

BILL ANALYSIS

Senate Research Center

H.B. 425
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Administration
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Engrossed

DIGEST AND PURPOSE

Currently, state agencies engaged in rulemaking may not always consider legislative intent when proposing rules. Also, many state agencies often do not inform legislative authors and sponsors about rules relating to 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 the legislature's intent and the implementation of the resulting rule. Rules written by an agency can influence the effect of a piece of legislation, and such rules should reflect the intent of the legislation. Under current law, agencies with broad rulemaking authority may interpret legislation in a way that could conflict with the intent of the legislature. H.B. 425 implements procedures to ensure that agency rules are consistent with legislative intent.

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 2001.032, Government Code, as follows:

Sec. 2001.032. New heading: LEGISLATIVE REVIEW AND NOTIFICATION. (a) Requires the state agency, in the process of developing new rules and before the agency gives notice of its intention of adopting a rule under Sections 2001.023 and 2001.024, to research the legislative history of the law and prepare a legislative history document on the bill or amendment that authorizes a state agency to adopt the rule. Requires the state agency, to effectively research and prepare a legislative history document, to meet certain conditions.

(b) Provides that in this section, a reference to the law under which a rule is or would be adopted includes a reference to the law that authorizes a state agency to adopt the rule and to the law that the rule would implement or enforce.

(c) Requires a state agency, before the agency gives notice of its intention to adopt a rule under Sections 2001.023 and 2001.024, to establish an internal review process to ensure that the proposed rule is consistent with the legislative history in enacting or otherwise affecting the law under which the rule would be adopted.

(d) Requires a state agency, before the agency gives notice of its intention to adopt a rule under Sections 2001.023 and 2001.024, to inform the primary author and sponsor of legislation that became law and that added, amended, or clearly affected the law under which the rule would be adopted, if the primary author or sponsor is still a member of the legislature, that the adoption of a rule related to the member's legislation is being considered.

(e) Requires the agency, concurrently with the state agency's filing of the notice with the secretary of state, to deliver a copy of the notice of the proposed rule required by Sections 2001.023 and 2001.024 to the primary author and sponsor as described in the legislative history if the primary author or sponsor is still a member of the legislature.

(f) 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 primary author and sponsor 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 if the author or sponsor is still a member of the legislature. Requires the state agency also to notify the primary author and sponsor in a timely manner of the time and place of a public hearing held in connection with the contemplated rulemaking if the primary author or sponsor is still a member of the legislature.

(g) 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 the primary author and sponsor as determined by the legislative history 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 the state agency gives an abbreviated notice or conducts a hearing in connection with the adoption of the emergency rule, to also promptly furnish the primary author and sponsor with a copy of the notice and to timely inform the primary author and sponsor of the time and place of the hearing.

(h) Provides that failure to provide notice under this section does not invalidate an action taken or rule adopted. Deletes text relating to referring each proposed state agency rule to the appropriate standing committee. Deletes text relating to delivering a copy of the notice of a proposed rule to certain individuals. Deletes text relating to authorizing a standing committee, on the vote of a majority of its members, to send to a state agency a certain statement.

SECTION 2. Amends Section 2001.024(a), Government Code, to require the notice of a proposed rule to include certain items.

SECTION 3. Amends Section 2001.033, Government Code, by making conforming and nonsubstantive changes.

SECTION 4. Provides that the change in law made by this Act applies only to rules and emergency rules adopted after a certain date.

SECTION 5. Effective date: September 1, 2003.