

By: Ellis

H.B. No. 2041

A BILL TO BE ENTITLED

AN ACT

relating to legislative review and gubernatorial suspension of certain rules of state agencies.

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

SECTION 1. Subchapter B, Chapter 2001, Government Code, is amended by adding Section 2001.0321 to read as follows:

Sec. 2001.0321. INDEPENDENT REVIEW OF RULES; SUSPENSION OF RULE BY GOVERNOR. (a) The chair of any standing committee of either house of the legislature may request the presiding officer of that house to initiate an independent review of a rule proposed or adopted by a state agency, including an emergency rule, unless the rule has been in effect for more than 180 days. An author or sponsor of legislation that enacted a law under which a rule or proposed rule is authorized may request the presiding officer of the same house as the requesting author or sponsor to initiate that review. Not later than the 10th day after the date the request is made, the presiding officer shall:

(1) notify the petitioning chair or requesting author or sponsor whether the review will be conducted; and

(2) refer the rule to the appropriate standing committee if the presiding officer determines that a review of the rule is appropriate.

(b) A standing committee shall review any proposed or adopted rule referred to it. The committee may hold a public hearing

1 or a meeting on the rule or proposed rule. In reviewing a rule or
2 proposed rule, the committee shall consider:

3 (1) whether the rule is authorized by law and is
4 consistent with the intent and scope of the authorizing law;

5 (2) whether the rule complies with all other
6 applicable law; and

7 (3) whether the rule can be justified when compared to
8 available alternatives that would satisfy the legislative intent of
9 the authorizing law and requirements of other applicable law on the
10 basis of:

11 (A) cost to the state and to persons affected by
12 the rule; and

13 (B) the burden the rule places on the public or
14 persons affected by the rule.

15 (c) A committee by majority vote of the membership of the
16 committee may recommend to the presiding officer of the appropriate
17 house that the presiding officer request the governor to suspend
18 the rule or proposed rule.

19 (d) The committee may meet by telephone conference call to
20 consider a rule or proposed rule under this section. The notice of
21 the meeting must specify as the location of the meeting at least one
22 location at which facilities must be provided to make the meeting
23 audible to the public. The meeting shall be recorded on audiotape
24 and the tape recordings shall be made available to the public.

25 (e) As an alternative to holding a meeting on the question,
26 the chair of the committee may notify the members of the committee
27 that a rule or proposed rule has been referred to the committee and

1 provide each member with a ballot to permit voting for, voting
2 against, or participating and not voting on whether the committee
3 shall recommend that the presiding officer request the governor to
4 suspend the rule or proposed rule. The chair shall give each member
5 an opportunity to vote or participate by mail or by facsimile
6 transmission of a marked ballot. Any deliberation among the
7 members of the committee must be in writing, occur in public
8 meeting, or occur in a telephone conference call as provided by
9 Subsection (d).

10 (f) If the committee recommends that the presiding officer
11 request the governor to suspend the rule or proposed rule, the
12 chair, not later than the 10th day after the date the recommendation
13 is made, shall give written notice of the committee recommendation
14 to:

- 15 (1) the presiding officer of the appropriate house;
16 (2) the state agency that adopted or proposed the
17 rule; and
18 (3) each member of the house of the legislature that
19 established the committee.

20 (g) Not later than the 20th day after the date of the
21 committee action, a member of that house may file a written
22 objection to or statement of support for the committee's action
23 with the presiding officer of that house.

24 (h) Not later than the 20th day after the date the presiding
25 officer receives notice that a committee has recommended that the
26 presiding officer request the governor to suspend a rule or
27 proposed rule, the presiding officer may request the governor to do

1 so. In making a decision under this subsection, the presiding
2 officer shall consider any objections or statements of support
3 filed by members of the house under Subsection (g). If the
4 presiding officer requests the governor to suspend the rule or
5 proposed rule, the presiding officer shall give written notice of
6 the request to:

7 (1) the governor;

8 (2) the state agency that adopted or proposed the
9 rule;

10 (3) the secretary of state; and

11 (4) the presiding officer of the other house of the
12 legislature.

13 (i) On the request of the presiding officer of either house
14 of the legislature under this section, the governor by proclamation
15 may suspend a rule adopted or proposed by a state agency. The
16 governor shall consider the items listed in Subsection (b) and
17 shall state in the proclamation the grounds for suspension of the
18 rule or proposed rule. The governor must state in the proclamation
19 the date on which the suspension takes effect. The effective date
20 may not be earlier than the 30th day after the date of the
21 proclamation. Not later than the fifth day after the date of the
22 proclamation, the governor shall:

23 (1) deliver a certified copy of the proclamation to
24 the state agency that adopted or proposed the rule; and

25 (2) file notice of the proclamation with the secretary
26 of state for publication in the Texas Register.

27 (j) When a rule or proposed rule is suspended under this

1 section, the state agency that adopted or proposed the rule may not
2 adopt a rule containing the substance of the suspended rule before
3 the second anniversary of the date the suspension takes effect,
4 unless the governor by proclamation consents to adoption of the
5 rule. On or after the second anniversary, the state agency may
6 adopt the same rule or a rule containing the substance of the
7 suspended rule as provided by this subchapter.

8 SECTION 2. Section 2001.032, Government Code, is repealed.

9 SECTION 3. This Act takes effect immediately if it receives
10 a vote of two-thirds of all the members elected to each house, as
11 provided by Section 39, Article III, Texas Constitution. If this
12 Act does not receive the vote necessary for immediate effect, this
13 Act takes effect September 1, 2003.