

1-1 By: Estes, Watson S.B. No. 1267  
1-2 (In the Senate - Filed March 11, 2015; March 17, 2015, read  
1-3 first time and referred to Committee on State Affairs;  
1-4 April 29, 2015, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 29, 2015,  
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	Huffman	X		
1-10	Ellis	X		
1-11	Birdwell	X		
1-12	Creighton	X		
1-13	Estes	X		
1-14	Fraser	X		
1-15	Nelson	X		
1-16	Schwertner	X		
1-17	Zaffirini	X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1267 By: Estes

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. This  
1-47 subsection does not prohibit the state agency from filing an  
1-48 amendment during the hearing of a contested case provided the  
1-49 opposing party is granted a continuance of at least seven days to  
1-50 prepare its case on request of the opposing party.

1-51 (c) In a suit for judicial review of a final decision or  
1-52 order of a state agency in a contested case, the state agency's  
1-53 failure to comply with Subsection (a)(3) or (b) shall constitute  
1-54 prejudice to the substantial rights of the appellant under Section  
1-55 2001.174(2) unless the court finds that the failure did not  
1-56 unfairly surprise and prejudice the appellant or that the appellant  
1-57 waived the appellant's rights.

1-58 SECTION 2. Section 2001.054, Government Code, is amended by  
1-59 adding Subsections (c-1) and (e) to read as follows:

1-60 (c-1) A state agency that has been granted the power to

2-1 summarily suspend a license under another statute may determine  
 2-2 that an imminent peril to the public health, safety, or welfare  
 2-3 requires emergency action and may issue an order to summarily  
 2-4 suspend the license holder's license pending proceedings for  
 2-5 revocation or other action, provided that the agency incorporates a  
 2-6 factual and legal basis establishing that imminent peril in the  
 2-7 order. Unless expressly provided otherwise by another statute, the  
 2-8 agency shall initiate the proceedings for revocation or other  
 2-9 action not later than the 30th day after the date the summary  
 2-10 suspension order is signed. The proceedings must be promptly  
 2-11 determined, and if the proceedings are not initiated before the  
 2-12 30th day after the date the order is signed, the license holder may  
 2-13 appeal the summary suspension order to a Travis County district  
 2-14 court. This subsection does not grant any state agency the power to  
 2-15 suspend a license without notice and an opportunity for a hearing.

2-16 (e) In a suit for judicial review of a final decision or  
 2-17 order of a state agency brought by a license holder, the agency's  
 2-18 failure to comply with Subsection (c) shall constitute prejudice to  
 2-19 the substantial rights of the license holder under Section  
 2-20 2001.174(2) unless the court determines that the failure did not  
 2-21 unfairly surprise and prejudice the license holder.

2-22 SECTION 3. Sections 2001.141(a), (b), and (e), Government  
 2-23 Code, are amended to read as follows:

2-24 (a) A decision or order of a state agency that may become  
 2-25 final under Section 2001.144 that is adverse to any [a] party in a  
 2-26 contested case must be in writing and signed by a person authorized  
 2-27 by the agency to sign the agency decision or order [stated in the  
 2-28 record].

2-29 (b) A decision or order that may become final under Section  
 2-30 2001.144 must include findings of fact and conclusions of law,  
 2-31 separately stated.

2-32 (e) If a party submits under a state agency rule proposed  
 2-33 findings of fact or conclusions of law, the decision or order shall  
 2-34 include a ruling on each proposed finding or conclusion.

2-35 SECTION 4. Section 2001.142, Government Code, is amended to  
 2-36 read as follows:

2-37 Sec. 2001.142. NOTIFICATION OF DECISIONS AND ORDERS.

