

1-1 By: West S.B. No. 95
1-2 (In the Senate - Filed November 12, 2002; January 27, 2003,
1-3 read first time and referred to Committee on Government
1-4 Organization; April 8, 2003, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 6, Nays 0;
1-6 April 8, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 95 By: Ratliff

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the procedures under which a state agency considers
1-11 legislative intent during the process of implementing certain
1-12 legislative enactments.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Chapter 322, Government Code, is amended by
1-15 adding Section 322.015 to read as follows:

1-16 Sec. 322.015. LETTERS OF LEGISLATIVE INTENT. (a) The
1-17 board may issue a letter to a state governmental entity clarifying
1-18 or explaining meaning or legislative intent on matters relating to:

1-19 (1) the General Appropriations Act; or

1-20 (2) another legislative enactment that makes an
1-21 appropriation or qualifies, details, limits, or restricts an
1-22 appropriation.

1-23 (b) A state governmental entity, in interpreting a
1-24 provision of law described by Subsection (a), is entitled to rely on
1-25 a letter of legislative intent issued by the board under this
1-26 section.

1-27 SECTION 2. Section 2001.032, Government Code, is amended to
1-28 read as follows:

1-29 Sec. 2001.032. CONSIDERATION OF LEGISLATIVE INTENT
1-30 [REVIEW]. (a) In this section, a reference to the law under which
1-31 a rule is or would be adopted includes a reference to the law that
1-32 authorizes a state agency to adopt the rule and to the law that the
1-33 rule would implement or enforce.

1-34 (b) Before a state agency gives notice of its intention to
1-35 adopt a rule under Sections 2001.023 and 2001.024, the agency shall
1-36 inform each author and sponsor of legislation that became law and
1-37 that added, amended, or clearly affected the law under which the
1-38 rule would be adopted, if the person is still a member of the
1-39 legislature, that the adoption of a rule related to the member's
1-40 legislation is being considered.

1-41 (c) The state agency shall deliver a copy of the notice of
1-42 the proposed rule required by Sections 2001.023 and 2001.024 to
1-43 each member of the legislature described by Subsection (b)
1-44 concurrently with the agency's filing of the notice with the
1-45 secretary of state. Not later than the seventh day before the date
1-46 the state agency considers the rule for final adoption, the agency
1-47 shall also deliver to the member a copy of the rule as proposed for
1-48 final adoption if the text of the rule differs from the text of the
1-49 proposed rule published under Section 2001.024 and shall solicit
1-50 comment from the member regarding the changed text of the proposed
1-51 rule. The state agency also shall:

1-52 (1) timely inform the member of the time and place of
1-53 any public hearing or informal conference held in connection with
1-54 the contemplated rulemaking and allow the member to participate;
1-55 and

1-56 (2) invite the member to participate as a member of any
1-57 advisory committee the state agency appoints in connection with the
1-58 contemplated rulemaking.

1-59 (d) The state agency shall deliver a copy of an emergency
1-60 rule adopted under Section 2001.034 and the written reasons for its
1-61 adoption to each member of the legislature described by Subsection
1-62 (b) with respect to the law under which the emergency rule was
1-63 adopted concurrently with the agency's filing of the rule and the

2-1 reasons for its adoption with the secretary of state. If the state
2-2 agency gives an abbreviated notice or conducts a hearing in
2-3 connection with the adoption of the emergency rule, the agency
2-4 shall also promptly furnish the member with a copy of the notice and
2-5 shall timely inform the member of the time and place of any hearing.

2-6 (e) If a dispute arises between the state agency and a
2-7 member of the legislature described by Subsection (b) with regard
2-8 to the legislature's intent in enacting or otherwise affecting the
2-9 law under which the rule would be adopted, either the state agency
2-10 or the member may request the attorney general to issue an opinion
2-11 to resolve the dispute. If an opinion is requested under this
2-12 subsection before the date on which the rule would otherwise take
2-13 effect, the rule may not take effect unless the attorney general
2-14 issues an opinion that determines the rule as finally proposed for
2-15 adoption is consistent with the legislature's intent in enacting or
2-16 otherwise affecting the law under which the rule would be adopted
2-17 [Each house of the legislature by rule shall establish a process
2-18 under which the presiding officer of each house refers each
2-19 proposed state agency rule to the appropriate standing committee
2-20 for review before the rule is adopted.

2-21 [~~(b) A state agency shall deliver to the lieutenant governor
2-22 and the speaker of the house of representatives a copy of the notice
2-23 of a proposed rule when the agency files notice with the secretary
2-24 of state under Section 2001.023.~~

2-25 [~~(c) On the vote of a majority of its members, a standing
2-26 committee may send to a state agency a statement supporting or
2-27 opposing adoption of a proposed rule].~~

2-28 SECTION 3. Subsection (b), Section 402.042, Government
2-29 Code, is amended to read as follows:

2-30 (b) An opinion may be requested by:

- 2-31 (1) the governor;
- 2-32 (2) the head of a department of state government;
- 2-33 (3) a head or board of a penal institution;
- 2-34 (4) a head or board of an eleemosynary institution;
- 2-35 (5) the head of a state board;
- 2-36 (6) a regent or trustee of a state educational
2-37 institution;
- 2-38 (7) a member of the legislature in accordance with
2-39 Section 2001.032 or a committee of a house of the legislature;
- 2-40 (8) a county auditor authorized by law; or
- 2-41 (9) the chairman of the governing board of a river
2-42 authority.

2-43 SECTION 4. The changes in law made by this Act relating to
2-44 the process of state agency rulemaking apply only in relation to:

- 2-45 (1) a state agency rule for which notice of the rule as
2-46 proposed is first published in the Texas Register under Sections
2-47 2001.023 and 2001.024, Government Code, on or after October 1,
2-48 2003; or
- 2-49 (2) an emergency rule adopted on or after September
2-50 15, 2003.

2-51 SECTION 5. This Act takes effect September 1, 2003.

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