

By: Estes, Watson

S.B. No. 1267

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 or that the appellant
14 waived the appellant's rights.

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

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

1 determined, and if the proceedings are not initiated before the
2 30th day after the date the order is signed, the license holder may
3 appeal the summary suspension order to a Travis County district
4 court. This subsection does not grant any state agency the power to
5 suspend a license without notice and an opportunity for a hearing.

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

12 SECTION 3. Sections 2001.141(a), (b), and (e), Government
13 Code, are amended to read as follows:

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

19 (b) A decision or order that may become final under Section
20 2001.144 must include findings of fact and conclusions of law,
21 separately stated.

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

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

27 Sec. 2001.142. NOTIFICATION OF DECISIONS AND ORDERS.

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

4 (1) personally;

5 (2) if agreed to by the party to be notified, by
6 electronic means sent to the current e-mail address or telecopier
7 number of the party's attorney of record or of the party if the
8 party is not represented by counsel; or

9 (3) by first class, certified, or registered mail sent
10 to the last known address of the party's attorney of record or of
11 the party if the party is not represented by counsel.

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

24 (c) If an adversely affected party or the party's attorney
25 of record does not receive the notice required by Subsections (a)
26 and (b) or acquire actual knowledge of a signed decision or order
27 before the 15th day after the date the decision or order is signed,

1 a period specified by or agreed to under Section 2001.144(a),
2 2001.146, 2001.147, or 2001.176(a) relating to a decision or order
3 or motion for rehearing begins, with respect to that party, on the
4 date the party receives the notice or acquires actual knowledge of
5 the signed decision or order, whichever occurs first. The period
6 may not begin earlier than the 15th day or later than the 90th day
7 after the date the decision or order was signed [~~A party or attorney~~
8 ~~of record notified by mail under Subsection (b) is presumed to have~~
9 ~~been notified on the third day after the date on which the notice is~~
10 ~~mailed].~~

11 (d) To establish a revised period under Subsection (c), the
12 adversely affected party must prove, on sworn motion and notice,
13 that the date the party received notice from the state agency or
14 acquired actual knowledge of the signing of the decision or order
15 was after the 14th day after the date the decision or order was
16 signed.

17 (e) The state agency must grant or deny the sworn motion not
18 later than the date of the agency's governing board's next meeting
19 or, for a state agency without a governing board with
20 decision-making authority in contested cases, not later than the
21 10th day after the date the agency receives the sworn motion.

22 (f) If the state agency fails to grant or deny the motion at
23 the next meeting or before the 10th day after the date the agency
24 receives the motion, as appropriate, the motion is considered
25 granted.

26 (g) If the sworn motion filed under Subsection (d) is
27 granted with respect to the party filing that motion, all the

1 periods specified by or agreed to under Section 2001.144(a),
2 2001.146, 2001.147, or 2001.176(a) relating to a decision or order,
3 or motion for rehearing, shall begin on the date specified in the
4 sworn motion that the party first received the notice required by
5 Subsections (a) and (b) or acquired actual knowledge of the signed
6 decision or order. The date specified in the sworn motion shall be
7 considered the date the decision or order was signed.

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

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

11 SECTION 6. Sections 2001.143(a) and (b), Government Code,
12 are amended to read as follows:

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

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

21 SECTION 7. Section 2001.144, Government Code, is amended to
22 read as follows:

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

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

27 (2) if a motion for rehearing is filed on time, on the

1 date:

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

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

5 (3) if a state agency finds that an imminent peril to
6 the public health, safety, or welfare requires immediate effect of
7 a decision or order, on the date the decision or order is signed,
8 provided that the agency incorporates in the decision or order a
9 factual and legal basis establishing an imminent peril to the
10 public health, safety, or welfare [~~rendered~~]; or

11 (4) on:

12 (A) the date specified in the decision or order
13 for a case in which all parties agree to the specified date in
14 writing or on the record; or

15 (B) [~~7~~] if the agreed specified date is [~~not~~]
16 before the date the decision or order is signed, the date the
17 decision or order is signed [~~or later than the 20th day after the~~
18 ~~date the order was rendered~~].

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

23 SECTION 8. Section 2001.145(b), Government Code, is amended
24 to read as follows:

25 (b) A decision or order that is final under Section
26 2001.144(a)(2), (3), or (4) is appealable.