2-38 (a) A state agency shall notify each party to [in] a contested case  
 2-39 [shall be notified either personally or by first class mail] of any  
 2-40 decision or order of the agency in the following manner:

2-41 (1) personally;

2-42 (2) if agreed to by the party to be notified, by  
 2-43 electronic means sent to the current e-mail address or telecopier  
 2-44 number of the party's attorney of record or of the party if the  
 2-45 party is not represented by counsel; or

2-46 (3) by first class, certified, or registered mail sent  
 2-47 to the last known address of the party's attorney of record or of  
 2-48 the party if the party is not represented by counsel.

2-49 (b) When a decision or order [On issuance] in a contested  
 2-50 case [of a decision] that may become final under Section 2001.144 is  
 2-51 signed or when an order ruling on a motion for rehearing is signed,  
 2-52 a state agency shall deliver or send a copy of the decision or order  
 2-53 to each party in accordance with Subsection (a). The state agency  
 2-54 shall keep a record documenting the provision of the notice  
 2-55 provided to each party in accordance with Subsection (a) [by first  
 2-56 class mail to the attorneys of record and shall keep an appropriate  
 2-57 record of the mailing. If a party is not represented by an attorney  
 2-58 of record, the state agency shall send a copy of the decision or  
 2-59 order by first class mail to the party and shall keep an appropriate  
 2-60 record of the mailing].

2-61 (c) If an adversely affected party or the party's attorney  
 2-62 of record does not receive the notice required by Subsections (a)  
 2-63 and (b) or acquire actual knowledge of a signed decision or order  
 2-64 before the 15th day after the date the decision or order is signed,  
 2-65 a period specified by or agreed to under Section 2001.144(a),  
 2-66 2001.146, 2001.147, or 2001.176(a) relating to a decision or order  
 2-67 or motion for rehearing begins, with respect to that party, on the  
 2-68 date the party receives the notice or acquires actual knowledge of  
 2-69 the signed decision or order, whichever occurs first. The period

3-1 may not begin earlier than the 15th day or later than the 90th day  
3-2 after the date the decision or order was signed [A party or attorney  
3-3 of record notified by mail under Subsection (b) is presumed to have  
3-4 been notified on the third day after the date on which the notice is  
3-5 mailed].

3-6 (d) To establish a revised period under Subsection (c), the  
3-7 adversely affected party must prove, on sworn motion and notice,  
3-8 that the date the party received notice from the state agency or  
3-9 acquired actual knowledge of the signing of the decision or order  
3-10 was after the 14th day after the date the decision or order was  
3-11 signed.

3-12 (e) The state agency must grant or deny the sworn motion not  
3-13 later than the date of the agency's governing board's next meeting  
3-14 or, for a state agency without a governing board with  
3-15 decision-making authority in contested cases, not later than the  
3-16 10th day after the date the agency receives the sworn motion.

3-17 (f) If the state agency fails to grant or deny the motion at  
3-18 the next meeting or before the 10th day after the date the agency  
3-19 receives the motion, as appropriate, the motion is considered  
3-20 granted.

3-21 (g) If the sworn motion filed under Subsection (d) is  
3-22 granted with respect to the party filing that motion, all the  
3-23 periods specified by or agreed to under Section 2001.144(a),  
3-24 2001.146, 2001.147, or 2001.176(a) relating to a decision or order,  
3-25 or motion for rehearing, shall begin on the date specified in the  
3-26 sworn motion that the party first received the notice required by  
3-27 Subsections (a) and (b) or acquired actual knowledge of the signed  
3-28 decision or order. The date specified in the sworn motion shall be  
3-29 considered the date the decision or order was signed.

3-30 SECTION 5. The heading to Section 2001.143, Government  
3-31 Code, is amended to read as follows:

3-32 Sec. 2001.143. TIME OF [RENDERING] DECISION.

3-33 SECTION 6. Sections 2001.143(a) and (b), Government Code,  
3-34 are amended to read as follows:

3-35 (a) A decision or order that may become final under Section  
3-36 2001.144 in a contested case should [~~must~~] be signed [~~rendered~~] not  
3-37 later than the 60th day after the date on which the hearing is  
3-38 finally closed.

