

1 SB204
2 196776-3
3 By Senators Albritton and Holley
4 RFD: Finance and Taxation Education
5 First Read: 02-APR-19

1 SB204

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3
4 ENROLLED, An Act,

5 Relating to administrative procedures; to amend
6 Sections 41-22-2, 41-22-3, Section 41-22-5, as amended by Act
7 2018-139, 2018 Regular Session, Sections 41-22-5.1, 41-22-5.2,
8 41-22-6, 41-22-7, 41-22-8, 41-22-22, 41-22-22.1, 41-22-23, and
9 41-22-27, Code of Alabama 1975; to update terminology; to
10 further specify when an agency is required to prepare a
11 business impact analysis; to require filing of the business
12 impact analysis with the Legislative Services Agency, Legal
13 Division; to specify that failure to file as required
14 invalidates the action; to provide that a rule may not become
15 effective until at least 45 days after notice is published in
16 the Alabama Administrative Monthly that the certified rule was
17 filed with the Legislative Services Agency; and to revise the
18 name of the Joint Committee on Administrative Regulation
19 Review and establish what is a quorum for purposes of
20 conducting business.

21 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

22 Section 1. Sections 41-22-2, 41-22-3, Section
23 41-22-5, as amended by Act 2018-139, 2018 Regular Session,
24 Sections 41-22-5.1, 41-22-5.2, 41-22-6, 41-22-7, 41-22-8,

1 41-22-22, 41-22-22.1, 41-22-23, and 41-22-27 of the Code of
2 Alabama 1975, are amended to read as follows:

3 "§41-22-2.

4 "(a) This chapter is intended to provide a minimum
5 procedural code for the operation of all state agencies when
6 they take action affecting the rights and duties of the
7 public. Nothing in this chapter is meant to discourage
8 agencies from adopting procedures conferring additional rights
9 upon the public; and, save for express provisions of this act
10 to the contrary, nothing in this chapter is meant to abrogate
11 in whole or in part any statute prescribing procedural duties
12 for an agency which are in addition to those provided herein.

13 "(b) The purposes of the Alabama Administrative
14 Procedure Act are:

15 "(1) To provide legislative oversight of powers and
16 duties delegated to administrative agencies;

17 "(2) To increase public accountability of
18 administrative agencies;

19 "(3) To simplify government by assuring a uniform
20 minimum procedure to which all agencies will be held in the
21 conduct of their most important functions;

22 "(4) To increase public access to governmental
23 information;

24 "(5) To increase public participation in the
25 formulation of administrative rules;

1 "(6) To increase the fairness of agencies in their
2 conduct of contested case proceedings; and

3 "(7) To simplify the process of judicial review of
4 agency action as well as increase its ease and availability.

5 "In accomplishing its objectives, the intention of
6 this chapter is to strike a fair balance between these
7 purposes and the need for efficient, economical and effective
8 government administration.

9 "(c) This chapter is not meant to alter the
10 substantive rights of any person or agency. Its impact is
11 limited to procedural rights with the expectation that better
12 substantive results will be achieved in the everyday conduct
13 of state government by improving the process by which those
14 results are attained.

15 "(d) Every state agency having express statutory
16 authority to ~~promulgate~~ adopt rules ~~and regulations~~ shall be
17 governed by the provisions of this chapter and any additional
18 provisions required by statute, and shall also have the
19 authority to amend or repeal rules ~~and regulations~~, and to
20 prescribe methods and procedures required in connection
21 therewith. Nothing in this chapter shall be construed as
22 granting to any agency the authority to adopt ~~or promulgate~~
23 rules ~~and regulations~~.

24 "(e) All agencies whose rules or administrative
25 decisions are subject to approval by the Supreme Court of

1 Alabama and the Department of Insurance of the State of
2 Alabama are exempted from the provisions of this chapter.

3 "§41-22-3.

4 "The following words and phrases when used in this
5 chapter shall, for the purpose of this chapter, have meanings
6 respectively ascribed to them in this section, except when the
7 context otherwise requires:

8 "(1) AGENCY. Every board, bureau, commission,
9 department, officer, or other administrative office or unit of
10 the state, including the Alabama Department of Environmental
11 Management, other than the Legislature and its agencies, the
12 Alabama State Port Authority, the courts, the Alabama Public
13 Service Commission, or the State Banking Department, whose
14 administrative procedures are governed by Sections 5-2A-8 and
15 5-2A-9. The term ~~shall~~ does not include boards of trustees of
16 postsecondary institutions, boards of plans administered by
17 public pension systems, counties, municipalities, or any
18 agencies of local governmental units, unless they are
19 expressly made subject to this chapter by general or special
20 law.

