

By: Estes

S.B. No. 522

A BILL TO BE ENTITLED

AN ACT

relating to contested cases conducted under the Administrative Procedure Act.

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

SECTION 1. Section 2001.052, Government Code, is amended to read as follows:

Sec. 2001.052. CONTENTS OF NOTICE. (a) Notice of a hearing in a contested case must include:

(1) a statement of the time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; and

(4) a short, plain statement of the factual matters asserted.

(b) If a state agency or other party is unable to state factual matters in detail at the time notice under this section is served, an initial notice may be limited to a statement of the issues involved. On timely written application, a more definite and detailed statement of the facts shall be furnished not less than seven [~~three~~] days before the date set for the hearing. In a proceeding in which the state agency has the burden of proof, a state agency that intends to rely on a section of a statute or rule

1 not previously referenced in the notice of hearing must amend the  
2 notice to refer to the section of the statute or rule not later than  
3 the seventh day before the date set for the hearing. This  
4 subsection does not prohibit the state agency from filing an  
5 amendment during the hearing of a contested case provided the  
6 opposing party is granted a continuance of at least seven days to  
7 prepare its case on request of the opposing party.

8 (c) In a suit for judicial review of a final decision or  
9 order of a state agency in a contested case, the state agency's  
10 failure to comply with Subsection (a)(3) or (b) shall constitute  
11 prejudice to the substantial rights of the appellant under Section  
12 2001.174(2) unless the court finds that the failure did not  
13 unfairly surprise and prejudice the appellant.

14 SECTION 2. Section 2001.054, Government Code, is amended by  
15 adding Subsections (c-1) and (e) to read as follows:

16 (c-1) If a state agency that has been granted the power to  
17 summarily suspend a license under another statute determines that  
18 an imminent peril to the public health, safety, or welfare requires  
19 emergency action and incorporates a factual and legal basis  
20 establishing that imminent peril in an order, the agency may issue  
21 an order to summarily suspend the license holder's license pending  
22 proceedings for revocation or other action. Unless expressly  
23 provided otherwise by another statute, the agency shall initiate  
24 the proceedings for revocation or other action not later than the  
25 30th day after the date the summary suspension order is signed. The  
26 proceedings must be promptly determined, and if the proceedings are  
27 not initiated before the 30th day after the date the order is

1 signed, the license holder may appeal the summary suspension order  
2 to a Travis County district court. This subsection does not grant  
3 any state agency the power to suspend a license without notice or a  
4 hearing.

5 (e) In a suit for judicial review of a final decision or  
6 order of a state agency brought by a license holder, the agency's  
7 failure to comply with Subsection (c) shall constitute prejudice to  
8 the substantial rights of the license holder under Section  
9 2001.174(2) unless the court determines that the failure did not  
10 unfairly surprise and prejudice the license holder.

11 SECTION 3. Subsections (a) and (e), Section 2001.141,  
12 Government Code, are amended to read as follows:

13 (a) A decision or order of a state agency that may become  
14 final under Section 2001.144 that is adverse to any [a] party in a  
15 contested case must be in writing and signed by a person authorized  
16 by the agency to sign the agency decision or order [~~stated in the~~  
17 ~~record~~].

18 (e) If a party submits under a state agency rule proposed  
19 findings of fact or conclusions of law, the decision shall include a  
20 ruling on each proposed finding or conclusion.

21 SECTION 4. Section 2001.142, Government Code, is amended to  
22 read as follows:

23 Sec. 2001.142. NOTIFICATION OF DECISIONS AND ORDERS.

24 (a) A state agency shall notify each party to [~~in~~] a contested case  
25 [~~shall be notified either personally or by first class mail~~] of any  
26 decision or order of the agency in the following manner:

27 (1) personally;

1           (2) if agreed to by the party to be notified, by  
2 electronic means to the current e-mail address or telecopier number  
3 of the party or the party's attorney of record; or

4           (3) by first class, certified, or registered mail sent  
5 to the last known address of the party or to the party's attorney of  
6 record.

7           (b) When a decision or order [On issuance] in a contested  
8 case [of a decision] that may become final under Section 2001.144 is  
9 signed or when an order ruling on a motion for rehearing is signed,  
10 a state agency shall send a copy of the decision or order to each  
11 party in accordance with Subsection (a). The state agency shall  
12 keep a record documenting the provision of the notice provided to  
13 each party in accordance with Subsection (a) [by first class mail to  
14 the attorneys of record and shall keep an appropriate record of the  
15 mailing. If a party is not represented by an attorney of record,  
16 the state agency shall send a copy of the decision or order by first  
17 class mail to the party and shall keep an appropriate record of the  
18 mailing].

