

BILL ANALYSIS

S.B. 1267
By: Estes
Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties explain that the Administrative Procedure Act governs procedures in contested case hearings before state agencies and assert that there are several differences between that act and the Texas Rules of Civil Procedure, especially in regard to the timing of an appeal of an agency decision. The parties contend that these differences are confusing and that even experienced administrative lawyers find it difficult to understand and apply the Administrative Procedure Act to a legal matter, especially in regard to motions for rehearing and suits for judicial review. The parties also point out that there is some confusion in regard to giving required notice of certain information. To address these concerns, S.B. 1267 seeks to align certain provisions of the Administrative Procedure Act more closely with the Texas Rules of Civil Procedure.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

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. 1267 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 and makes certain provisions of that act relating to decisions also apply to orders.

S.B. 1267 changes the deadline by which a more definite and detailed statement of the facts is required to be furnished following an authorized limited initial notice from not less than three days to not less than seven days before the date set for the hearing. The bill requires a state agency that intends to rely on a section of a statute or rule not previously referenced in the notice of hearing, in a proceeding in which the state agency has the burden of proof, 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 these provisions 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.

S.B. 1267 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 requirements relating to the contents of a notice constitutes certain prejudice to the substantial rights of the appellant under the Administrative Procedure Act unless the court finds that the failure did not

unfairly surprise and prejudice the appellant or that the appellant waived the appellant's rights.

S.B. 1267 authorizes a state agency that has been granted the power to summarily suspend a license under another statute to determine that an imminent peril to the public health, safety, or welfare requires emergency action and to issue an order to summarily suspend the license holder's license pending proceedings for revocation or other action, provided that the agency incorporates a factual and legal basis establishing that imminent peril in the order. The bill sets out provisions relating to the initiation of the proceedings for revocation or other action and the appeal by a license holder of the summary suspension order. The bill specifies that these provisions do not grant any state agency the power to suspend a license without notice and an opportunity for a hearing.

S.B. 1267 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 the statutory provisions regarding the requisite notice and opportunity for license holder compliance before the institution of state agency proceedings constitutes certain prejudice to the substantial rights of the license holder under the Administrative Procedure Act unless the court determines that the failure did not unfairly surprise and prejudice the license holder.

S.B. 1267 changes the requirement that a decision or order of a state agency that may become final that is adverse to any party in a contested case be in writing or stated in the record to instead be in writing and signed by a person authorized by the agency to sign the agency decision or order. The bill requires an order that may become final to include findings of fact and conclusions of law, separately stated. The bill requires an order, if a party submits under a state agency rule proposed findings of fact, to include a ruling on each proposed finding and requires a decision or order, if a party submits under a state agency rule proposed conclusions of law, to include a ruling on each proposed conclusion.

S.B. 1267 revises the requirements relating to the notification of a party to a contested case regarding a decision or order and 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 specified or agreed-to revised period 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. 1267 replaces a requirement that a decision or order that may become final in a contested case be rendered not later than the 60th day after the date on which the hearing is finally closed with a specification that such a decision or order should be signed by that date. 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 to extend the period in which the decision or order may be signed as an alternative to the agency extending such a period.

S.B. 1267 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 and changes certain criteria based on the date of certain decisions or orders being rendered to instead be based on the date such decisions or orders are signed. The bill specifies that a decision or order that becomes final on the date the decision or order is signed based on the state agency finding that an imminent peril to the public health, safety, or welfare required immediate effect of the decision or order is only final provided that the agency incorporates in the decision or order a factual and legal basis establishing an imminent peril to the public health, safety, or welfare. The bill revises statutory provisions relating to the date a decision or order becomes final and makes an order that is final based on certain criteria appealable.

S.B. 1267 revises statutory provisions governing the procedures for a motion for rehearing in a contested case and 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 except under certain specified conditions and requires that a required subsequent motion for rehearing be filed not later than the 20th day after the date the order disposing of the original motion for rehearing is signed.

S.B. 1267 establishes that, for purposes of 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, 2015.