

By: Estes, Watson

S.B. No. 1267

A BILL TO BE ENTITLED

AN ACT

relating to contested cases conducted under the Administrative Procedure Act.

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

SECTION 1. Section 2001.052, Government Code, is amended to read as follows:

Sec. 2001.052. CONTENTS OF NOTICE. (a) Notice of a hearing in a contested case must include:

(1) a statement of the time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; and

(4) a short, plain statement of the factual matters asserted.

(b) If a state agency or other party is unable to state factual matters in detail at the time notice under this section is served, an initial notice may be limited to a statement of the issues involved. On timely written application, a more definite and detailed statement of the facts shall be furnished not less than seven [~~three~~] days before the date set for the hearing. In a proceeding in which the state agency has the burden of proof, a state agency that intends to rely on a section of a statute or rule

1 not previously referenced in the notice of hearing must amend the  
2 notice to refer to the section of the statute or rule not later than  
3 the seventh day before the date set for the hearing. This  
4 subsection does not prohibit the state agency from filing an  
5 amendment during the hearing of a contested case provided the  
6 opposing party is granted a continuance of at least seven days to  
7 prepare its case on request of the opposing party.

8 (c) In a suit for judicial review of a final decision or  
9 order of a state agency in a contested case, the state agency's  
10 failure to comply with Subsection (a)(3) or (b) shall constitute  
11 prejudice to the substantial rights of the appellant under Section  
12 [2001.174](#)(2) unless the court finds that the failure did not  
13 unfairly surprise and prejudice the appellant.

14 SECTION 2. Section [2001.054](#), Government Code, is amended by  
15 adding Subsections (c-1) and (e) to read as follows:

16 (c-1) A state agency that has been granted the power to  
17 summarily suspend a license under another statute may determine  
18 that an imminent peril to the public health, safety, or welfare  
19 requires emergency action and may issue an order to summarily  
20 suspend the license holder's license pending proceedings for  
21 revocation or other action, provided that the agency incorporates a  
22 factual and legal basis establishing that imminent peril in the  
23 order. Unless expressly provided otherwise by another statute, the  
24 agency shall initiate the proceedings for revocation or other  
25 action not later than the 30th day after the date of the summary  
26 suspension order is signed. The proceedings must be promptly  
27 determined, and if the proceedings are not initiated before the

1 30th day after the date the order is signed, the license holder may  
2 appeal the summary suspension order to a Travis County district  
3 court. This subsection does not grant any state agency the power to  
4 suspend a license without notice or a hearing.

5 (e) In a suit for judicial review of a final decision or  
6 order of a state agency brought by a license holder, the agency's  
7 failure to comply with Subsection (c) shall constitute prejudice to  
8 the substantial rights of the license holder under Section  
9 2001.174(2) unless the court determines that the failure did not  
10 unfairly surprise and prejudice the license holder.

11 SECTION 3. Sections 2001.141(a), (b), and (e), Government  
12 Code, are amended to read as follows:

13 (a) A decision or order of a state agency that may become  
14 final under Section 2001.144 that is adverse to any [a] party in a  
15 contested case must be in writing and signed by a person authorized  
16 by the agency to sign the agency decision or order [~~stated in the~~  
17 ~~record~~].

18 (b) A decision or order that may become final under Section  
19 2001.144 must include findings of fact and conclusions of law,  
20 separately stated.

21 (e) If a party submits under a state agency rule proposed  
22 findings of fact or conclusions of law, the decision or order shall  
23 include a ruling on each proposed finding or conclusion.

24 SECTION 4. Section 2001.142, Government Code, is amended to  
25 read as follows:

26 Sec. 2001.142. NOTIFICATION OF DECISIONS AND ORDERS.

27 (a) A state agency shall notify each party to [~~in~~] a contested case

1 ~~[shall be notified either personally or by first class mail]~~ of any  
2 decision or order of the agency in the following manner:

3 (1) personally;

4 (2) if agreed to by the party to be notified, by  
5 electronic means sent to the current e-mail address or telecopier  
6 number of the party's attorney of record or of the party if the  
7 party is not represented by counsel; or

8 (3) by first class, certified, or registered mail sent  
9 to the last known address of the party's attorney of record or of  
10 the party if the party is not represented by counsel.

