

1 HB210
2 163615-2
3 By Representative Ball
4 RFD: Internal Affairs
5 First Read: 10-MAR-15

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8 SYNOPSIS: Under existing law, the Joint Committee on
9 Administrative Regulation Review consists of the
10 members of the Legislative Council. The committee
11 is required to review rules proposed to be adopted
12 under the Administrative Procedure Act. The
13 committee may disapprove a rule which disapproval
14 must be sustained by the adoption of a joint
15 resolution at the next regular session of the
16 Legislature or the rule becomes effective upon
17 adjournment of that regular session.

18 This bill would provide that the disapproval
19 of a rule may be appealed to the Lieutenant
20 Governor and establish a procedure therefor.

21 The bill would also extend the time rules
22 generally become effective from 35 days after
23 filing the certified rule to 45 days after filing
24 and allows the committee to extend that period to
25 60 days if it determines a business economic impact
26 statement is required for the rule.
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1 A BILL
2 TO BE ENTITLED
3 AN ACT

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5 Relating to the Administrative Procedure Act; to
6 amend Sections 41-22-5, 41-22-5.1, 41-22-6, 41-22-22, and
7 41-22-23, as amended by Act 2014-457, of the 2014 Regular
8 Session, and to repeal Section 41-22-24, Code of Alabama 1975,
9 to further provide the procedures for proposed rules to be
10 approved or disapproved by the Legislature, to provide for
11 certain appeals to the Lieutenant Governor, and to delay the
12 effective date of certain rules in certain circumstances.

13 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

14 Section 1. Sections 41-22-5, 41-22-5.1, 41-22-6, and
15 41-22-22, Code of Alabama 1975, are amended to read as
16 follows:

17 "§41-22-5.

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

20 "(1) Give at least 35 days' notice of its intended
21 action. Date of publication in the Alabama Administrative
22 Monthly shall constitute the date of notice. The notice shall
23 include a statement of either the terms or substance of the
24 intended action or a description of the subjects and issues
25 involved, shall specify a notice period ending not less than
26 35 days or more than 90 days from the date of the notice,
27 during which period interested persons may present their views

1 thereon, and shall specify the place where, and the manner in
2 which interested persons may present their views thereon. The
3 notice shall be given to the chairman of the legislative
4 committee, as provided in Section 41-22-23, and mailed to all
5 persons who pay the cost of such mailing and who have made
6 timely request of the agency for advance notice of its
7 rulemaking proceedings and shall be published, prior to any
8 action thereon, in the Alabama Administrative Monthly. A
9 complete copy of the proposed rule shall be filed with the
10 secretary of the agency and the Legislative Reference Service.

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

20 "(b) Notwithstanding any other provision of this
21 chapter to the contrary, if an agency finds that an immediate
22 danger to the public health, safety, or welfare requires
23 adoption of a rule upon fewer than 35 days' notice or that
24 action is required by or to comply with a federal statute or
25 regulation which requires adoption of a rule upon fewer than
26 35 days' notice and states in writing its reasons for that
27 finding to the committee, it may proceed without prior notice

1 or hearing or upon any abbreviated notice and hearing that it
2 finds practicable, to adopt an emergency rule. The rule shall
3 become effective immediately, unless otherwise stated therein,
4 upon the filing of the rule and a copy of the written
5 statement of the reasons therefor with the Legislative
6 Reference Service and the secretary of the agency. The rule
7 may be effective for a period of not longer than 120 days and
8 shall not be renewable. An agency shall not adopt the same or
9 a substantially similar emergency rule within one calendar
10 year from its first adoption unless the agency clearly
11 establishes it could not reasonably be foreseen during the
12 initial 120-day period that such emergency would continue or
13 would likely reoccur during the next nine months. The adoption
14 of the same or a substantially similar rule by normal
15 rule-making procedures is not precluded. In any subsequent
16 action contesting the effective date of a rule adopted
17 pursuant to this subsection, the burden of proof shall be on
18 the agency to justify its finding. Prior to indexing and
19 publication, the agency shall make reasonable efforts to
20 apprise the persons who may be affected by its rules of the
21 adoption of the emergency rule. An emergency rule shall be
22 strictly construed and shall not be valid except to the extent
23 necessary to prevent, mitigate, or resolve immediate danger to
24 the public health, safety, or welfare.

