

1-1 By: Estes S.B. No. 522
 1-2 (In the Senate - Filed February 12, 2013; February 20, 2013,
 1-3 read first time and referred to Committee on State Affairs;
 1-4 April 18, 2013, reported adversely, with favorable Committee
 1-5 Substitute by the following vote: Yeas 5, Nays 4; April 18, 2013,
 1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12		X		
1-13		X		
1-14	X			
1-15		X		
1-16	X			
1-17		X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 522 By: Huffman

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to contested cases conducted under the Administrative
 1-22 Procedure Act.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 2001.052, Government Code, is amended to
 1-25 read as follows:

1-26 Sec. 2001.052. CONTENTS OF NOTICE. (a) Notice of a
 1-27 hearing in a contested case must include:

1-28 (1) a statement of the time, place, and nature of the
 1-29 hearing;

1-30 (2) a statement of the legal authority and
 1-31 jurisdiction under which the hearing is to be held;

1-32 (3) a reference to the particular sections of the
 1-33 statutes and rules involved; and

1-34 (4) a short, plain statement of the factual matters
 1-35 asserted.

1-36 (b) If a state agency or other party is unable to state
 1-37 factual matters in detail at the time notice under this section is
 1-38 served, an initial notice may be limited to a statement of the
 1-39 issues involved. On timely written application, a more definite
 1-40 and detailed statement of the facts shall be furnished not less than
 1-41 seven [~~three~~] days before the date set for the hearing. In a
 1-42 proceeding in which the state agency has the burden of proof, a
 1-43 state agency that intends to rely on a section of a statute or rule
 1-44 not previously referenced in the notice of hearing must amend the
 1-45 notice to refer to the section of the statute or rule not later than
 1-46 the seventh day before the date set for the hearing.

1-47 (c) In a suit for judicial review of a final decision or
 1-48 order of a state agency in a contested case, the state agency's
 1-49 failure to comply with Subsection (a)(3) or (b) shall constitute
 1-50 prejudice to the substantial rights of the appellant under Section
 1-51 2001.174(2) unless the court finds that the failure did not
 1-52 unfairly surprise and prejudice the appellant.

1-53 SECTION 2. Section 2001.054, Government Code, is amended by
 1-54 adding Subsections (c-1) and (e) to read as follows:

1-55 (c-1) If a state agency determines that an imminent peril to
 1-56 the public health, safety, or welfare requires emergency action and
 1-57 incorporates a factual and legal basis establishing that imminent
 1-58 peril in an order, the agency may issue an order to summarily
 1-59 suspend the license holder's license pending proceedings for
 1-60 revocation or other action. Unless expressly provided otherwise by

2-1 another statute, the agency shall initiate the proceedings for
 2-2 revocation or other action not later than the 30th day after the
 2-3 date the summary suspension order is signed. The proceedings must
 2-4 be promptly determined, and if the proceedings are not initiated
 2-5 before the 30th day after the date the order is signed, the license
 2-6 holder may appeal the summary suspension order to a Travis County
 2-7 district court.

2-8 (e) In a suit for judicial review of a final decision or
 2-9 order of a state agency brought by a license holder, the agency's
 2-10 failure to comply with Subsection (c) shall constitute prejudice to
 2-11 the substantial rights of the license holder under Section
 2-12 2001.174(2) unless the court determines that the failure did not
 2-13 unfairly surprise and prejudice the license holder.

2-14 SECTION 3. Subsections (a) and (e), Section 2001.141,
 2-15 Government Code, are amended to read as follows:

2-16 (a) A decision or order of a state agency that may become
 2-17 final under Section 2001.144 that is adverse to any [a] party in a
 2-18 contested case must be in writing and signed by a person authorized
 2-19 by the agency to sign the agency decision or order [stated in the
 2-20 record].

2-21 (e) If a party submits under a state agency rule proposed
 2-22 findings of fact or conclusions of law, the decision shall include a
 2-23 ruling on each proposed finding or conclusion.

2-24 SECTION 4. Section 2001.142, Government Code, is amended to
 2-25 read as follows:

2-26 Sec. 2001.142. NOTIFICATION OF DECISIONS AND ORDERS.

2-27 (a) A state agency shall notify each party to [in] a contested case
 2-28 [shall be notified either personally or by first class mail] of any
 2-29 decision or order of the agency in the following manner:

2-30 (1) personally;

2-31 (2) by electronic means to the current e-mail address
 2-32 or telecopier number of the party or the party's attorney of record;
 2-33 or

2-34 (3) by first class, certified, or registered mail sent
 2-35 to the last known address of the party or to the party's attorney of
 2-36 record.

2-37 (b) When a decision or order [On issuance] in a contested
 2-38 case [of a decision] that may become final under Section 2001.144 is
 2-39 signed or when an order ruling on a motion for rehearing is signed,
 2-40 a state agency shall send a copy of the decision or order to each
 2-41 party in accordance with Subsection (a). The state agency shall
 2-42 keep a record documenting the provision of the notice provided to
 2-43 each party in accordance with Subsection (a) [by first class mail to
 2-44 the attorneys of record and shall keep an appropriate record of the
 2-45 mailing. If a party is not represented by an attorney of record,
 2-46 the state agency shall send a copy of the decision or order by first
 2-47 class mail to the party and shall keep an appropriate record of the
 2-48 mailing].

