

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

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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 concerning the subject matter  
18 of the proposed rule.

19  
20 A BILL  
21 TO BE ENTITLED  
22 AN ACT

23  
24 Relating to the Alabama Administrative Procedure  
25 Act; to amend Section 41-22-5 of the Code of Alabama 1975, to  
26 require the notice of intended action published prior to the  
27 adoption, amendment, or repeal of a rule to contain a

1 statement whether the proposed rule relates to or affects any  
2 litigation to which the agency is a party.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

6 "§41-22-5.

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

9 "(1) Give at least 35 days' notice of its intended  
10 action. Date of publication in the Alabama Administrative  
11 Monthly shall constitute the date of notice. In addition to  
12 the other requirements of this chapter, the notice shall state  
13 whether the proposed adoption, amendment, or repeal of the  
14 rule relates to or affects in any manner any litigation which  
15 the agency is a party to concerning the subject matter of the  
16 proposed rule. The notice shall include a statement of either  
17 the terms or substance of the intended action or a description  
18 of the subjects and issues involved, shall specify a notice  
19 period ending not less than 35 days or more than 90 days from  
20 the date of the notice, during which period interested persons  
21 may present their views thereon, and shall specify the place  
22 where, and the manner in which interested persons may present  
23 their views thereon. The notice shall be given to the chairman  
24 of the legislative committee, as provided in Section 41-22-23,  
25 and mailed to all persons who pay the cost of such mailing and  
26 who have made timely request of the agency for advance notice  
27 of its rulemaking proceedings and shall be published, prior to

1 any action thereon, in the Alabama Administrative Monthly. A  
2 complete copy of the proposed rule shall be filed with the  
3 secretary of the agency and the Legislative Reference Service.

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

13 "(b) Notwithstanding any other provision of this  
14 chapter to the contrary, if an agency finds that an immediate  
15 danger to the public health, safety, or welfare requires  
16 adoption of a rule upon fewer than 35 days' notice or that  
17 action is required by or to comply with a federal statute or  
18 regulation which requires adoption of a rule upon fewer than  
19 35 days' notice and states in writing its reasons for that  
20 finding to the committee, it may proceed without prior notice  
21 or hearing or upon any abbreviated notice and hearing that it  
22 finds practicable, to adopt an emergency rule. The rule shall  
23 become effective immediately, unless otherwise stated therein,  
24 upon the filing of the rule and a copy of the written  
25 statement of the reasons therefor with the Legislative  
26 Reference Service and the secretary of the agency. The rule  
27 may be effective for a period of not longer than 120 days and

1 shall not be renewable. An agency shall not adopt the same or  
2 a substantially similar emergency rule within one calendar  
3 year from its first adoption unless the agency clearly  
4 establishes it could not reasonably be foreseen during the  
5 initial 120-day period that such emergency would continue or  
6 would likely reoccur during the next nine months. The adoption  
7 of the same or a substantially similar rule by normal  
8 rule-making procedures is not precluded. In any subsequent  
9 action contesting the effective date of a rule adopted  
10 pursuant to this subsection, the burden of proof shall be on  
11 the agency to justify its finding. Prior to indexing and  
12 publication, the agency shall make reasonable efforts to  
13 apprise the persons who may be affected by its rules of the  
14 adoption of the emergency rule. An emergency rule shall be  
15 strictly construed and shall not be valid except to the extent  
16 necessary to prevent, mitigate, or resolve immediate danger to  
17 the public health, safety, or welfare.

18 "(c) It is the intent of this section to establish  
19 basic minimum procedural requirements for the adoption,  
20 amendment, or repeal of administrative rules. Except for  
21 emergency rules which are provided for in subsection (b) of  
22 this section, the provisions of this section are applicable to  
23 the exercise of any rulemaking authority conferred by any  
24 statute, but nothing in this section repeals or diminishes  
25 additional requirements imposed by law or diminishes or  
26 repeals any summary power granted by law to the state or any  
27 agency thereof.

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

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