

1 SB5
2 180559-2
3 By Senator Sanford
4 RFD: Governmental Affairs
5 First Read: 09-JAN-18
6 PFD: 07/25/2017

1 SB5

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4 ENROLLED, An Act,

5 Relating to the Alabama Administrative Procedure
6 Act; to amend Section 41-22-5 of the Code of Alabama 1975, to
7 require the notice of intended action published prior to the
8 adoption, amendment, or repeal of a rule to contain a
9 statement whether the proposed rule relates to or affects any
10 litigation to which the agency is a party.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Section 41-22-5 of the Code of Alabama
13 1975, is amended to read as follows:

14 "§41-22-5.

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

17 "(1) Give at least 35 days' notice of its intended
18 action. Date of publication in the Alabama Administrative
19 Monthly shall constitute the date of notice. In addition to
20 the other requirements of this chapter, the notice shall state
21 whether the proposed adoption, amendment, or repeal of the
22 rule relates to or affects in any manner any litigation which
23 the agency is a party to concerning the subject matter of the
24 proposed rule. The notice shall include a statement of either
25 the terms or substance of the intended action or a description

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

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

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

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

1 adoption of the emergency rule. An emergency rule shall be
2 strictly construed and shall not be valid except to the extent
3 necessary to prevent, mitigate, or resolve immediate danger to
4 the public health, safety, or welfare.

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

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

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

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President and Presiding Officer of
the Senate

Speaker of the House of Representa-
tives

SB5
Senate 23-JAN-18
I hereby certify that the within Act originated in
and passed the Senate.

Patrick Harris,
Secretary.

House of Representatives
Passed: 20-FEB-18

By: Senator Sanford