

By: Krause

H.B. No. 2816

A BILL TO BE ENTITLED

AN ACT

1
2 relating to legislative and judicial review of state agency
3 rulemaking.

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

5 SECTION 1. Subchapter B, Chapter 2001, Government Code, is
6 amended by adding Section 2001.0321 to read as follows:

7 Sec. 2001.0321. DECLARATORY JUDGMENT. (a) Notwithstanding
8 and without limiting any other remedy available under law to any
9 person, a member of the legislature may bring an action for
10 declaratory judgment if it is alleged that a member of a governing
11 body of a state agency or an executive official of a state agency,
12 while engaged in rulemaking for the state agency, has adopted a rule
13 or proposed a rule for adoption without a grant of or contrary to a
14 grant of statutory or constitutional authority to adopt the rule or
15 proposed rule.

16 (b) An action for declaratory judgment under Subsection (a)
17 may be brought only in a district court of Travis County or in a
18 district court of the county in which the member of the governing
19 body of the state agency or executive official of the state agency
20 resides.

21 (c) A district court reviewing an action brought under
22 Subsection (a) may issue declaratory relief, including temporary
23 and emergency relief, regarding the validity of or authority to
24 adopt a state agency rule or proposed state agency rule, including

1 an emergency rule adopted under Section 2001.034, but may not issue
2 monetary relief other than costs of court.

3 (d) A court may render a declaratory judgment without regard
4 to whether the state agency made a determination on or issued any
5 order on the validity of or authority to adopt the state agency rule
6 or proposed state agency rule.

7 (e) A district court in which an action is brought under
8 this section, on its own motion or the motion of any party, may
9 request transfer of the action to the court of appeals for the
10 district court if the district court finds that the public interest
11 requires a prompt, authoritative determination of the validity of
12 or authority to adopt the state agency rule or proposed state agency
13 rule and the case would ordinarily be appealed. After filing of the
14 district court's request with the court of appeals, transfer of the
15 action may be granted by the court of appeals if it agrees with the
16 findings of the district court concerning the application of the
17 statutory or constitutional standards to the action. On entry of an
18 order by the court of appeals granting transfer, the action is
19 transferred to the court of appeals for decision, and the validity
20 of or authority to adopt the state agency rule or proposed state
21 agency rule is subject to judicial review by the court of appeals.
22 The administrative record and the district court record shall be
23 filed by the district clerk with the clerk of the court of appeals.
24 The court of appeals may direct the district court to conduct any
25 necessary evidentiary hearings in connection with the action.

26 (f) The attorney general may not represent a member of a
27 governing body of a state agency or an executive official of a state

1 agency, a state agency, or a member of the legislature in any suit
2 brought under this section.

3 SECTION 2. This Act takes effect immediately if it receives
4 a vote of two-thirds of all the members elected to each house, as
5 provided by Section 39, Article III, Texas Constitution. If this
6 Act does not receive the vote necessary for immediate effect, this
7 Act takes effect September 1, 2015.