

1-1 By: Estes S.B. No. 1446
1-2 (In the Senate - Filed March 8, 2017; March 20, 2017, read
1-3 first time and referred to Committee on State Affairs;
1-4 April 27, 2017, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 27, 2017,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

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

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 1446 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. Sections 2001.052(a) and (b), Government Code,
1-25 are amended to read as follows:

1-26 (a) Notice of a hearing in a contested case must include:

1-27 (1) a statement of the time, place, and nature of the
1-28 hearing;

1-29 (2) a statement of the legal authority and
1-30 jurisdiction under which the hearing is to be held;

1-31 (3) a reference to the particular sections of the
1-32 statutes and rules involved; and

1-33 (4) either:

1-34 (A) a short, plain statement of the factual
1-35 matters asserted; or

1-36 (B) an attachment that incorporates by reference
1-37 the factual matters asserted in the complaint or petition filed
1-38 with the state agency.

1-39 (b) If a state agency or other party is unable to state
1-40 factual matters in detail at the time notice under this section is
1-41 served, an initial notice may be limited to a statement of the
1-42 issues involved. On timely written application, a more definite
1-43 and detailed statement of the facts shall be furnished not less than
1-44 seven days before the date set for the hearing. In a proceeding in
1-45 which the state agency has the burden of proof, a state agency that
1-46 intends to rely on a section of a statute or rule not previously
1-47 referenced in the notice of hearing must amend the notice, or the
1-48 complaint or petition, if applicable, to refer to the section of the
1-49 statute or rule not later than the seventh day before the date set
1-50 for the hearing. This subsection does not prohibit the state agency
1-51 from filing an amendment during the hearing of a contested case
1-52 provided the opposing party is granted a continuance of at least
1-53 seven days to prepare its case on request of the opposing party.

1-54 SECTION 2. Section 2001.054(e), Government Code, is amended
1-55 to read as follows:

1-56 (e) In a suit for judicial review of a final decision or
1-57 order of a state agency brought by a license holder, the agency's
1-58 failure to comply with Subsection (c) shall constitute prejudice to
1-59 the substantial rights of the license holder under Section
1-60 2001.174(2) unless the court determines that the failure did not

2-1 unfairly surprise and prejudice the license holder or that the
 2-2 license holder waived the opportunity provided in Subsection (c)(2)
 2-3 to show compliance with all requirements of law for the retention of
 2-4 the license.

2-5 SECTION 3. Sections 2001.142(a), (c), (d), (e), (f), and
 2-6 (g), Government Code, are amended to read as follows:

2-7 (a) A state agency shall notify each party to a contested
 2-8 case of any decision or order of the agency using at least one of the
 2-9 following methods of service [in the following manner]:

2-10 (1) personal service [personally];

2-11 (2) if agreed to by the party to be notified, service
 2-12 by electronic means sent to the current e-mail address or facsimile
 2-13 [~~telecopier~~] number of the party's attorney of record or of the
 2-14 party if the party is not represented by counsel; [~~or~~]

2-15 (3) service by first class, certified, or registered
 2-16 mail sent to the last known address of the party's attorney of
 2-17 record or of the party if the party is not represented by counsel;
 2-18 or

2-19 (4) service by a method required under the state
 2-20 agency's rules or orders for a party to serve copies of pleadings in
 2-21 a contested case.

2-22 (c) If an adversely affected party or the party's attorney
 2-23 of record does not receive the notice required by Subsections (a)
 2-24 and (b) or acquire actual knowledge of a signed decision or order
 2-25 before the 15th day after the date the decision or order is signed,
 2-26 a period specified by or agreed to under Section 2001.144(a),
 2-27 2001.146, 2001.147, or 2001.176(a) relating to a decision or order
 2-28 or motion for rehearing begins, with respect to that party, on the
 2-29 date the party or the party's attorney of record receives the notice
 2-30 or acquires actual knowledge of the signed decision or order,
 2-31 whichever occurs first. The period may not begin earlier than the
 2-32 15th day or later than the 45th [90th] day after the date the
 2-33 decision or order was signed.

2-34 (d) To establish a revised period under Subsection (c), the
 2-35 adversely affected party must prove, on sworn motion and notice,
 2-36 that:

2-37 (1) the date the party or the party's attorney of
 2-38 record first received notice from the state agency or acquired
 2-39 actual knowledge of the signing of the decision or order was after
 2-40 the 14th day after the date the decision or order was signed;

2-41 (2) the adversely affected party exercised due
 2-42 diligence by keeping the state agency and all other parties to the
 2-43 contested case apprised of the current mailing address and any
 2-44 electronic contact information for the adversely affected party or
 2-45 the adversely affected party's attorney of record; and

2-46 (3) the adversely affected party and the party's
 2-47 attorney of record did not take any action that impeded or prevented
 2-48 receipt of notice of the signing of the decision or order.

2-49 (e) The state agency or a person authorized to act for the
 2-50 agency must grant or deny the sworn motion not later than the date
 2-51 of the agency's governing board's next meeting or, for a state
 2-52 agency without a governing board with decision-making authority in
 2-53 contested cases, not later than the 10th day after the date the
 2-54 agency receives the sworn motion.

2-55 (f) If the state agency or a person authorized to act for the
 2-56 agency fails to grant or deny the motion at the next meeting or
 2-57 before the 10th day after the date the agency receives the motion,
 2-58 as appropriate, the motion is considered granted.

