

By: Estes

S.B. No. 1446

A BILL TO BE ENTITLED

AN ACT

relating to contested cases conducted under the Administrative Procedures 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) a short, plain statement of the factual matters asserted or incorporating by reference the factual allegations or assertions made in a complaint or petition filed with the state agency and attached to the notice of hearing.

(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 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

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

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

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

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

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

- 25 (1) personally;
- 26 (2) if agreed to by the party to be notified, by  
27 electronic means sent to the current e-mail address or facsimile

1 [~~telecopier~~] number of the party's attorney of record or of the  
2 party if the party is not represented by counsel; [~~or~~]

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

6 (4) a method specified in the state agency's rules or  
7 orders by which parties must serve copies of pleadings in a  
8 contested case.

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

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

24 (1) the date the party or the party's attorney of  
25 record first received notice from the state agency or acquired  
26 actual knowledge of the signing of the decision or order was after  
27 the 14th day after the date the decision or order was signed;

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

6           (3) neither the adversely affected party nor the  
7 party's attorney of record took any action that impeded or  
8 prevented receipt of notice of the signing of the decision or order.

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

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

19           (g) If a [the] sworn motion filed under Subsection (d) is  
20 granted with respect to the adversely affected party filing that  
21 motion, then all the periods specified by or agreed to under Section  
22 2001.144(a), 2001.146, 2001.147, or 2001.176(a) relating to a  
23 decision or order, or motion for rehearing, shall begin, with  
24 respect to the movant, on the date specified in the sworn motion  
25 that the movant or the movant's attorney of record ~~[party]~~ first  
26 received the notice required by Subsections (a) and (b) or acquired  
27 actual knowledge of the signed decision or order. The date

1 specified in the sworn motion shall be considered the date the  
2 decision or order was signed with respect to the movant. With  
3 respect to motions for rehearing, the timely filing of a sworn  
4 motion pursuant to Subsection (d) shall extend the period for  
5 taking agency action on any motion for rehearing to the 100th day  
6 after the date the decision or order that is the subject of the  
7 motion for rehearing is signed.

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

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

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

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

15 (A) the order overruling the last-filed motion  
16 for rehearing is signed; or

17 (B) the last-filed motion for rehearing is  
18 overruled by operation of law;

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

25 (4) on:

26 (A) the date specified in the decision or order  
27 for a case in which all parties agree to the specified date in

1 writing or on the record; or

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

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

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

16 (b) A party must file with the state agency a reply, if any,  
17 to a motion for rehearing not later than the 40th day after the date  
18 the decision or order that is the subject of the motion is signed,  
19 or not later than the 10th day after the date a motion for rehearing  
20 is filed if the time for filing the motion for rehearing has been  
21 extended under Section 2001.142, by an agreement under Section  
22 2001.147, or by a written state agency order under Subsection (e).  
23 On filing ~~[of]~~ the reply, the party filing the reply shall send  
24 copies of the reply ~~[shall be sent]~~ to all other parties using the  
25 notification methods ~~[procedures]~~ specified by Section  
26 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 extends the time or takes the action not later than the 10th  
5 day after the date the period for filing a motion or reply or taking  
6 agency action expires. An extension may not extend the period for  
7 agency action beyond the 100th day after the date the decision or  
8 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 Sections 1 and 2 of  
18 this Act to Chapter 2001, Government Code, apply only to an  
19 administrative proceeding or a contested case that is initiated on  
20 or after the effective date of this Act. An administrative  
21 proceeding or a contested case that is initiated before the  
22 effective date of this Act is governed by the law in effect when  
23 such proceeding was initiated, and the former law is continued in  
24 effect for that purpose.

25 SECTION 7. The changes in law made by Sections 3 and 4 of  
26 this Act to Chapter 2001, Government Code, apply only to orders or  
27 decisions 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 when the final order or decision was made, and the  
4 former law is continued in effect for that purpose.

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