21 "(2) COMMITTEE. The Joint Committee on
22 Administrative ~~Regulation~~ Rule Review ~~shall be,~~ comprised of
23 the members of the Legislative Council, or any successor of
24 the Joint Committee on Administrative Rule Review.

1 "(3) CONTESTED CASE. A proceeding, including but not
2 restricted to ratemaking, price fixing, and licensing, in
3 which the legal rights, duties, or privileges of a party are
4 required by law to be determined by an agency after an
5 opportunity for hearing. The term ~~shall~~ does not include
6 intra-agency personnel actions; ~~shall~~ and does not include
7 those hearings or proceedings in which the Alabama Board of
8 Pardons and Paroles considers the granting or denial of
9 pardons, paroles, or restoration of civil and political
10 rights, or remission of fines and forfeitures; ~~and which are~~
11 ~~exempt from Sections 41-22-12 through 41-22-21, relating to~~
12 ~~contested cases.~~

13 "(4) LICENSE. The whole or part of any agency
14 franchise, permit, certificate, approval, registration,
15 charter, or similar form of permission required by law, but
16 not a license required solely for revenue purposes when
17 issuance of the license is merely a ministerial act.

18 "(5) LICENSING. The agency process respecting the
19 grant, denial, renewal, revocation, suspension, annulment,
20 withdrawal, or amendment of a license or imposition of terms
21 for the exercise of a license.

22 "(6) PARTY. Each person or agency named or admitted
23 as a party or properly seeking and entitled as a matter of
24 right, whether established by constitution, statute, or agency
25 regulation or otherwise, to be admitted as a party, or

1 admitted as an intervenor under Section 41-22-14. ~~An agency~~
2 ~~may by rule authorize limited forms~~ The term includes any
3 limited form of participation in agency proceedings authorized
4 by agency rule for persons who are not eligible to become
5 parties.

6 "(7) PERSON. Any individual, partnership,
7 corporation, association, governmental subdivision, or public
8 or private organization of any character other than an agency.

9 "(8) QUORUM. No less than a majority of the members
10 of a multimember agency shall constitute a quorum authorized
11 to act in the name of the agency, unless provided otherwise by
12 statute.

13 "(9) RULE. Each agency rule, regulation, standard,
14 or statement of general applicability that implements,
15 interprets, or prescribes law or policy, or that describes the
16 organization, procedure, or practice requirements of any
17 agency and includes any form which imposes any requirement or
18 solicits any information not specifically required by statute
19 or by an existing rule or by federal statute or by federal
20 rule or regulation; provided, however, all forms shall be
21 filed with the secretary of the agency and with the
22 Legislative ~~Reference Service~~ Services Agency, Legal Division,
23 and all forms, except intergovernmental, interagency, and
24 intra-agency forms which do not affect the rights of the
25 public and emergency forms adopted pursuant to Section

1 41-22-5, shall be published in the Agency Administrative Code.
2 The term includes the amendment or repeal of all existing
3 rules, but does not include any of the following:

4 "a. Statements concerning only the internal
5 management of an agency and not affecting private rights or
6 procedures available to the public.

7 "b. Declaratory rulings issued pursuant to Section
8 41-22-11.

9 "c. Intergovernmental, interagency, and intra-agency
10 memoranda, directives, manuals, or other communications which
11 do not substantially affect the legal rights of, or procedures
12 available to, the public or any segment thereof.

13 "d. Determinations, decisions, orders, statements of
14 policy, and interpretations that are made in contested cases.

15 "e. An order which is directed to a specifically
16 named person or to a group of specifically named persons which
17 does not constitute a general class, and the order is served
18 on the person or persons to whom it is directed by the
19 appropriate means applicable thereto. The fact that the named
20 person who is being regulated serves a group of unnamed
21 persons who will be affected does not make the order a rule.

22 "f. An order which applies to a specifically
23 described tract of real estate.

24 "g. Any rules or actions relating to any of the
25 following:

1 "1. The conduct of inmates of public institutions
2 and prisoners on parole.

