

BILL ANALYSIS

Senate Research Center
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DIGEST AND PURPOSE

Currently, state agencies engaged in rulemaking do not consider legislative intent through an examination of the journal record. Also, regarding the rulemaking process, state agencies do not inform legislative authors and sponsors of rules created from their prospective bills and the agencies are only required to publish proposed rules related to legislation in the Texas Register. This leaves a potential gap between a legislator's intent and the implementation of the resulting bill. Since rules written by an agency heavily influence the way a piece of legislation affects Texas citizens, such rules should reflect the intent of the original legislation. However, under current law, agencies with broad rulemaking authority can interpret legislation in a way that could directly conflict with the intent of the legislator. As proposed, S.B. 95 requires a state agency writing rules to review senate and house journals for the discussions which occurred in both related to the law requiring rule-making. This bill also requires the state agency to inform each author and sponsor of a pending rule at the agency; deliver a copy of the rule to the member at least seven days before final adoption of the rule; ask for the member's comments; and invite the member to participate on any advisory committee.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2001.032, Government Code, as follows:

Sec. 2001.032. New heading: CONSIDERATION OF LEGISLATIVE INTENT. Deletes existing subsections [(a) although not specifically labeled in bill], (b), and (c).

(a) Provides that in this section, a reference to the law under which a rule is or would be adopted includes a reference to the law that authorizes a state agency to adopt the rule and to the law that the rule would implement or enforce.

(b) Requires a state agency, before giving notice of its intention to adopt a rule under notice of appeal and content of notice, to take certain actions, regarding legislative intent.

(c) Requires the state agency to deliver a copy of the notice of the proposed rule to each author and sponsor of the legislation with the agency's filing of the notice with the secretary of state. Requires the state agency, not later than the seventh day before the date the agency considers the rule for final adoption, to deliver to the member a copy of the rules as proposed for final adoption if the text of the rule differs from the text of the proposed rule under Section 2001.024 and requires the agency to solicit comment from the member regarding the changed text of the proposed rule. Requires the state agency to take certain other actions.

(d) Requires the state agency to deliver a copy of an emergency rule adopted under Section 2001.034 and the written reasons for its adoption to each member of the

legislature described by Subsection (b)(3) with respect to the law under which the emergency rule was adopted concurrently with the agency's filing of the rule and the reasons for its adoption with the secretary of state. Requires the state agency, if the agency gives an abbreviated notice or conducts a hearing in connection with the adoption of the emergency rule, to promptly furnish the member with a copy of the notice and the agency is required to timely inform the member of the time and place of the hearing.

SECTION 2. Amends Section 2001.024(a), Government Code, by adding, to the list of items required to be included in the notice of a proposed rule, a certification that the state agency has complied with Section 2001.032(b) in connection with the proposed rule, citations to all the statements or discussions of legislative intent described by Section 2001.032(b)(1) in the journals of the senate and house of representatives, and a certification that the proposed rule has been reviewed by legal counsel and be found to be within the state agency's authority to adopt and consistent with the intent of the legislature in enacting or otherwise affecting the law under the rule would be adopted, as described by Section 2001.032(a).

SECTION 3. Amends Section 2001.033, Government Code, by making conforming and nonsubstantive changes.

SECTION 4. Provides that the change in law made by this Act applies only in certain instances.

SECTION 5. Effective date: September 1, 2003.