

BILL ANALYSIS

Senate Research Center

S.B. 1446
By: Estes
State Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2015, the legislature passed S.B. 1267, which reformed the Administrative Procedures Act to require more robust notice to parties to contested cases and eliminated procedural traps in the notice for rehearing process that had previously caused parties to lose their appellate rights based on technicalities. While S.B. 1267 has achieved these goals, a year and a half of applying its provisions in practice has revealed several ambiguities that administrative lawyers representing both private parties and agencies have indicated should be clarified. Additionally, it contained one provision designed to prevent a party that fails to receive notice of a decision or order from losing its appellate rights that is overly generous in the sense that its grace period lasts too long and does not expressly exclude parties that fail to receive notice as a result of their own conduct.

S.B. 1446 clarifies the ambiguities that a year and a half of applying S.B. 1267 have revealed. It also shortens the period during which a party that fails to receive notice of a decision or order through no fault of its own may file a motion for rehearing after the normal deadline from 90 days to 45 days. Lastly, it clarifies that parties that fail to receive notice as a result of their own conduct are not eligible for extension of the deadline. (Original Author's / Sponsor's Statement of Intent)

S.B. 1446 amends current law relating to contested cases conducted under the Administrative Procedures Act.

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 Sections 2001.052(a) and (b), Government Code, as follows:

- (a) Requires that notice of a hearing in a contested case include either a short, plain statement of the factual matters asserted or an attachment that incorporates by reference the factual matters asserted in the complaint or petition filed with the state agency.
- (b) Requires that a state agency that intends to rely on a section of a statute or rule not previously referenced in the notice of hearing, in a proceeding in which the state agency has the burden of proof, amend the notice, or the complaint or petition, if applicable, to refer to the section of the statute or rule not later than a certain date.

SECTION 2. Amends Section 2001.054(e), Government Code, as follows:

- (e) Requires that a state agency's failure to comply with Subsection (c) (relating to a revocation, suspension, annulment, or withdrawal of a license), in a suit for judicial review of a final decision or order of the agency brought by a license holder, constitute prejudice to the substantial rights of the license holder under Section 2001.174(2) (relating to requiring a court to reverse or remand the case for further proceedings if substantial rights of the appellant have been prejudiced) unless the court determines that the failure did not unfairly surprise and prejudice the license holder or that the license

holder waived the opportunity in Subsection (c)(2) (relating to providing that a revocation, suspension, annulment, or withdrawal of a license is not effective unless the license holder is given opportunity to show compliance) to show compliance with all requirements of law for the retention of the license.

SECTION 3. Amends Sections 2001.142(a), (c), (d), (e), (f), and (g), Government Code, as follows:

(a) Requires that a state agency notify each party to a contested case of any decision or order of the agency using at least one of the following methods of service, rather than in the following manner:

(1) personal service, rather than personally;

(2) and (3) makes nonsubstantive changes; or

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

(c) Provides that a specified period relating to a decision or order or motion for rehearing begins, with respect to that party, on the date the party or the party's attorney of record, rather than the party, receives the notice or acquires actual knowledge of the signed decision or order, whichever occurs first. Prohibits the period from beginning earlier than the 15th day or later than the 45th, rather than 90th, day after the date the decision or order was signed.

(d) Requires the adversely affected party to prove, to establish a revised period under Subsection (c), on sworn motion and notice, that:

(1) creates this subdivision from existing text and makes a conforming and a nonsubstantive change;

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

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

(e) Requires the state agency or a person authorized to act for the state agency to grant or deny the sworn motion not later than a certain date.

(f) Makes a conforming change.

(g) Requires that all the specified periods, if a sworn motion filed under Subsection (d) is granted with respect to the adversely affected party filing that motion, begin for the movant on the date specified in the sworn motion that the movant or the movant's attorney of record, rather than the sworn motion that the party, first received the required notice or acquired actual knowledge of the signed decision or order. Requires that the date specified in the sworn motion be considered the date the decision or order was signed for the movant. Provides that the timely filing of a sworn motion for rehearing under Subsection (d) extends the period for agency action on any motion for rehearing to the 100th day after the date the decision or order subject to the motion for rehearing is signed.

SECTION 4. Amends Section 2001.144(a), Government Code, as follows:

(a) Provides that a decision or order in a contested case is final:

(1) makes no changes to this subdivision;

(2) if a motion for rehearing is timely filed, rather than filed on time, on the date the order overruling the latest filed motion for rehearing is signed or the latest filed motion for rehearing is overruled by operation of law, rather than the order overruling the motion for rehearing is signed or the motion is overruled by operation of law;

(3) and (4) makes no changes to these subdivisions.

SECTION 5. Amends Sections 2001.146(a), (b), (e), and (i), Government Code, as follows:

(a) Requires the movant, on filing the motion for rehearing, to send copies of the motion to all other parties using the notification methods specified by Section 2001.142(a), rather than requires that copies of the motion, on filing of the motion for rehearing, be sent to all other parties using the notification procedures specified by Section 2001.142(a).

(b) Requires a party to file with the state agency a reply, if any, to a motion for rehearing not later than a certain day after the date the decision on order that is the subject of the motion is signed, or not later than the 10th day after the date a motion for rehearing is filed if the time for filing the motion for rehearing has been extended under Section 2001.142 (Notification of Decisions and Orders), by an agreement under Section 2001.147 (Agreement to Modify Time Limits), or by a written state agency order under Subsection (e) (relating to extending the time for filing a motion or reply or taking agency action). Requires the party filing the reply to send copies of the reply to all other parties using the specified notification methods, rather than requires that copies of the reply, on filing of the reply, be sent to all other parties using the specified notification procedures.

(e) Makes conforming changes.

(i) Provides that the time limits and other requirements for filing a subsequent motion for rehearing, a reply to the subsequent motion for rehearing, and a ruling on the subsequent motion for rehearing are governed by this section and Sections 2001.142, 2001.144 (Decisions or Orders; When Final), 2001.145 (Motions for Rehearing: Prerequisites to Appeal), and 2001.147. Deletes existing text requiring that a subsequent motion for rehearing required by Subsection (h) be filed not later than the 20th day after the date the order disposing of the original motion for rehearing is signed.

SECTION 6. Makes application of the changes in law made by this Act to Sections 2001.052 and 2001.054, Government Code, prospective.

SECTION 7. Makes application of the changes in law made by this Act to Sections 2001.142 and 2001.144, Government Code, prospective.

SECTION 8. Effective date: September 1, 2017.