

1 HB148  
2 147004-2  
3 By Representative Wren  
4 RFD: State Government  
5 First Read: 05-FEB-13

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8 SYNOPSIS: Under existing law, the Legislative Council,  
9 sitting as the Joint Committee on Administrative  
10 Regulation Review, is required to review all rules  
11 proposed to be adopted pursuant to the  
12 Administrative Procedure Act. The committee may  
13 disapprove a rule which disapproval may be  
14 sustained by the adoption of a joint resolution at  
15 the next regular session of the Legislature.

16 This bill would provide that the Joint  
17 Committee on Legislative Operations, a proposed  
18 successor committee to the Legislative Council,  
19 would be required to affirmatively approve a  
20 proposed rule prior to its becoming effective. The  
21 bill further provides that the committee may make  
22 use of the Chief of Legislative Operations and  
23 other personnel and agencies of the legislative  
24 department when considering proposed rules. A  
25 proposed rule change could be disapproved by the  
26 committee or, if not affirmatively approved, the  
27 proposed rule would be deemed disapproved. The bill

1 further provides for an appeal process to the  
2 Lieutenant Governor upon the disapproval of a rule  
3 by the Joint Committee on Legislative Operations.  
4 If the Lieutenant Governor approves a rule, the  
5 Legislature may overrule the Lieutenant Governor's  
6 approval by joint resolution.

7  
8 A BILL  
9 TO BE ENTITLED  
10 AN ACT

11  
12 Relating to the Administrative Procedure Act; to  
13 amend Sections 41-22-5, 41-22-6, 41-22-22, 41-22-23, and  
14 41-22-24, Code of Alabama 1975, to further provide the  
15 procedures for proposed rules to be approved or disapproved by  
16 the Legislature and to provide for certain appeals to the  
17 Lieutenant Governor.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. Sections 41-22-5, 41-22-6, 41-22-22,  
20 41-22-23, and 41-22-24, Code of Alabama 1975, are amended to  
21 read as follows:

22 "§41-22-5.

23 "(a) Prior to the adoption, amendment, or repeal of  
24 any rule, the agency shall:

25 "(1) Give at least ~~35~~ 60 days' notice of its  
26 intended action. Date of publication in the Alabama  
27 Administrative Monthly shall constitute the date of notice.

1 The notice shall include a statement of either the terms or  
2 substance of the intended action or a description of the  
3 subjects and issues involved, shall specify a notice period  
4 ending not less than ~~35~~ 60 days or more than 90 days from the  
5 date of the notice, during which period interested persons may  
6 present their views thereon, and shall specify the place  
7 where, and the manner in which interested persons may present  
8 their views thereon. The notice shall be given to the chairman  
9 of the ~~legislative~~ committee and the Chief of Legislative  
10 Operations, as provided in Section 41-22-23, and mailed to all  
11 persons who pay the cost of such mailing and who have made  
12 timely request of the agency for advance notice of its  
13 rulemaking proceedings and shall be published, prior to any  
14 action thereon, in the Alabama Administrative Monthly. A  
15 complete copy of the proposed rule shall be filed with the  
16 secretary of the agency and the Legislative Reference Service.

17 "(2) Afford all interested persons reasonable  
18 opportunity to submit data, views, or arguments, orally or in  
19 writing. The agency shall consider fully all written and oral  
20 submissions respecting the proposed rule. Upon adoption of a  
21 rule, the agency, if conflicting views are submitted on the  
22 proposed rule, shall issue a concise statement of the  
23 principal reasons for and against its adoption, incorporating  
24 therein its reasons for overruling any considerations urged  
25 against its adoption.

26 "(b) Notwithstanding any other provision of this  
27 chapter to the contrary, if an agency finds that an immediate

