

1 SB190  
2 138547-2  
3 By Senator Holley  
4 RFD: Governmental Affairs  
5 First Read: 07-FEB-12

1 SB190

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4 ENGROSSED

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7 A BILL  
8 TO BE ENTITLED  
9 AN ACT

10  
11 To amend Sections 41-22-6, 41-22-7, and 41-22-23 and  
12 to add Section 41-22-23.1 to the Code of Alabama 1975,  
13 relating to the Administrative Procedure Act; to require the  
14 Governor to approve new rules before they are certified; to  
15 require certified rules to be referred to the appropriate  
16 standing committees of each house for recommendation; to  
17 extend the date after certification when rules become  
18 effective; to require the Chief Examiner of Public Accounts to  
19 review agency compliance with the Administrative Procedure  
20 Act; to allow the Chief Examiner of Public Accounts and the  
21 Legislative Reference Service to recover their full costs of  
22 performing their duties under the Administrative Procedure  
23 Act; and to authorize the Chair of the Joint Committee on  
24 Administrative Regulation Review to allow an administrative  
25 agency to withdraw a certified rule.

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1           Section 1. Sections 41-22-6, 41-22-7, and 41-22-23  
2 of the Code of Alabama 1975, are amended to read as follows:

3           "§41-22-6.

4           "(a) Each agency shall have an officer designated as  
5 its secretary and shall file in the office of the secretary of  
6 the agency a certified copy of each rule adopted by it,  
7 including all rules, as defined in this chapter, existing on  
8 October 1, 1981. Each rule or regulation promulgated, whether  
9 the original or a revision, and all copies thereof, shall have  
10 the name or names of the author or authors, respectively, on  
11 its face. The secretary of the agency shall keep a permanent  
12 register of the rules open to public inspection.

13           "(b) After a rule is adopted, but before it is  
14 certified to the Legislative Reference Service pursuant to  
15 subsection (c), the secretary of the agency shall transmit the  
16 rule to the Governor for his or her approval. A rule may not  
17 be certified to the Legislative Reference Service pursuant to  
18 subsection (c) unless the Governor has approved the rule and  
19 refiles the approved rule with the secretary of the agency.

20           "~~(b)~~ (c) The secretary of each agency shall file in  
21 the office of the Legislative Reference Service, no later than  
22 15 days after the ~~filing~~ refiling of a rule by the Governor  
23 with the secretary of the agency and within 90 days after  
24 completion of the notice, in a form and manner prescribed by  
25 the Legislative Reference Service, a certified copy of each  
26 rule adopted by it and approved by the Governor. As used in

1 this section, "completion of notice" means the end of the  
2 notice period specified pursuant to subdivision (1) of  
3 subsection (a) of Section 41-22-5. A rule that is not filed  
4 with the Legislative Reference Service within the time limits  
5 prescribed in this subdivision is invalid. The Legislative  
6 Reference Service shall keep a permanent register of the rules  
7 open to public inspection.

8 ~~"(c)~~ (d) Each rule hereafter adopted is effective ~~35~~  
9 55 days after filing with the Legislative Reference Service,  
10 unless it is:

11 "(1) A rule for which a later date is required by  
12 statute or specified in the rule.

13 "(2) A rule for which an earlier date is required by  
14 statute.

15 "(3) An emergency rule adopted pursuant to  
16 subsection (b) of Section 41-22-5.

17 "(4) A rule which the committee disapproves of or  
18 proposes an amendment for pursuant to Section 41-22-23.

19 "§41-22-7.

20 "(a) The secretary of the agency shall establish and  
21 maintain an official register of regulations which shall be  
22 compiled, indexed, published in loose-leaf form, and kept up  
23 to date by the secretary of the agency. This register of  
24 regulations shall be known as "The (name of the agency)  
25 Administrative Code," and it shall be made available, upon  
26 request, at cost to all persons for copying and inspection and

1 to those persons who subscribe thereto. Supplementation shall  
2 be made as often as is practicable, but at least once every  
3 year. The secretary of the agency shall number and renumber  
4 rules to conform with a uniform numbering system devised by  
5 the Legislative Reference Service.

