

Rules and Regulations Filing Act

HB 2027 amends the Rules and Regulations Filing Act (the Act) by deleting the existing definition of “rule and regulation,” “rule,” and “regulation,” including several provisions exempting specific rules and regulations from formal rulemaking under the Act, and replacing it with a simplified definition. It also expands the definition of “person” to include individuals and companies or other legal or commercial entities.

The bill gives precedential value to orders issued in an adjudication against a person who was not a party to the original adjudication when the order is:

- Designated by the agency as precedent;
- Not overruled by a court or other adjudication; and
- Disseminated to the public in one of the following ways:
 - Inclusion in a publicly available index of all orders designated as precedent, maintained by the agency and published on its website;
 - Publication in full on the agency website in a format allowing key terms searches; or
 - Being made available to the public in any other manner required by the Secretary of State.

The bill also allows statements of policy to be treated as binding within the agency when directed to agency personnel concerning their duties or the internal management or organization of the agency.

The bill states that agency-issued forms, whose contents are governed by rule and regulation or statute, and guidance and information the agency provides to the public do not give rise to a legal right or duty and are not treated as authority for any standard, requirement, or policy reflected in the forms, guidance, or information. Further, the bill provides the following are not subject to the Act:

- Policies relating to the curriculum of a public educational institution or to the administration, conduct, discipline, or graduation of students from such institution;

- Parking and traffic regulations of any state educational institution under the control and supervision of the State Board of Regents;
- Rules and regulations relating to the emergency or security procedures of a correctional institution; and
- Orders issued by the Secretary of Corrections or any warden of a correctional institution.

Similarly, statutes that specify the procedures for issuing rules and regulations will apply rather than the procedures outlined in the Act.

Finally, the bill creates a new section giving state agencies the authority to issue guidance documents without following the procedures set forth in the Act. Under the terms of this new section, guidance documents can contain binding instructions to state agency staff members, except presiding officers. Presiding officers and agency heads can consider the guidance documents in an agency adjudication, but are not bound by them. To act in variance with a guidance document, an agency must provide a reasonable explanation for the variance and, if a person claims to have reasonably relied on the agency's position, the explanation must include a reasonable justification for the agency's conclusion that the need for the variance outweighs the affected person's reliance interests. The bill requires each state agency to maintain an index of the guidance documents; publish the index on the agency's website; make all guidance documents available to the public; file the index in any other manner required by the Secretary of State; and provide a copy of each guidance document to the Joint Committee on Administrative Rules and Regulations (may be provided electronically).