

BILL ANALYSIS

Senate Research Center

C.S.H.B. 425
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Administration
5/23/2003
Committee Report (Substituted)

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. C.S.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 Chapter 322, Government Code, by adding Section 322.015, as follows:

Sec. 322.015. LETTERS OF LEGISLATIVE INTENT. (a) Authorizes the Legislative Budget Board (LBB) to issue a letter to a state governmental entity clarifying or explaining meaning or legislative intent on matters relating to the General Appropriations Act or another legislative enactment that makes an appropriation or qualifies, details, limits, or restricts an appropriation.

(b) Provides that a state governmental entity, in interpreting a provision of law described by Subsection (a), is entitled to rely on a letter of legislative intent issued by LBB under this section.

SECTION 2. Amends Section 2001.032, Government Code, as follows:

Sec. 2001.032. New heading: CONSIDERATION OF LEGISLATIVE INTENT. (a) 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.

(b) 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 each 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 person is still a member of the legislature, that the adoption of a rule related to the member's legislation is being considered.

(c) Requires the 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) 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 also to take certain actions.

(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) 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.

(e) Authorizes either the state agency or the member, if a dispute arises between the state agency and a member of the legislature described by Subsection (b) with regard to the legislature's intent in enacting or otherwise affecting the law under which the rule would be adopted, to request the attorney general to issue an opinion to resolve the dispute. Prohibits the rule, if an opinion is requested under this subsection before the date on which the rule would otherwise take effect, from taking effect unless the attorney general issues an opinion that determines the rule as finally proposed for adoption is consistent with the legislature's intent in enacting or otherwise affecting the law under which the rule would be 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 3. Amends Section 402.042(b), Government Code, to authorize an opinion to be requested by certain individuals.

SECTION 4. Provides that the changes in law made by this Act relating to the process of state agency rulemaking apply only to rules and emergency rules adopted after a certain date.

SECTION 5. Effective date: September 1, 2003