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H.B. No. 5083

A BILL TO BE ENTITLED

AN ACT

relating to the adoption and review of rules by state agencies.

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

SECTION 1. Section 28.002(m), Education Code, is amended to read as follows:

(m) Section 2001.0395 [~~2001.039~~], Government Code, [~~as added by Chapter 1499, Acts of the 76th Legislature, Regular Session, 1999,~~] does not apply to a rule adopted by the State Board of Education under Subsection (c) or (d).

SECTION 2. Subchapter A, Chapter 2001, Government Code, is amended by adding Section 2001.008 to read as follows:

Sec. 2001.008. EXPRESS STATUTORY AUTHORITY FOR RULE OR GUIDANCE DOCUMENT REQUIRED. (a) In this section, "guidance document" means any letter, opinion, compliance manual, or other statement issued by a state agency that explains or interprets one or more of the state agency's rules.

(b) A state agency may not adopt a rule or issue a guidance document unless the agency has been granted an express statutory delegation of authority to adopt the rule or issue the guidance document.

(c) For purposes of Subsection (b), a state agency does not have an express statutory delegation of authority to adopt a rule or issue a guidance document solely because the rule or guidance document is reasonably related to the purpose of the state agency's

1 enabling legislation or to a general statutory power or duty of the
2 state agency.

3 SECTION 3. Subchapter B, Chapter 2001, Government Code, is
4 amended by adding Section 2001.0227 to read as follows:

5 Sec. 2001.0227. CERTAIN RULES PROHIBITED BASED ON COSTS OF
6 COMPLIANCE; COST-BENEFIT ANALYSES REQUIRED. (a) A state agency
7 shall prepare a cost-benefit analysis for each proposed rule as
8 provided by this section.

9 (b) The cost-benefit analysis must include:

10 (1) a cost-benefit analysis estimating for each year
11 of the first six years that the rule will be in effect:

12 (A) the public benefits expected as a result of
13 adoption of the rule; and

14 (B) the expected economic costs to persons
15 required to comply with the rule;

16 (2) an explanation of all assumptions, methods,
17 supporting data, and, if any, discount rates used in preparing the
18 cost-benefit analysis; and

19 (3) a clear statement of the total expected economic
20 costs to persons required to comply with the rule and the total
21 public benefits expected as a result of the adoption of the rule.

22 (c) A state agency may not adopt a proposed rule:

23 (1) for which the cost-benefit analysis under
24 Subsection (b) states that the total expected economic costs to
25 comply with the rule exceed the total public benefits expected as a
26 result of the adoption of the proposed rule; or

27 (2) if there are alternative methods of regulation

1 that could accomplish the legislature's intent in authorizing the
2 rule and any statutory purposes provided by the legislature at a
3 lower economic cost to persons required to comply with the rule.

4 (d) If the proposed rule takes effect and remains in effect
5 at least six years, the state agency shall:

6 (1) solicit from interested stakeholders data
7 regarding the stakeholders' experience and actual economic costs of
8 compliance with the rule; and

9 (2) conduct a retrospective cost-benefit analysis
10 that compares:

11 (A) estimates made under Subsection (b)(1)
12 regarding the economic costs of compliance; and

13 (B) the actual economic costs of compliance based
14 on the data provided under Subdivision (1) and any other readily
15 available data relevant to this purpose.

16 (e) If a state agency uses a discount rate in preparing an
17 analysis under Subsection (b) or (d), the state agency shall
18 provide:

19 (1) a reasoned justification for the use of the
20 discount rate; and

21 (2) another cost-benefit analysis for the same rule
22 that does not include the use of the discount rate.

23 (f) A state agency that prepares an analysis under
24 Subsection (b) or (d) shall publish on the agency's publicly
25 accessible Internet website all documentation and other materials
26 used to prepare the analysis in a machine-readable format.

27 (g) A reference to an existing rule under this section

1 includes any amendments to the rule, and, to the extent feasible,
2 the state agency shall prepare the analysis required under
3 Subsection (b) based on the terms of the rule as amended.