3 "2. The curriculum of public educational
4 institutions or the admission, conduct, discipline, or
5 graduation of students of the institutions; provided, however,
6 that this exception shall not extend to rules or actions of
7 the State Department of Education.

8 "3. Opinions issued by the Attorney General of the
9 State of Alabama.

10 "4. The conduct of commissioned officers, warrant
11 officers, and enlisted persons in the military service.

12 "5. Advisory opinions issued by the Alabama Ethics
13 Commission.

14 "6. Hunting and fishing seasons or bag or creel
15 limits promulgated by the Commissioner of the Department of
16 Conservation and Natural Resources.

17 "h. Standards, specifications, codes, plans,
18 manuals, and publications used in the design, construction,
19 repair, and maintenance of highways, roads, and bridges under
20 the jurisdiction of the Department of Transportation.

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 days' notice of its intended
25 action. Date of publication in the Alabama Administrative

1 Monthly shall constitute the date of notice. In addition to
2 the other requirements of this chapter, the notice shall state
3 whether the proposed adoption, amendment, or repeal of the
4 rule relates to or affects in any manner any litigation which
5 the agency is a party to concerning the subject matter of the
6 proposed rule. The notice shall include a statement of either
7 the terms or substance of the intended action or a description
8 of the subjects and issues involved, shall specify a notice
9 period ending not less than 35 days or more than 90 days from
10 the date of the notice, during which period interested persons
11 may present their views, and shall specify the place where,
12 and the manner in which interested persons may present their
13 views. The notice shall be given to the ~~chairman~~ chair of the
14 ~~legislative~~ committee, as provided in Section 41-22-23, and
15 mailed to all persons who pay the cost of such mailing and who
16 have made timely request of the agency for advance notice of
17 its rulemaking proceedings and shall be published, prior to
18 any action, in the Alabama Administrative Monthly. A complete
19 copy of the proposed rule shall be filed with the secretary of
20 the agency and the Legislative Services Agency, Legal
21 Division.

22 "(2) Afford all interested persons reasonable
23 opportunity to submit data, views, or arguments, orally or in
24 writing. The agency shall consider fully all written and oral
25 submissions respecting the proposed rule. Upon adoption of a

1 rule, the agency, if conflicting views are submitted on the
2 proposed rule, shall issue a concise statement of the
3 principal reasons for and against its adoption, incorporating
4 therein its reasons for overruling any considerations urged
5 against its adoption.

6 " (b) (1) Notwithstanding any other provision of this
7 chapter to the contrary, if an agency finds that an immediate
8 danger to the public health, safety, or welfare requires
9 adoption of a rule upon fewer than 35 days' notice or that
10 action is required by or to comply with a federal statute or
11 regulation which requires adoption of a rule upon fewer than
12 35 days' notice and states in writing its reasons for that
13 finding to the committee, it may proceed without prior notice
14 or hearing or upon any abbreviated notice and hearing that it
15 finds practicable, to adopt an emergency rule. The rule shall
16 become effective immediately, unless otherwise stated in the
17 rule, upon the filing of the rule and a copy of the written
18 statement of the reasons therefor with the Legislative
19 Services Agency, Legal Division, and the secretary of the
20 agency. The rule may be effective for a period of not longer
21 than 120 days and shall not be renewable.

22 "(2) An agency shall not adopt the same or a
23 substantially similar emergency rule within one calendar year
24 from its first adoption unless the agency clearly establishes
25 it could not reasonably be foreseen during the initial 120-day

1 period that such emergency would continue or would likely
2 reoccur during the next nine months. The adoption of the same
3 or a substantially similar rule by normal rulemaking
4 procedures is not precluded. In any subsequent action
5 contesting the effective date of a rule adopted pursuant to
6 this subsection, the burden of proof shall be on the agency to
7 justify its finding.

8 "(3) Prior to indexing and publication, the agency
9 shall make reasonable efforts to apprise the persons who may
10 be affected by its rules of the adoption of the emergency
11 rule. An emergency rule shall be strictly construed and shall
12 not be valid except to the extent necessary to prevent,
13 mitigate, or resolve immediate danger to the public health,
14 safety, or welfare.

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

24 "(d) No rule adopted after October 1, 1982, is valid
25 unless adopted in substantial compliance with this section. A

1 proceeding to contest any rule on the ground of noncompliance
2 with the procedural requirements of this section must be
3 commenced within two years from the effective date of the
4 rule; provided, however, that a proceeding to contest a rule
5 based on failure to provide notice as ~~herein~~ required in this
6 section may be commenced at any time.