25 "(c) It is the intent of this section to establish
26 basic minimum procedural requirements for the adoption,
27 amendment, or repeal of administrative rules. Except for

1 emergency rules which are provided for in subsection (b) of
2 this section, the provisions of this section are applicable to
3 the exercise of any rulemaking authority conferred by any
4 statute, but nothing in this section repeals or diminishes
5 additional requirements imposed by law or diminishes or
6 repeals any summary power granted by law to the state or any
7 agency thereof.

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

16 "§41-22-5.1.

17 "(a) This section and Section 41-22-5.2 shall be
18 known and may be cited as "The Red Tape Reduction Act."

19 "(b) When an agency files a notice of intent to
20 adopt, amend, or repeal any rule, the agency shall make its
21 best efforts to notify the public of the proposed rule. At a
22 minimum, when the agency files the notice of intent, the
23 agency shall post the text of the rule the agency proposes to
24 adopt, amend, or repeal on its website or, if the agency has
25 no website, on a website operated or maintained by the
26 executive branch. Additionally, when the agency files a notice
27 of intent to adopt, amend, or repeal a rule, the agency shall

1 electronically notify any person who has registered with the
2 agency his or her desire to receive notification of any
3 proposal by the agency to adopt, amend, or repeal a rule.

4 "(c) If, prior to the end of the notice period, a
5 business notifies an agency that it will be negatively
6 impacted by an action proposed under subsection (b), the
7 agency shall prepare and submit to the committee or its
8 successor committee, agency, or service the information
9 provided by the affected business as well as a Business
10 Economic Impact Statement. The statement shall estimate the
11 number of businesses subject to the agency's proposal as well
12 as the projected reporting, recordkeeping, and other
13 administrative costs required for compliance with the
14 proposal. An agency shall prepare the business economic impact
15 statement using information available to the agency in the
16 normal course of business and utilizing the expertise and
17 experience of existing agency employees.

18 "(d) After receiving a business economic impact
19 statement from an agency, the committee or its successor
20 committee, agency, or service may require the agency to
21 analyze and report to the committee or its successor
22 committee, agency, or service the feasibility of some or all
23 of the following methods of reducing the impact of the rule on
24 businesses:

25 "(1) The establishment of less stringent compliance
26 or reporting requirements for businesses.

1 "(2) The establishment of less stringent schedules
2 or deadlines for compliance or reporting requirements for
3 businesses.

4 "(3) The consolidation or simplification of
5 compliance or reporting requirements for businesses.

6 "(4) The establishment of performance standards for
7 businesses to replace design or operational standards required
8 in the rule.

9 "(e) An agency shall include information on any
10 business economic impact statement whether the proposed rule
11 is proposed as a result of a requirement issued by a federal
12 agency.

13 "(f) A business economic impact statement required
14 to be filed pursuant to this section shall be filed with the
15 Legislative Reference Service at the same time as the proposed
16 rule is certified to the Legislative Reference Service and
17 shall be available for public inspection.

18 "(g) Each agency that files a business economic
19 impact statement, at the time it is filed, shall place that
20 statement on its website in a location that is easily
21 accessible by the general public, or, if the agency does not
22 have a website, on a website operated or maintained by the
23 executive branch.

24 "(h) If the committee or its successor committee,
25 agency, or service determines that an agency or a division of
26 an agency exists primarily to perform certification or
27 licensing-related functions, the agency is not required to

1 comply with the provisions of this section unless the
2 committee or its successor committee, agency, or service
3 determines in writing that an agency's proposal has such a
4 negative impact on businesses that the filing of a business
5 economic impact statement is warranted. Notwithstanding the
6 provisions of subsection (c) of Section 41-22-6 providing that
7 a rule is effective 45 days after filing with Legislative
8 Reference Service, in any case in which the committee or its
9 successor committee, agency, or service determines that the
10 filing of a business economic impact statement is warranted as
11 provided herein, the effective date of the rule shall be 45
12 additional days after the effective date specified in
13 subsection (c) of Section 41-22-6. In all other respects, the
14 remainder of this chapter shall continue to apply to the
15 proposed rule.