1 danger to the public health, safety, or welfare requires  
2 adoption of a rule upon fewer than ~~35~~ 60 days' notice or that  
3 action is required by or to comply with a federal statute or  
4 regulation which requires adoption of a rule upon fewer than  
5 ~~35~~ 60 days' notice and states in writing its reasons for that  
6 finding, it may proceed without prior notice or hearing or  
7 upon any abbreviated notice and hearing that it finds  
8 practicable, to adopt an emergency rule. The rule shall become  
9 effective immediately, unless otherwise stated therein, upon  
10 the filing of the rule and a copy of the written statement of  
11 the reasons therefor with the Legislative Reference Service  
12 and the secretary of the agency. The rule may be effective for  
13 a period of not longer than 120 days and shall not be  
14 renewable. An agency shall not adopt the same or a  
15 substantially similar emergency rule within one calendar year  
16 from its first adoption unless the agency clearly establishes  
17 it could not reasonably be foreseen during the initial 120-day  
18 period that such emergency would continue or would likely  
19 reoccur during the next nine months. The adoption of the same  
20 or a substantially similar rule by normal rule-making  
21 procedures is not precluded. In any subsequent action  
22 contesting the effective date of a rule adopted pursuant to  
23 this subsection, the burden of proof shall be on the agency to  
24 justify its finding. Prior to indexing and publication, the  
25 agency shall make reasonable efforts to apprise the persons  
26 who may be affected by its rules of the adoption of the  
27 emergency rule. An emergency rule shall be strictly construed

1 and shall have as narrow of an application as reasonably  
2 possible.

3 "(c) It is the intent of this section to establish  
4 basic minimum procedural requirements for the adoption,  
5 amendment, or repeal of administrative rules. Except for  
6 emergency rules which are provided for in subsection (b) of  
7 this section, the provisions of this section are applicable to  
8 the exercise of any rulemaking authority conferred by any  
9 statute, but nothing in this section repeals or diminishes  
10 additional requirements imposed by law or diminishes or  
11 repeals any summary power granted by law to the state or any  
12 agency thereof.

13 "(d) No rule adopted after October 1, 1982, is valid  
14 unless adopted in substantial compliance with this section. A  
15 proceeding to contest any rule on the ground of noncompliance  
16 with the procedural requirements of this section must be  
17 commenced within two years from the effective date of the  
18 rule; provided, however, that a proceeding to contest a rule  
19 based on failure to provide notice as herein required may be  
20 commenced at any time.

21 "§41-22-6.

22 "(a) Each agency shall have an officer designated as  
23 its secretary and shall file in the office of the secretary of  
24 the agency a certified copy of each rule adopted by it,  
25 including all rules, as defined in this chapter, existing on  
26 October 1, 1981. Each rule or regulation promulgated, whether  
27 the original or a revision, and all copies thereof, shall have

1 the name or names of the author or authors, respectively, on  
2 its face. The secretary of the agency shall keep a permanent  
3 register of the rules open to public inspection.

4 "(b) The secretary of each agency shall file in the  
5 office of the Legislative Reference Service, no later than 15  
6 days after the filing with the secretary of the agency and  
7 within 90 days after completion of the notice, in a form and  
8 manner prescribed by the Legislative Reference Service, a  
9 certified copy of each rule adopted by it. As used in this  
10 section, "completion of notice" means the end of the notice  
11 period specified pursuant to subdivision (1) of subsection (a)  
12 of Section 41-22-5. A rule that is not filed with the  
13 Legislative Reference Service within the time limits  
14 prescribed in this subdivision is invalid. The Legislative  
15 Reference Service shall keep a permanent register of the rules  
16 open to public inspection.

17 "(c) Each rule hereafter adopted is effective ~~35~~  
18 ~~days after filing with the Legislative Reference Service,~~  
19 ~~unless it is:~~

20 "(1) ~~A rule for which a later date is required by~~  
21 ~~statute or specified in the rule~~ Upon approval by the  
22 committee.

23 "(2) ~~A rule for which an earlier date is required by~~  
24 ~~statute~~ Upon adjournment of the next legislative session  
25 following the completion of the appeal process as set forth in  
26 Section 41-22-24, if the Legislature fails to take action to  
27 disapprove the rule after approval by the Lieutenant Governor.

1           ~~"(3) An emergency rule adopted pursuant to~~  
2           ~~subsection (b) of Section 41-22-5~~ At the time specified in an  
3           ~~emergency rule adopted pursuant to subsection (b) of Section~~  
4           ~~41-22-5.~~

5           ~~"(4) A rule which the committee disapproves of or~~  
6           ~~proposes an amendment for pursuant to Section 41-22-23~~ If  
7           ~~otherwise approved pursuant to the procedures of this chapter,~~  
8           ~~at a later date as required by statute or specified in the~~  
9           ~~rule.~~

