86R2051 CJC-F

By:  West S.B. No. 122

A BILL TO BE ENTITLED

AN ACT

relating to the procedure by which a state agency considers legislative intent when adopting an agency rule.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 2001.032, Government Code, is amended to read as follows:

Sec. 2001.032.  CONSIDERATION OF LEGISLATIVE INTENT [~~REVIEW~~]. (a) In this section, a reference to the law under which a rule is or would be adopted includes a reference to the law that authorizes a state agency to adopt the rule and to the law that the rule would implement or enforce.

(b)  Before a state agency gives notice of its intention to adopt a rule under Sections 2001.023 and 2001.024, the agency must inform each author and sponsor of legislation that became law and that added, amended, or clearly affected the law under which the rule would be adopted, if the person is still a member of the legislature, that the adoption of a rule related to the member's legislation is being considered.

(c)  The state agency shall deliver a copy of the notice of the proposed rule required by Sections 2001.023 and 2001.024 to each member of the legislature described by Subsection (b) concurrently with the agency's filing of the notice with the secretary of state. Not later than the seventh day before the date the state agency considers the rule for final adoption, the agency shall deliver to the member a copy of the rule as proposed for final adoption if the text of the rule differs from the text of the proposed rule published under Section 2001.024 and shall solicit comment from the member regarding the changed text of the proposed rule. The state agency shall:

(1)  timely inform the member of the time and place of any public hearing or informal conference held in connection with the proposed rule and allow the member to participate; and

(2)  invite the member to participate as a member of any advisory committee the state agency appoints in connection with the proposed rule.

(d)  The state agency shall deliver a copy of an emergency rule adopted under Section 2001.034 and the written reasons for its adoption to each member of the legislature described by Subsection (b) with respect to the law under which the emergency rule was adopted concurrently with the agency's filing of the rule and the reasons for its adoption with the secretary of state. If the state agency gives an abbreviated notice or conducts a hearing in connection with the adoption of the emergency rule, the agency shall promptly provide to the member a copy of the notice and shall timely inform the member of the time and place of any hearing.

(e)  If a dispute arises between the state agency and a member of the legislature described by Subsection (b) with regard to the legislature's intent in enacting or otherwise affecting the law under which the rule would be adopted, the state agency or the member may request the attorney general to issue an opinion to resolve the dispute. If an opinion is requested under this subsection before the date on which the rule would otherwise take effect, the rule may not take effect unless the attorney general issues an opinion that determines the rule as finally proposed for adoption is consistent with the legislature's intent in enacting or otherwise affecting the law under which the rule would be adopted. [~~Each house of the legislature by rule shall establish a process under which the presiding officer of each house refers each proposed state agency rule to the appropriate standing committee for review before the rule is adopted.~~

[~~(b)  On receiving a written request from the lieutenant governor, a member of the legislature, or a legislative agency, the secretary of state shall provide the requestor with electronic notification of rulemaking filings by a state agency under Section 2001.023.~~

[~~(c)  On the vote of a majority of its members, a standing committee may send to a state agency a statement supporting or opposing adoption of a proposed rule.~~]

SECTION 2.  Section 402.042(b), Government Code, is amended to read as follows:

(b)  An opinion may be requested by:

(1)  the governor;

(2)  the head of a department of state government;

(3)  a head or board of a penal institution;

(4)  a head or board of an eleemosynary institution;

(5)  the head of a state board;

(6)  a regent or trustee of a state educational institution;

(7)  a member of the legislature in accordance with Section 2001.032;

(8)  a committee of a house of the legislature;

(9) [~~(8)~~]  a county auditor authorized by law; or

(10) [~~(9)~~]  the chairman of the governing board of a river authority.

SECTION 3.  Section 141.008(a), Health and Safety Code, is amended to read as follows:

(a)  The executive commissioner may adopt rules to implement this chapter. In adopting the rules the executive commissioner shall comply with Subchapter B, Chapter 2001, Government Code, including Sections 2001.032 [~~2001.032(b)~~] and 2001.033, Government Code. In developing the rules to be adopted by the executive commissioner, the department shall consult parents, youth camp operators, and appropriate public and private officials and organizations.

SECTION 4.  The change in law made by this Act applies only in relation to:

(1)  a state agency rule for which notice of the rule as proposed is first published in the Texas Register under Sections 2001.023 and 2001.024, Government Code, on or after October 1, 2019; or

(2)  an emergency rule adopted on or after September 15, 2019.

SECTION 5.  This Act takes effect September 1, 2019.