11 (b) When a decision or order ~~[On issuance]~~ in a contested  
12 case ~~[of a decision]~~ that may become final under Section 2001.144 is  
13 signed or when an order ruling on a motion for rehearing is signed,  
14 a state agency shall deliver or send a copy of the decision or order  
15 to each party in accordance with Subsection (a). The state agency  
16 shall keep a record documenting the provision of the notice  
17 provided to each party in accordance with Subsection (a) ~~[by first~~  
18 ~~class mail to the attorneys of record and shall keep an appropriate~~  
19 ~~record of the mailing. If a party is not represented by an attorney~~  
20 ~~of record, the state agency shall send a copy of the decision or~~  
21 ~~order by first class mail to the party and shall keep an appropriate~~  
22 ~~record of the mailing].~~

23 (c) If an adversely affected party or the party's attorney  
24 of record does not receive the notice required by Subsections (a)  
25 and (b) or acquire actual knowledge of a signed decision or order  
26 before the 15th day after the date the decision or order is signed,  
27 a period specified by or agreed to under Section 2001.144(a),

2001.146, 2001.147, or 2001.176(a) relating to a decision or order or motion for rehearing begins, with respect to that party, on the date the party receives the notice or acquires actual knowledge of the signed decision or order, whichever occurs first. The period may not begin earlier than the 15th day or later than the 90th day after the date the decision or order was signed ~~[A party or attorney of record notified by mail under Subsection (b) is presumed to have been notified on the third day after the date on which the notice is mailed].~~

(d) To establish a revised period under Subsection (c), the adversely affected party must prove, on sworn motion and notice, that the date the party received notice from the state agency or acquired actual knowledge of the signing of the decision or order was after the 14th day after the date the decision or order was signed.

(e) The state agency must grant or deny the sworn motion not later than the date of the agency's governing board's next meeting or, for a state agency without a governing board with decision-making authority in contested cases, not later than the 10th day after the date the agency receives the sworn motion.

(f) If the state agency fails to grant or deny the motion at the next meeting or before the 10th day after the date the agency receives the motion, as appropriate, the motion is considered granted.

(g) If the sworn motion filed under Subsection (d) is granted with respect to the party filing that motion, all the periods specified by or agreed to under Section 2001.144(a),

1 2001.146, 2001.147, or 2001.176(a) relating to a decision or order,  
2 or motion for rehearing, shall begin on the date specified in the  
3 sworn motion that the party first received the notice required by  
4 Subsections (a) and (b) or acquired actual knowledge of the signed  
5 decision or order. The date specified in the sworn motion shall be  
6 considered the date the decision or order was signed.

7 SECTION 5. The heading to Section 2001.143, Government  
8 Code, is amended to read as follows:

9 Sec. 2001.143. TIME OF [~~RENDERING~~] DECISION.

10 SECTION 6. Sections 2001.143(a) and (b), Government Code,  
11 are amended to read as follows:

12 (a) A decision or order that may become final under Section  
13 2001.144 in a contested case must be signed [~~rendered~~] not later  
14 than the 60th day after the date on which the hearing is finally  
15 closed.

16 (b) In a contested case heard by other than a majority of the  
17 officials of a state agency, the agency or the person who conducts  
18 the contested case hearing may extend the period in which the  
19 decision or order may be signed [~~issued~~].

20 SECTION 7. Section 2001.144, Government Code, is amended to  
21 read as follows:

22 Sec. 2001.144. DECISIONS OR ORDERS; WHEN FINAL. (a) A  
23 decision or order in a contested case is final:

24 (1) if a motion for rehearing is not filed on time, on  
25 the expiration of the period for filing a motion for rehearing;

26 (2) if a motion for rehearing is filed on time, on  
27 the date:

1 (A) the order overruling the motion for rehearing  
2 is signed [~~rendered~~]; or

3 (B) the motion is overruled by operation of law;

4 (3) if a state agency finds that an imminent peril to  
5 the public health, safety, or welfare requires immediate effect of  
6 a decision or order, on the date the decision or order is signed,  
7 provided that the agency incorporates in the decision or order a  
8 factual and legal basis establishing an imminent peril to the  
9 public health, safety, or welfare [~~rendered~~]; or

10 (4) on:

11 (A) the date specified in the decision or order order  
12 for a case in which all parties agree to the specified date in  
13 writing or on the record; or

14 (B) [~~7~~] if the agreed specified date is [~~not~~]  
15 before the date the decision or order is signed, the date the  
16 decision or order is signed [~~or later than the 20th day after the~~  
17 ~~date the order was rendered~~].

18 (b) If a decision or order is final under Subsection (a)(3),  
19 a state agency must recite in the decision or order the finding made  
20 under Subsection (a)(3) and the fact that the decision or order is  
21 final and effective on the date signed [~~rendered~~].

22 SECTION 8. Section 2001.145(b), Government Code, is amended  
23 to read as follows:

24 (b) A decision or order that is final under Section  
25 2001.144(a)(2), (3), or (4) is appealable.

