

By: Christian, Miller, Eissler

H.B. No. 425

Substitute the following for H.B. No. 425:

By: Goodman

C.S.H.B. No. 425

A BILL TO BE ENTITLED

AN ACT

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

8 Sec. 322.015. LETTERS OF CLARIFICATION. (a) The board may
9 issue a letter clarifying or explaining the meaning or intent of a
10 provision:

11 (1) in the General Appropriations Act; or

12 (2) in another legislative enactment if the provision
13 makes an appropriation or qualifies, details, limits, or restricts
14 an appropriation.

15 (b) A state governmental entity, in interpreting a
16 provision of law described by Subsection (a), is entitled to rely on
17 a letter of clarification issued by the board under this section.

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

20 Sec. 2001.032. NOTIFICATION TO CERTAIN MEMBERS OF THE
21 LEGISLATURE [~~LEGISLATIVE REVIEW~~]. (a) In this section, a
22 reference to the law under which a rule is or would be adopted
23 includes a reference to the law that authorizes a state agency to
24 adopt the rule and to the law that the rule would implement or

1 enforce.

2 (b) Before a state agency gives notice of its intention to
3 adopt a rule under Sections 2001.023 and 2001.024, the agency shall
4 inform each primary author and primary sponsor of legislation
5 enacted after January 1, 2003, that became law and that added,
6 amended, or clearly affected the law under which the rule would be
7 adopted, if the person is still a member of the legislature, that
8 the adoption of a rule related to the member's legislation is being
9 considered.

10 (c) The state agency shall deliver a copy of the notice of
11 the proposed rule required by Sections 2001.023 and 2001.024 to
12 each member of the legislature described by Subsection (b)
13 concurrently with the agency's filing of the notice with the
14 secretary of state. Not later than the seventh day before the date
15 the state agency considers the rule for final adoption, the agency
16 shall also deliver to the member a copy of the rule as proposed for
17 final adoption if the text of the rule differs from the text of the
18 proposed rule published under Section 2001.024 and shall solicit
19 comment from the member regarding the changed text of the proposed
20 rule. The state agency also shall:

21 (1) timely inform the member of the time and place of
22 any public hearing or formal meeting held in connection with the
23 contemplated rulemaking and allow the member or the member's
24 designated representative to participate; and

25 (2) invite the member or the member's designated
26 representative to participate as a member of any advisory committee
27 the state agency appoints in connection with the contemplated

1 rulemaking.

2 (d) The state agency shall deliver a copy of an emergency
3 rule adopted under Section 2001.034 and the written reasons for its
4 adoption to each member of the legislature described by Subsection
5 (b) with respect to the law under which the emergency rule was
6 adopted concurrently with the agency's filing of the rule and the
7 reasons for its adoption with the secretary of state. If the state
8 agency gives an abbreviated notice or conducts a hearing in
9 connection with the adoption of the emergency rule, the agency
10 shall also promptly furnish the member with a copy of the notice and
11 shall timely inform the member of the time and place of any hearing.

12 ~~[Each house of the legislature by rule shall establish a process~~
13 ~~under which the presiding officer of each house refers each~~
14 ~~proposed state agency rule to the appropriate standing committee~~
15 ~~for review before the rule is adopted.]~~

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

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

23 SECTION 3. Subchapter B, Chapter 2001, Government Code, is
24 amended by adding Section 2001.0321 to read as follows:

25 Sec. 2001.0321. INDEPENDENT REVIEW OF RULES; SUSPENSION OF
26 RULE BY GOVERNOR. (a) The chair of any standing committee of
27 either house of the legislature may request the presiding officer

1 of that house to initiate an independent review of a rule proposed
2 or adopted by a state agency unless the rule has been in effect for
3 more than 180 days before the date the request is made. Not later
4 than the 10th day after the date the request is made, the presiding
5 officer shall:

6 (1) notify the petitioning chair whether the review
7 will be conducted; and

8 (2) refer the rule to the appropriate standing
9 committee if the presiding officer determines that a review of the
10 rule is appropriate.