7 "§41-22-5.1.

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

10 "(b) When an agency files a notice of intent to
11 adopt, amend, or repeal any rule, the agency shall make its
12 best efforts to notify the public of the proposed rule. At a
13 minimum, when the agency files the notice of intent, the
14 agency shall post the text of the rule the agency proposes to
15 adopt, amend, or repeal on its website or, if the agency has
16 no website, on a website operated or maintained by the
17 executive branch. Additionally, when the agency files a notice
18 of intent to adopt, amend, or repeal a rule, the agency shall
19 electronically notify any person who has registered with the
20 agency his or her desire to receive notification of any
21 proposal by the agency to adopt, amend, or repeal a rule.

22 "(c) If, prior to the end of the notice period, a
23 business notifies an agency that it will be negatively
24 impacted by an action proposed under subsection (b), the
25 agency shall prepare and submit to the committee ~~or its~~

1 ~~successor committee, agency, or service~~ the information
2 provided by the affected business as well as a ~~Business~~
3 ~~Economic Impact Statement~~ business impact analysis of the
4 proposed action. The ~~statement~~ analysis shall estimate the
5 number of businesses subject to the agency's proposal as well
6 as the projected reporting, recordkeeping, and other
7 administrative costs required for compliance with the
8 proposal. An agency shall prepare the business ~~economic impact~~
9 ~~statement~~ impact analysis using information available to the
10 agency in the normal course of business and utilizing the
11 expertise and experience of existing agency employees.

12 "(d) After receiving a business ~~economic impact~~
13 ~~statement~~ impact analysis from an agency, the committee ~~or its~~
14 ~~successor committee, agency, or service~~ may require the agency
15 to analyze and report to the committee ~~or its successor~~
16 ~~committee, agency, or service~~ the feasibility of some or all
17 of the following methods of reducing the impact of the rule on
18 businesses:

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

21 "(2) The establishment of less stringent schedules
22 or deadlines for compliance or reporting requirements for
23 businesses.

24 "(3) The consolidation or simplification of
25 compliance or reporting requirements for businesses.

1 "(4) The establishment of performance standards for
2 businesses to replace design or operational standards required
3 in the rule.

4 "~~(e) An agency shall include information on any~~
5 ~~business economic impact statement~~ The agency shall state in
6 the business impact analysis whether the proposed rule is
7 proposed as a result of a requirement issued by a federal
8 agency, and if so, the agency shall submit information
9 identifying the specific requirement issued by the federal
10 agency.

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

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

23 "(h) If the committee ~~or its successor committee,~~
24 ~~agency, or service~~ determines that an agency or a division of
25 an agency exists primarily to perform certification or

1 licensing-related functions, the agency is not required to
2 comply with ~~the provisions of~~ this section unless the
3 committee ~~or its successor committee, agency, or service~~
4 determines in writing that an agency's proposal has such a
5 negative impact on businesses that the filing of a business
6 ~~economic impact statement~~ impact analysis is warranted.

7 Notwithstanding the provisions of subsection (c) of Section
8 41-22-6 providing that a rule is effective 45 days after
9 notice that the agency filed the certified rule ~~filing~~ with
10 the Legislative Reference Service Services Agency, Legal
11 Division, is published in the Alabama Administrative Monthly
12 in any case in which the committee ~~or its successor committee,~~
13 ~~agency, or service~~ determines that the filing of a business
14 ~~economic impact statement~~ impact analysis is warranted as
15 provided ~~herein~~ in this section, the effective date of the
16 rule shall be 45 additional days after the effective date
17 specified in subsection (c) of Section 41-22-6. In all other
18 respects, the remainder of this chapter shall continue to
19 apply to the proposed rule.

20 "(i) An agency or department shall fulfill any
21 request for license or permit within 28 calendar days after
22 receiving the application or notify the applicant of the
23 reason for failure to issue the license or permit.

24 "(j) An agency is not required to comply with this
25 section if the proposed rule is being adopted in order for the

1 agency to comply with membership requirements in a multi-state
2 or national membership organization.

3 "(k) This section shall not apply to the
4 ~~promulgation~~ adoption of an emergency rule adopted pursuant to
5 subsection (b) of Section 41-22-5.

6 "§41-22-5.2.