10           ~~"§41-22-22.~~

11           ~~"(a) There shall be a joint standing legislative~~  
12           ~~committee known as the Joint Committee on Administrative~~  
13           ~~Regulation Review, to review all agency rules. The committee~~  
14           ~~shall consist of the members of the Legislative Council,~~  
15           ~~including any member of the Legislative Council temporarily~~  
16           ~~serving in the place of a permanent member, and shall meet on~~  
17           ~~the call of the chair. The chair may name subcommittees to~~  
18           ~~meet and review agency rules and report to the full committee.~~  
19           ~~A quorum of the committee shall be the same as a quorum for~~  
20           ~~the Legislative Council as set forth in Section 29-6-3.~~  
21           ~~Members of the committee shall receive the same compensation,~~  
22           ~~expenses, and transportation allowances for meetings as they~~  
23           ~~receive for attendance at meetings of the Legislative Council.~~  
24           ~~All compensation and expenses authorized by this section shall~~  
25           ~~be paid from funds appropriated to the use of the Legislative~~  
26           ~~Council. The committee shall review all agency rules prior to~~  
27           ~~their adoption. The committee shall have full access to all~~



1 resources of the legislative department and all agencies  
2 thereof when conducting its review.

3 ~~"(b) The committee shall do all of the following:~~

4 ~~"(1) Maintain a continuous review of the statutory~~  
5 ~~authority on which each administrative rule is based, and~~  
6 ~~whenever the authority is eliminated or significantly changed~~  
7 ~~by repeal, amendment, or other factor, advise the agency~~  
8 ~~concerned of the fact.~~

9 ~~"(2) Review administrative rules and advise the~~  
10 ~~agencies concerned of its findings.~~

11 ~~"(3) Have the further duties prescribed in Section~~  
12 ~~41-22-23.~~

13 ~~"(4) The committee shall determine and report~~  
14 ~~annually to the Legislature the total cost to the state~~  
15 ~~allocated to the implementation of this chapter.~~

16 ~~"§41-22-23.~~

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

1 ~~the proposed rule or rules immediately~~ each member of the  
2 committee, to the Chief of Legislative Operations, and to such  
3 other persons in the legislative department as the committee  
4 requires. The form of the proposed rule presented to the  
5 committee shall be as follows: New language shall be  
6 underlined and language to be deleted shall be typed and lined  
7 through.

8 " (b) Upon receipt of the proposed rule, the Chief of  
9 Legislative Operations shall review the rule and make a  
10 recommendation thereon to the committee. The committee shall  
11 study all proposed rules and may hold public hearings thereon.  
12 In the event the committee fails to give notice to the agency  
13 of either its approval or disapproval of the proposed rule  
14 within ~~35~~ 60 days after filing of the adopted rule with the  
15 Legislative Reference Service pursuant to Section 41-22-6, the  
16 committee shall be deemed to have ~~approved~~ disapproved the  
17 proposed ~~regulation~~ rule for the purposes of this section. ~~In~~  
18 ~~the event the committee disapproves a proposed rule or any~~  
19 ~~part thereof, it shall give notice of the disapproval to the~~  
20 ~~agency. Any disapproved rule shall be suspended until the~~  
21 ~~adjournment of the next regular session of the Legislature~~  
22 ~~following the date of disapproval and suspension of the~~  
23 ~~committee or until the Legislature shall revoke, by joint~~  
24 ~~resolution, the suspension of the committee. The rule shall be~~  
25 ~~reinstated on the adjournment of the legislative session in~~  
26 ~~the event the Legislature, by joint resolution, fails to~~  
27 ~~sustain the disapproval and suspension of the committee.~~

1           "(c) The committee may propose an amendment to any  
2 proposed rule and may ~~disapprove the proposed rule and~~ return  
3 it to the agency with the suggested amendment. In the event  
4 the agency accepts the rule as amended, the agency may  
5 resubmit the rule as amended to the committee. In the event  
6 the agency does not accept the amendment, the proposed amended  
7 rule shall be ~~submitted to the Legislature as~~ deemed  
8 ~~disapproved, as provided in Section 41-22-24.~~

9           "(d) An agency may withdraw a proposed rule by leave  
10 of the committee. An agency may resubmit a rule so withdrawn  
11 or returned under this section with minor modification. Such a  
12 rule is a new filing and subject to this section but is not  
13 subject to further notice as provided in subsection (a) of  
14 Section 41-22-5.

15           "(e) The committee is authorized to review and  
16 approve or disapprove any rule adopted prior to October 1,  
17 1982.

