to keep a record documenting the provision and receipt of the notice. Deletes existing text requiring the agency to send a copy of the decision or order by first class mail to the attorneys of record, keep an appropriate record of the mailing, and to send a copy of the decision or order by first class mail to the party and to keep an appropriate record of the mailing if a party is not represented by an attorney of record.

(c) Provides that a time period provided under Section 2001.144(a) (relating to a decision in a contested case being final), 2001.146 (Motions For Rehearing: Procedures), 2001.147 (Agreement To Modify Time Limits), or 2001.176(a) (relating to a person initiating judicial review in a contested case) begins on the

date the party receives such notice or acquires actual knowledge of the signed decision or rehearing order, whichever occurs first, if an adversely affected party does not receive timely notice under this section of a signed decision or rehearing order. Prohibits the aforementioned time period from begin earlier than the 15th day or later than the 90th day after the decision or rehearing order was signed. Deletes existing text providing that a party or attorney of record who was notified by mail under Subsection (b) is presumed to have been notified on the third day after the date on which the notice is mailed.

(d) Requires the adversely affected party to prove, on sworn motion and notice, that the date the party received notice from the state agency or acquired actual knowledge of the signing of the decision or rehearing order was more than 14 days after the decision or rehearing order was signed, to establish a revised time period under Subsection (c).

SECTION 5. Amends the heading to Section 2001.143, Government Code, to read as follows:

Sec. 2001.143. TIME OF DECISION.

SECTION 6. Amends Sections 2001.143(a) and (b), as follows:

(a) Requires that a decision, rather than a decision or order, that may become final under Section 2001.144 in a contested case be signed, rather than rendered, not later than the 60th day after the date on which the hearing is finally closed.

(b) Authorizes the agency or the person who conducts the contested case hearing to extend the period in which the decision, rather than decision or order, is authorized to be signed, rather than issued, in a contested case heard by other than a majority of the officials of a state agency.

SECTION 7. Amends Sections 2001.144 and 2001.145, Government Code, as follows:

Sec. 2001.144. DECISIONS; WHEN FINAL. (a) Provides that a decision in a contested case is final if:

(1) Makes no change to this subdivision;

(2) if a motion for rehearing is filed on time, on the date the order overruling the motion for rehearing is signed, rather than rendered, or the motion is overruled by operation of law; or

(3) if a state agency finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a decision, rather than a decision or order, on the date the decision is signed, rather than rendered, and sets forth a factual and legal basis establishing an imminent peril to the public health, safety, or welfare.

Deletes existing Subdivision (4) providing that a decision in a contested case is final if, on the date specified in the order for a case in which all parties agree to the specified date in writing or on the record, the specified date is not before the date the order is signed or later than the 20th day after the date the order was rendered. Makes a conforming change.

(b) Requires a state agency to recite in the decision or order the finding made under Subsection (a)(3) and the fact that the decision or order is final and effective on the date signed, rather than rendered, if a decision or order is final under Subsection (a)(3)

Sec. 2001.145. MOTIONS FOR REHEARING: PREREQUISITES TO APPEAL.

(a) Provides that a timely motion for rehearing is a prerequisite to an appeal in a

contested case except that a motion for rehearing of a decision, rather than a decision or order, that is final under Section 2001.144(a)(3) is not a prerequisite for appeal. Makes a nonsubstantive change.

(b) Provides that a decision that is final under Section 2001.144(a)(2) or (3) is appealable. Makes a nonsubstantive change.

SECTION 8. Amends Section 2001.146, Government Code, by amending Subsections (a), (b), (c), (e), and (f), and adding Subsections (g) and (h), as follows:

(a) Requires that a motion for rehearing in a contested case be filed by a party and served on all other parties to the contested case in accordance with Rule 21a (Methods of Service), Texas Rules of Civil Procedure, not later than the 20th day after the date on which the decision that is the subject of complaint is signed. Deletes existing text requiring that a motion for rehearing in a contested case be filed by a party not later than the 20th day after the date on which the party or the party's attorney of record is notified as required by Section 2001.142 or a decision or order that may become final under section 2001.144.

(b) Requires that a reply to a motion for rehearing be filed with a state agency not later than the 30th day after the date on which the decision that is the subject of complaint is signed, or not later than the 10th day after a motion for rehearing is filed if the time for filing the motion for rehearing has been extended by a valid agreement under Section 2001.147 or by a written agency order under Subsection (e), rather than requiring that a motion for rehearing be filed with the state agency not later than the 30th day after the date on which the party or the party's attorney of record is notified as required by Section 2001.142 of the decision or order that may become final under Section 2001.144.

(c) Requires a state agency to act on a motion for rehearing not later than the 45th day after the date on which the decision that is the subject of complaint is signed or the motion for rehearing is overruled by operation of law, rather than requiring a state agency to act on a motion for rehearing not later than the 45th day after the date on which the party or the party's attorney of record is notified as required by Section 2001.142 of the decision or order that may become final under Section 2001.144 or the motion for rehearing is overruled by operation of law.

(e) Authorizes a state agency to, on its own initiative or on the motion of any party, by written order, extend the time for filing a motion or reply or taking agency action under this section, not later than the 30th day after a decision that is the subject of complaint is signed. Prohibits an extension from extending the period for agency action beyond the 90th day after the date of the decision that is the subject of complaint is signed, rather than prohibiting an extension from extending the period for agency action beyond the 90th day after the date on which the party or the party's attorney of record is notified as required by Section 2001.142 of the decision or order that may become final under Section 2001.144.

(f) Provides that, in the event of an extension, a motion for rehearing is overruled by operation of law on the date fixed by the order or, in the absence of a fixed date, 90 days after the date on which the decision that is the subject of complaint is signed, rather than 90 days after the date the party or the party's attorney of record is notified as required by Section 2001.142 of the decision or order that may become final under Section 2001.144.

(g) Requires that a motion for rehearing identify with particularity findings of fact or conclusions of law that are the subject of complaint and any evidentiary or legal ruling claimed to be erroneous. Requires that the motion set forth the legal and factual basis for the claimed error.

(h) Requires that a further motion for rehearing be filed not later than 20 days after the order disposing of the original motion for rehearing is signed, after an agency rules on a motion for rehearing, if that order modifies in any respect the decision that is the subject of complaint, even if the modification does not change the outcome of the contested case or makes only typographical, grammatical, or immaterial changes to the decision; or vacates the decision that is the subject of complaint and issues a new decision.

SECTION 9. Amends Section 2001.176(a), Government Code, to provide that a prematurely filed petition is effective to initiate judicial review and is deemed filed on the day of, but after, the event that begins the period for filing a petition.

SECTION 10. Provides that the changes in law made by this Act to Chapter 2001, Government Code, apply only to an administrative hearing conducted, or to a decision in an administrative hearing issued, on or after the effective date of this Act. Provides that a hearing conducted or decision issued before the effective date of this Act is governed by the law in effect when the hearing was conducted or the decision was issued, and the former law is continued in effect for that purpose.

SECTION 11. Effective date: September 1, 2013.