16 "(i) An ~~However,~~ any agency or department shall
17 fulfill any request for license or permit within 28 calendar
18 days after receiving the application or notify applicant of
19 the reason for ~~non-issuance of request~~ failure to issue the
20 license or permit.

21 "~~(i)~~ (j) An agency is not required to comply with
22 this section if the proposed rule is being adopted in order
23 for the agency to comply with membership requirements in a
24 multi-state or national membership organization.

25 "~~(j)~~ (k) This section shall not apply to the
26 promulgation of an emergency rule adopted pursuant to
27 subsection (b) of Section 41-22-5.

1 "§41-22-6.

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

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

24 "(c) Each rule hereafter adopted is effective ~~35~~ 45
25 days after filing with the Legislative Reference Service,
26 unless it is:

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

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

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

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

9 "(5) A rule that takes effect upon adjournment of
10 the next legislative session following the completion of the
11 appeal process as set forth in Section 41-22-23, if the
12 Legislature fails to take action to disapprove the rule after
13 approval by the Lieutenant Governor.

14 "§41-22-22.

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

1 All compensation and expenses authorized by this section shall
2 be paid from funds appropriated to the use of the Legislative
3 Council.

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

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

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

12 ~~"(3) Have the further duties prescribed in Section~~
13 ~~41-22-23.~~

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

17 "The committee shall review all agency rules prior
18 to their adoption. The committee shall have full access to all
19 resources of the legislative department and all agencies
20 thereof when conducting its review."

21 Section 2. Section 41-22-23, as amended by Act
22 2014-457 of the 2014 Regular Session, is amended to read as
23 follows:

24 "§41-22-23.

25 "(a) The notice required by subdivision (a)(1) of
26 Section 41-22-5 shall be given, in addition to the persons
27 therein named, to ~~the chair of the legislative committee. The~~

1 ~~agency shall furnish the committee with 33 copies of the~~
2 ~~proposed rule or rules, and no rule, except an emergency rule~~
3 ~~issued pursuant to subsection (b) of Section 41-22-5 shall be~~
4 ~~effective until these copies are so furnished. Any member of~~
5 ~~the Senate or House of Representatives who requests a copy of~~
6 ~~proposed agency rules from the Chair of the Joint Committee on~~
7 ~~Administrative Regulation Review shall be provided a copy and~~
8 ~~the agency proposing rules shall furnish additional copies of~~
9 ~~the proposed rule or rules immediately each member of the~~
10 ~~committee and such other persons in the legislative department~~
11 ~~as the committee requires.~~ The form of the proposed rule
12 presented to the committee shall be as follows: New language
13 shall be underlined and language to be deleted shall be typed
14 and lined through.

15 " (b) ~~The~~ Within the 45-day period between the time a
16 rule is certified and the date it becomes effective, and
17 subject to subsection (h) of Section 41-22-5.1, the committee
18 shall study all proposed rules and may hold public hearings
19 thereon. The committee may adopt a policy providing when a
20 public hearing will be held on a rule meeting specified
21 criteria. In the event the committee fails to give notice to
22 the agency of either its approval or disapproval of the
23 proposed rule within ~~35~~ 45 days after filing of the adopted
24 rule with the Legislative Reference Service pursuant to
25 Section 41-22-6, the committee shall be deemed to have
26 approved the proposed ~~regulation~~ rule for the purposes of this
27 section. In the event the committee disapproves a proposed

1 rule or any part thereof, it shall give notice of the
2 disapproval to the agency. ~~Any disapproved rule shall be~~
3 ~~suspended until the adjournment of the next regular session of~~
4 ~~the Legislature following the date of disapproval and~~
5 ~~suspension of the committee or until the Legislature shall~~
6 ~~revoke, by joint resolution, the suspension of the committee.~~
7 ~~The rule shall be reinstated on the adjournment of the~~
8 ~~legislative session in the event the Legislature, by joint~~
9 ~~resolution, fails to sustain the disapproval and suspension of~~
10 ~~the committee. The disapproval of any rule may be appealed to~~
11 ~~the Lieutenant Governor by the agency that submitted the rule.~~
12 If the disapproval of a rule is appealed to the Lieutenant
13 Governor, the Lieutenant Governor, within the 15 days after
14 the disapproval of the rule, may review the rule and hold
15 public hearings he or she determines necessary.

