

BILL ANALYSIS

S.B. 522
By: Estes
Special Purpose Districts
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties note that there are several differences between the Administrative Procedure Act, which governs procedures in contested case hearings before state agencies, and the Texas Rules of Civil Procedure, which govern procedures in traditional courts, concerning when an agency decision can be appealed. The parties contend that these differences make the act confusing and difficult for even experienced administrative lawyers to apply, especially with regard to motions for rehearing and suits for judicial review.

The parties further note that when an agency initiates a proceeding against a person subject to its regulation it is required to give certain notice of the particular sections of the statutes and rules involved before the contested case is tried. The parties contend, however, that agencies have often failed to give adequate notice of the grounds for contested cases, either by failing to comply with statutory requirements or by justifying decisions based on statutes and rules that were never disclosed before the hearing. The parties assert that, as a result, many businesses, professionals, and other entities have been disciplined for violating statutes or rules that were never disclosed before the hearing and for which they had no opportunity to defend against. The parties claim that such disciplinary actions are contrary to the due process of law.

S.B. 522 seeks to address these issues by establishing provisions relating to contested cases conducted under the Administrative Procedure Act.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 522 amends the Government Code to specify that the short, plain statement of the matters asserted that is required to be included in a notice of a hearing in a contested case conducted under the Administrative Procedure Act is a short, plain statement of the factual matters asserted. The bill, under provisions providing certain authorization for an initial notice to be limited to a statement of the issues involved, requires on timely written application a more definite and detailed statement of the facts to be furnished not less than seven days before the date set for the hearing, rather than not less than three days before such date. The bill, in a proceeding in which the state agency has the burden of proof, requires a state agency that intends to rely on a section of a statute or rule not previously referenced in the notice of hearing to amend the notice to refer to the section of the statute or rule not later than the seventh day before the date set for the hearing. The bill specifies that certain specified statutory provisions, as amended by the bill, relating to the contents of a notice do not prohibit the state agency from filing an amendment during the hearing of a contested case provided the opposing party is granted a continuance of at least seven days to prepare its case on request of the opposing party. The bill specifies that in a suit for judicial review of a final decision or order of a state agency in a contested case, the state agency's failure to comply with certain specified provisions relating to the contents of a notice

constitutes prejudice to the substantial rights of the appellant under certain specified provisions relating to review under the substantial evidence rule or an undefined scope of review unless the court finds that the failure did not unfairly surprise and prejudice the appellant.

S.B. 522, if a state agency that has been granted the power to summarily suspend a license under another statute determines that an imminent peril to the public health, safety, or welfare requires emergency action and incorporates a factual and legal basis establishing that imminent peril in an order, authorizes the agency to issue an order to summarily suspend the license holder's license pending proceedings for revocation or other action. The bill requires the agency to initiate the proceedings for revocation or other action not later than the 30th day after the date the summary suspension order is signed unless expressly provided otherwise by another statute. The bill requires the proceedings to be promptly determined and, if the proceedings are not initiated before the 30th day after the date the order is signed, authorizes the license holder to appeal the summary suspension order to a Travis County district court. The bill specifies that these provisions do not grant any state agency the power to suspend a license without notice or a hearing. The bill specifies that in a suit for judicial review of a final decision or order of a state agency brought by a license holder, the agency's failure to comply with certain requirements relating to the revocation, suspension, annulment, or withdrawal of a license constitutes prejudice to the substantial rights of the license holder under certain provisions relating to review under the substantial evidence rule or an undefined scope of review unless the court determines that the failure did not unfairly surprise and prejudice the license holder.

S.B. 522 revises the requirement that a decision or order that may become final that is adverse to a party in a contested case be in writing or stated in the record to specify that such a decision or order is a decision or order of a state agency, to remove the requirement that the decision or order be stated in the record in lieu of being in writing, and to require the decision or order to be signed by a person authorized by the agency to sign the agency decision or order, in addition to the requirement that the decision or order be in writing. The bill requires a decision to include a ruling on each proposed conclusion of law if a party submits under a state agency rule proposed conclusions of law.

S.B. 522, in a provision requiring that a party in a contested case hearing be notified of decisions and orders personally or by first class mail, revises that provision to require a state agency to make such notification to each party personally, by electronic means to the current e-mail address or telecopier number of the party or the party's attorney of record if agreed to by the party to be notified, or by first class, certified, or registered mail sent to the last known address of the party or to the party's attorney of record and to make related changes. The bill establishes that if an adversely affected party or the party's attorney of record does not receive the required notice or acquire actual knowledge of a signed decision or order before the 15th day after the date the decision or order is signed, a period specified by or agreed to under certain specified provisions relating to a decision or motion for rehearing begins, with respect to that party, on the date the party receives the notice or acquires actual knowledge of the signed decision or order, whichever occurs first. The bill sets out provisions relating to such a revised period.

S.B. 522 requires a decision or order that may become final in a contested case to be signed, rather than rendered, not later than the 60th day after the date on which the hearing is finally closed. The bill, in a contested case heard by other than a majority of the officials of a state agency, authorizes the person who conducts the contested case hearing, in lieu of the agency, to extend the period in which the decision or order may be signed.

S.B. 522 makes provisions establishing criteria for when a decision in a contested case is final applicable to when an order in a contested case is final. The bill specifies that a decision or order in a contested case is final on the date the decision or order is signed and incorporates in the decision or order a factual and legal basis establishing an imminent peril to the public health, safety, or welfare, rather than on the date the decision is rendered, if a state agency finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a decision or

order. The bill removes language providing that a decision in a contested case is final on the date specified in the order for a case in which all parties agree to the specified date in writing or on the record if the specified date is not before the date the order is signed or later than the 20th day after the date the order was rendered. The bill instead specifies that a decision or order in a contested case is final on the date specified in the decision or order for a case in which all parties agree to the specified date in writing or on the record, provided that if the agreed specified date is before the date the decision or order is signed, the date the decision or order is signed is the date the decision or order is final.

S.B. 522 revises provisions governing the procedures for a motion for rehearing. The bill makes the requirement that a reply to a motion for rehearing be filed with the state agency applicable only if there is a reply, clarifies and specifies deadlines for filing such a reply, and provides for copies of a motion for rehearing and of a reply to be sent to applicable parties. The bill makes the authorization of a state agency to extend the time for filing a motion or reply or taking related agency action applicable if the agency extends the time or takes the action not later than the 10th day after the date the period for filing a motion or reply or taking agency action expires. The bill requires a motion for rehearing to identify with particularity findings of fact or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous. The bill requires the motion to also state the legal and factual basis for the claimed error. The bill establishes that a subsequent motion for rehearing is not required after a state agency rules on a motion for rehearing unless the order disposing of the original motion for rehearing modifies, corrects, or reforms in any respect the decision or order that is the subject of the complaint, other than a typographical, grammatical, or other clerical change identified as such by the agency in the order, including any modification, correction, or reformation that does not change the outcome of the contested case, or unless the order vacates the decision or order that is the subject of the motion and provides for a new decision or order. The bill requires a required subsequent motion for rehearing to be filed not later than the 20th day after the date the order disposing of the original motion for rehearing is signed.

S.B. 522 establishes that in a contested case in which a motion for rehearing is a prerequisite for seeking judicial review a prematurely filed petition is effective to initiate judicial review and is considered to be filed on the date the last timely motion for rehearing is overruled and after the motion is overruled.

EFFECTIVE DATE

September 1, 2013.