2-59 (g) If a [~~the~~] sworn motion filed under Subsection (d) is
 2-60 granted with respect to the adversely affected party filing that
 2-61 motion, all the periods specified by or agreed to under Section
 2-62 2001.144(a), 2001.146, 2001.147, or 2001.176(a) relating to a
 2-63 decision or order, or motion for rehearing, shall begin for the
 2-64 movant on the date specified in the sworn motion that the movant or
 2-65 the movant's attorney of record [party] first received the notice
 2-66 required by Subsections (a) and (b) or acquired actual knowledge of
 2-67 the signed decision or order. The date specified in the sworn
 2-68 motion shall be considered the date the decision or order was signed
 2-69 for the movant. The timely filing of a sworn motion for rehearing

3-1 under Subsection (d) extends the period for agency action on any
 3-2 motion for rehearing until the 100th day after the date the decision
 3-3 or order subject to the motion for rehearing is signed.

3-4 SECTION 4. Section 2001.144(a), Government Code, is amended
 3-5 to read as follows:

3-6 (a) A decision or order in a contested case is final:

3-7 (1) if a motion for rehearing is not filed on time, on
 3-8 the expiration of the period for filing a motion for rehearing;

3-9 (2) if a motion for rehearing is timely filed [~~filed on~~
 3-10 ~~time~~], on the date:

3-11 (A) the order overruling the latest filed motion
 3-12 for rehearing is signed; or

3-13 (B) the latest filed motion for rehearing is
 3-14 overruled by operation of law;

3-15 (3) if a state agency finds that an imminent peril to
 3-16 the public health, safety, or welfare requires immediate effect of
 3-17 a decision or order, on the date the decision or order is signed,
 3-18 provided that the agency incorporates in the decision or order a
 3-19 factual and legal basis establishing an imminent peril to the
 3-20 public health, safety, or welfare; or

3-21 (4) on:

3-22 (A) the date specified in the decision or order
 3-23 for a case in which all parties agree to the specified date in
 3-24 writing or on the record; or

3-25 (B) if the agreed specified date is before the
 3-26 date the decision or order is signed, the date the decision or order
 3-27 is signed.

3-28 SECTION 5. Sections 2001.146(a), (b), (e), and (i),
 3-29 Government Code, are amended to read as follows:

3-30 (a) A motion for rehearing in a contested case must be filed
 3-31 by a party not later than the 25th day after the date the decision or
 3-32 order that is the subject of the motion is signed, unless the time
 3-33 for filing the motion for rehearing has been extended under Section
 3-34 2001.142, by an agreement under Section 2001.147, or by a written
 3-35 state agency order issued under Subsection (e). On filing [~~of~~] the
 3-36 motion for rehearing, the movant shall send copies of the motion
 3-37 [~~shall be sent~~] to all other parties using the notification methods
 3-38 [~~procedures~~] specified by Section 2001.142(a).

3-39 (b) A party must file with the state agency a reply, if any,
 3-40 to a motion for rehearing not later than the 40th day after the date
 3-41 the decision or order that is the subject of the motion is signed,
 3-42 or not later than the 10th day after the date a motion for rehearing
 3-43 is filed if the time for filing the motion for rehearing has been
 3-44 extended under Section 2001.142, by an agreement under Section
 3-45 2001.147, or by a written state agency order under Subsection (e).
 3-46 The party [On] filing [of] the reply shall send[er] copies of the
 3-47 reply [shall be sent] to all other parties using the notification
 3-48 methods [procedures] specified by Section 2001.142(a).

3-49 (e) A state agency or a person authorized to act for the
 3-50 agency may, on its own initiative or on the motion of any party for
 3-51 cause shown, by written order extend the time for filing a motion or
 3-52 reply or taking agency action under this section, provided that the
 3-53 agency or person extends the time or takes the action not later than
 3-54 the 10th day after the date the period for filing a motion or reply
 3-55 or taking agency action expires. An extension may not extend the
 3-56 period for agency action beyond the 100th day after the date the
 3-57 decision or order that is the subject of the motion is signed.

3-58 (i) The time limits and other requirements for filing a
 3-59 subsequent motion for rehearing, a reply to the subsequent motion
 3-60 for rehearing, and a ruling on the subsequent motion for rehearing
 3-61 are governed by this section and Sections 2001.142, 2001.144,
 3-62 2001.145, and 2001.147 [A subsequent motion for rehearing required
 3-63 by Subsection (h) must be filed not later than the 20th day after
 3-64 the date the order disposing of the original motion for rehearing is
 3-65 signed].

3-66 SECTION 6. The changes in law made by this Act to Sections
 3-67 2001.052 and 2001.054, Government Code, apply only to an
 3-68 administrative proceeding or contested case that is initiated on or
 3-69 after the effective date of this Act. An administrative proceeding

4-1 or contested case initiated before the effective date of this Act is
4-2 governed by the law in effect on the date the proceeding was
4-3 initiated, and the former law is continued in effect for that
4-4 purpose.

4-5 SECTION 7. The changes in law made by this Act to Sections
4-6 2001.142 and 2001.144, Government Code, apply only to an order or
4-7 decision made by a state agency in a contested case on or after the
4-8 effective date of this Act. An order or decision made in a
4-9 contested case before the effective date of this Act is governed by
4-10 the law in effect on the date the final order or decision was made,
4-11 and the former law is continued in effect for that purpose.

4-12 SECTION 8. This Act takes effect September 1, 2017.

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