

By: Estes
(Clardy)

S.B. No. 1446

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. Sections 2001.052(a) and (b), Government Code, are amended to read as follows:

(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) either:

(A) a short, plain statement of the factual matters asserted; or

(B) an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.

(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

1 seven days before the date set for the hearing. In a proceeding in
2 which the state agency has the burden of proof, a state agency that
3 intends to rely on a section of a statute or rule not previously
4 referenced in the notice of hearing must amend the notice, or the
5 complaint or petition, if applicable, to refer to the section of the
6 statute or rule not later than the seventh day before the date set
7 for the hearing. This subsection does not prohibit the state agency
8 from filing an amendment during the hearing of a contested case
9 provided the opposing party is granted a continuance of at least
10 seven days to prepare its case on request of the opposing party.

11 SECTION 2. Section 2001.054(e), Government Code, is amended
12 to read as follows:

13 (e) In a suit for judicial review of a final decision or
14 order of a state agency brought by a license holder, the agency's
15 failure to comply with Subsection (c) shall constitute prejudice to
16 the substantial rights of the license holder under Section
17 2001.174(2) unless the court determines that the failure did not
18 unfairly surprise and prejudice the license holder or that the
19 license holder waived the opportunity provided in Subsection (c)(2)
20 to show compliance with all requirements of law for the retention of
21 the license.

22 SECTION 3. Sections 2001.142(a), (c), (d), (e), (f), and
23 (g), Government Code, are amended to read as follows:

24 (a) A state agency shall notify each party to a contested
25 case of any decision or order of the agency using at least one of the
26 following methods of service [~~in the following manner~~]:

27 (1) personal service [~~personally~~];

1 (2) if agreed to by the party to be notified, service
2 by electronic means sent to the current e-mail address or facsimile
3 [~~telecopier~~] number of the party's attorney of record or of the
4 party if the party is not represented by counsel; [~~or~~]

5 (3) service by first class, certified, or registered
6 mail sent to the last known address of the party's attorney of
7 record or of the party if the party is not represented by counsel;
8 or

9 (4) service by a method required under the state
10 agency's rules or orders for a party to serve copies of pleadings in
11 a contested case.

12 (c) If an adversely affected party or the party's attorney
13 of record does not receive the notice required by Subsections (a)
14 and (b) or acquire actual knowledge of a signed decision or order
15 before the 15th day after the date the decision or order is signed,
16 a period specified by or agreed to under Section 2001.144(a),
17 2001.146, 2001.147, or 2001.176(a) relating to a decision or order
18 or motion for rehearing begins, with respect to that party, on the
19 date the party or the party's attorney of record receives the notice
20 or acquires actual knowledge of the signed decision or order,
21 whichever occurs first. The period may not begin earlier than the
22 15th day or later than the 45th [~~90th~~] day after the date the
23 decision or order was signed.

24 (d) To establish a revised period under Subsection (c), the
25 adversely affected party must prove, on sworn motion and notice,
26 that:

27 (1) the date the party or the party's attorney of

1 record first received notice from the state agency or acquired
2 actual knowledge of the signing of the decision or order was after
3 the 14th day after the date the decision or order was signed;

4 (2) the adversely affected party exercised due
5 diligence by keeping the state agency and all other parties to the
6 contested case apprised of the current mailing address and any
7 electronic contact information for the adversely affected party or
8 the adversely affected party's attorney of record; and

9 (3) the adversely affected party and the party's
10 attorney of record did not take any action that impeded or prevented
11 receipt of notice of the signing of the decision or order.

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

18 (f) If the state agency or a person authorized to act for the
19 agency fails to grant or deny the motion at the next meeting or
20 before the 10th day after the date the agency receives the motion,
21 as appropriate, the motion is considered granted.

22 (g) If a [the] sworn motion filed under Subsection (d) is
23 granted with respect to the adversely affected party filing that
24 motion, all the periods specified by or agreed to under Section
25 [2001.144\(a\)](#), [2001.146](#), [2001.147](#), or [2001.176\(a\)](#) relating to a
26 decision or order, or motion for rehearing, shall begin for the
27 movant on the date specified in the sworn motion that the movant or

1 the movant's attorney of record [~~party~~] first received the notice
2 required by Subsections (a) and (b) or acquired actual knowledge of
3 the signed decision or order. The date specified in the sworn
4 motion shall be considered the date the decision or order was signed
5 for the movant. The timely filing of a sworn motion for rehearing
6 under Subsection (d) extends the period for agency action on any
7 motion for rehearing until the 100th day after the date the decision
8 or order subject to the motion for rehearing is signed.

