

BILL ANALYSIS

Senate Research Center

H.B. 1485
By: Pitts et al. (Averitt)
State Affairs
5/21/2009
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 1485 relates to rulemaking and performance assessments of certain state agencies.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to each house of the legislature is rescinded in SECTION 2 (Section 2001.032, Government Code) of this bill.

Rulemaking authority is expressly granted to the Governor's Office of Budget and Planning in SECTION 6 (Section 2056.056, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2001.024(a), Government Code, to require that the notice of a proposed rule include certain information, including a statement of the statutory or other authority under which the rule is proposed to be adopted, including a certification that the proposed rule has been reviewed by legal counsel and 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 which the rule would be adopted, as described by Section 2001.032; and a copy of the legislative history developed for use by the agency during the deliberative process of developing the rule.

SECTION 2. Amends Section 2001.032, Government Code, as follows:

Sec. 2001.032. New heading: CONSIDERATION OF LEGISLATIVE INTENT. (a) Requires a state agency, in the process of developing a new rule and before the agency gives notice of its intention to adopt a rule under Sections 2001.023 (Notice of Proposed Rule) and 2001.024 (Content of Notice), to research the legislative history of and prepare a legislative history on the law under which the rule is to be adopted. Requires the state agency, to effectively research and prepare the legislative history, to assemble certain information.

(b) Provides that 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) Requires a state agency, before the agency gives notice of its intention to adopt a rule under Sections 2001.023 and 2001.024, to 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 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) Requires the state agency, concurrently with the agency's filing of the notice with the secretary of state, to 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) Requires the state agency, not later than the 10th day before the date the state agency considers the proposed rule for final adoption, to 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. Requires the agency also to 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) Authorizes the primary author or sponsor of legislation that added or amended the law under which the rule would be adopted to 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) Authorizes the governor, before the state agency adopts the rule, to issue a proclamation instructing the agency not to adopt the rule. Authorizes the governor, after the state agency adopts the rule, during the 90-day period following the date the agency finally adopts the rule, to issue a proclamation vacating the rule. Requires that a proclamation under this subsection describe how the rule is inconsistent with the intent of the legislature.

(h) Prohibits the state agency from adopting 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. Provides that a rule is vacated if the governor issues a proclamation vacating the rule within the period prescribed by Subsection (g). Requires the agency also to promptly deliver a copy of a proclamation received under Subsection (g) to the primary author and sponsor.

(i) Provides that a rule is vacated under this section as of the date of issuance of the governor's proclamation vacating the rule. Provides that 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) Requires the state agency to deliver a copy of an emergency rule adopted under Section 2001.034 (Emergency Rulemaking) 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. Requires the agency, if the agency gives an abbreviated notice or conducts a hearing in connection with the adoption of the emergency rule, to also promptly deliver to the primary author and sponsor a copy of the notice and to timely inform the primary author and sponsor of the time and place of the hearing.

(k) Provides that failure to provide notice under this section does not invalidate an action taken or rule adopted. Provides that 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) Requires each house of the legislature to consider the adoption of a rule that allows 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 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.

Deletes existing Subsection (a) requiring that each house of the legislature by rule to 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. Deletes existing Subsection (b) requiring a state agency to 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. Deletes existing Subsection (c) authorizing a standing committee, on the vote of a majority of its members, to send to a state agency a statement supporting or opposing adoption of a proposed rule.

SECTION 3. Amends Section 2001.033, Government Code, as follows:

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

(1) a reasoned justification for the rule as adopted consisting solely of 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, 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 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 valid exercise of the agency's legal authority and 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) Requires that nothing in this section be construed to require additional analysis of alternatives not adopted by an agency beyond that required by Subsection (a)(1)(C), rather than Subdivision (1)(C), or to require the reasoned justification to be stated separately from the statements required in Subsection (a)(1), rather than Subdivision (1).

SECTION 4. Amends the heading to Chapter 2056, Government Code, to read as follows:

CHAPTER 2056. STRATEGIC PLANS OF OPERATION;
PERFORMANCE ASSESSMENTS

SECTION 5. Amends Chapter 2056, Government Code, by designating Sections 2056.001 through 2056.011 as Subchapter A and adding a heading for Subchapter A to read as follows:

SUBCHAPTER A. STRATEGIC PLANS

SECTION 6. Amends Chapter 2056, Government Code, by adding Subchapter B, as follows:

SUBCHAPTER B. PERFORMANCE ASSESSMENT

Sec. 2056.051. DEFINITION. Defines "foundation."