27 SECTION 9. Section 2001.146, Government Code, is amended by

1 amending Subsections (a), (b), (c), (e), and (f) and adding
2 Subsections (g), (h), and (i) to read as follows:

3 (a) A motion for rehearing in a contested case must be filed
4 by a party not later than the 25th [~~20th~~] day after the date [~~on~~
5 ~~which~~] the decision or order that is the subject of the motion is
6 signed, unless the time for filing the motion for rehearing has been
7 extended under Section 2001.142, by an agreement under Section
8 2001.147, or by a written state agency order issued under
9 Subsection (e). On filing of the motion for rehearing, copies of
10 the motion shall be sent to all other parties using the notification
11 procedures specified by Section 2001.142(a) [party or the party's
12 attorney of record is notified as required by Section 2001.142 of a
13 decision or order that may become final under Section 2001.144].

14 (b) A party must file with the state agency a reply, if any,
15 to a motion for rehearing [must be filed with the state agency] not
16 later than the 40th [~~30th~~] day after the date [~~on which the party or~~
17 ~~the party's attorney of record is notified as required by Section~~
18 ~~2001.142 of~~] the decision or order that is the subject of the motion
19 is signed, or not later than the 10th day after the date a motion for
20 rehearing is filed if the time for filing the motion for rehearing
21 has been extended by an agreement under Section 2001.147 or by a
22 written state agency order under Subsection (e). On filing of the
23 reply, copies of the reply shall be sent to all other parties using
24 the notification procedures specified by Section 2001.142(a) [ex
25 order that may become final under Section 2001.144].

26 (c) A state agency shall act on a motion for rehearing not
27 later than the 55th [~~45th~~] day after the date [~~on which the party or~~

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

5 (e) A state agency may, on its own initiative or on the
6 motion of any party for cause shown, by written order extend the
7 time for filing a motion or reply or taking agency action under this
8 section, provided that the agency extends the time or takes the
9 action not later than the 10th day after the date the period for
10 filing a motion or reply or taking agency action expires. An[~~r~~
11 ~~except that an]~~ extension may not extend the period for agency
12 action beyond the 100th [~~90th~~] day after the date [~~on which the~~
13 ~~party or the party's attorney of record is notified as required by~~
14 ~~Section 2001.142 of]~~ the decision or order that is the subject of
15 the motion is signed [~~that may become final under Section~~
16 ~~2001.144]~~.

17 (f) In the event of an extension, a motion for rehearing is
18 overruled by operation of law on the date fixed by the order or, in
19 the absence of a fixed date, the 100th day [~~90 days~~] after the date
20 [~~on which the party or the party's attorney of record is notified as~~
21 ~~required by Section 2001.142 of]~~ the decision or order that is the
22 subject of the motion is signed [~~that may become final under Section~~
23 ~~2001.144]~~.

24 (g) A motion for rehearing must identify with particularity
25 findings of fact or conclusions of law that are the subject of the
26 complaint and any evidentiary or legal ruling claimed to be
27 erroneous. The motion must also state the legal and factual basis

1 for the claimed error.

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

5 (1) modifies, corrects, or reforms in any respect the
6 decision or order that is the subject of the complaint, other than a
7 typographical, grammatical, or other clerical change identified as
8 such by the agency in the order, including any modification,
9 correction, or reformation that does not change the outcome of the
10 contested case; or

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

13 (i) A subsequent motion for rehearing required by
14 Subsection (h) must be filed not later than the 20th day after the
15 date the order disposing of the original motion for rehearing is
16 signed.

17 SECTION 10. Section 2001.176(a), Government Code, is
18 amended to read as follows:

19 (a) A person initiates judicial review in a contested case
20 by filing a petition not later than the 30th day after the date ~~on~~
21 ~~which~~ the decision or order that is the subject of complaint is
22 final and appealable. In a contested case in which a motion for
23 rehearing is a prerequisite for seeking judicial review, a
24 prematurely filed petition is effective to initiate judicial review
25 and is considered to be filed:

26 (1) on the date the last timely motion for rehearing is
27 overruled; and

1 (2) after the motion is overruled.

2 SECTION 11. The changes in law made by this Act to Chapter
3 2001, Government Code, apply only to an administrative hearing that
4 is set by the State Office of Administrative Hearings, or another
5 state agency conducting an administrative hearing, on or after the
6 effective date of this Act. A hearing set before the effective date
7 of this Act, or any decision issued or appeal from the hearing, is
8 governed by the law in effect when the hearing was set, and the
9 former law is continued in effect for that purpose.

10 SECTION 12. This Act takes effect September 1, 2015.