

Amend **HB 1485** (House Committee Report) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

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

Sec. 2001.032. CONSIDERATION OF LEGISLATIVE INTENT [REVIEW]. (a) In the process of developing a new rule and before a state agency gives notice of its intention to adopt a rule under Sections 2001.023 and 2001.024, the agency shall research the legislative history of and prepare a legislative history on the law under which the rule is to be adopted. To effectively research and prepare the legislative history, the state agency must:

(1) ascertain the names of the primary author and sponsor of the legislation that added or amended the law that authorizes the agency to adopt the rule by consulting with the chief clerk of the house of representatives, the secretary of the senate, an automated information system operated by the Texas Legislative Council, or another reliable source;

(2) identify any statement or discussion of legislative intent that occurred in the legislative process before enrollment in connection with the legislation that added or amended the law under which the rule would be adopted;

(3) review the final publicly available bill analysis prepared by a legislative office before enrollment;

(4) determine whether each legislative author or sponsor identified in Subdivision (1) is still a member of the legislature; and

(5) assemble the information gathered under Subdivisions (1), (2), (3), and (4) into a legislative history to be used by the agency during the deliberative process of developing new rules.

(b) In this section, a reference to the law under which a rule is or would be adopted includes the law that the rule would implement or enforce.

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

(1) 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

(2) notify the primary author and sponsor of the legislation that added or amended the law under which the rule would be adopted that the adoption of a rule related to the member's legislation is being considered.

(d) Concurrently with the state agency's filing of the notice with the secretary of state, the agency shall deliver a copy of the notice of the proposed rule required by Sections 2001.023 and 2001.024 to the primary author and sponsor as described in the legislative history.

(e) Not later than the 10th day before the date the state agency considers the proposed rule for final adoption, the agency shall deliver to the primary author and sponsor a copy of the proposed rule if the text of the rule differs from the text of the proposed rule published under Section 2001.024. The agency also shall notify the primary author and sponsor in a timely manner of the time and place of a public hearing or informal conference held in connection with the contemplated rulemaking.

(f) The primary author or sponsor of legislation that added or amended the law under which the rule would be adopted may formally advise the governor in writing of the person's belief that the proposed rule is not consistent with the intent of the legislature.

(g) Before the state agency adopts the rule, the governor may issue a proclamation instructing the agency not to adopt the rule. After the state agency adopts the rule, the governor may, during the 90-day period following the date the agency finally adopts the rule, issue a proclamation vacating the rule. A proclamation under this subsection must describe how the rule is inconsistent with the intent of the legislature.

(h) The state agency may not adopt the proposed rule if the agency receives the proclamation instructing the agency not to adopt the rule before the agency meets to consider the rule for final adoption. A rule is vacated if the governor issues a proclamation vacating the rule within the period prescribed by

Subsection (g). The agency also shall promptly deliver a copy of a proclamation received under Subsection (g) to the primary author and sponsor.

(i) A rule is vacated under this section as of the date of issuance of the governor's proclamation vacating the rule. A decision or act taken under the vacated rule on or after the date the rule took effect but before the date the rule is vacated is governed by the rule that was in effect when the decision or act was taken, and the vacated rule is continued in effect for that purpose.

(j) The state agency shall deliver a copy of an emergency rule adopted under Section 2001.034 and the written reasons for its adoption to the primary author and sponsor as determined by the legislative history 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. If the agency gives an abbreviated notice or conducts a hearing in connection with the adoption of the emergency rule, the agency shall also promptly deliver to the primary author and sponsor a copy of the notice and shall timely inform the primary author and sponsor of the time and place of the hearing.

(k) Failure to provide notice under this section does not invalidate an action taken or rule adopted. A requirement of this section that a notice or other item be delivered to a primary author or sponsor of legislation does not apply if the author or sponsor is no longer a member of the legislature.

(l) Each house of the legislature shall consider the adoption of a rule that allows:

(1) the primary author of a bill to enter a statement of legislative intent into the bill analysis before the bill is considered in a committee hearing in the originating house; and

(2) the author of each adopted amendment to a bill to enter a statement into the bill analysis that indicates how the amendment's author intends to change the purpose of the bill. ~~Each house of the legislature by rule shall establish a process under which the presiding officer of each house refers each proposed state agency rule to the appropriate standing committee for review before the rule is adopted.~~

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

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

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

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

(1) a brief explanation of the proposed rule;

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

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

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

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

~~[and]~~

(C) a certification that the proposed rule has been reviewed by legal counsel and found to be:

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

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

(D) a copy of the legislative history developed for use by the agency during the deliberative process of developing the rule;

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

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

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

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

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

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

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

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

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

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

(8) any other statement required by law.

SECTION \_\_\_\_\_. Section 2001.033, Government Code, is amended to read as follows:

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

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

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

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

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

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

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

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

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

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

SECTION \_\_\_\_\_. The change in law made by this Act relating to the process of state agency rulemaking applies only in relation to:

(1) a state agency rule for which notice of the rule as proposed is first published in the Texas Register under Sections 2001.023 and 2001.024, Government Code, on or after October 1, 2009; or

(2) an emergency rule adopted on or after September 15, 2009.