Sec. 2056.052. PERFORMANCE EXCELLENCE; ASSESSMENT. (a) Requires a state agency to establish a six-year plan to assess the agency's management, accountability, performance, and customer service using the Malcolm Baldrige Criteria for Performance Excellence and every two years assess the agency's progress in implementing the plan.

(b) Requires a state agency, not later than March 1 of each even-numbered year following the year a state agency establishes a six-year assessment plan under this section, to submit its most recent biennial assessment to the Quality Texas Foundation (foundation). Requires the foundation to use the assessment to

independently assess the agency's quality management, accountability, and performance evaluation systems using criteria developed or adopted by the foundation and evaluate the effectiveness of the agency's leadership, planning, customer focus, performance measurement, employee focus, and process management.

Sec. 2056.053. REPORT. Requires the foundation, not later than December 1 of the year the foundation receives an assessment from a state agency under Section 2056.052, to submit a report of the foundation's assessments and recommendations for legislation or further action by the state agency to the presiding officers of each house of the legislature, the Legislative Budget Board (LBB), the Governor's Office of Budget and Planning (office), and the state agency that submitted the assessment.

Sec. 2056.054. REVIEW BY SUNSET ADVISORY COMMISSION. (a) Authorizes the legislature, if the most recent assessment of a state agency conducted by the foundation under Section 2056.052(b) indicates that the agency failed to significantly improve any deficiencies noted by the foundation in a previous assessment conducted by the foundation, to require that the state agency be included in the group of state agencies reviewed by the Sunset Advisory Commission (sunset commission) prior to the next legislative session.

(b) Requires the state agency, if the legislature recommends review by the sunset commission, to cooperate with the review in the manner required by Chapter 325 (Texas Sunset Act) as if the state agency were scheduled to be abolished.

Sec. 2056.055. AWARDS. (a) Authorizes the office, from funds appropriated or otherwise available for this purpose, to grant an award of up to 10 percent of the net savings or revenue increases to a state agency that demonstrates in an assessment by the foundation of the agency under Section 2056.052(b) significant improvement in any deficiency noted in a previous assessment under that section and reduces state expenditures by increasing agency efficiency, increases state revenues, or increases agency productivity as a direct result of the improvement.

(b) Requires that an award be computed using a cost-benefit analysis on the net annual actual or projected savings or increased revenues that equal or exceed \$500 after implementation costs and that are certified by the affected state agency and LBB.

(c) Authorizes a state agency to use an award granted under this section for targeted salary increases or one-time merit payments for employees and information technology hardware or software designed to increase state agency accountability and customer satisfaction.

Sec. 2056.056. RULEMAKING AUTHORITY. (a) Requires the office to adopt rules necessary to implement this subchapter.

(b) Requires the office, in developing the rules, to consult with and consider the comments of LBB.

SECTION 7. (a) Requires the office, not later than October 1, 2009, to select six state agencies to conduct the assessment required by Section 2056.052, Government Code, as added by this Act, as follows: two state agencies with at least 800 full-time employees, two state agencies with at least 100 and not more than 799 full-time employees, and two state agencies with not more than 100 full-time employees.

(b) Requires a state agency selected under Subsection (a) of this section, not later than March 1, 2010, to establish the six-year plan and conduct the first biennial assessment required under Section 2056.052, Government Code, as added by this Act, and submit the assessment as required under Section 2056.052(b), Government Code, as added by this Act.

SECTION 8. (a) Requires the office, not later than October 1, 2009, to adopt the rules necessary to implement Subchapter B, Chapter 2056, Government Code, as added by this Act.

(b) Provides that a state agency, other than a state agency selected under Section 7 of this Act, is not required to submit a biennial assessment under Section 2056.052(b), Government Code, as added by this Act, before March 1, 2012.

SECTION 9. Provides that the change in law made by this Act relating to the process of state agency rulemaking applies only in relation to 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 an emergency rule adopted on or after September 15, 2009.

SECTION 10. Effective date: September 1, 2009.