11 (b) A standing committee shall review any proposed or
12 adopted rule referred to it. The committee may hold a public hearing
13 or a meeting on the rule or proposed rule. In reviewing a rule or
14 proposed rule, the committee shall consider:

15 (1) whether the rule is authorized by law and is
16 consistent with the intent and scope of the authorizing law;

17 (2) whether the rule complies with all other
18 applicable law; and

19 (3) whether the rule can be justified when compared to
20 available alternatives that would satisfy the legislative intent of
21 the authorizing law and requirements of other applicable law on the
22 basis of:

23 (A) the cost to the state and to persons affected
24 by the rule; and

25 (B) the burden the rule places on the public or
26 persons affected by the rule.

27 (c) The committee by majority vote of the membership of the

1 committee may recommend to the presiding officer of the appropriate
2 house that the presiding officer request the governor to suspend
3 the rule or proposed rule.

4 (d) The committee may meet by telephone conference call to
5 consider a rule or proposed rule under this section. The notice of
6 the meeting must specify as the location of the meeting at least one
7 location at which facilities must be provided to make the meeting
8 audible to the public. The meeting shall be recorded on audiotape
9 and the tape recordings shall be made available to the public.

10 (e) As an alternative to holding a meeting on the question,
11 the chair of the committee may notify the members of the committee
12 that a rule or proposed rule has been referred to the committee and
13 provide each member with a ballot to permit voting for, voting
14 against, or participating and not voting on whether the committee
15 shall recommend that the presiding officer request the governor to
16 suspend the rule or proposed rule. The chair shall give each member
17 an opportunity to vote or participate by mail or by facsimile
18 transmission of a marked ballot.

19 (f) If the committee recommends that the presiding officer
20 request the governor to suspend the rule or proposed rule, the
21 chair, not later than the 10th day after the date the recommendation
22 is made, shall give written notice of the committee recommendation
23 to:

24 (1) the presiding officer of the appropriate house;
25 (2) the state agency that adopted or proposed the
26 rule; and

27 (3) each member of the house of the legislature that

1 established the committee.

2 (g) Not later than the 20th day after the date of the
3 committee action, a member of that house may file a written
4 objection to or statement of support for the committee's action
5 with the presiding officer of that house.

6 (h) Not later than the 20th day after the date the presiding
7 officer receives notice that a committee has recommended that the
8 presiding officer request the governor to suspend a rule or
9 proposed rule, the presiding officer may request the governor to do
10 so. In making a decision under this subsection, the presiding
11 officer shall consider any objections or statements of support
12 filed by members of the house under Subsection (g). If the
13 presiding officer requests the governor to suspend the rule or
14 proposed rule, the presiding officer shall give written notice of
15 the request to:

16 (1) the governor;

17 (2) the state agency that adopted or proposed the
18 rule;

19 (3) the secretary of state; and

20 (4) the presiding officer of the other house of the
21 legislature.

22 (i) On the request of the presiding officer of either house
23 of the legislature under this section, the governor by proclamation
24 may suspend a rule, other than an emergency rule, adopted or
25 proposed by a state agency. The governor shall consider the items
26 listed in Subsection (b) and shall state in the proclamation the
27 grounds for suspension of the rule or proposed rule. The governor

1 must state in the proclamation the date on which the suspension
2 takes effect. The effective date of the suspension may not be
3 earlier than the 30th day after the date of the proclamation. Not
4 later than the fifth day after the date of the proclamation, the
5 governor shall:

6 (1) deliver a certified copy of the proclamation to
7 the state agency that adopted or proposed the rule; and

8 (2) file notice of the proclamation with the secretary
9 of state for publication in the Texas Register.

10 (j) When a rule or proposed rule is suspended under this
11 section, the state agency that adopted or proposed the rule may not
12 adopt a rule containing the substance of the suspended rule before
13 the second anniversary of the date the suspension takes effect,
14 unless the governor by proclamation consents to adoption of the
15 rule. On or after the second anniversary, the state agency may
16 adopt the same rule or a rule containing the substance of the
17 suspended rule as provided by this subchapter.

18 SECTION 4. The changes in law made by this Act to Section
19 2001.032, Government Code, apply only in relation to:

20 (1) a state agency rule for which notice of the rule as
21 proposed is first published in the Texas Register under Sections
22 2001.023 and 2001.024, Government Code, on or after October 1,
23 2003; or

24 (2) an emergency rule adopted on or after September
25 15, 2003.

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