

By: Christian

H.B. No. 4171

A BILL TO BE ENTITLED

1 AN ACT  
2 relating to procedures to help ensure that certain state agency  
3 rules are consistent with the meaning and intent of applicable  
4 legislative enactments.

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

6 SECTION 1. 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;

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

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

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

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

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

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

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

23          (d) Concurrently with the state agency's filing of the  
24 notice with the secretary of state, the agency shall deliver a copy  
25 of the notice of the proposed rule required by Sections 2001.023 and  
26 2001.024 to the primary author and sponsor as described in the  
27 legislative history.

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

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

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

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

1 and sponsor.

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

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

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

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

26 (1) the primary author of a bill to enter a statement  
27 of legislative intent into the bill analysis before the bill is

1 considered in a committee hearing in the originating house; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13           (8) any other statement required by law.

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

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

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

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

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

1 factual basis for the rule and the rule as adopted; and

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

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

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

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

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

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

20 SECTION 4. 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 5. This Act takes effect September 1, 2009.