

By: West

S.B. No. 95

A BILL TO BE ENTITLED

AN ACT

relating to requiring a state agency to consider legislative intent during the process of adopting an agency rule.

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

SECTION 1. Section 2001.032, Government Code, is amended to read as follows:

Sec. 2001.032. CONSIDERATION OF LEGISLATIVE INTENT [~~REVIEW~~].

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

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

(2) ensure that the proposed rule is consistent with the legislature's intent in enacting or otherwise affecting the law under which the rule would be adopted; and

(3) inform each author and sponsor of legislation that became law and that added, amended, or clearly affected the law

1 under which the rule would be adopted, if the person is still a
2 member of the legislature, that the adoption of a rule related to
3 the member's legislation is being considered.

4 (c) The state agency shall deliver a copy of the notice of
5 the proposed rule required by Sections 2001.023 and 2001.024 to
6 each member of the legislature described by Subsection (b)(3)
7 concurrently with the agency's filing of the notice with the
8 secretary of state. Not later than the seventh day before the date
9 the state agency considers the rule for final adoption, the agency
10 shall also deliver to the member a copy of the rule as proposed for
11 final adoption if the text of the rule differs from the text of the
12 proposed rule published under Section 2001.024 and shall solicit
13 comment from the member regarding the changed text of the proposed
14 rule. The state agency also shall:

15 (1) timely inform the member of the time and place of
16 any public hearing or informal conference held in connection with
17 the contemplated rulemaking and allow the member to participate;
18 and

19 (2) invite the member to participate as a member of any
20 advisory committee the state agency appoints in connection with the
21 contemplated rulemaking.

22 (d) The state agency shall deliver a copy of an emergency
23 rule adopted under Section 2001.034 and the written reasons for its
24 adoption to each member of the legislature described by Subsection
25 (b)(3) with respect to the law under which the emergency rule was
26 adopted concurrently with the agency's filing of the rule and the
27 reasons for its adoption with the secretary of state. If the state

1 agency gives an abbreviated notice or conducts a hearing in
2 connection with the adoption of the emergency rule, the agency
3 shall also promptly furnish the member with a copy of the notice and
4 shall timely inform the member of the time and place of any hearing.

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

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

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

16 SECTION 2. Section 2001.024(a), Government Code, is amended
17 to read as follows:

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

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

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

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

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

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

1 (C) a certification that the state agency has
2 complied with Section 2001.032(b) in connection with the proposed
3 rule;

4 (D) citations to all statements or discussions of
5 legislative intent described by Section 2001.032(b)(1) in the
6 journals of the senate and house of representatives; and

7 (E) [~~(C)~~] a certification that the proposed rule
8 has been reviewed by legal counsel and found to be:

9 (i) within the state agency's authority to
10 adopt; and

11 (ii) consistent with the intent of the
12 legislature in enacting or otherwise affecting the law under which
13 the rule would be adopted, as described by Section 2001.032(a);

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

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

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

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

27 (D) if applicable, that enforcing or

1 administering the rule does not have foreseeable implications
2 relating to cost or revenues of the state or local governments;

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

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

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

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

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

15 (8) any other statement required by law.

16 SECTION 3. Section 2001.033, Government Code, is amended to
17 read as follows:

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

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

22 (A) a summary of comments received from parties
23 and of any written comments received from members of the
24 legislature interested in the rule that shows the names of
25 interested groups or associations offering comment on the rule and
26 of members of the legislature offering written comment on the rule
27 and whether they were for or against its adoption;

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

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

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

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

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

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

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

22 SECTION 4. The change in law made by this Act applies only
23 in relation to:

24 (1) a state agency rule for which notice of the rule as
25 proposed is first published in the Texas Register under Sections
26 2001.023 and 2001.024, Government Code, on or after October 1,
27 2003; or

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

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