6 "(b) The secretary of the agency may omit from its  
7 administrative code rules that are general in form, but are  
8 applicable to only one county or a part thereof. Rules so  
9 omitted shall be filed with the secretary of the agency, and  
10 exclusion from publication shall not affect their validity or  
11 effectiveness. The secretary of the agency shall publish a  
12 compilation of and index to all rules so omitted at least  
13 annually.

14 "(c) The secretary of the agency shall make copies  
15 of the agency's administrative code available on an annual  
16 subscription basis, at cost.

17 "(d) The secretary of the agency shall file with the  
18 Legislative Reference Service, not later than 15 days after  
19 filing with the secretary of the agency, all rules or  
20 amendments or repeal of rules promulgated by the agency. In  
21 addition, the secretary of the Alabama Public Service  
22 Commission and the Alabama State Port Authority shall file  
23 with the Legislative Reference Service, not later than 15 days  
24 after filing with the secretary of the commission, all rules  
25 or amendments or repeal of rules promulgated by that  
26 commission.

1           "(e) The Legislative Reference Service shall  
2       establish and maintain an official register of regulations  
3       which shall be so compiled, indexed, published in loose-leaf  
4       form, and kept up to date by the Legislative Reference  
5       Service. The register of regulations shall be known as the  
6       "Alabama Administrative Code," and shall be made available at  
7       cost, upon request, to all persons for inspection and copying  
8       or who subscribe thereto. Supplementation shall be made as  
9       often as is practicable, but at least once every year. The  
10      Legislative Reference Service shall devise a uniform numbering  
11      system for rules and may renumber rules before publication to  
12      conform with the system.

13           "(f) The Legislative Reference Service shall publish  
14      a monthly bulletin entitled the "Alabama Administrative  
15      Monthly," which shall contain a statement of either the terms  
16      or substance of all rules filed during the preceding month,  
17      excluding rules in effect on October 1, 1982, together with  
18      other material required by law and such other material the  
19      agency or committee determines to be of general interest.

20           "(g) The Legislative Reference Service may omit from  
21      the Alabama Administrative Monthly and the Alabama  
22      Administrative Code rules that are general in form, but are  
23      applicable to only one county or a part thereof. Rules so  
24      omitted shall be filed with the Legislative Reference Service,  
25      and exclusion from publication shall not affect their validity  
26      or effectiveness. The Legislative Reference Service shall

1 publish a compilation of, and index to, all rules so omitted  
2 at least annually.

3 "(h) The Legislative Reference Service shall make  
4 copies of the Alabama Administrative Code and copies of the  
5 Alabama Administrative Monthly available at cost on an annual  
6 subscription basis.

7 "(i) The Legislative Reference Service shall charge  
8 each agency using the Alabama Administrative Monthly a space  
9 rate computed to cover all publishing or printing costs  
10 related to the Alabama Administrative Monthly and shall charge  
11 each agency a per page rate for each page published in the  
12 Alabama Administrative Code to cover costs incurred by the  
13 Legislative Reference Service in ~~publishing the Alabama~~  
14 ~~Administrative Code~~ performing its duties under this chapter.

15 "§41-22-23.

16 "(a) The notice required by subdivision (a)(1) of  
17 Section 41-22-5 shall be given, in addition to the persons  
18 therein named, to the chair of the legislative committee. The  
19 agency shall furnish the committee with 33 copies of the  
20 proposed rule or rules, and no rule, except an emergency rule  
21 issued pursuant to subsection (b) of Section 41-22-5 shall be  
22 effective until these copies are so furnished. Any member of  
23 the Senate or House of Representatives who requests a copy of  
24 proposed agency rules from the Chair of the Joint Committee on  
25 Administrative Regulation Review shall be provided a copy and  
26 the agency proposing rules shall furnish additional copies of

1 the proposed rule or rules immediately. The form of the  
2 proposed rule presented to the committee shall be as follows:  
3 New language shall be underlined and language to be deleted  
4 shall be typed and lined through.

