

1 SB178
2 147004-3
3 By Senator Holley
4 RFD: Governmental Affairs
5 First Read: 15-JAN-14

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4 ENGROSSED

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7 A BILL
8 TO BE ENTITLED
9 AN ACT

10
11 Relating to the Administrative Procedure Act; to
12 amend Sections 41-22-5, 41-22-6, 41-22-22, 41-22-23, and
13 41-22-24, Code of Alabama 1975, to further provide the
14 procedures for proposed rules to be approved or disapproved by
15 the Legislature and to provide for certain appeals to the
16 Lieutenant Governor.

17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

21 "§41-22-5.

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

24 "(1) Give at least ~~35~~ 60 days' notice of its
25 intended action. Date of publication in the Alabama
26 Administrative Monthly shall constitute the date of notice.
27 The notice shall include a statement of either the terms or

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

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

25 "(b) Notwithstanding any other provision of this
26 chapter to the contrary, if an agency finds that an immediate
27 danger to the public health, safety, or welfare requires

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

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 Legislative Council shall review all agency rules~~
27 ~~prior to their adoption. The Legislative Council shall have~~

1 full access to all resources of the legislative department and
2 all agencies 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 Legislative Council, the Executive Secretary of the
3 Legislative Council, and such other persons in the legislative
4 department as the Legislative Council requires. The form of
5 the proposed rule presented to the committee shall be as
6 follows: New language shall be underlined and language to be
7 deleted shall be typed and lined through.

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

1 ~~resolution, fails to sustain the disapproval and suspension of~~
2 ~~the committee.~~

3 "(c) The Legislative Council may propose an
4 amendment to any proposed rule and may ~~disapprove the proposed~~
5 ~~rule and~~ return it to the agency with the suggested amendment.
6 In the event the agency accepts the rule as amended, the
7 agency may resubmit the rule as amended to the Legislative
8 Council. In the event the agency does not accept the
9 amendment, the proposed amended rule shall be ~~submitted to the~~
10 ~~Legislature as~~ deemed disapproved, ~~as provided in Section~~
11 ~~41-22-24.~~

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

18 "(e) The Legislative Council is authorized to review
19 and approve or disapprove any rule adopted prior to October 1,
20 1982.

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

1 Council. At a minimum, the fiscal note submitted with a
2 proposed rule shall include the following:

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

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

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

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

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

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

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

25 "(8) The uncertainties associated with the
26 estimation of particular benefits and burdens and the
27 difficulties involved in the comparison of qualitatively and

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

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

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

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

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

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

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

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

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

24 "~~(5)~~(6) Is the increase in cost, if any, more
25 harmful to the public than the harm that might result from the
26 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 Legislative Council
5 may deem 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 Legislative Council
3 and return the rule to the agency.

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

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 SB11 of the 2014 Regular Session.

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Senate

Read for the first time and referred to the Senate
committee on Governmental Affairs..... 15-JAN-14

Read for the second time and placed on the calen-
dar..... 21-JAN-14

Read for the third time and passed as amended 22-JAN-14

Yeas 23
Nays 7

Patrick Harris
Secretary