7 "(a) Within five years of July 1, 2013, each agency
8 shall review all agency rules existing on that date to
9 determine whether the rules should be continued without
10 change, or should be amended or rescinded. The agency may
11 indicate compliance with the requirements of this section by
12 filing a notice in the Alabama Administrative Monthly
13 certifying its compliance. If the head of the agency
14 determines that completion of the review of existing rules is
15 not feasible by the established date, the agency shall publish
16 a statement certifying that determination.

17 "(b) A rule adopted after July 1, 2013, shall be
18 reviewed every five years in a manner consistent with
19 subsection (a).

20 "§41-22-6.

21 "(a) Each agency shall have an officer designated as
22 its secretary and shall file in the office of the secretary of
23 the agency a certified copy of each rule adopted by it,
24 including all rules, as defined in this chapter, existing on
25 October 1, 1981. Each rule ~~or regulation promulgated~~ adopted,

1 whether the original or a revision, and all copies thereof,
2 shall have the name or names of the author or authors,
3 respectively, on its face. The secretary of the agency shall
4 keep a permanent register of the rules open to public
5 inspection.

6 "(b) The secretary of each agency shall file in the
7 office of the Legislative ~~Reference Service~~ Services Agency,
8 Legal Division, no later than 15 days after the filing with
9 the secretary of the agency and within 90 days after
10 completion of the notice, in a form and manner prescribed by
11 the Legislative ~~Reference Service~~ Services Agency, Legal
12 Division, a certified copy of each rule adopted by it. If the
13 agency was required to prepare a business impact analysis
14 pursuant to subsection (c) of Section 41-22-5.1, the agency
15 shall file the business impact analysis at the same time as
16 the certified rule. As used in this section, "completion of
17 notice" means the end of the notice period specified pursuant
18 to subdivision (1) of subsection (a) of Section 41-22-5. A
19 rule that is not filed with the Legislative ~~Reference Service~~
20 Services Agency, Legal Division, within the time limits
21 prescribed in this ~~subdivision~~ subsection is invalid. If the
22 agency was required to prepare a business impact analysis and
23 either fails to prepare the analysis or fails to file a copy
24 of the analysis with the certified rule within the time limits
25 specified in this section, the rule is invalid. The

1 Legislative ~~Reference Service~~ Services Agency, Legal Division,
2 shall keep a permanent register of the rules open to public
3 inspection.

4 "(c) Each rule ~~hereafter~~ adopted is effective 45
5 days after ~~filing~~ a notice is published in the Alabama
6 Administrative Monthly that the certified rule and, if
7 required pursuant to subsection (c) of Section 41-22-5.1, the
8 business impact analysis, has been filed with the Legislative
9 ~~Reference Service~~ Services Agency, Legal Division, unless it
10 is any of the following:

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

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

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

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

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

1 "(d) The Legislative Services Agency shall publish
2 notice that a certified rule has been filed in its office no
3 later than the next month after the certified rule is filed.

4 "§41-22-7.

5 "(a) The secretary of ~~the~~ an agency shall establish
6 and maintain an official register of ~~regulations~~ rules which
7 shall be compiled, indexed, published in loose-leaf form, and
8 kept up to date by the secretary of the agency. This register
9 of ~~regulations~~ rules shall be known as "The (name of the
10 agency) Administrative Code," and it shall be made available,
11 upon request, at cost to all persons for copying and
12 inspection and to those persons who subscribe ~~thereto~~ to the
13 register. Supplementation shall be made as often as is
14 practicable, but at least once every year. The secretary of
15 ~~the~~ an agency shall number and renumber rules to conform with
16 a uniform numbering system devised by the Legislative
17 ~~Reference Service~~ Services Agency, Legal Division.

18 "(b) The secretary of ~~the~~ an agency may omit from
19 its administrative code rules that are general in form, but
20 are applicable to only one county or a part thereof. Rules so
21 omitted shall be filed with the secretary ~~of the agency~~, and
22 exclusion from publication shall not affect their validity or
23 effectiveness. The secretary ~~of the agency~~ shall publish a
24 compilation of and index to all rules so omitted at least
25 annually.

1 "(c) The secretary of ~~the~~ an agency shall make
2 copies of the agency's administrative code available on an
3 annual subscription basis, at cost.