5 "(b) The committee shall refer a rule certified to  
6 the Legislative Reference Service pursuant to Section 41-22-6  
7 to the appropriate standing committees of the House of  
8 Representatives and the Senate for recommendation. The chair  
9 of a standing committee to which a certified rule is referred  
10 pursuant to this subsection within 10 days after referral  
11 shall refer the rule to a subcommittee of the standing  
12 committee or the entire standing committee or return the rule  
13 to the joint committee for consideration pursuant to  
14 subsection (c). If the rule is referred to a subcommittee, the  
15 subcommittee, within 10 days thereafter and, with or without a  
16 recommendation, shall refer the rule to the entire standing  
17 committee or return the rule to the joint committee. If the  
18 chair of the standing committee or the subcommittee refers the  
19 rule to the entire standing committee, the standing committee,  
20 within 10 days after referral and, with or without a  
21 recommendation, shall return the rule to the joint committee  
22 for consideration pursuant to subsection (c). If a rule is not  
23 returned to the joint committee within 30 days after referral  
24 to the appropriate standing committees, it shall be deemed  
25 referred with a recommendation that the rule be allowed to  
26 take effect.



1           "~~(b)~~ (c) The committee shall study all proposed  
2 rules and may hold public hearings thereon. In the event the  
3 committee fails to give notice to the agency of either its  
4 approval or disapproval of the proposed rule within 35 days  
5 after filing of the adopted rule with the Legislative  
6 Reference Service pursuant to Section 41-22-6, the committee  
7 shall be deemed to have approved the proposed regulation for  
8 the purposes of this section. In the event the committee  
9 disapproves a proposed rule or any part thereof, it shall give  
10 notice of the disapproval to the agency. Any disapproved rule  
11 shall be suspended until the adjournment of the next regular  
12 session of the Legislature following the date of disapproval  
13 and suspension of the committee or until the Legislature shall  
14 revoke, by joint resolution, the suspension of the committee.  
15 The rule shall be reinstated on the adjournment of the  
16 legislative session in the event the Legislature, by joint  
17 resolution, fails to sustain the disapproval and suspension of  
18 the committee.

19           "~~(c)~~ d The committee may propose an amendment to any  
20 proposed rule and may disapprove the proposed rule and return  
21 it to the agency with the suggested amendment. In the event  
22 the agency accepts the rule as amended, the agency may  
23 resubmit the rule as amended to the committee. In the event  
24 the agency does not accept the amendment, the proposed amended  
25 rule shall be submitted to the Legislature as disapproved, as  
26 provided in Section 41-22-24.

1           "~~(d)~~ (e) An agency may withdraw a proposed rule ~~by~~  
2 ~~leave~~ on approval of the chair of the committee. An agency may  
3 resubmit a rule so withdrawn or returned under this section  
4 with minor modification. Such a rule is a new filing and  
5 subject to this section but is not subject to further notice  
6 as provided in subsection (a) of Section 41-22-5.

7           "~~(e)~~ (f) The committee is authorized to review and  
8 approve or disapprove any rule adopted prior to October 1,  
9 1982.

10           "~~(f)~~ (g) A rule submitted to the committee which has  
11 an economic impact shall be accompanied by a fiscal note  
12 prepared by the agency in accordance with this subsection.  
13 Upon receiving the fiscal note, the committee may require  
14 additional information from the submitting agency, other state  
15 agencies, or other sources. A state agency shall cooperate and  
16 provide information to the committee. At a minimum, the fiscal  
17 note submitted with a proposed rule shall include the  
18 following:

19           "(1) A determination of the need for the regulation  
20 and the expected benefit of the regulation.

21           "(2) A determination of the costs and benefits  
22 associated with the regulation and an explanation of why the  
23 regulation is considered to be the most cost effective,  
24 efficient, and feasible means for allocating public and  
25 private resources and for achieving the stated purpose.

26           "(3) The effect of the regulation on competition.

1           "(4) The effect of the regulation on the cost of  
2 living and doing business in the geographical area in which  
3 the regulation would be implemented.

4           "(5) The effect of the regulation on employment in  
5 the geographical area in which the regulation would be  
6 implemented.

7           "(6) The source of revenue to be used for  
8 implementing and enforcing the regulation.

9           "(7) A conclusion on the short-term and long-term  
10 economic impact upon all persons substantially affected by the  
11 regulation, including an analysis containing a description of  
12 which persons will bear the costs of the regulation and which  
13 persons will benefit directly and indirectly from the  
14 regulation.

15           "(8) The uncertainties associated with the  
16 estimation of particular benefits and burdens and the  
17 difficulties involved in the comparison of qualitatively and  
18 quantitatively dissimilar benefits and burdens. A  
19 determination of the need for the regulation shall consider  
20 qualitative and quantitative benefits and burdens.

21           "(9) The effect of the regulation on the environment  
22 and public health.

23           "(10) The detrimental effect on the environment and  
24 public health if the regulation is not implemented.

1           "~~(g)~~ (h) In determining whether to approve or  
2 disapprove proposed rules, the committee shall consider the  
3 following criteria:

4           "(1) Would the absence of the rule or rules  
5 significantly harm or endanger the public health, safety, or  
6 welfare?

7           "(2) Is there a reasonable relationship between the  
8 state's police power and the protection of the public health,  
9 safety, or welfare?

10          "(3) Is there another, less restrictive method of  
11 regulation available that could adequately protect the public?

12          "(4) Does the rule or do the rules have the effect  
13 of directly or indirectly increasing the costs of any goods or  
14 services involved and, if so, to what degree?

15          "(5) Is the increase in cost, if any, more harmful  
16 to the public than the harm that might result from the absence  
17 of the rule or rules?

18          "(6) Are all facets of the rulemaking process  
19 designed solely for the purpose of, and so they have, as their  
20 primary effect, the protection of the public?

21          "(7) Any other criteria the committee may deem  
22 appropriate."

23                 Section 2. Section 41-22-23.1 is added to the Code  
24 of Alabama 1975, to read as follows:

25                 §41-22-23.1.

1           (a) The Chief Examiner of Public Accounts, when  
2 otherwise conducting an examination of an agency which is  
3 required to adopt rules pursuant to this chapter, shall review  
4 the administrative rules of the agency for compliance with  
5 this chapter. The examination shall include a determination of  
6 all of the following, that:

7           (1) Policies of the agency that meet the definition  
8 of a rule in subsection (a) of Section 41-22-3 were adopted as  
9 rules in accordance with this chapter.

10           (2) Fiscal notes required by subsection (f) of  
11 Section 41-22-23 were prepared with an acceptable methodology  
12 using valid data.

13           (3) Applicable rules were enforced in a consistent  
14 manner.

15           (b) The Chief Examiner shall provide a copy of any  
16 examination performed pursuant to subsection (a) to the Joint  
17 Committee on Administrative Regulation Review.

18           (c) An agency examined by the Chief Examiner under  
19 subsection (a) shall reimburse the Chief Examiner for the cost  
20 of conducting the examination.

21           Section 3. (a) Upon request of the Speaker of the  
22 House, the President Pro Tempore of the Senate, the Chair of  
23 the Senate Judiciary Committee, and the Chair of the House  
24 Judiciary Committee, the Joint Committee on Administrative  
25 Regulation Review shall review any existing rule to determine  
26 whether the rule was adopted in accordance with the

1 Administrative Procedure Act, including, but not limited to,  
2 whether the rule is within the authority delegated to the  
3 agency by the Legislature and whether the agency complied with  
4 the procedural requirements for adopting a rule, including,  
5 but not limited to, the requirement of a fiscal note required  
6 by subsection (f) of Section 41-22-23, Code of Alabama 1975.

7 (b) Upon a determination that a rule reviewed under  
8 subsection (a) should be amended or repealed, the joint  
9 committee shall notify the appropriate agency of the suggested  
10 action or report that fact to the Legislature and recommend  
11 appropriate legislative action, or both.

12 Section 4. This act shall become effective  
13 immediately following its passage and approval by the  
14 Governor, or its otherwise becoming law.

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Senate

Read for the first time and referred to the Senate  
committee on Governmental Affairs..... 07-FEB-12

Read for the second time and placed on the calen-  
dar..... 14-FEB-12

Read for the third time and passed as amended .... 15-MAR-12

Yeas 35  
Nays 0

Patrick Harris  
Secretary