

BILL ANALYSIS

S.B. 1446
By: Estes
State Affairs
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties contend that recent reforms made to the Administrative Procedures Act resulted in several inadvertent ambiguities with regard to the procedures for handling a contested case that should be clarified. S.B. 1446 seeks to revise that act to clarify those ambiguities and make certain other changes.

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. 1446 amends the Government Code to revise the required contents of a hearing notice in a contested case under the Administrative Procedure Act to provide the option for the notice to include an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency as an alternative to including a short, plain statement of the factual matters asserted. The bill makes the requirement for a state agency to amend such a hearing notice to refer to a section of a statute or rule not previously referenced in the notice on which the agency intends to rely not later than the seventh day before the date set for the hearing if the agency has the burden of proof in the proceeding applicable also to the amendment of a complaint or petition, if applicable.

S.B. 1446 makes a provision establishing that a state agency's failure to comply with certain requirements before instituting an agency proceeding regarding a revocation, suspension, annulment, or withdrawal of a license constitutes prejudice to the substantial rights of the license holder in a suit for judicial review of a final decision or order of the agency brought by the license holder inapplicable if the court determines that the license holder waived the opportunity to show compliance with all requirements of law for the retention of the license.

S.B. 1446 includes service by a method required under a state agency's rules or orders for a party to serve copies of pleadings in a contested case among the methods of service the state agency may use in notifying each party to a contested case of any decision or order of the agency. The bill changes the latest date on which a period specified by or agreed to under certain statutory provisions relating to a decision or order or motion for rehearing in a contested case may begin if an adversely affected party or the party's attorney of record does not receive certain required notice or acquire actual knowledge of a decision or order before the 15th day after the date the decision or order is signed from the 90th day after the date the decision or order was signed to

the 45th day after that date. The bill clarifies that the beginning date of that period may be the date on which the adversely affected party's attorney of record receives the notice or acquires actual knowledge of the signed decision or order as an alternative to the date on which the party receives the notice or acquires that knowledge.

S.B. 1446 includes among the matters that the adversely affected party must prove on sworn motion and notice to establish such a revised period relating to a decision or order or motion for rehearing in a contested case that the adversely affected party exercised due diligence by keeping the state agency and all other parties to the contested case apprised of the current mailing address and any electronic contact information for the adversely affected party or the adversely affected party's attorney of record and that the adversely affected party and the party's attorney of record did not take any action that impeded or prevented receipt of notice of the signing of the decision or order. The bill clarifies that the required proof regarding the date the party first received notice or acquired actual knowledge of the signing of the decision or order may refer to such receipt or knowledge acquisition by the party's attorney of record.

S.B. 1446 adds to the requirement that a state agency grant or deny an adversely affected party's sworn motion to establish a revised period by a prescribed deadline the option for a person authorized to act for the agency to perform such duty. The bill clarifies the applicability of provisions providing for the date on which the specified periods relating to a decision or order or motion for rehearing begin for the movant if the sworn motion to establish a revised period is granted and establishes that the timely filing of a sworn motion for rehearing under provisions relating to the establishment of a revised period extends the period for agency action on any motion for rehearing until the 100th day after the date the decision or order subject to the motion for rehearing is signed. The bill specifies that the date on which a decision or order in a contested case becomes final if a motion for rehearing is timely filed is the date the order overruling the latest filed motion for rehearing is signed or the date the latest filed motion for rehearing is overruled by operation of law.

S.B. 1446 specifies that the party responsible for sending copies of a motion for rehearing in a contested case to all other parties is the movant and that the party responsible for sending copies of a reply to a motion for rehearing to all other parties is the party filing the reply. The bill authorizes a person authorized to act for a state agency, by written order and on the person's own initiative or on the motion of any party for cause shown, to extend the time for filing a motion or reply or taking agency action under provisions relating to the procedures for motions for rehearing in a contested case, subject to certain conditions. The bill removes a requirement relating to the deadline for filing a subsequent motion for rehearing and instead establishes that the time limits and other requirements for filing a subsequent motion for rehearing, a reply to the subsequent motion for rehearing, and a ruling on the subsequent motion for rehearing are governed by specified provisions of the Administrative Procedure Act.

EFFECTIVE DATE

September 1, 2017.