

BILL ANALYSIS

Senate Research Center
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S.B. 485
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DIGEST AND PURPOSE

Currently, state agencies engaged in rule-making do not consider legislative intent through an examination of the journal record. Also, regarding the rule-making process, state agencies do not inform legislative authors and sponsors of rules created from their respective bills and the agencies are only required to publish proposed rules related to legislation in the Texas Register. This leaves a potential gap between a legislator's intent and the implementation of the resulting bill. Since rules written by an agency heavily influence the way a piece of legislation affects Texas citizens, such rules should reflect the intent of the original legislation. However, under current law, agencies with broad rule-making authority can interpret legislation in a way that could directly conflict with the intent of the legislator as long as it makes sense in the context of, and does not conflict with, the language of the legislation. As proposed, S.B. 485 requires a state agency writing rules to review senate and house journals for the discussions which occurred in both related to the law requiring rule-making. This bill also requires the state agency to inform each author and sponsor of a pending rule at the agency; deliver a copy of the rule to the member at least seven days before final adoption of the rule; ask for the member's comments; and invite the member to participate on any advisory committees.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to state agencies as defined by Section 2001.003, Government Code, in SECTION 1 (Section 2001.032, Government Code), of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2001.032, Government Code, as follows:

Sec. 2001.032. New heading: CONSIDERATION OF LEGISLATIVE INTENT.

(a) Defines what is included in a reference to the law under which a rule is or would be adopted. Deletes language requiring each house of the legislature, by rule, to establish a process under which the presiding officer of each house refers each proposed state agency rule to the appropriate standing committee for review before the rule is adopted.

(b) Requires a state agency to perform certain functions before giving notice of its intention to adopt a rule under Sections 2001.023 and 2001.024. Deletes language requiring a state agency to deliver to the lieutenant governor and the speaker of the house of representatives a copy of the notice of a proposed rule when the agency files notice with the secretary of state under Section 2001.023.

(c) Requires a state agency to deliver a copy of the notice of the proposed rule required by Sections 2001.023 and 2001.024 to each member of the legislature described by Subsection (b) (3) concurrently with the agency's filing of the notice with the secretary of state. Requires the agency, not later than the seventh day before the date the state agency considers the rule for final adoption, to deliver to the member a copy of the rule as proposed for final adoption if the text of the rule differs from the text of the proposed rule published under Section 2001.024 and to solicit comment from

the member regarding the changed text of the proposed rule.

Requires the state agency to perform other functions regarding the member. Deletes language authorizing a standing committee, on the vote of a majority of its members, to send to a state agency a statement supporting or opposing adoption of a proposed rule.

(d) Requires the state agency to deliver a copy of an emergency rule adopted under Section 2001.034 and the written reasons for its adoption to each member of the legislature described by Subsection (b)(3) with respect to the law under which the emergency rule was adopted concurrently with the agency's filing of the rule and the reasons for its adoption with the secretary of state. Requires the agency, if it gives an abbreviated notice or conducts a hearing in connection with the adoption of the emergency rule, to promptly furnish the member with a copy of the notice and timely inform the member of the time and place of any hearing.

SECTION 2. Amends Section 2001.024(a), Government Code, to require the notice of a proposed rule to include a statement of the statutory or other authority under which the rule is proposed to be adopted, including: a certification that the state agency has complied with Section 2001.032(b) in connection with the proposed rule; citations to all statements or discussions of legislative intent described by Section 2001.032(b)(1) in the journals of the senate and house of representatives; and a certification that the proposed rule has been reviewed by legal counsel and found to be consistent with the intent of the legislature in adding, amending, or affecting under the law under which the rule would be adopted, as described by Section 2001.032(a).

SECTION 3. Amends Section 2001.033, Government Code, to require a state agency order finally adopting a rule to include certain elements. Makes conforming changes.

SECTION 4. Provides that the change in law made by this Act applies only in relation to a state agency rule for which notice of the rule as proposed is first published in the Texas Register under Sections 2001.023 and 2001.024, Government Code, on or after October 1, 2001, or an emergency rule adopted on or after September 15, 2001.

SECTION 5. Effective date: September 1, 2001.