

- SUBJECT:** Modifying administrative procedures for contested cases
- COMMITTEE:** State Affairs — favorable, without amendment
- VOTE:** 13 ayes — Cook, Giddings, Craddick, Farrar, Geren, Guillen, K. King, Kuempel, Meyer, Oliveira, Paddie, E. Rodriguez, Smithee
0 nays
- SENATE VOTE:** On final passage, May 2 — 31-0
- WITNESSES:** No public hearing
- BACKGROUND:** Government Code, sec. 2001.003 defines a "contested case" as a proceeding, including a ratemaking or licensing proceeding, in which legal rights, duties, or privileges of a party are to be determined by a state agency after an opportunity for adjudicative hearing.
- Notice required.** Sec. 2001.051 entitles each party in a contested case to notice and an opportunity for hearing. Sec. 2001.052(4) requires notice to include a short statement of the factual matters asserted.
- Sec. 2001.142(a) requires a state agency to notify each party to a contested case of any agency decision or order either personally or by contacting the party's attorney by mail, e-mail, or telecopier.
- Motion for rehearing.** Sec. 2001.142(c) establishes that if a party proves that the party did not receive notice or gain knowledge of a state agency decision or order within 14 days of the decision or order being signed, the party may submit a sworn motion for a revised period for rehearing. If granted, the period begins on the day the party receives notice or acquires knowledge of the decision or order, which may not be more than 90 days after the decision or order was signed. Sec. 2001.146(a) requires copies of a motion for rehearing to be sent to all other parties upon filing.
- Sec. 2001.146(i) prohibits subsequent motions for rehearing from being

filed later than 20 days after the order disposing of the original motion for rehearing was signed.

Licensing. Sec. 2001.054(c) prohibits a state agency from revoking, suspending, annulling, or withdrawing a license without providing prior notice of the facts or conduct alleged and an opportunity for the license holder to comply with the law to retain the license. Sec. 2001.054(e) provides that failure to comply with this requirement constitutes prejudice to the substantial rights of the license holder in a suit for judicial review, unless the failure to comply did not unfairly prejudice the license holder.

Observers have noted that ambiguities in current statute have created disagreements about administrative duties and procedures in contested cases, citing a need to clarify the responsibilities of parties to these cases.

DIGEST: SB 1446 would modify various administrative procedures related to contested cases.

Notice required. The bill would allow parties to satisfy the notice requirement for statement of facts by including with the required notice an attachment that described the factual matters asserted on the complaint or petition and incorporated these matters into the notice by reference.

The bill also would amend the list of methods by which state agencies could notify parties of a state agency decision or order to include personal service, or, if agreed to by the party to be notified, email, a fax, or a method required under the state agency's rules for serving copies of pleadings.

Motion for rehearing. The bill would prohibit a period for rehearing from beginning later than 45 days after the decision or order was signed, rather than 90 days under current law. The bill also would require the affected party to include in the sworn motion for rehearing proof that:

- the party exercised due diligence in keeping the agency informed of the appropriate mailing address and electronic contact

- information; and
- the party and the party's attorney did not take any action that impeded or prevented receipt of notice.

The bill would provide that the timely filing of a motion for rehearing would extend the period for agency action on a motion until 100 days after the decision or order in question was signed.

The bill would specify that, using the approved notification methods, the movant would be the party responsible for sending copies of the motion to all other parties upon filing and the party filing the reply would be responsible for sending copies of the reply to all other parties. A person authorized to act for a state agency, in addition to the state agency itself as established by current law, would be allowed to grant or deny a motion to establish a revised period.

The bill would remove the 20-day time limit on filing a subsequent motion for rehearing.

Licensing. The bill would specify that prejudice to the substantial rights of the license holder in a suit for judicial review was not present if the license holder declined the opportunity to comply with the law to retain the license.

Effective date. The bill would take effect September 1, 2017, and would apply only to a contested case, administrative proceeding, order, or decision initiated or made on or after that date.