

By: Pitts, Edwards

H.B. No. 1485

A BILL TO BE ENTITLED

AN ACT

relating to rulemaking and performance assessments of certain state agencies.

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

SECTION 1. 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

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

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

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

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

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

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

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

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

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

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

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

5 (8) any other statement required by law.

6 SECTION 2. Section 2001.032, Government Code, is amended to
7 read as follows:

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

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

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

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

27 (4) determine whether each legislative author or

1 sponsor identified in Subdivision (1) is still a member of the
2 legislature; and

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

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

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

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

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

20 (d) Concurrently with the state agency's filing of the
21 notice with the secretary of state, the agency shall deliver a copy
22 of the notice of the proposed rule required by Sections 2001.023 and
23 2001.024 to the primary author and sponsor as described in the
24 legislative history.

25 (e) Not later than the 10th day before the date the state
26 agency considers the proposed rule for final adoption, the agency
27 shall deliver to the primary author and sponsor a copy of the

1 proposed rule if the text of the rule differs from the text of the
2 proposed rule published under Section 2001.024. The agency also
3 shall notify the primary author and sponsor in a timely manner of
4 the time and place of a public hearing or informal conference held
5 in connection with the contemplated rulemaking.

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

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

18 (h) The state agency may not adopt the proposed rule if the
19 agency receives the proclamation instructing the agency not to
20 adopt the rule before the agency meets to consider the rule for
21 final adoption. A rule is vacated if the governor issues a
22 proclamation vacating the rule within the period prescribed by
23 Subsection (g). The agency also shall promptly deliver a copy of a
24 proclamation received under Subsection (g) to the primary author
25 and sponsor.

26 (i) A rule is vacated under this section as of the date of
27 issuance of the governor's proclamation vacating the rule. A

1 decision or act taken under the vacated rule on or after the date
2 the rule took effect but before the date the rule is vacated is
3 governed by the rule that was in effect when the decision or act was
4 taken, and the vacated rule is continued in effect for that purpose.

5 (j) The state agency shall deliver a copy of an emergency
6 rule adopted under Section 2001.034 and the written reasons for its
7 adoption to the primary author and sponsor as determined by the
8 legislative history with respect to the law under which the
9 emergency rule was adopted concurrently with the agency's filing of
10 the rule and the reasons for its adoption with the secretary of
11 state. If the agency gives an abbreviated notice or conducts a
12 hearing in connection with the adoption of the emergency rule, the
13 agency shall also promptly deliver to the primary author and
14 sponsor a copy of the notice and shall timely inform the primary
15 author and sponsor of the time and place of the hearing.

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

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

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

26 (2) the author of each adopted amendment to a bill to
27 enter a statement into the bill analysis that indicates how the

1 amendment's author intends to change the purpose of the bill. [~~Each~~
2 ~~house of the legislature by rule shall establish a process under~~
3 ~~which the presiding officer of each house refers each proposed~~
4 ~~state agency rule to the appropriate standing committee for review~~
5 ~~before the rule is adopted.~~

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

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

13 SECTION 3. Section 2001.033, Government Code, is amended to
14 read as follows:

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

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

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

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

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

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

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

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

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

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

19 SECTION 4. The heading to Chapter 2056, Government Code, is
20 amended to read as follows:

21 CHAPTER 2056. STRATEGIC PLANS OF OPERATION;

22 PERFORMANCE ASSESSMENTS

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

26 SUBCHAPTER A. STRATEGIC PLANS

27 SECTION 6. Chapter 2056, Government Code, is amended by

1 adding Subchapter B to read as follows:

2 SUBCHAPTER B. PERFORMANCE ASSESSMENT

3 Sec. 2056.051. DEFINITION. In this subchapter,
4 "foundation" means the Quality Texas Foundation or another similar
5 independent assessment entity selected by the Governor's Office of
6 Budget and Planning for the purpose of performing independent
7 assessments under this subchapter.

8 Sec. 2056.052. PERFORMANCE EXCELLENCE; ASSESSMENT. (a) A
9 state agency shall:

10 (1) establish a six-year plan to assess the agency's
11 management, accountability, performance, and customer service
12 using the Malcolm Baldrige Criteria for Performance Excellence; and

13 (2) every two years assess the agency's progress in
14 implementing the plan.