2-49 (c) If an adversely affected party or the party's attorney
 2-50 of record does not receive the notice required by Subsection (a) or
 2-51 acquire actual knowledge of a signed decision or order before the
 2-52 15th day after the date the decision or order is signed, a period
 2-53 specified by or agreed to under Section 2001.144(a), 2001.146,
 2-54 2001.147, or 2001.176(a) relating to a decision or motion for
 2-55 rehearing begins, with respect to that party, on the date the party
 2-56 receives the notice or acquires actual knowledge of the signed
 2-57 decision or order, whichever occurs first. The period may not begin
 2-58 earlier than the 15th day or later than the 90th day after the date
 2-59 the decision or order was signed [A party or attorney of record
 2-60 notified by mail under Subsection (b) is presumed to have been
 2-61 notified on the third day after the date on which the notice is
 2-62 mailed].

2-63 (d) To establish a revised period under Subsection (c), the
 2-64 adversely affected party must prove, on sworn motion and notice,
 2-65 that the date the party received notice from the state agency or
 2-66 acquired actual knowledge of the signing of the decision or order
 2-67 was after the 14th day after the date the decision or order
 2-68 signed. The state agency governing board must grant or deny the
 2-69 sworn motion not later than the board's next meeting or, for a state

3-1 agency without a governing board, not later than the 10th day after
 3-2 the date the agency receives the sworn motion. If a state agency
 3-3 fails to grant or deny the motion at the next meeting, or before the
 3-4 10th day after the date the agency receives the motion, as
 3-5 appropriate, the motion is considered granted.

3-6 SECTION 5. The heading to Section 2001.143, Government
 3-7 Code, is amended to read as follows:

3-8 Sec. 2001.143. TIME OF [~~RENDERING~~] DECISION.

3-9 SECTION 6. Subsections (a) and (b), Section 2001.143,
 3-10 Government Code, are amended to read as follows:

3-11 (a) A decision or order that may become final under Section
 3-12 2001.144 in a contested case must be signed [~~rendered~~] not later
 3-13 than the 60th day after the date on which the hearing is finally
 3-14 closed.

3-15 (b) In a contested case heard by other than a majority of the
 3-16 officials of a state agency, the agency or the person who conducts
 3-17 the contested case hearing may extend the period in which the
 3-18 decision or order may be signed [~~issued~~].

3-19 SECTION 7. Sections 2001.144 and 2001.145, Government Code,
 3-20 are amended to read as follows:

3-21 Sec. 2001.144. DECISIONS OR ORDERS; WHEN FINAL. (a) A
 3-22 decision or order in a contested case is final:

3-23 (1) if a motion for rehearing is not filed on time, on
 3-24 the expiration of the period for filing a motion for rehearing;

3-25 (2) if a motion for rehearing is filed on time, on the
 3-26 date:

3-27 (A) the order overruling the motion for rehearing
 3-28 is signed [~~rendered~~]; or

3-29 (B) the motion is overruled by operation of law;
 3-30 or

3-31 (3) if a state agency finds that an imminent peril to
 3-32 the public health, safety, or welfare requires immediate effect of
 3-33 a decision or order, on the date the decision or order is signed and
 3-34 incorporates in the decision or order a factual and legal basis
 3-35 establishing an imminent peril to the public health, safety, or
 3-36 welfare [~~rendered; or~~

3-37 [~~(4) on the date specified in the order for a case in~~
 3-38 ~~which all parties agree to the specified date in writing or on the~~
 3-39 ~~record, if the specified date is not before the date the order is~~
 3-40 ~~signed or later than the 20th day after the date the order was~~
 3-41 ~~rendered].~~

3-42 (b) If a decision or order is final under Subsection (a)(3),
 3-43 a state agency must recite in the decision or order the finding made
 3-44 under Subsection (a)(3) and the fact that the decision or order is
 3-45 final and effective on the date signed [~~rendered~~].

3-46 Sec. 2001.145. MOTIONS FOR REHEARING: PREREQUISITES TO
 3-47 APPEAL. (a) A timely motion for rehearing is a prerequisite to an
 3-48 appeal in a contested case except that a motion for rehearing of a
 3-49 decision or order that is final under Section 2001.144(a)(3) [~~or~~
 3-50 ~~(4)~~] is not a prerequisite for appeal.

3-51 (b) A decision or order that is final under Section
 3-52 2001.144(a)(2) or [~~7~~] (3) [~~7, or (4)~~] is appealable.