4 SECTION 4. Section 2001.024(a), Government Code, is amended
5 to read as follows:

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

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

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

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

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

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

16 (C) if applicable, the bill number for the
17 legislation that enacted the statutory authority under which the
18 rule is proposed to be adopted if the legislation was enacted during
19 the four-year period preceding the date notice of the proposed rule
20 is given; and

21 (D) a certification that the proposed rule has
22 been reviewed by legal counsel and found to be within the state
23 agency's authority to adopt;

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

1 (A) the additional estimated cost to the state
2 and to local governments expected as a result of enforcing or
3 administering the rule;

4 (B) the estimated reductions in costs to the
5 state and to local governments as a result of enforcing or
6 administering the rule;

7 (C) the estimated loss or increase in revenue to
8 the state or to local governments as a result of enforcing or
9 administering the rule; and

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

13 (5) the cost-benefit analysis required under Section
14 2001.0227 ~~[a note about public benefits and costs showing the name~~
15 ~~and title of the officer or employee responsible for preparing or~~
16 ~~approving the note and stating for each year of the first five years~~
17 ~~that the rule will be in effect.~~

18 ~~[(A) the public benefits expected as a result of~~
19 ~~adoption of the proposed rule; and~~

20 ~~[(B) the probable economic cost to persons~~
21 ~~required to comply with the rule];~~

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

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

26 (8) any other statement required by law.

27 SECTION 5. Section 2001.033, Government Code, is amended by

1 amending Subsection (a) and adding Subsection (c) to read as
2 follows:

3 (a) A state agency order finally adopting a rule must
4 include:

5 (1) a reasoned justification for the rule as adopted
6 consisting solely of:

7 (A) a summary of comments received from parties
8 interested in the rule that shows the names of interested groups or
9 associations offering comment on the rule and whether they were for
10 or against its adoption;

11 (B) a summary of the factual basis for the rule as
12 adopted which demonstrates a rational connection between the
13 factual basis for the rule and the rule as adopted; and

14 (C) the reasons why the agency disagrees with
15 party submissions and proposals;

16 (2) a concise restatement of the particular statutory
17 provisions under which the rule is adopted and of how the agency
18 interprets the provisions as authorizing or requiring the rule;
19 ~~and~~

20 (3) a certification that the rule, as adopted, has
21 been reviewed by legal counsel and found to be a valid exercise of
22 the agency's legal authority; and

23 (4) the cost-benefit analysis required under Section
24 2001.0227 updated to reflect reasonable public commentary on the
25 state agency's calculations of the costs and benefits of the rule or
26 a reasoned justification for why the agency did not update the
27 cost-benefit analysis based on the public commentary.

1 (c) A state agency rule may not be arbitrary or capricious.

2 SECTION 6. Section 2001.038, Government Code, is amended by
3 adding Subsection (g) to read as follows:

4 (g) A respondent subject to an enforcement action by a state
5 agency for the violation of a rule may request a declaratory
6 judgment from the court finding a rule invalid if the state agency
7 lacks express statutory delegation of authority to adopt the rule
8 on which the enforcement action is based, including if the state
9 agency relies on a guidance document to interpret the rule for
10 purposes of the enforcement action. A court shall award a
11 respondent that prevails on the ground provided by this subsection
12 reasonable attorney's fees and court costs. For purposes of this
13 section, "guidance document" has the meaning assigned by Section
14 2001.008.

15 SECTION 7. Subchapter B, Chapter 2001, Government Code, is
16 amended by adding Sections 2001.0395 and 2001.042 to read as
17 follows:

18 Sec. 2001.0395. EXPIRATION OF RULES. (a) Each state agency
19 rule expires on the 12th anniversary of the rule's effective date
20 unless the state agency that adopted the rule readopts the rule
21 before the rule's expiration date in accordance with this section.

22 (b) The expiration date for a readopted rule is the 12th
23 anniversary of the readopted rule's effective date.

24 (c) The adoption of an amendment to an existing rule does
25 not affect the expiration date of the rule under this section unless
26 the amendment is made as part of a readoption of the entire rule or
27 chapter of the Texas Administrative Code containing the amended

1 rule.

2 (d) The procedures of this subchapter required for the
3 adoption of a rule apply to the readoption of a rule under this
4 section, including:

5 (1) preparing a cost-benefit analysis under Section
6 2001.0227(b);

7 (2) providing opportunity for public comment under
8 Section 2001.029;

9 (3) responding to substantive public comments, as
10 required under Section 2001.033(a)(1)(C); and

11 (4) providing an updated cost-benefit analysis under
12 Section 2001.033(a)(4).

