

BILL ANALYSIS

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C.S.S.B. 1267
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State Affairs
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Administrative Procedure 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 state courts, concerning when decisions 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 fail 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 trial. As a result, many businesses, professionals, and other people have been disciplined for violating statutes or rules that were never disclosed before trial and which they had no opportunity to defend against. This is contrary to due process of law.

S.B. 1267 amends the APA to make its deadlines 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 reversible error, meaning that failure to do so would result in the decision being reversed unless the reviewing court finds that the failure did not unfairly surprise or prejudice the appellant. (Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 1267 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:

(1)-(3) Makes no change to these subdivisions;

(4) a short, plain statement of the factual matters asserted, rather than the matters asserted.

(b) Authorizes that an initial notice, if a state agency or other party is unable to state factual matters in detail at the time notice under this section is served, be limited to a statement of the issues involved. Requires that a more definite and

detailed statement of the facts, on timely written application, be furnished not less than seven days, rather than three days, before the date set for the hearing. 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. Provides that this subsection does not prohibit the state agency from filing an amendment during the hearing of a contested case provided the opposing party is granted a continuance of at least seven days to prepare its case on request of the opposing party.

(c) Requires that the state agency's failure to comply with Subsection (a)(3) or (b), in a suit for judicial review of a final decision or order of a state agency in a contested case, constitute prejudice to the substantial rights of the appellant under Section 2001.174(2) (relating to the requirements for the review of a contested case under this section) unless the court finds that the failure did not unfairly surprise and prejudice the appellant or that the appellant waived the appellant's rights.

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

(c-1) Authorizes a state agency that has been granted the power to summarily suspend a license under another statute to determine that an imminent peril to the public health, safety, or welfare requires emergency action and to issue an order to summarily suspend the license holder's license pending proceedings for revocation or other action, provided that the agency incorporates a factual and legal basis establishing that imminent peril in the order. 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 of 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, authorizes the license holder may appeal the summary suspension order to a Travis County district court. Provides that this subsection does not grant any state agency the power to suspend a license without notice or a hearing.

(e) Requires that the agency's failure to comply with Subsection (c) (relating to the requirements for revocation of a state agency license), in a suit for judicial review of a final decision or order of a state agency brought by a license holder, constitute 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), (b), 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 (Decisions; When Final) 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 requires a decision or order that may become final under Section 2001.144 that is adverse to a party in a contested case be in writing or stated in the record.

(b) Requires that a decision or order that may become final under Section 2001.144 include findings of fact and conclusions of law, separately stated.

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

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 requires a party in 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) if agreed to by the party to be notified, by electronic means sent to the current e-mail address or telecopier number of the party's attorney of record or of the party if the party is not represented by counsel; or

(3) by first class, certified, or registered mail sent to the last known address of the party's attorney of record or of the party if the party is not represented by counsel.

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

(c) Provides that if an adversely affected party or the party's attorney of record does not receive the notice required by Subsections (a) and (b) 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) (relating to the decision of a contested case being final), 2001.146 (Motions for Rehearing: Procedures), 2001.147 (Agreement to Modify Time Limits), or 2001.176(a) (providing that a person initiates judicial review in a contested case by filing a petition that meets certain requirements) relating to a decision or order 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.

(e) Requires the state agency to grant or deny the sworn motion not later than the date of the agency's governing board's next meeting or, for a state agency without a governing board with decision-making authority in contested cases, not later than the 10th day after the date the agency receives the sworn motion.

(f) Provides that, if the 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.

(g) Requires that all the periods specified by or agreed to under Section 2001.144(a), 2001.146, 2001.147, or 2001.176(a) relating to a decision or order, or motion for rehearing, if the sworn motion filed under Subsection (d) is granted with respect to the party filing that motion, begin on the date specified in the sworn motion that the party first received the notice required by Subsections (a) and (b) or acquired actual knowledge of the signed decision or order. Requires that the date specified in the sworn motion be considered the date the decision or order was signed.

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), Government Code, as follows:

(a) Provides that a decision or order that may become final under Section 2001.144 in a contested case should be signed, rather than must be 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, in a contested case heard by other than a majority of the officials of a state agency, to extend the period in which the decision or order may be signed, rather than issued.

SECTION 7. Amends Section 2001.144, Government Code, as follows:

Sec. 2001.144. New heading: 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:

(A) the order overruling the motion for rehearing is signed, rather than rendered; or

(B) Makes no change to this paragraph;

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

(4) on:

(A) the date specified in the decision or order for a case in which all parties agree to the specified date in writing or on the record; or

(B) if the agreed specified date is before the date the decision or order is signed, the date the decision or order is signed, rather than 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) Changes a reference to rendered to signed.

SECTION 8. Amends Section 2001.145(b), Government Code, to provide that a decision or order that is final under Section 2001.144(a)(2), (3), or (4) is appealable.

SECTION 9. Amends Section 2001.146, Government Code, by amending Subsections (a), (b), (c), (e), and (f) and adding Subsections (g), (h), and (i), as follows:

(a) Requires that a motion for rehearing in a contested case be filed by a party not later than the 25th 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 under Section 2001.142, 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) (requiring a party in a contested case to be notified either personally or by first class mail of any decision or order). 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 of a decision or order that may become final under Section 2001.144.

(b) Requires a party to file with the state agency a reply, if any, to a motion for rehearing not later than the 40th day after the date the decision or order that is the subject of the 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 55th 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 requires 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, provided that 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 100th day after the date the decision or order that is the subject of the motion is signed. Deletes existing text authorizing a state agency, by written order, to extend the time for filing a motion or reply or taking agency action under this section, except that an extending 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 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, the 100th day after the date the decision or order that is the subject of the motion is signed. Deletes existing text providing 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 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) Provides that a subsequent motion for rehearing is not required after a state agency rules on a motion for rehearing unless the order disposing of the original motion for rehearing:

(1) 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

(2) vacates the decision or order that is the subject of the motion and provides for a new decision or order.

(i) Requires that a subsequent motion for rehearing required by Subsection (h) be filed not later than the 20th day after the date the order disposing of the original motion for rehearing is signed.

SECTION 10. Amends Section 2001.176(a), Government Code, to provide 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 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:

(1) on the date the last timely motion for rehearing is overruled; and

(2) after the motion is overruled.

Makes a nonsubstantive change.

SECTION 11. 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. Makes application of this Act prospective.

SECTION 12. Effective date: September 1, 2015.