3-53 SECTION 8. Section 2001.146, Government Code, is amended by
 3-54 amending Subsections (a), (b), (c), (e), and (f) and adding
 3-55 Subsections (g) and (h) to read as follows:

3-56 (a) A motion for rehearing in a contested case must be filed
 3-57 by a party not later than the 20th day after the date [~~on which~~]
 3-58 the decision or order that is the subject of the motion is signed,
 3-59 unless the time for filing the motion for rehearing has been
 3-60 extended by an agreement under Section 2001.147 or by a written
 3-61 state agency order issued under Subsection (e). On filing of the
 3-62 motion for rehearing, copies of the motion shall be sent to all
 3-63 other parties using the notification procedures specified by
 3-64 Section 2001.142(a) [party or the party's attorney of record is
 3-65 notified as required by Section 2001.142 of a decision or order that
 3-66 may become final under Section 2001.144].

3-67 (b) A party must file with the state agency a reply to a
 3-68 motion for rehearing [~~must be filed with the state agency~~] not later
 3-69 than the 30th day after the date [~~on which the party or the party's~~

4-1 ~~attorney of record is notified as required by Section 2001.142 of]~~
 4-2 ~~the decision or order that is the subject of the motion is signed,~~
 4-3 ~~or not later than the 10th day after the date a motion for rehearing~~
 4-4 ~~is filed if the time for filing the motion for rehearing has been~~
 4-5 ~~extended by an agreement under Section 2001.147 or by a written~~
 4-6 ~~state agency order under Subsection (e). On filing of the reply,~~
 4-7 ~~copies of the reply shall be sent to all other parties using the~~
 4-8 ~~notification procedures specified by Section 2001.142(a) [or order~~
 4-9 ~~that may become final under Section 2001.144].~~

4-10 (c) A state agency shall act on a motion for rehearing not
 4-11 later than the 45th day after the date ~~[on which the party or the~~
 4-12 ~~party's attorney of record is notified as required by Section~~
 4-13 ~~2001.142 of]~~ the decision or order that is the subject of the motion
 4-14 ~~is signed [that may become final under Section 2001.144]~~ or the
 4-15 motion for rehearing is overruled by operation of law.

4-16 (e) A state agency may, on its own initiative or on the
 4-17 motion of any party for cause shown, by written order extend the
 4-18 time for filing a motion or reply or taking agency action under this
 4-19 section if the agency extends the time or takes the action not later
 4-20 than the 10th day after the date the period for filing a motion or
 4-21 reply or taking agency action expires. ~~An[, except that an]~~
 4-22 extension may not extend the period for agency action beyond the
 4-23 90th day after the date ~~[on which the party or the party's attorney~~
 4-24 ~~of record is notified as required by Section 2001.142 of]~~ the
 4-25 decision or order that is the subject of the motion is signed ~~[that~~
 4-26 ~~may become final under Section 2001.144].~~

4-27 (f) In the event of an extension, a motion for rehearing is
 4-28 overruled by operation of law on the date fixed by the order or, in
 4-29 the absence of a fixed date, the 90th day ~~[90 days]~~ after the date
 4-30 ~~[on which the party or the party's attorney of record is notified as~~
 4-31 ~~required by Section 2001.142 of]~~ the decision or order that is the
 4-32 subject of the motion is signed ~~[that may become final under Section~~
 4-33 ~~2001.144].~~

4-34 (g) A motion for rehearing must identify with particularity
 4-35 findings of fact or conclusions of law that are the subject of the
 4-36 complaint and any evidentiary or legal ruling claimed to be
 4-37 erroneous. The motion must also state the legal and factual basis
 4-38 for the claimed error.

4-39 (h) After a state agency rules on a motion for rehearing,
 4-40 any subsequent motion for rehearing must be filed not later than the
 4-41 20th day after the date the order disposing of the original motion
 4-42 for rehearing is signed, if that order:

4-43 (1) modifies, corrects, or reforms in any respect the
 4-44 decision or order that is the subject of the complaint, other than a
 4-45 typographical, grammatical, or other clerical change identified as
 4-46 such by the agency in the order, including any modification,
 4-47 correction, or reformation that does not change the outcome of the
 4-48 contested case; or

4-49 (2) vacates the decision or order that is the subject
 4-50 of the motion and provides for a new decision or order.

4-51 SECTION 9. Subsection (a), Section 2001.176, Government
 4-52 Code, is amended to read as follows:

4-53 (a) A person initiates judicial review in a contested case
 4-54 by filing a petition not later than the 30th day after the date ~~[on~~
 4-55 ~~which]~~ the decision or order that is the subject of complaint is
 4-56 final and appealable. In a contested case in which a motion for
 4-57 rehearing is a prerequisite for seeking judicial review, a
 4-58 prematurely filed petition is effective to initiate judicial review
 4-59 and is considered to be filed:

4-60 (1) on the date the last timely motion for rehearing is
 4-61 overruled; and

4-62 (2) after the motion is overruled.

4-63 SECTION 10. The changes in law made by this Act to Chapter
 4-64 2001, Government Code, apply only to an administrative hearing that
 4-65 is set by the State Office of Administrative Hearings, or another
 4-66 state agency conducting an administrative hearing, on or after the
 4-67 effective date of this Act. A hearing set before the effective date
 4-68 of this Act, or any decision issued or appeal from the hearing, is
 4-69 governed by the law in effect when the hearing was set, and the

5-1 former law is continued in effect for that purpose.

5-2 SECTION 11. This Act takes effect September 1, 2013.

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