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H.B. No. 425

A BILL TO BE ENTITLED

1 AN ACT

2 relating to procedures to help ensure that certain state agency
3 actions are consistent with the meaning and intent of applicable
4 legislative enactments.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 2001.032, Government Code, is amended to
7 read as follows:

8 Sec. 2001.032. LEGISLATIVE REVIEW AND NOTIFICATION. (a)
9 In the process of developing new rules and before a state agency
10 gives notice of its intention of adopting a rule under Sections
11 2001.023 and 2001.024, the agency shall research the legislative
12 history of the law and prepare a legislative history document on the
13 bill or amendment that authorizes a state agency to adopt the rule.
14 To effectively research and prepare a legislative history document,
15 the state agency must:

16 (1) confirm the names of the primary author and
17 sponsor of the legislation or amendment that authorizes the state
18 agency to adopt the rule with the chief clerk of the house of
19 representatives, the secretary of the senate, or an automated
20 information system operated by the Texas Legislative Council or
21 some other reliable information service;

22 (2) determine whether a statement or discussion of
23 legislative intent was entered into the journals of the senate or
24 house of representatives in connection with legislation that became

1 law and that added, amended, or clearly affected the law under which
2 the rule would be adopted;

3 (3) verify the standing of each legislative author or
4 sponsor identified in Subdivision (1) as to their current
5 membership in the legislature; and

6 (4) assemble the information gathered under
7 Subdivisions (1), (2), and (3) into a legislative history document
8 to be used by the state agency during the deliberative process of
9 developing new rules.

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

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

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

26 (e) Concurrently with the state agency's filing of the
27 notice with the secretary of state, the agency shall deliver a copy

1 of the notice of the proposed rule required by Sections 2001.023 and
2 2001.024 to the primary author and sponsor as described in the
3 legislative history if the primary author or sponsor is still a
4 member of the legislature.

5 (f) Not later than the seventh day before the date the state
6 agency considers the rule for final adoption, the agency shall
7 deliver to the primary author and sponsor a copy of the rule as
8 proposed for final adoption if the text of the rule differs from the
9 text of the proposed rule published under Section 2001.024 and if
10 the author or sponsor is still a member of the legislature. The
11 state agency also shall notify the primary author and sponsor in a
12 timely manner of the time and place of a public hearing held in
13 connection with the contemplated rulemaking if the primary author
14 or sponsor is still a member of the legislature.

15 (g) The state agency shall deliver a copy of an emergency
16 rule adopted under Section 2001.034 and the written reasons for its
17 adoption to the primary author and sponsor as determined by the
18 legislative history with respect to the law under which the
19 emergency rule was adopted concurrently with the agency's filing of
20 the rule and the reasons for its adoption with the secretary of
21 state. If the state agency gives an abbreviated notice or conducts a
22 hearing in connection with the adoption of the emergency rule, the
23 agency shall also promptly furnish the primary author and sponsor
24 with a copy of the notice and shall timely inform the primary author
25 and sponsor of the time and place of the hearing.

26 (h) Failure to provide notice under this section does not
27 invalidate an action taken or rule adopted. [~~Each house of the~~

1 ~~legislature by rule shall establish a process under which the~~
2 ~~presiding officer of each house refers each proposed state agency~~
3 ~~rule to the appropriate standing committee for review before the~~
4 ~~rule is adopted.~~

5 ~~[(b) A state agency shall deliver to the lieutenant governor~~
6 ~~and the speaker of the house of representatives a copy of the notice~~
7 ~~of a proposed rule when the agency files notice with the secretary~~
8 ~~of state under Section 2001.023.~~

9 ~~[(c) On the vote of a majority of its members, a standing~~
10 ~~committee may send to a state agency a statement supporting or~~
11 ~~opposing adoption of a proposed rule.]~~

12 SECTION 2. Section 2001.024(a), Government Code, is amended
13 to read as follows:

14 (a) The notice of a proposed rule must include:

15 (1) a brief explanation of the proposed rule;

16 (2) the text of the proposed rule, except any portion
17 omitted under Section 2002.014, prepared in a manner to indicate
18 any words to be added or deleted from the current text;

19 (3) a statement of the statutory or other authority
20 under which the rule is proposed to be adopted, including:

21 (A) a concise explanation of the particular
22 statutory or other provisions under which the rule is proposed;

23 (B) the section or article of the code affected;

24 [~~and~~]

25 (C) a certification that the proposed rule has
26 been reviewed by legal counsel and found to be within the state
27 agency's authority to adopt; and

1 (D) a copy of the legislative history developed
2 and used by the agency during the proposal process;

3 (4) a fiscal note showing the name and title of the
4 officer or employee responsible for preparing or approving the note
5 and stating for each year of the first five years that the rule will
6 be in effect:

7 (A) the additional estimated cost to the state
8 and to local governments expected as a result of enforcing or
9 administering the rule;

10 (B) the estimated reductions in costs to the
11 state and to local governments as a result of enforcing or
12 administering the rule;

13 (C) the estimated loss or increase in revenue to
14 the state or to local governments as a result of enforcing or
15 administering the rule; and

16 (D) if applicable, that enforcing or
17 administering the rule does not have foreseeable implications
18 relating to cost or revenues of the state or local governments;

19 (5) a note about public benefits and costs showing the
20 name and title of the officer or employee responsible for preparing
21 or approving the note and stating for each year of the first five
22 years that the rule will be in effect:

23 (A) the public benefits expected as a result of
24 adoption of the proposed rule; and

25 (B) the probable economic cost to persons
26 required to comply with the rule;

27 (6) the local employment impact statement prepared

1 under Section 2001.022, if required;

2 (7) a request for comments on the proposed rule from
3 any interested person; and

4 (8) any other statement required by law.

5 SECTION 3. Section 2001.033, Government Code, is amended to
6 read as follows:

7 Sec. 2001.033. STATE AGENCY ORDER ADOPTING RULE. (a) A
8 state agency order finally adopting a rule must include:

9 (1) a reasoned justification for the rule as adopted
10 consisting solely of:

11 (A) a summary of comments received from parties
12 and of any written comments received from members of the
13 legislature interested in the rule that shows the names of
14 interested groups or associations offering comment on the rule and
15 of members of the legislature offering written comment on the rule
16 and whether they were for or against its adoption;

17 (B) a summary of the factual basis for the rule as
18 adopted which demonstrates a rational connection between the
19 factual basis for the rule and the rule as adopted; and

20 (C) the reasons why the agency disagrees with
21 party submissions and proposals and with any written comments or
22 proposals offered by a member of the legislature;

23 (2) a concise restatement of the particular statutory
24 provisions under which the rule is adopted and of how the agency
25 interprets the provisions as authorizing or requiring the rule; and

26 (3) a certification that the rule, as adopted, has
27 been reviewed by legal counsel and found to be:

1 (A) a valid exercise of the agency's legal
2 authority; and

3 (B) consistent with the intent of the legislature
4 in enacting or otherwise affecting the law under which the rule is
5 adopted, as described by Section 2001.032(a).

6 (b) Nothing in this section shall be construed to require
7 additional analysis of alternatives not adopted by an agency beyond
8 that required by Subsection (a)(1)(C) [~~Subdivision (1)(C)~~] or to
9 require the reasoned justification to be stated separately from the
10 statements required in Subsection (a)(1) [~~Subdivision (1)~~].

11 SECTION 4. The change in law made by this Act applies only
12 in relation to:

13 (1) a state agency rule for which notice of the rule as
14 proposed is first published in the Texas Register under Sections
15 2001.023 and 2001.024, Government Code, on or after October 1,
16 2003; or

17 (2) an emergency rule adopted on or after September
18 15, 2003.

19 SECTION 5. This Act takes effect September 1, 2003.