19           (c) If an adversely affected party or the party's attorney  
20 of record does not receive the notice required by Subsection (a) or  
21 acquire actual knowledge of a signed decision or order before the  
22 15th day after the date the decision or order is signed, a period  
23 specified by or agreed to under Section 2001.144(a), 2001.146,  
24 2001.147, or 2001.176(a) relating to a decision or motion for  
25 rehearing begins, with respect to that party, on the date the party  
26 receives the notice or acquires actual knowledge of the signed  
27 decision or order, whichever occurs first. The period may not begin

1 earlier than the 15th day or later than the 90th day after the date  
2 the decision or order was signed [~~A party or attorney of record~~  
3 ~~notified by mail under Subsection (b) is presumed to have been~~  
4 ~~notified on the third day after the date on which the notice is~~  
5 ~~mailed~~].

6 (d) To establish a revised period under Subsection (c), the  
7 adversely affected party must prove, on sworn motion and notice,  
8 that the date the party received notice from the state agency or  
9 acquired actual knowledge of the signing of the decision or order  
10 was after the 14th day after the date the decision or order was  
11 signed. The state agency governing board must grant or deny the  
12 sworn motion not later than the board's next meeting or, for a state  
13 agency without a governing board, not later than the 10th day after  
14 the date the agency receives the sworn motion. If a state agency  
15 fails to grant or deny the motion at the next meeting, or before the  
16 10th day after the date the agency receives the motion, as  
17 appropriate, the motion is considered granted.

18 SECTION 5. The heading to Section 2001.143, Government  
19 Code, is amended to read as follows:

20 Sec. 2001.143. TIME OF [~~RENDERING~~] DECISION.

21 SECTION 6. Subsections (a) and (b), Section 2001.143,  
22 Government Code, are amended to read as follows:

23 (a) A decision or order that may become final under Section  
24 2001.144 in a contested case must be signed [~~rendered~~] not later  
25 than the 60th day after the date on which the hearing is finally  
26 closed.

27 (b) In a contested case heard by other than a majority of the

1 officials of a state agency, the agency or the person who conducts  
2 the contested case hearing may extend the period in which the  
3 decision or order may be signed [~~issued~~].

4 SECTION 7. Section 2001.144, Government Code, is amended to  
5 read as follows:

6 Sec. 2001.144. DECISIONS OR ORDERS; WHEN FINAL. (a) A  
7 decision or order in a contested case is final:

8 (1) if a motion for rehearing is not filed on time, on  
9 the expiration of the period for filing a motion for rehearing;

10 (2) if a motion for rehearing is filed on time, on the  
11 date:

12 (A) the order overruling the motion for rehearing  
13 is signed [~~rendered~~]; or

14 (B) the motion is overruled by operation of law;

15 (3) if a state agency finds that an imminent peril to  
16 the public health, safety, or welfare requires immediate effect of  
17 a decision or order, on the date the decision or order is signed and  
18 incorporates in the decision or order a factual and legal basis  
19 establishing an imminent peril to the public health, safety, or  
20 welfare [~~rendered~~]; or

21 (4) on the date specified in the decision or order for  
22 a case in which all parties agree to the specified date in writing  
23 or on the record, provided that if the agreed specified date is  
24 [~~not~~] before the date the decision or order is signed, the date the  
25 decision or order is signed is the date the decision or order is  
26 final for purposes of this section [~~or later than the 20th day after~~  
27 ~~the date the order was rendered~~].

1 (b) If a decision or order is final under Subsection (a)(3),  
2 a state agency must recite in the decision or order the finding made  
3 under Subsection (a)(3) and the fact that the decision or order is  
4 final and effective on the date signed [~~rendered~~].

5 SECTION 8. Subsection (b), Section 2001.145, Government  
6 Code, is amended to read as follows:

7 (b) A decision or order that is final under Section  
8 2001.144(a)(2), (3), or (4) is appealable.

9 SECTION 9. Section 2001.146, Government Code, is amended by  
10 amending Subsections (a), (b), (c), (e), and (f) and adding  
11 Subsections (g), (h), and (i) to read as follows:

12 (a) A motion for rehearing in a contested case must be filed  
13 by a party not later than the 20th day after the date [~~on which~~]  
14 decision or order that is the subject of the motion is signed,  
15 unless the time for filing the motion for rehearing has been  
16 extended by an agreement under Section 2001.147 or by a written  
17 state agency order issued under Subsection (e). On filing of the  
18 motion for rehearing, copies of the motion shall be sent to all  
19 other parties using the notification procedures specified by  
20 Section 2001.142(a) [party or the party's attorney of record is  
21 notified as required by Section 2001.142 of a decision or order that  
22 may become final under Section 2001.144].

