

## **BILL ANALYSIS**

Senate Research Center  
83R21837 YDB-F

C.S.S.B. 522  
By: Estes  
State Affairs  
4/16/2013  
Committee Report (Substituted)

### **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.

C.S.S.B. 522 amends current law relating to contested cases conducted 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 seven 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, in a proceeding in which the state agency has the burden of proof, to amend the notice to refer to the section of the statute or rule not later than the seventh day before the date set for the hearing.

(c) Requires that, in a suit for judicial review of a final decision or order of a state agency in a contested case, the state 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 prejudice to the substantial 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) unless the court finds that the failure did not unfairly surprise and prejudice the appellant.

SECTION 2. Amends Section 2001.054, Government Code, by adding Subsections (c-1) and (e), as follows:

(c-1) Authorizes a state agency, if the agency determines that an imminent peril to the public health, safety, or welfare requires emergency action and incorporates a factual and legal basis establishing that imminent peril in an order, to issue an order to summarily suspend the license holder's license pending proceedings for revocation or other action. Requires the agency, unless expressly provided otherwise by another statute, to initiate the proceedings for revocation or other action not later than the 30th day after the date the summary suspension order is signed. Requires that the proceedings be promptly determined, and if the proceedings are not initiated before the 30th day after the date the order is signed, the license holder is authorized to appeal the summary suspension order to a Travis County district court.

(e) Requires that a state agency's failure to comply with Subsection (c), in a suit for judicial review of a final decision or order of the agency brought by a license holder, constitutes prejudice to the substantial rights of the license holder under Section 2001.174(2) unless the court determines that the failure did not unfairly surprise and prejudice the license holder.

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

(a) Requires that 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 the agency to sign the agency decision or order, rather than be 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, rather than requiring a party in a contested case to be notified either personally or by first class mail, of any decision or order of the agency in the following manner:

(1) personally;

(2) by electronic means to the current e-mail address or telecopier number of the party or the party's attorney of record; or

(3) by first class, certified, or registered mail sent to the last known address of the party or to the party's attorney of record.

(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 or order 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 of the notice provided to each party in accordance with Subsection (a). Deletes existing text requiring an 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 if an adversely affected party or the party's attorney of record does not receive the notice required by Subsection (a) or acquire actual knowledge of a signed decision or order before the 15th day after the date the decision or order is signed, a period specified by or agreed to under Section 2001.144(a), 2001.146, 2001.147, or 2001.176(a) relating to a decision or motion for rehearing begins, with respect to that party, on the date the party receives the notice or acquires actual knowledge of the signed decision or order, whichever occurs first. Prohibits the period from beginning earlier than the 15th day or later than the 90th day after the date the decision or order was signed. Deletes existing text providing that a party or attorney of record 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 establish a revised period under Subsection (c), 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 order was after the 14th day after the date the decision or order was signed. Requires the state agency governing board to grant or deny the sworn motion not later than the board's next meeting or, for a state agency without a governing board, not later than the 10th day after the date the agency receives the sworn motion. Provides that if a state agency fails to grant or deny the motion at the next meeting, or before the 10th day after the date the agency receives the motion, as appropriate, the motion is considered granted.

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

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

Sec. 2001.144. DECISIONS OR ORDERS; WHEN FINAL. (a) Provides that a decision or order in a contested case is final:

(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 or order, on the date the decision or order is signed and incorporates in the decision or order a factual and legal basis establishing an imminent peril to the public health, safety, or welfare, rather than rendered.

Deletes existing Subdivision (4) providing that 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, if 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.

(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 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 or order 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 not later than the 20th day after the date the decision or order that is the subject of the motion is signed, unless the time for filing the motion for rehearing has been extended by an agreement under Section 2001.147 or by a written state agency order issued under Subsection (e). Requires that copies of the motion, on filing of the motion for rehearing, be sent to all other parties using the notification procedures specified by Section 2001.142(a). 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. Makes a nonsubstantive change.

(b) Requires a party to file with the state agency a reply to a motion for rehearing not later than the 30th day after the date the decision that is the subject of motion is signed, or not later than the 10th day after the date a motion for rehearing is filed if the time for filing the motion for rehearing has been extended by an agreement under Section 2001.147 or by a written state agency order under Subsection (e). Requires that copies of the reply, on filing of the reply, be sent to all other parties using the notification procedures specified by Section 2001.142(a). Deletes existing text requiring that a reply to 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 the decision or order that is the subject of the motion 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 for cause shown, by written order extend the time for filing a motion or reply or taking agency action under this section if the agency extends the time or takes the action not later than the 10th day after the date the period for filing a motion or reply or taking agency action expires. Prohibits an extension from extending the period for agency action beyond the 90th day after the date the decision or order that is the subject of the motion is signed. Deletes existing text authorizing a state agency to by written order extend the time for filing a motion or reply or taking agency action under this section, except that an extension is prohibited 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 is authorized to 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, the 90th day the date on which the decision or order that is the subject of complaint is signed, rather than 90 days 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.

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

(h) Requires that any subsequent motion for rehearing, after a state agency rules on a motion for rehearing, be filed not later than the 20th day after the date the order disposing of the original motion for rehearing is signed, if that order modifies, corrects, or reforms in any respect the decision or order that is the subject of the complaint, other than a typographical, grammatical, or other clerical change identified as such by the agency in the order, including any modification, correction, or reformation that does not change the outcome of the contested case, or vacates the decision or order that is the subject of the motion and provides for a new decision or order.

SECTION 9. Amends Section 2001.176(a), Government Code, as follows:

(a) Provides that a person initiates judicial review in a contested case by filing a petition not later than the 30th day after the date the decision or order that is the subject of the complaint is final and appealable. Provides that in a contested case in which a motion for rehearing is a prerequisite for seeking judicial review, a prematurely filed petition is effective to initiate judicial review and is considered to be filed on the date the last timely motion for rehearing is overruled and after the motion is overruled.

SECTION 10. Provides that the changes in law made by this Act to Chapter 2001, Government Code, apply only to an administrative hearing that is set by the State Office of Administrative Hearings, or another state agency conducting an administrative hearing, on or after the effective date of this Act. Provides that a hearing set before the effective date of this Act, or any decision issued or appeal from the hearing, is governed by the law in effect when the hearing was set, and the former law is continued in effect for that purpose.

SECTION 11. Effective date: September 1, 2013.