

By: Madden

H.B. No. 2754

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

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

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

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

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

1 hearing or a meeting on the rule or proposed rule. In reviewing a  
2 rule or 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.