13 (e) In readopting a rule under this section, a state agency
14 must also:

15 (1) provide an assessment of whether the reasons for
16 initially adopting the rule continue to exist;

17 (2) provide an assessment of whether the rule is
18 obsolete, unnecessary, or duplicative or conflicts with other
19 rules;

20 (3) consider public comments that provide data and
21 information on the actual economic costs to persons required to
22 comply with the rule;

23 (4) to the fullest extent practicable, base estimates
24 on expected economic costs to persons required to comply with the
25 rule on data and information described by Section 2001.0227(d)(1);
26 and

27 (5) publish all notices, analyses, and responses to

1 public comments on the state agency's publicly accessible Internet
2 website.

3 (f) Each state agency shall with respect to the state
4 agency's rules:

5 (1) publish on the state agency's publicly accessible
6 Internet website the expiration date for each rule; and

7 (2) make the expiration date of each rule available
8 through an application programming interface that allows automated
9 access and monitoring of the rules' expiration dates.

10 (g) The secretary of state shall include a rule's expiration
11 date in the online publication of the Texas Administrative Code in a
12 standardized metadata field that accompanies each section of the
13 code.

14 (h) Notwithstanding any other provision of this section, a
15 rule does not expire under this section if the governor in writing
16 exempts a rule from the application of this section. On the written
17 request from a state agency, the governor shall exempt a rule that:

18 (1) is necessary:

19 (A) to comply with federal law; or

20 (B) because federal funding is conditioned on the
21 rule remaining in effect; or

22 (2) is authorized or required by the constitution.

23 (i) A state agency that administers a rule exempted under
24 Subsection (h) shall every 12 years after the date of the exemption
25 consider less burdensome alternatives to the rule, solicit public
26 commentary on those potential alternatives, and in determining
27 whether to adopt less burdensome alternatives, calculate the

1 expected economic costs to persons required to comply with the rule
2 based on data and information provided by persons subject to the
3 rule and bearing those costs.

4 (j) On written request by a state agency, the governor may
5 extend a rule's expiration date under this section for a period not
6 to exceed one year following the date on which the extension is
7 granted. A written request under this subsection to extend a rule's
8 expiration date must:

9 (1) explain the reason the state agency cannot
10 complete the readoption of the rule under this section before the
11 rule's expiration date; and

12 (2) describe the harm to the public's health, safety,
13 or welfare that would result if the rule expired.

14 (k) Any extension granted under Subsection (j) must be
15 accompanied by findings affirming the conditions described by
16 Subsections (j)(1) and (2).

17 Sec. 2001.042. CERTAIN ENFORCEMENT ACTIONS INVALID
18 REGARDLESS OF COMMENCEMENT DATE. An enforcement action brought by
19 a state agency shall be dismissed if the enforcement action is based
20 on the violation of a rule that expired, regardless of whether the
21 enforcement action commenced before the date the rule expired.

22 SECTION 8. Section 801.022(e), Occupations Code, is amended
23 to read as follows:

24 (e) Not later than December 31, 2026, the department shall
25 conduct a review under former Section 2001.039, Government Code, of
26 each rule under 22 T.A.C. Part 24. In conducting the review under
27 this subsection, the department shall ensure that license holders

1 and the public have a meaningful opportunity to provide input and
2 recommend changes to the rules.

3 SECTION 9. Section 2001.039, Government Code, is repealed.

4 SECTION 10. (a) Notwithstanding Section 2001.0395,
5 Government Code, as added by this Act, a state agency shall assign
6 the state agency's rules that exist on the effective date of this
7 section eight different expiration dates for the purpose of
8 staggering the expiration dates of the rules and implementing that
9 section.

10 (b) An expiration date assigned to a rule under this section
11 may not be later than January 1, 2040.

12 (c) Not later than December 1, 2025, each state agency shall
13 report to the governor the expiration dates assigned under this
14 section.

15 (d) The governor shall publish on the office's publicly
16 accessible Internet website a schedule of all the expiration dates
17 assigned under this section.

18 (e) This section takes effect September 1, 2025.

19 SECTION 11. The changes in law made by this Act to
20 Subchapter B, Chapter 2001, Government Code, apply only to a
21 proposed state agency rule for which notice is filed with the
22 secretary of state under Section 2001.023, Government Code, on or
23 after the effective date of this Act.

24 SECTION 12. Except as otherwise provided by this Act, this
25 Act takes effect January 1, 2026.