23 (b) A party must file with the state agency a reply, if any,  
24 to a motion for rehearing [~~must be filed with the state agency~~] not  
25 later than the 30th day after the date [~~on which the party or the~~  
26 ~~party's attorney of record is notified as required by Section~~  
27 ~~2001.142 of]~~ the decision or order that is the subject of the motion

1 is signed, or not later than the 10th day after the date a motion for  
2 rehearing is filed if the time for filing the motion for rehearing  
3 has been extended by an agreement under Section 2001.147 or by a  
4 written state agency order under Subsection (e). On filing of the  
5 reply, copies of the reply shall be sent to all other parties using  
6 the notification procedures specified by Section 2001.142(a) [~~or~~  
7 order that may become final under Section 2001.144].

8 (c) A state agency shall act on a motion for rehearing not  
9 later than the 45th day after the date [~~on which the party or the~~  
10 ~~party's attorney of record is notified as required by Section~~  
11 ~~2001.142 of]~~ the decision or order that is the subject of the motion  
12 is signed [~~that may become final under Section 2001.144]~~ or the  
13 motion for rehearing is overruled by operation of law.

14 (e) A state agency may, on its own initiative or on the  
15 motion of any party for cause shown, by written order extend the  
16 time for filing a motion or reply or taking agency action under this  
17 section if the agency extends the time or takes the action not later  
18 than the 10th day after the date the period for filing a motion or  
19 reply or taking agency action expires. An [~~, except that an~~  
20 extension may not extend the period for agency action beyond the  
21 90th day after the date [~~on which the party or the party's attorney~~  
22 ~~of record is notified as required by Section 2001.142 of]~~ the  
23 decision or order that is the subject of the motion is signed [~~that~~  
24 ~~may become final under Section 2001.144].~~

25 (f) In the event of an extension, a motion for rehearing is  
26 overruled by operation of law on the date fixed by the order or, in  
27 the absence of a fixed date, the 90th day [~~90 days~~] after the date



1 ~~[on which the party or the party's attorney of record is notified as~~  
2 ~~required by Section 2001.142 of]~~ the decision or order that is the  
3 subject of the motion is signed ~~[that may become final under Section~~  
4 ~~2001.144]~~.

5 (g) A motion for rehearing must identify with particularity  
6 findings of fact or conclusions of law that are the subject of the  
7 complaint and any evidentiary or legal ruling claimed to be  
8 erroneous. The motion must also state the legal and factual basis  
9 for the claimed error.

10 (h) A subsequent motion for rehearing is not required after  
11 a state agency rules on a motion for rehearing unless the order  
12 disposing of the original motion for rehearing:

13 (1) modifies, corrects, or reforms in any respect the  
14 decision or order that is the subject of the complaint, other than a  
15 typographical, grammatical, or other clerical change identified as  
16 such by the agency in the order, including any modification,  
17 correction, or reformation that does not change the outcome of the  
18 contested case; or

19 (2) vacates the decision or order that is the subject  
20 of the motion and provides for a new decision or order.

21 (i) A subsequent motion for rehearing required by  
22 Subsection (h) must be filed not later than the 20th day after the  
23 date the order disposing of the original motion for rehearing is  
24 signed.

25 SECTION 10. Subsection (a), Section 2001.176, Government  
26 Code, is amended to read as follows:

27 (a) A person initiates judicial review in a contested case

1 by filing a petition not later than the 30th day after the date [~~on~~  
2 ~~which~~] the decision or order that is the subject of complaint is  
3 final and appealable. In a contested case in which a motion for  
4 rehearing is a prerequisite for seeking judicial review, a  
5 prematurely filed petition is effective to initiate judicial review  
6 and is considered to be filed:

7           (1) on the date the last timely motion for rehearing is  
8 overruled; and

9           (2) after the motion is overruled.

10           SECTION 11. The changes in law made by this Act to Chapter  
11 2001, Government Code, apply only to an administrative hearing that  
12 is set by the State Office of Administrative Hearings, or another  
13 state agency conducting an administrative hearing, on or after the  
14 effective date of this Act. A hearing set before the effective date  
15 of this Act, or any decision issued or appeal from the hearing, is  
16 governed by the law in effect when the hearing was set, and the  
17 former law is continued in effect for that purpose.

18           SECTION 12. This Act takes effect September 1, 2013.