

AN ACT

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

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

SECTION 1. Chapter 322, Government Code, is amended by adding Section 322.015 to read as follows:

Sec. 322.015. LETTERS OF LEGISLATIVE INTENT. (a) The board may issue a letter to a state governmental entity clarifying or explaining meaning or legislative intent on matters relating to:

(1) the General Appropriations Act; or

(2) another legislative enactment that makes an appropriation or qualifies, details, limits, or restricts an appropriation.

(b) A state governmental entity, in interpreting a provision of law described by Subsection (a), may rely on a letter of legislative intent issued by the board under this section.

SECTION 2. Section 2001.032, Government Code, is amended to read as follows:

Sec. 2001.032. LEGISLATIVE REVIEW AND NOTIFICATION. (a) In the process of developing new rules and before a state agency gives notice of its intention of adopting a rule under Sections 2001.023 and 2001.024, the agency shall research the legislative history of the law and prepare a legislative history document on the

1 bill or amendment that authorizes a state agency to adopt the rule.  
2 To effectively research and prepare a legislative history document,  
3 the state agency must:

4 (1) confirm the names of the primary author and  
5 sponsor of the legislation or amendment that authorizes the state  
6 agency to adopt the rule with the chief clerk of the house of  
7 representatives, the secretary of the senate, or an automated  
8 information system operated by the Texas Legislative Council or  
9 some other reliable information service;

10 (2) determine whether a statement or discussion of  
11 legislative intent was entered into the journals of the senate or  
12 house of representatives in connection with legislation that became  
13 law and that added, amended, or clearly affected the law under which  
14 the rule would be adopted;

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

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

22 (b) In this section, a reference to the law under which a  
23 rule is or would be adopted includes a reference to the law that  
24 authorizes a state agency to adopt the rule and to the law that the  
25 rule would implement or enforce.

26 (c) Before a state agency gives notice of its intention to  
27 adopt a rule under Sections 2001.023 and 2001.024, the agency shall

1 establish an internal review process to ensure that the proposed  
2 rule is consistent with the legislative history in enacting or  
3 otherwise affecting the law under which the rule would be adopted.

4 (d) Before a state agency gives notice of its intention to  
5 adopt a rule under Sections 2001.023 and 2001.024, the agency shall  
6 inform the primary author and sponsor of legislation that became  
7 law and that added, amended, or clearly affected the law under which  
8 the rule would be adopted, if the primary author or sponsor is still  
9 a member of the legislature, that the adoption of a rule related to  
10 the member's legislation is being considered.

11 (e) Concurrently with the state agency's filing of the  
12 notice with the secretary of state, the agency shall deliver a copy  
13 of the notice of the proposed rule required by Sections 2001.023 and  
14 2001.024 to the primary author and sponsor as described in the  
15 legislative history if the primary author or sponsor is still a  
16 member of the legislature.

17 (f) Not later than the seventh day before the date the state  
18 agency considers the rule for final adoption, the agency shall  
19 deliver to the primary author and sponsor a copy of the rule as  
20 proposed for final adoption if the text of the rule differs from the  
21 text of the proposed rule published under Section 2001.024 and if  
22 the author or sponsor is still a member of the legislature. The  
23 state agency also shall notify the primary author and sponsor in a  
24 timely manner of the time and place of a public hearing held in  
25 connection with the contemplated rulemaking if the primary author  
26 or sponsor is still a member of the legislature.

27 (g) The state agency shall deliver a copy of an emergency

1 rule adopted under Section 2001.034 and the written reasons for its  
2 adoption to the primary author and sponsor as determined by the  
3 legislative history with respect to the law under which the  
4 emergency rule was adopted concurrently with the agency's filing of  
5 the rule and the reasons for its adoption with the secretary of  
6 state. If the state agency gives an abbreviated notice or conducts a  
7 hearing in connection with the adoption of the emergency rule, the  
8 agency shall also promptly furnish the primary author and sponsor  
9 with a copy of the notice and shall timely inform the primary author  
10 and sponsor of the time and place of the hearing.

11 (h) Failure to provide notice under this section does not  
12 invalidate an action taken or rule adopted. [~~Each house of the~~  
13 legislature by rule shall establish a process under which the  
14 presiding officer of each house refers each proposed state agency  
15 rule to the appropriate standing committee for review before the  
16 rule is adopted.

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

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

24 SECTION 3. Section 2001.024(a), Government Code, is amended  
25 to read as follows:

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

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

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

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

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

8                   (B) the section or article of the code affected;  
9 ~~and~~

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

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

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

19                   (A) the additional estimated cost to the state  
20 and to local governments expected as a result of enforcing or  
21 administering the rule;

22                   (B) the estimated reductions in costs to the  
23 state and to local governments as a result of enforcing or  
24 administering the rule;

25                   (C) the estimated loss or increase in revenue to  
26 the state or to local governments as a result of enforcing or  
27 administering the rule; and

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

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

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

10 (B) the probable economic cost to persons  
11 required to comply with the rule;

12 (6) the local employment impact statement prepared  
13 under Section 2001.022, if required;

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

16 (8) any other statement required by law.

17 SECTION 4. Section 2001.033, Government Code, is amended to  
18 read as follows:

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

21 (1) a reasoned justification for the rule as adopted  
22 consisting solely of:

23 (A) a summary of comments received from parties  
24 and of any written comments received from members of the  
25 legislature interested in the rule that shows the names of  
26 interested groups or associations offering comment on the rule and  
27 of members of the legislature offering written comment on the rule

1 and whether they were for or against its adoption;

2 (B) a summary of the factual basis for the rule as  
3 adopted which demonstrates a rational connection between the  
4 factual basis for the rule and the rule as adopted; and

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

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

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

13 (A) a valid exercise of the agency's legal  
14 authority; and

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

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

23 SECTION 5. The changes in law made by this Act relating to  
24 the process of state agency rulemaking apply only in relation to:

25 (1) a state agency rule for which notice of the rule as  
26 proposed is first published in the Texas Register under Sections  
27 2001.023 and 2001.024, Government Code, on or after October 1,

1 2003; or

2 (2) an emergency rule adopted on or after September  
3 15, 2003.

4 SECTION 6. This Act takes effect September 1, 2003.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 425 was passed by the House on May 5, 2003, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 425 on May 28, 2003, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 425 on June 1, 2003, by a non-record vote; and that the House adopted H.C.R. No. 293 authorizing certain corrections in H.B. No. 425 on June 2, 2003, by a non-record vote.

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Chief Clerk of the House

H.B. No. 425

I certify that H.B. No. 425 was passed by the Senate, with amendments, on May 27, 2003, by the following vote: Yeas 31, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 425 on June 1, 2003, by a viva-voce vote; and that the Senate adopted H.C.R. No. 293 authorizing certain corrections in H.B. No. 425 on June 2, 2003.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor