

1 SB190
2 135589-1
3 By Senator Holley
4 RFD: Governmental Affairs
5 First Read: 07-FEB-12

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8 SYNOPSIS: Under existing law, the Alabama
9 Administrative Procedure Act governs the procedures
10 for state agencies to adopt rules. The Joint
11 Committee on Administrative Regulation Review may
12 allow an agency to withdraw a proposed rule.

13 This bill would authorize the Chair of the
14 Joint Committee on Administrative Regulation Review
15 to allow an agency to withdraw a proposed rule
16 instead of requiring the joint committee to act on
17 a request by an agency to withdraw the proposed
18 rule.

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20 A BILL

21 TO BE ENTITLED

22 AN ACT

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24 To amend Section 41-22-23 of the Code of Alabama
25 1975, relating to the Alabama Administrative Procedure Act; to
26 authorize the Chair of the Joint Committee on Administrative

1 Regulation Review to allow an agency to withdraw a proposed
2 rule.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 41-22-23 of the Code of Alabama
5 1975, is amended to read as follows:

6 "§41-22-23.

7 "(a) The notice required by subdivision (a)(1) of
8 Section 41-22-5 shall be given, in addition to the persons
9 therein named, to the chair of the legislative committee. The
10 agency shall furnish the committee with 33 copies of the
11 proposed rule or rules, and no rule, except an emergency rule
12 issued pursuant to subsection (b) of Section 41-22-5 shall be
13 effective until these copies are so furnished. Any member of
14 the Senate or House of Representatives who requests a copy of
15 proposed agency rules from the Chair of the Joint Committee on
16 Administrative Regulation Review shall be provided a copy and
17 the agency proposing rules shall furnish additional copies of
18 the proposed rule or rules immediately. The form of the
19 proposed rule presented to the committee shall be as follows:
20 New language shall be underlined and language to be deleted
21 shall be typed and lined through.

22 "(b) The committee shall study all proposed rules
23 and may hold public hearings thereon. In the event the
24 committee fails to give notice to the agency of either its
25 approval or disapproval of the proposed rule within 35 days
26 after filing of the adopted rule with the Legislative

1 Reference Service pursuant to Section 41-22-6, the committee
2 shall be deemed to have approved the proposed regulation for
3 the purposes of this section. In the event the committee
4 disapproves a proposed rule or any part thereof, it shall give
5 notice of the disapproval to the agency. Any disapproved rule
6 shall be suspended until the adjournment of the next regular
7 session of the Legislature following the date of disapproval
8 and suspension of the committee or until the Legislature shall
9 revoke, by joint resolution, the suspension of the committee.
10 The rule shall be reinstated on the adjournment of the
11 legislative session in the event the Legislature, by joint
12 resolution, fails to sustain the disapproval and suspension of
13 the committee.

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

22 "(d) An agency may withdraw a proposed rule ~~by leave~~
23 on approval of the chair of the committee. An agency may
24 resubmit a rule so withdrawn or returned under this section
25 with minor modification. Such a rule is a new filing and

1 subject to this section but is not subject to further notice
2 as provided in subsection (a) of Section 41-22-5.

3 "(e) The committee is authorized to review and
4 approve or disapprove any rule adopted prior to October 1,
5 1982.

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

15 "(1) A determination of the need for the regulation
16 and the expected benefit of the regulation.

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

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

23 "(4) The effect of the regulation on the cost of
24 living and doing business in the geographical area in which
25 the regulation would be implemented.

1 "(5) The effect of the regulation on employment in
2 the geographical area in which the regulation would be
3 implemented.

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

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

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

18 "(9) The effect of the regulation on the environment
19 and public health.

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

22 "(g) In determining whether to approve or disapprove
23 proposed rules, the committee shall consider the following
24 criteria:

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

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

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

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

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

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

18 "(7) Any other criteria the committee may deem
19 appropriate."

20 Section 2. This act shall become effective
21 immediately following its passage and approval by the
22 Governor, or its otherwise becoming law.