26 SECTION 9. Section 2001.146, Government Code, is amended by  
27 amending Subsections (a), (b), (c), (e), and (f) and adding

Subsections (g), (h), and (i) to read as follows:

(a) A motion for rehearing in a contested case must be filed by a party not later than the 20th day after the date ~~[on which]~~ the decision or order that is the subject of the motion is signed, unless the time for filing the motion for rehearing has been extended by an agreement under Section 2001.147 or by a written state agency order issued under Subsection (e). On filing of the motion for rehearing, copies of the motion shall be sent to all other parties using the notification procedures specified by Section 2001.142(a) [party or the party's attorney of record is notified as required by Section 2001.142 of a decision or order that may become final under Section 2001.144].

(b) A party must file with the state agency a reply, if any, to a motion for rehearing [must be filed with the state agency] not later than the 30th day after the date [on which the party or the party's attorney of record is notified as required by Section 2001.142 of] the decision or 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 by an agreement under Section 2001.147 or by a written state agency order under Subsection (e). On filing of the reply, copies of the reply shall be sent to all other parties using the notification procedures specified by Section 2001.142(a) [or order that may become final under Section 2001.144].

(c) A state agency shall act on a motion for rehearing not later than the 45th day after the date ~~[on which the party or the party's attorney of record is notified as required by Section~~



~~2001.142 of~~] the decision or order that is the subject of the motion  
is signed [~~that may become final under Section 2001.144~~] or the  
 motion for rehearing is overruled by operation of law.

(e) A state agency may, on its own initiative or on the  
motion of any party for cause shown, by written order extend the  
 time for filing a motion or reply or taking agency action under this  
 section, provided that the agency extends the time or takes the  
action not later than the 10th day after the date the period for  
filing a motion or reply or taking agency action expires. An[~~r~~  
~~except that an~~] extension may not extend the period for agency  
 action beyond the 90th day after the date [~~on which the party or the~~  
~~party's attorney of record is notified as required by Section~~  
~~2001.142 of~~] the decision or order that is the subject of the motion  
is signed [~~that may become final under Section 2001.144~~].

(f) In the event of an extension, a motion for rehearing is  
 overruled by operation of law on the date fixed by the order or, in  
 the absence of a fixed date, the 90th day [~~90 days~~] after the date  
 [~~on which the party or the party's attorney of record is notified as~~  
~~required by Section 2001.142 of~~] the decision or order that is the  
subject of the motion is signed [~~that may become final under Section~~  
~~2001.144~~].

(g) A motion for rehearing must identify with particularity  
findings of fact or conclusions of law that are the subject of the  
complaint and any evidentiary or legal ruling claimed to be  
erroneous. The motion must also state the legal and factual basis  
for the claimed error.

(h) A subsequent motion for rehearing is not required after

1 a state agency rules on a motion for rehearing unless the order  
2 disposing of the original motion for rehearing:

3 (1) modifies, corrects, or reforms in any respect the  
4 decision or order that is the subject of the complaint, other than a  
5 typographical, grammatical, or other clerical change identified as  
6 such by the agency in the order, including any modification,  
7 correction, or reformation that does not change the outcome of the  
8 contested case; or

9 (2) vacates the decision or order that is the subject  
10 of the motion and provides for a new decision or order.

11 (i) A subsequent motion for rehearing required by Subsection  
12 (h) must be filed not later than the 20th day after the date the  
13 order disposing of the original motion for rehearing is signed.

14 SECTION 10. Section 2001.176(a), Government Code, is  
15 amended to read as follows:

16 (a) A person initiates judicial review in a contested case  
17 by filing a petition not later than the 30th day after the date ~~on~~  
18 ~~which~~ the decision or order that is the subject of complaint is  
19 final and appealable. In a contested case in which a motion for  
20 rehearing is a prerequisite for seeking judicial review, a  
21 prematurely filed petition is effective to initiate judicial review  
22 and is considered to be filed:

23 (1) on the date the last timely motion for rehearing is  
24 overruled; and

25 (2) after the motion is overruled.

26 SECTION 11. The changes in law made by this Act to Chapter  
27 2001, Government Code, apply only to an administrative hearing that

1 is set by the State Office of Administrative Hearings, or another  
2 state agency conducting an administrative hearing, on or after the  
3 effective date of this Act. A hearing set before the effective date  
4 of this Act, or any decision issued or appeal from the hearing, is  
5 governed by the law in effect when the hearing was set, and the  
6 former law is continued in effect for that purpose.

7       SECTION 12. This Act takes effect September 1, 2015.