16 "If the Lieutenant Governor sustains the disapproval
17 of the rule, he or she shall notify the committee and return
18 the rule to the agency.

19 "If the Lieutenant Governor approves the rule, he or
20 she shall notify the chair of the committee. The rule shall
21 become effective upon adjournment of the next regular session
22 of the Legislature that commences after the approval unless,
23 prior to that time, the Legislature adopts a joint resolution
24 that overrules the approval by the Lieutenant Governor and
25 sustains the action of the committee.

26 "If the Lieutenant Governor fails to either approve
27 or disapprove the rule within the 15 days after the

1 disapproval of the committee, the rule shall be deemed
2 approved and the rule shall become effective upon adjournment
3 of the next regular session of the Legislature that commences
4 after the deemed approval unless, prior to that time, the
5 Legislature adopts a joint resolution that overrides the
6 deemed approval of the Lieutenant Governor and sustains the
7 action of the committee.

8 "(c) The committee may propose an amendment to any
9 proposed rule and ~~may disapprove the proposed rule and return~~
10 it to the agency with the suggested amendment. In the event
11 the agency accepts the rule as amended, the agency may
12 resubmit the rule as amended to the committee. and the rule
13 shall become effective on the date specified in the rule, or
14 on the date the amended rule is submitted, whichever is later.
15 In the event the agency does not accept the amendment, the
16 proposed amended rule shall be ~~submitted to the Legislature as~~
17 deemed disapproved, as provided in subsection (b) Section
18 ~~41-22-24~~.

19 "(d) An agency may withdraw a proposed or certified
20 rule. An agency may resubmit a rule so withdrawn or returned
21 under this section with minor modification. Such a rule is a
22 new filing and subject to this section but is not subject to
23 further notice as provided in subsection (a) of Section
24 41-22-5.

25 "(e) The committee is authorized to review and
26 approve or disapprove any rule adopted prior to October 1,
27 1982.

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

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

12 "(2) A determination of the costs and benefits
13 associated with the regulation and an explanation of why the
14 regulation is considered to be the most cost effective,
15 efficient, and feasible means for allocating public and
16 private resources and for achieving the stated purpose.

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

18 "(4) The effect of the regulation on the cost of
19 living and doing business in the geographical area in which
20 the regulation would be implemented.

21 "(5) The effect of the regulation on employment in
22 the geographical area in which the regulation would be
23 implemented.

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

26 "(7) A conclusion on the short-term and long-term
27 economic impact upon all persons substantially affected by the

1 regulation, including an analysis containing a description of
2 which persons will bear the costs of the regulation and which
3 persons will benefit directly and indirectly from the
4 regulation.

5 "(8) The uncertainties associated with the
6 estimation of particular benefits and burdens and the
7 difficulties involved in the comparison of qualitatively and
8 quantitatively dissimilar benefits and burdens. A
9 determination of the need for the regulation shall consider
10 qualitative and quantitative benefits and burdens.

11 "(9) The effect of the regulation on the environment
12 and public health.

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

15 "(g) In determining whether to approve or disapprove
16 proposed rules, the committee shall consider the following
17 criteria:

18 "(1) Is there a statutory authority for the proposed
19 rule?

20 "~~(1)~~(2) Would the absence of the rule or rules
21 significantly harm or endanger the public health, safety, or
22 welfare?

23 "~~(2)~~(3) Is there a reasonable relationship between
24 the state's police power and the protection of the public
25 health, safety, or welfare?

26 "~~(3)~~(4) Is there another, less restrictive method of
27 regulation available that could adequately protect the public?

1 "~~(4)~~(5) Does the rule or do the rules have the
2 effect of directly or indirectly increasing the costs of any
3 goods or services involved and, if so, to what degree?

4 "~~(5)~~(6) Is the increase in cost, if any, more
5 harmful to the public than the harm that might result from the
6 absence of the rule or rules?

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

10 "~~(7)~~(8) Any other criteria the committee may deem
11 appropriate."

12 Section 3. Section 41-22-24 of the Code of Alabama
13 1975, is repealed.

14 Section 4. This act shall become operative October
15 1, 2015, following its passage and approval by the Governor or
16 its otherwise becoming law.