3-39 (b) In a contested case heard by other than a majority of the  
3-40 officials of a state agency, the agency or the person who conducts  
3-41 the contested case hearing may extend the period in which the  
3-42 decision or order may be signed [~~issued~~].

3-43 SECTION 7. Section 2001.144, Government Code, is amended to  
3-44 read as follows:

3-45 Sec. 2001.144. DECISIONS OR ORDERS; WHEN FINAL. (a) A  
3-46 decision or order in a contested case is final:

3-47 (1) if a motion for rehearing is not filed on time, on  
3-48 the expiration of the period for filing a motion for rehearing;

3-49 (2) if a motion for rehearing is filed on time, on the  
3-50 date:

3-51 (A) the order overruling the motion for rehearing  
3-52 is signed [~~rendered~~]; or

3-53 (B) the motion is overruled by operation of law;

3-54 (3) if a state agency finds that an imminent peril to  
3-55 the public health, safety, or welfare requires immediate effect of  
3-56 a decision or order, on the date the decision or order is signed,  
3-57 provided that the agency incorporates in the decision or order a  
3-58 factual and legal basis establishing an imminent peril to the  
3-59 public health, safety, or welfare [~~rendered~~]; or

3-60 (4) on:

3-61 (A) the date specified in the decision or order  
3-62 for a case in which all parties agree to the specified date in  
3-63 writing or on the record; or

3-64 (B) [~~7~~] if the agreed specified date is [~~not~~]  
3-65 before the date the decision or order is signed, the date the  
3-66 decision or order is signed [~~or later than the 20th day after the~~  
3-67 ~~date the order was rendered~~].

3-68 (b) If a decision or order is final under Subsection (a)(3),  
3-69 a state agency must recite in the decision or order the finding made

4-1 under Subsection (a)(3) and the fact that the decision or order is  
 4-2 final and effective on the date signed [~~rendered~~].

4-3 SECTION 8. Section 2001.145(b), Government Code, is amended  
 4-4 to read as follows:

4-5 (b) A decision or order that is final under Section  
 4-6 2001.144(a)(2), (3), or (4) is appealable.

4-7 SECTION 9. Section 2001.146, Government Code, is amended by  
 4-8 amending Subsections (a), (b), (c), (e), and (f) and adding  
 4-9 Subsections (g), (h), and (i) to read as follows:

4-10 (a) A motion for rehearing in a contested case must be filed  
 4-11 by a party not later than the 25th [~~20th~~] day after the date [~~on~~  
 4-12 ~~which~~] the decision or order that is the subject of the motion is  
 4-13 signed, unless the time for filing the motion for rehearing has been  
 4-14 extended under Section 2001.142, by an agreement under Section  
 4-15 2001.147, or by a written state agency order issued under  
 4-16 Subsection (e). On filing of the motion for rehearing, copies of  
 4-17 the motion shall be sent to all other parties using the notification  
 4-18 procedures specified by Section 2001.142(a) [party or the party's  
 4-19 attorney of record is notified as required by Section 2001.142 of a  
 4-20 decision or order that may become final under Section 2001.144].

4-21 (b) A party must file with the state agency a reply, if any,  
 4-22 to a motion for rehearing [must be filed with the state agency] not  
 4-23 later than the 40th [~~30th~~] day after the date [~~on which the party or~~  
 4-24 ~~the party's attorney of record is notified as required by Section~~  
 4-25 ~~2001.142 of]~~ the decision or order that is the subject of the motion  
 4-26 is signed, or not later than the 10th day after the date a motion for  
 4-27 rehearing is filed if the time for filing the motion for rehearing  
 4-28 has been extended by an agreement under Section 2001.147 or by a  
 4-29 written state agency order under Subsection (e). On filing of the  
 4-30 reply, copies of the reply shall be sent to all other parties using  
 4-31 the notification procedures specified by Section 2001.142(a) [or  
 4-32 order that may become final under Section 2001.144].

