

By: Estes

S.B. No. 522

A BILL TO BE ENTITLED

AN ACT

relating to contested cases held 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 10 [~~three~~] days before the date set for the hearing. In a proceeding concerning the grant, denial, revocation, suspension, annulment, withdrawal, or renewal of a license, a state agency that

1 intends to rely on a section of a statute or rule not previously
2 referenced in the notice of hearing must amend the notice to refer
3 to the section of such statute or rule not less than 10 days before
4 the date set for the hearing.

5 (c) In a suit for judicial review of a final decision of a
6 state agency in a contested case, the agency's failure to comply
7 with Subsection (a)(3) or Subsection (b) shall constitute
8 substantial prejudice to the rights of the appellant under Section
9 2001.174(2).

10 SECTION 2. Section 2001.054, Government Code, is amended to
11 read as follows:

12 (a) The provisions of this chapter concerning contested
13 cases apply to the grant, denial, or renewal of a license that is
14 required to be preceded by notice and opportunity for hearing.

15 (b) If a license holder makes timely and sufficient
16 application for the renewal of a license or for a new license for an
17 activity of a continuing nature, the existing license does not
18 expire until the application has been finally determined by the
19 state agency. If the application is denied or the terms of the new
20 license are limited, the existing license does not expire until the
21 last day for seeking review of the agency order or a later date
22 fixed by order of the reviewing court.

23 (c) A revocation, suspension, annulment, or withdrawal of a
24 license is not effective unless, before institution of state agency
25 proceedings:

26 (1) the agency gives notice by personal service or by
27 registered or certified mail to the license holder of facts or

1 conduct alleged to warrant the intended action; and

2 (2) the license holder is given an opportunity to show
3 compliance with all requirements of law for the retention of the
4 license.

5 If, however, the agency finds that an imminent peril to the
6 public health, safety or welfare imperatively requires emergency
7 action, and incorporates a factual and legal basis establishing
8 that imminent peril in an order, summary suspension of a license may
9 be ordered pending proceedings for revocation or other action. Such
10 an order is final and appealable to a Travis County district court
11 upon entry.

12 (d) A license described in Subsection (a) remains valid
13 unless it expires without timely application for renewal, is
14 amended, revoked, suspended, annulled, or withdrawn, or the denial
15 of a renewal application becomes final. The term or duration of a
16 license described in Subsection (a) is tolled during the period the
17 license is subjected to judicial review. However, the term or
18 duration of a license is not tolled if, during judicial review, the
19 licensee engages in the activity for which the license was issued.

20 (e) In a suit for judicial review of a final decision of a
21 state agency brought by a license holder, the agency's failure to
22 comply with Subsection (c) shall constitute substantial prejudice
23 to the rights of the license holder under Section 2001.174(2).

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

26 (a) A decision of a state agency [~~or order~~] that may become
27 final under Section 2001.144 that is adverse to any [~~a~~] party in a

1 contested case must be in writing and signed by a person authorized
2 by law to sign the agency decision [~~or stated in the record~~].

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

6 SECTION 4. Section 2001.142, Government Code, is amended to
7 read as follows:

8 Sec. 2001.142. NOTIFICATION OF DECISIONS AND
9 ORDERS. (a) A state agency shall notify each party to [~~in~~] a
10 contested case of any decision or order of the agency in the
11 following manner:

12 (1) by certified or registered mail sent to the last
13 known address of the party or to the party's attorney of record; or

14 (2) by electronic means to the current e-mail address
15 or telecopier number of the party or the party's attorney of record
16 [~~shall be notified either personally or by first class mail of any~~
17 ~~decision or order~~].

18 (b) When a decision [~~On issuance~~] in a contested case [~~of a~~
19 ~~decision~~] that may become final under Section 2001.144 is signed or
20 when an order ruling on a motion for rehearing is signed, a state
21 agency shall send a copy of the decision or order to each party in
22 accordance with Subsection (a). The state agency must keep a record
23 documenting the provision and receipt of the notice [~~by first class~~
24 ~~mail to the attorneys of record and shall keep an appropriate record~~
25 ~~of the mailing. If a party is not represented by an attorney of~~
26 ~~record, the state agency shall send a copy of the decision or order~~
27 ~~by first class mail to the party and shall keep an appropriate~~

1 ~~record of the mailing]~~.

2 (c) If an adversely affected party does not receive timely
3 notice under this section of a signed decision or rehearing order,
4 then, with respect to that party, a time period provided under
5 Section 2001.144(a), 2001.146, 2001.147, or 2001.176(a) relating
6 to a decision or motion for rehearing begins on the date the party
7 receives such notice or acquires actual knowledge of the signed
8 decision or rehearing order, whichever occurs first. However, in
9 no event shall such period begin earlier than the 15th day or later
10 than the 90th day after the decision or rehearing order was signed
11 ~~[A party or attorney of record notified by mail under Subsection (b)~~
12 ~~is presumed to have been notified on the third day after the date on~~
13 ~~which the notice is mailed]~~.

14 (d) To establish a revised time period under Subsection (c),
15 the adversely affected party must prove, on sworn motion and
16 notice, that the date the party received notice from the state
17 agency or acquired actual knowledge of the signing of the decision
18 or rehearing order was more than 14 days after the decision or
19 rehearing order was signed.

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

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

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

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

1 finally closed.

