

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

1 shall deliver to the member a copy of the rule as proposed for final  
2 adoption if the text of the rule differs from the text of the  
3 proposed rule published under Section 2001.024 and shall solicit  
4 comment from the member regarding the changed text of the proposed  
5 rule. The state agency shall:

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

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

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

22 (e) If a dispute arises between the state agency and a  
23 member of the legislature described by Subsection (b) with regard  
24 to the legislature's intent in enacting or otherwise affecting the  
25 law under which the rule would be adopted, the state agency or the  
26 member may request the attorney general to issue an opinion to  
27 resolve the dispute. If an opinion is requested under this

1 subsection before the date on which the rule would otherwise take  
2 effect, the rule may not take effect unless the attorney general  
3 issues an opinion that determines the rule as finally proposed for  
4 adoption is consistent with the legislature's intent in enacting or  
5 otherwise affecting the law under which the rule would be adopted.  
6 ~~[Each house of the legislature by rule shall establish a process~~  
7 ~~under which the presiding officer of each house refers each~~  
8 ~~proposed state agency rule to the appropriate standing committee~~  
9 ~~for review before the rule is adopted.]~~

10 ~~[(b) On receiving a written request from the lieutenant~~  
11 ~~governor, a member of the legislature, or a legislative agency, the~~  
12 ~~secretary of state shall provide the requestor with electronic~~  
13 ~~notification of rulemaking filings by a state agency under Section~~  
14 ~~[2001.023](#).]~~

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

18 SECTION 2. Section [402.042](#)(b), Government Code, is amended  
19 to read as follows:

20 (b) An opinion may be requested by:

- 21 (1) the governor;
- 22 (2) the head of a department of state government;
- 23 (3) a head or board of a penal institution;
- 24 (4) a head or board of an eleemosynary institution;
- 25 (5) the head of a state board;
- 26 (6) a regent or trustee of a state educational
- 27 institution;

- 1           (7) a member of the legislature in accordance with  
2 Section 2001.032;  
3           (8) a committee of a house of the legislature;  
4           (9) [~~(8)~~] a county auditor authorized by law; or  
5           (10) [~~(9)~~] the chairman of the governing board of a  
6 river authority.

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

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

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

19           (1) a state agency rule for which notice of the rule as  
20 proposed is first published in the Texas Register under Sections  
21 2001.023 and 2001.024, Government Code, on or after October 1,  
22 2019; or

23           (2) an emergency rule adopted on or after September  
24 15, 2019.

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