

BILL ANALYSIS

Senate Research Center
78R10282 JRD-F

C.S.S.B. 95
By: West
Government Organization
4/7/2003
Committee Report (Substituted)

DIGEST AND PURPOSE

Currently, state agencies engaged in rulemaking do not consider legislative intent through an examination of the journal record. Also, regarding the rulemaking process, state agencies do not inform legislative authors and sponsors of rules created from their prospective bills and the agencies are only required to publish proposed rules related to legislation in the Texas Register. This leaves a potential gap between a legislator's intent and the implementation of the resulting bill. Since rules written by an agency heavily influence the way a piece of legislation affects Texas citizens, such rules should reflect the intent of the original legislation. However, under current law, agencies with broad rulemaking authority can interpret legislation in a way that could directly conflict with the intent of the legislator. C.S.S.B. 95 requires the state agency to inform each author and sponsor of a pending rule at the agency; deliver a copy of the rule to the member at least seven days before final adoption of the rule; ask for the member's comments; and invite the member to participate on any advisory committee.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 322, Government Code, by adding Section 322.015, as follows:

Sec. 322.015. LETTERS OF LEGISLATIVE INTENT. (a) Authorizes the Legislative Budget Board (LBB) to issue a letter to a state governmental entity clarifying or explaining meaning or legislative intent on certain matters.

(b) Provides that a state governmental entity, in interpreting a provision of law described by Subsection (a), is entitled to rely on a letter of legislative intent issued by LBB under this section.

SECTION 2. Amends Section 2001.032, Government Code, as follows:

Sec. 2001.032. New heading: CONSIDERATION OF LEGISLATIVE INTENT. (a) Provides that 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) Requires a state agency, before giving notice of its intention to adopt a rule under notice of appeal and content of notice, to inform each author and sponsor of the 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) Requires the state agency to deliver a copy of the notice of the proposed rule to each author and sponsor of the legislation with the agency's filing of the notice with the secretary of state. Requires the state agency, not later than the seventh day before

the date the agency considers the rule for final adoption, to deliver to the member a copy of the rules as proposed for final adoption if the text of the rule differs from the text of the proposed rule under Section 2001.024 and requires the agency to solicit comment from the member regarding the changed text of the proposed rule. Requires the state agency to take certain other actions.

(d) Requires the state agency to 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. Requires the state agency, if the agency gives an abbreviated notice or conducts a hearing in connection with the adoption of the emergency rule, to promptly furnish the member with a copy of the notice and the agency is required to timely inform the member of the time and place of the hearing.

(e) Authorizes the state agency or the member, 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, to request the attorney general to issue an opinion to resolve the dispute. Provides that 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.

SECTION 3. Amends Section 402.042(b), Government Code, to add a new subdivision to provide that a member of the legislature may request an opinion from the attorney general on a question affecting the public interest.

SECTION 4. Provides that the change in law made by this Act applies only in certain instances.

SECTION 5. Effective date: September 1, 2003.

SUMMARY OF COMMITTEE CHANGES

Changes the relating clause.

SECTION 1. Adds a new SECTION 1 to proposed text and renumbers subsequent SECTIONS accordingly.

SECTION 2. Redesignates proposed SECTION 1 as SECTION 2 and adds a new Subsection (e) to Section 2001.032, Government Code.

SECTION 3. Adds a new SECTION 3 to proposed text and renumbers subsequent SECTIONS accordingly.

SECTION 4. Adds new language to the enacting clause relating to the process of state agency rulemaking.