2 (b) In a contested case heard by other than a majority of the
3 officials of a state agency, the agency or the person who conducts
4 the contested case hearing may extend the period in which the
5 decision [~~or order~~] may be signed [~~issued~~].

6 SECTION 7. Sections 2001.144 and 2001.145, Government Code,
7 are amended to read as follows:

8 Sec. 2001.144. DECISIONS; WHEN FINAL. (a) A decision in a
9 contested case is final:

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

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

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

16 (B) the motion is overruled by operation of law;
17 or

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

23 [~~(4) on the date specified in the order for a case in~~
24 ~~which all parties agree to the specified date in writing or on the~~
25 ~~record, if the specified date is not before the date the order is~~
26 ~~signed or later than the 20th day after the date the order was~~
27 ~~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 Sec. 2001.145. MOTIONS FOR REHEARING: PREREQUISITES TO
6 APPEAL. (a) A timely motion for rehearing is a prerequisite to an
7 appeal in a contested case except that a motion for rehearing of a
8 decision [~~or order~~] that is final under Section 2001.144(a)(3) [~~or~~
9 (4)] is not a prerequisite for appeal.

10 (b) A decision that is final under Section 2001.144(a)(2)
11 or (3) [~~or (4)~~] is appealable.

12 SECTION 8. Section 2001.146, Government Code, is amended by
13 amending Subsections (a), (b), (c), (e), and (f) and adding
14 Subsections (g) and (h) to read as follows:

15 (a) A motion for rehearing in a contested case must be filed
16 by a party and served on all other parties to the contested case in
17 accordance with Rule 21a, Texas Rules of Civil Procedure, not later
18 than the 20th day after the date on which the decision that is the
19 subject of complaint is signed [~~party or the party's attorney of~~
20 ~~record is notified as required by Section 2001.142 of a decision or~~
21 ~~order that may become final under Section 2001.144)].~~

22 (b) A reply to a motion for rehearing must be filed with the
23 state agency not later than the 30th day after the date on which
24 [~~the party or the party's attorney of record is notified as required~~
25 ~~by Section 2001.142 of]~~ the decision that is the subject [~~or order~~]
26 of complaint is signed, or not later than the 10th day after a
27 motion for rehearing is filed if the time for filing the motion for

1 rehearing has been extended by a valid agreement under Section
2 2001.147 or by a written agency order under Subsection (e) [~~or order~~
3 ~~that may become final under Section 2001.144]~~.

4 (c) A state agency shall act on a motion for rehearing not
5 later than the 45th day after the date on which [~~the party or the~~
6 ~~party's attorney of record is notified as required by Section~~
7 ~~2001.142 of]~~ the decision that is the subject of complaint is signed
8 [~~or order that may become final under Section 2001.144]~~ or the
9 motion for rehearing is overruled by operation of law.

10 (e) Not later than the 30th day after a decision that is the
11 subject of complaint is signed, a [A] state agency may, on its own
12 initiative or on the motion of any party, by written order extend
13 the time for filing a motion or reply or taking agency action under
14 this section. An [~~, except that an]~~ extension may not extend the
15 period for agency action beyond the 90th day after the date [~~on~~
16 ~~which the party or the party's attorney of record is notified as~~
17 ~~required by Section 2001.142 of]~~ the decision that is the subject of
18 complaint is signed [~~or order that may become final under Section~~
19 ~~2001.144]~~.

20 (f) In the event of an extension, a motion for rehearing is
21 overruled by operation of law on the date fixed by the order or, in
22 the absence of a fixed date, 90 days after the date on which [~~the~~
23 ~~party or the party's attorney of record is notified as required by~~
24 ~~Section 2001.142 of]~~ the decision that is the subject of complaint
25 is signed [~~or order that may become final under Section 2001.144]~~.

26 (g) A motion for rehearing must identify with particularity
27 findings of fact or conclusions of law that are the subject of

1 complaint and any evidentiary or legal ruling claimed to be
2 erroneous. The motion must also set forth the legal and factual
3 basis for the claimed error.

4 (h) After an agency rules on a motion for rehearing, a
5 further motion for rehearing must be filed not later than 20 days
6 after the order disposing of the original motion for rehearing is
7 signed, if that order:

8 (1) modifies in any respect the decision that is the
9 subject of complaint, even if the modification does not change the
10 outcome of the contested case or makes only typographical,
11 grammatical, or immaterial changes to the decision; or

12 (2) vacates the decision that is the subject of
13 complaint and issues a new decision.

14 SECTION 9. Subsection (a), Section 2001.176, Government
15 Code, is amended to read as follows:

16 (a) A person initiates judicial review in a contested case
17 by filing a petition not later than the 30th day after the date on
18 which the decision that is the subject of complaint is final and
19 appealable. A prematurely filed petition is effective to initiate
20 judicial review and is deemed filed on the day of, but after, the
21 event that begins the period for filing a petition.

22 SECTION 10. The changes in law made by this Act to Chapter
23 2001, Government Code, apply only to an administrative hearing
24 conducted, or to a decision in an administrative hearing issued, on
25 or after the effective date of this Act. A hearing conducted or
26 decision issued before the effective date of this Act is governed by
27 the law in effect when the hearing was conducted or the decision was

1 issued, and the former law is continued in effect for that purpose.

2 SECTION 11. This Act takes effect September 1, 2013.