9 SECTION 4. Section 2001.144(a), Government Code, is amended
10 to read as follows:

11 (a) A decision or order in a contested case is final:

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

14 (2) if a motion for rehearing is timely filed [~~filed on~~
15 ~~time~~], on the date:

16 (A) the order overruling the latest filed motion
17 for rehearing is signed; or

18 (B) the latest filed motion for rehearing is
19 overruled by operation of law;

20 (3) if a state agency finds that an imminent peril to
21 the public health, safety, or welfare requires immediate effect of
22 a decision or order, on the date the decision or order is signed,
23 provided that the agency incorporates in the decision or order a
24 factual and legal basis establishing an imminent peril to the
25 public health, safety, or welfare; or

26 (4) on:

27 (A) the date specified in the decision or order

1 for a case in which all parties agree to the specified date in
2 writing or on the record; or

3 (B) if the agreed specified date is before the
4 date the decision or order is signed, the date the decision or order
5 is signed.

6 SECTION 5. Sections 2001.146(a), (b), (e), and (i),
7 Government Code, are amended to read as follows:

8 (a) A motion for rehearing in a contested case must be filed
9 by a party not later than the 25th day after the date the decision or
10 order that is the subject of the motion is signed, unless the time
11 for filing the motion for rehearing has been extended under Section
12 2001.142, by an agreement under Section 2001.147, or by a written
13 state agency order issued under Subsection (e). On filing ~~[of]~~ the
14 motion for rehearing, the movant shall send copies of the motion
15 ~~[shall be sent]~~ to all other parties using the notification methods
16 ~~[procedures]~~ specified by Section 2001.142(a).

17 (b) A party must file with the state agency a reply, if any,
18 to a motion for rehearing not later than the 40th day after the date
19 the decision or order that is the subject of the motion is signed,
20 or not later than the 10th day after the date a motion for rehearing
21 is filed if the time for filing the motion for rehearing has been
22 extended under Section 2001.142, by an agreement under Section
23 2001.147, or by a written state agency order under Subsection (e).
24 The party ~~[On]~~ filing ~~[of]~~ the reply shall send~~[r]~~ copies of the
25 reply ~~[shall be sent]~~ to all other parties using the notification
26 methods ~~[procedures]~~ specified by Section 2001.142(a).

27 (e) A state agency or a person authorized to act for the

1 agency may, on its own initiative or on the motion of any party for
2 cause shown, by written order extend the time for filing a motion or
3 reply or taking agency action under this section, provided that the
4 agency or person extends the time or takes the action not later than
5 the 10th day after the date the period for filing a motion or reply
6 or taking agency action expires. An extension may not extend the
7 period for agency action beyond the 100th day after the date the
8 decision or order that is the subject of the motion is signed.

9 (i) The time limits and other requirements for filing a
10 subsequent motion for rehearing, a reply to the subsequent motion
11 for rehearing, and a ruling on the subsequent motion for rehearing
12 are governed by this section and Sections 2001.142, 2001.144,
13 2001.145, and 2001.147 [~~A subsequent motion for rehearing required~~
14 ~~by Subsection (h) must be filed not later than the 20th day after~~
15 ~~the date the order disposing of the original motion for rehearing is~~
16 ~~signed].~~

17 SECTION 6. The changes in law made by this Act to Sections
18 2001.052 and 2001.054, Government Code, apply only to an
19 administrative proceeding or contested case that is initiated on or
20 after the effective date of this Act. An administrative proceeding
21 or contested case initiated before the effective date of this Act is
22 governed by the law in effect on the date the proceeding was
23 initiated, and the former law is continued in effect for that
24 purpose.

25 SECTION 7. The changes in law made by this Act to Sections
26 2001.142 and 2001.144, Government Code, apply only to an order or
27 decision made by a state agency in a contested case on or after the

1 effective date of this Act. An order or decision made in a
2 contested case before the effective date of this Act is governed by
3 the law in effect on the date the final order or decision was made,
4 and the former law is continued in effect for that purpose.

5 SECTION 8. This Act takes effect September 1, 2017.