15 (b) Not later than March 1 of each even-numbered year
16 following the year a state agency establishes a six-year assessment
17 plan under this section, the agency shall submit its most recent
18 biennial assessment to the foundation. The foundation shall use the
19 assessment to:

20 (1) independently assess the agency's quality
21 management, accountability, and performance evaluation systems
22 using criteria developed or adopted by the foundation; and

23 (2) evaluate the effectiveness of the agency's
24 leadership, planning, customer focus, performance measurement,
25 employee focus, and process management.

26 Sec. 2056.053. REPORT. Not later than December 1 of the
27 year the foundation receives an assessment from a state agency

1 under Section 2056.052, the foundation shall submit a report of the
2 foundation's assessments and recommendations for legislation or
3 further action by the state agency to:

4 (1) the presiding officers of each house of the
5 legislature;

6 (2) the Legislative Budget Board;

7 (3) the Governor's Office of Budget and Planning; and

8 (4) the state agency that submitted the assessment.

9 Sec. 2056.054. REVIEW BY SUNSET ADVISORY COMMISSION. (a)
10 If the most recent assessment of a state agency conducted by the
11 foundation under Section 2056.052(b) indicates that the agency
12 failed to significantly improve any deficiencies noted by the
13 foundation in a previous assessment conducted by the foundation,
14 the legislature may require that the state agency be included in the
15 group of state agencies reviewed by the Sunset Advisory Commission
16 prior to the next legislative session.

17 (b) If the legislature recommends review by the Sunset
18 Advisory Commission, the state agency shall cooperate with the
19 review in the manner required by Chapter 325 (Texas Sunset Act) as
20 if the state agency were scheduled to be abolished.

21 Sec. 2056.055. AWARDS. (a) From funds appropriated or
22 otherwise available for this purpose, the Governor's Office of
23 Budget and Planning may grant an award of up to 10 percent of the net
24 savings or revenue increases to a state agency that:

25 (1) demonstrates in an assessment by the foundation of
26 the agency under Section 2056.052(b) significant improvement in any
27 deficiency noted in a previous assessment under that section; and

1 (2) reduces state expenditures by increasing agency
2 efficiency, increases state revenues, or increases agency
3 productivity as a direct result of the improvement.

4 (b) An award must be computed using a cost-benefit analysis
5 on the net annual actual or projected savings or increased revenues
6 that equal or exceed \$500 after implementation costs and that are
7 certified by the affected state agency and the Legislative Budget
8 Board.

9 (c) A state agency may use an award granted under this
10 section for:

11 (1) targeted salary increases or one-time merit
12 payments for employees; and

13 (2) information technology hardware or software
14 designed to increase state agency accountability and customer
15 satisfaction.

16 Sec. 2056.056. RULEMAKING AUTHORITY. (a) The Governor's
17 Office of Budget and Planning shall adopt rules necessary to
18 implement this subchapter.

19 (b) In developing the rules, the office of budget and
20 planning shall consult with and consider the comments of the
21 Legislative Budget Board.

22 SECTION 7. (a) Not later than October 1, 2009, the
23 Governor's Office of Budget and Planning shall select six state
24 agencies to conduct the assessment required by Section 2056.052,
25 Government Code, as added by this Act, as follows:

26 (1) two state agencies with at least 800 full-time
27 employees;

1 (2) two state agencies with at least 100 and not more
2 than 799 full-time employees; and

3 (3) two state agencies with not more than 100
4 full-time employees.

5 (b) Not later than March 1, 2010, a state agency selected
6 under Subsection (a) of this section shall:

7 (1) establish the six-year plan and conduct the first
8 biennial assessment required under Section 2056.052, Government
9 Code, as added by this Act; and

10 (2) submit the assessment as required under Section
11 2056.052(b), Government Code, as added by this Act.

12 SECTION 8. (a) Not later than October 1, 2009, the
13 Governor's Office of Budget and Planning shall adopt the rules
14 necessary to implement Subchapter B, Chapter 2056, Government Code,
15 as added by this Act.

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

20 SECTION 9. The change in law made by this Act relating to
21 the process of state agency rulemaking applies only in relation to:

22 (1) a state agency rule for which notice of the rule as
23 proposed is first published in the Texas Register under Sections
24 2001.023 and 2001.024, Government Code, on or after October 1,
25 2009; or

26 (2) an emergency rule adopted on or after September
27 15, 2009.

1 SECTION 10. This Act takes effect September 1, 2009.