

BILL ANALYSIS

C.S.H.B. 425
By: Christian
State Affairs
Committee Report (Substituted)

BACKGROUND 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. The purpose of C.S.H.B. 425 is to implement procedures to ensure that agency rules are consistent with legislative intent.

RULEMAKING AUTHORITY

It is the opinion of the committee that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 425 amends the Government Code by adding Section 322.015, which would authorize the Legislative Budget Board to issue a letter clarifying the meaning or intent of a provision in the General Appropriations Act or another legislative enactment if the provision makes or affects an appropriation. The bill authorizes a state governmental entity to rely on such a letter in interpreting such a provision of law.

C.S.H.B. 425 amends Chapter 2001 of the Government Code to require a state agency, when proposing or adopting a rule, to inform each primary author and primary sponsor of legislation enacted after January 1, 2003 that a rule related to the member's legislation is being considered. C.S.H.B. 425 also requires the agency to inform such members of the time and place of any public hearing or formal meeting regarding the contemplated rulemaking, and to invite the member or the member's designated representative to participate as a member of any advisory committee the state agency appoints in connection with the contemplated rulemaking. C.S.H.B. 425 also establishes notification requirements to each primary author and sponsor with respect to emergency rules.

C.S.H.B. 425 deletes provisions requiring each house of the legislature to establish a process to refer proposed rules to appropriate standing committees, provisions requiring agencies to deliver notice of proposed rules to the lieutenant governor and speaker of the house, and provisions authorizing standing committees to send a statement supporting or opposing adoption of a proposed rule.

C.S.H.B. 425 adds Section 2001.0321 to the Government Code pertaining to independent review of agency rules and the suspension of those rules by the governor. The bill authorizes the chair of any standing committee of either house of the legislature to request the presiding officer of that house to initiate an independent review of a proposed or adopted state agency rule that has been in effect for 180 days or less. Upon such a request, the bill requires the presiding officer to timely notify the petitioning chair whether the review will be conducted, and timely refer the rule to the appropriate standing committee if a determination is made that such review is appropriate.

C.S.H.B. 425 establishes detailed timelines, procedures, and criteria for standing committee review of a rule or proposed rule. After such review, the committee may by majority vote recommend to the presiding officer of the appropriate house that the governor be requested to suspend the rule or proposed rule. If the presiding officer decides to make such a request, the bill sets out a detailed mechanism for making the request.

C.S.H.B. 425 sets out the criteria and the mechanism to be used, and the timelines to be followed, by the governor if the governor decides to suspend a rule, other than an emergency rule, adopted or proposed by a state agency. The bill also establishes procedures and timelines to be followed by a state agency in the event the governor suspends a rule or proposed rule.

The provisions of C.S.H.B. 425 relating to independent review apply only to rules for which notice is first published on or after October 1, 2003, or to an emergency rule adopted on or after September 15, 2003.

EFFECTIVE DATE

September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 425 adds Section 322.015 to the Government Code as described above. The substitute adds language that requires state agencies to inform each primary author and sponsor, rather than all authors and sponsors as was specified in the original bill, about proposed or adopted rules related to the member's legislation. The substitute adds a provision that the required notification only relates to legislation enacted after January 1, 2003. The substitute differs from the original by requiring a state agency to inform the necessary members of the legislature of the time and place of any formal meeting, rather than any informal conference, in connection with the contemplated rulemaking. The substitute adds language which allows a member's designated representative to participate in any public hearing or formal meeting, or serve as a member of any advisory committee, on the contemplated rulemaking. The substitute adds Section 2001.0321 to the Government Code as described above. The substitute adds language to provide that the changes in law made by the Act apply only in relation to a state agency rule for which notice of the rule as proposed is first published in the Texas Register on or after October 1, 2003, or an emergency rule adopted on or after September 15, 2003.

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