

1 SB107
2 173112-2
3 By Senator Sanford
4 RFD: Governmental Affairs
5 First Read: 07-FEB-17

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8 SYNOPSIS: Under existing law, the Alabama
9 Administrative Procedure Act (AAPA) requires an
10 agency to publish in the Alabama Administrative
11 Monthly a notice of intended action prior to the
12 adoption, amendment, or repeal of a rule.

13 This bill would require the notice of
14 intended action on a proposed rule to contain a
15 statement whether the proposed rule relates to or
16 affects in any manner any litigation which the
17 agency is a party to or relates to or affects any
18 judicial decision concerning the subject matter of
19 the proposed rule. In that event, the notice of
20 intended action would be required to give an
21 explanation of how the proposed rule would relate
22 to or affect the litigation or judicial decision.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
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1 Relating to the Alabama Administrative Procedure
2 Act; to amend Section 41-22-5 of the Code of Alabama 1975, to
3 require the notice of intended action published prior to the
4 adoption, amendment, or repeal of a rule to contain a
5 statement whether the proposed rule relates to or affects any
6 litigation or judicial decision.

7 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

8 Section 1. Section 41-22-5 of the Code of Alabama
9 1975, is amended to read as follows:

10 "§41-22-5.

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

13 "(1) Give at least 35 days' notice of its intended
14 action. Date of publication in the Alabama Administrative
15 Monthly shall constitute the date of notice. In addition to
16 the other requirements of this chapter, the notice shall state
17 whether the proposed adoption, amendment, or repeal of the
18 rule relates to or affects in any manner any litigation which
19 the agency is a party to or relates to or affects any judicial
20 decision concerning the subject matter of the proposed rule.
21 In that event, the notice of intended action shall give an
22 explanation of how the proposed adoption, amendment, or repeal
23 of the rule would relate to or affect the litigation or
24 judicial decision. The notice shall include a statement of
25 either the terms or substance of the intended action or a
26 description of the subjects and issues involved, shall specify
27 a notice period ending not less than 35 days or more than 90

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

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

22 "(b) Notwithstanding any other provision of this
23 chapter to the contrary, if an agency finds that an immediate
24 danger to the public health, safety, or welfare requires
25 adoption of a rule upon fewer than 35 days' notice or that
26 action is required by or to comply with a federal statute or
27 regulation which requires adoption of a rule upon fewer than

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

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

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

19 Section 2. This act shall become effective on the
20 first day of the third month following its passage and
21 approval by the Governor, or its otherwise becoming law.