18           "(f) A rule submitted to the committee which has an  
19 economic impact shall be accompanied by a fiscal note prepared  
20 by the agency in accordance with this subsection. Upon  
21 receiving the fiscal note, the committee may require  
22 additional information from the submitting agency, other state  
23 agencies, or other sources. A state agency shall cooperate and  
24 provide information to the committee. At a minimum, the fiscal  
25 note submitted with a proposed rule shall include the  
26 following:

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

3           "(2) A determination of the costs and benefits  
4 associated with the regulation and an explanation of why the  
5 regulation is considered to be the most cost effective,  
6 efficient, and feasible means for allocating public and  
7 private resources and for achieving the stated purpose.

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

9           "(4) The effect of the regulation on the cost of  
10 living and doing business in the geographical area in which  
11 the regulation would be implemented.

12           "(5) The effect of the regulation on employment in  
13 the geographical area in which the regulation would be  
14 implemented.

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

17           "(7) A conclusion on the short-term and long-term  
18 economic impact upon all persons substantially affected by the  
19 regulation, including an analysis containing a description of  
20 which persons will bear the costs of the regulation and which  
21 persons will benefit directly and indirectly from the  
22 regulation.

23           "(8) The uncertainties associated with the  
24 estimation of particular benefits and burdens and the  
25 difficulties involved in the comparison of qualitatively and  
26 quantitatively dissimilar benefits and burdens. A

1 determination of the need for the regulation shall consider  
2 qualitative and quantitative benefits and burdens.

3 "(9) The effect of the regulation on the environment  
4 and public health.

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

7 "(g) In determining whether to approve or disapprove  
8 proposed rules, the committee shall consider the following  
9 criteria:

10 "(1) Is there a statutory basis for the proposed  
11 rule?

12 "~~(1)~~(2) Would the absence of the rule or rules  
13 significantly harm or endanger the public health, safety, or  
14 welfare?

15 "~~(2)~~(3) Is there a reasonable relationship between  
16 the state's police power and the protection of the public  
17 health, safety, or welfare?

18 "~~(3)~~(4) Is there another, less restrictive method of  
19 regulation available that could adequately protect the public?

20 "~~(4)~~(5) Does the rule or do the rules have the  
21 effect of directly or indirectly increasing the costs of any  
22 goods or services involved and, if so, to what degree?

23 "~~(5)~~(6) Is the increase in cost, if any, more  
24 harmful to the public than the harm that might result from the  
25 absence of the rule or rules?

1           "~~(6)~~(7) Are all facets of the rulemaking process  
2 designed solely for the purpose of, and so they have, as their  
3 primary effect, the protection of the public?

4           "~~(7)~~(8) Any other criteria the committee may deem  
5 appropriate.

6           "§41-22-24.

7           "~~On the first day of each regular session of the  
8 Alabama Legislature the chairman of the committee shall submit  
9 a joint resolution sustaining the disapproval under Section  
10 41-22-23 by the joint committee of any proposed regulation to  
11 each house of the Legislature for their study. Such resolution  
12 with the disapproved rule attached shall be referred by the  
13 Speaker of the House or the Lieutenant Governor or both to an  
14 appropriate committee or committees, other than the Joint  
15 Committee on Administrative Regulation Review, for  
16 consideration and such committee or committees shall schedule  
17 hearings thereon, if requested by an affected party or the  
18 submitting agency. The Legislature may, by joint resolution,  
19 sustain the disapproval of the committee under Section  
20 41-22-23. In the event the Legislature fails to sustain such  
21 committee disapproval by the adjournment of the next regular  
22 session of the Legislature, the rule shall be reinstated.~~

23           "The disapproval of any rule may be appealed to the  
24 Lieutenant Governor who may review the submission and may hold  
25 public hearings thereon as determined necessary by the  
26 Lieutenant Governor to consider the rule.

1                   "If the Lieutenant Governor sustains the disapproval  
2 of the rule, he or she shall notify the committee and return  
3 the rule to the agency.

4                   "If the Lieutenant Governor approves the rule, he or  
5 she shall notify the chair of the committee. The rule shall  
6 become effective upon adjournment of the next regular session  
7 of the Legislature that commences after the approval unless,  
8 prior to that time, the Legislature adopts a joint resolution  
9 that overrules the approval by the Lieutenant Governor and  
10 sustains the action of the committee."

11                   Section 2. The provisions of this act are severable.  
12 If any part of this act is declared invalid or  
13 unconstitutional, that declaration shall not affect the part  
14 which remains.

15                   Section 3. This act shall become effective on the  
16 effective date of SB\_\_\_\_\_ of the 2013 Regular Session.