4-33 (c) A state agency shall act on a motion for rehearing not  
 4-34 later than the 55th [~~45th~~] day after the date [~~on which the party or~~  
 4-35 ~~the party's attorney of record is notified as required by Section~~  
 4-36 ~~2001.142 of]~~ the decision or order that is the subject of the motion  
 4-37 is signed [that may become final under Section 2001.144] or the  
 4-38 motion for rehearing is overruled by operation of law.

4-39 (e) A state agency may, on its own initiative or on the  
 4-40 motion of any party for cause shown, by written order extend the  
 4-41 time for filing a motion or reply or taking agency action under this  
 4-42 section, provided that the agency extends the time or takes the  
 4-43 action not later than the 10th day after the date the period for  
 4-44 filing a motion or reply or taking agency action expires. An[~~7~~  
 4-45 ~~except that an] extension may not extend the period for agency~~  
 4-46 ~~action beyond the 100th~~ [~~90th~~] day after the date [~~on which the~~  
 4-47 ~~party or the party's attorney of record is notified as required by~~  
 4-48 ~~Section 2001.142 of]~~ the decision or order that is the subject of  
 4-49 the motion is signed [that may become final under Section  
 4-50 2001.144].

4-51 (f) In the event of an extension, a motion for rehearing is  
 4-52 overruled by operation of law on the date fixed by the order or, in  
 4-53 the absence of a fixed date, the 100th day [~~90 days~~] after the date  
 4-54 [~~on which the party or the party's attorney of record is notified as~~  
 4-55 ~~required by Section 2001.142 of]~~ the decision or order that is the  
 4-56 subject of the motion is signed [that may become final under Section  
 4-57 2001.144].

4-58 (g) A motion for rehearing must identify with particularity  
 4-59 findings of fact or conclusions of law that are the subject of the  
 4-60 complaint and any evidentiary or legal ruling claimed to be  
 4-61 erroneous. The motion must also state the legal and factual basis  
 4-62 for the claimed error.

4-63 (h) A subsequent motion for rehearing is not required after  
 4-64 a state agency rules on a motion for rehearing unless the order  
 4-65 disposing of the original motion for rehearing:

4-66 (1) modifies, corrects, or reforms in any respect the  
 4-67 decision or order that is the subject of the complaint, other than a  
 4-68 typographical, grammatical, or other clerical change identified as  
 4-69 such by the agency in the order, including any modification,

5-1 correction, or reformation that does not change the outcome of the  
5-2 contested case; or

5-3 (2) vacates the decision or order that is the subject  
5-4 of the motion and provides for a new decision or order.

5-5 (i) A subsequent motion for rehearing required by  
5-6 Subsection (h) must be filed not later than the 20th day after the  
5-7 date the order disposing of the original motion for rehearing is  
5-8 signed.

5-9 SECTION 10. Section 2001.176(a), Government Code, is  
5-10 amended to read as follows:

5-11 (a) A person initiates judicial review in a contested case  
5-12 by filing a petition not later than the 30th day after the date [~~on~~  
5-13 ~~which~~] the decision or order that is the subject of complaint is  
5-14 final and appealable. In a contested case in which a motion for  
5-15 rehearing is a prerequisite for seeking judicial review, a  
5-16 prematurely filed petition is effective to initiate judicial review  
5-17 and is considered to be filed:

5-18 (1) on the date the last timely motion for rehearing is  
5-19 overruled; and

5-20 (2) after the motion is overruled.

5-21 SECTION 11. The changes in law made by this Act to Chapter  
5-22 2001, Government Code, apply only to an administrative hearing that  
5-23 is set by the State Office of Administrative Hearings, or another  
5-24 state agency conducting an administrative hearing, on or after the  
5-25 effective date of this Act. A hearing set before the effective date  
5-26 of this Act, or any decision issued or appeal from the hearing, is  
5-27 governed by the law in effect when the hearing was set, and the  
5-28 former law is continued in effect for that purpose.

5-29 SECTION 12. This Act takes effect September 1, 2015.

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