4 "(d) The secretary of ~~the~~ an agency shall file with
5 the Legislative ~~Reference Service~~ Services Agency, Legal
6 Division, not later than 15 days after filing with the
7 secretary ~~of the agency~~, all rules or amendments or repeal of
8 rules ~~promulgated~~ adopted by the agency. In addition, the
9 ~~secretary~~ secretaries of the Alabama Public Service Commission
10 and the Alabama State Port Authority, respectively, shall file
11 with the Legislative ~~Reference Service~~ Services Agency, Legal
12 Division, not later than 15 days after filing with the
13 secretary ~~of the commission~~, all rules or amendments or repeal
14 of rules ~~promulgated~~ adopted by ~~that~~ the commission or
15 authority.

16 "(e) The Legislative ~~Reference Service~~ Services
17 Agency, Legal Division, shall establish and maintain an
18 official register of ~~regulations~~ rules which shall be so
19 compiled, indexed, published in loose-leaf form, and kept up
20 to date by the Legislative ~~Reference Service~~ Services Agency,
21 Legal Division. The register of ~~regulations~~ rules shall be
22 known as the "Alabama Administrative Code," and shall be made
23 available at cost, upon request, to all persons for inspection
24 and copying or who subscribe thereto. Supplementation shall be
25 made as often as is practicable, but at least once every year.

1 The Legislative ~~Reference Service~~ Services Agency, Legal
2 Division, shall devise a uniform numbering system for rules
3 and may renumber rules before publication to conform with the
4 system.

5 "(f) The Legislative ~~Reference Service~~ Services
6 Agency, Legal Division, shall publish a monthly bulletin
7 entitled the "Alabama Administrative Monthly," which shall
8 contain a statement of either the terms or substance of all
9 rules filed during the preceding month, excluding rules in
10 effect on October 1, 1982, together with other material
11 required by law and such other material the agency or
12 committee determines to be of general interest.

13 "(g) The Legislative ~~Reference Service~~ Services
14 Agency, Legal Division, may omit from the Alabama
15 Administrative Monthly and the Alabama Administrative Code
16 rules that are general in form, but are applicable to only one
17 county or a part thereof. Rules so omitted shall be filed with
18 the Legislative ~~Reference Service~~ Services Agency, Legal
19 Division, and exclusion from publication shall not affect
20 their validity or effectiveness. The Legislative ~~Reference~~
21 ~~Service~~ Services Agency, Legal Division, shall publish a
22 compilation of, and index to, all rules so omitted at least
23 annually.

24 "(h) The Legislative ~~Reference Service~~ Services
25 Agency, Legal Division, shall make copies of the Alabama

1 Administrative Code and copies of the Alabama Administrative
2 Monthly available at cost on an annual subscription basis.

3 "(i) The Legislative ~~Reference Service~~ Services
4 Agency, Legal Division, shall charge each agency using the
5 Alabama Administrative Monthly a space rate computed to cover
6 all publishing or printing costs related to the Alabama
7 Administrative Monthly and shall charge each agency a per page
8 rate for each page published in the Alabama Administrative
9 Code to cover costs incurred by the Legislative ~~Reference~~
10 ~~Service~~ Services Agency, Legal Division, in publishing the
11 Alabama Administrative Code.

12 "§41-22-8.

13 "Each agency shall prescribe by rule the form for
14 petition requesting the adoption, amendment, or repeal of a
15 rule and the procedure for submission, consideration, and
16 disposition thereof. Within 60 days after submission of a
17 petition, the agency either shall deny the petition in writing
18 on the merits, stating its reasons for the denial, or initiate
19 rule-making proceedings in accordance with Section 41-22-5;
20 provided, however, an agency which has its next regularly
21 scheduled meeting beyond ~~said~~ the 60-day period, may by
22 written notice extend ~~said~~ the period for not more than 30
23 days during which it shall deny or initiate rule-making
24 proceedings.

25 "§41-22-22.

1 "The committee shall review all agency rules prior
2 to their adoption. The committee shall have full access to all
3 resources of the legislative department and all agencies
4 thereof when conducting its review. For purposes of conducting
5 business, six members of the committee, to include a minimum
6 of three members of the House of Representatives and three
7 members of the Senate, shall constitute a quorum.

8 "§41-22-22.1.

9 "(a) The Legislative ~~Reference Service~~ Services
10 Agency, Legal Division, shall review each rule certified to it
11 by a state board or commission that regulates a profession, a
12 controlling number of the members of which are active market
13 participants in the profession, to determine whether the rule
14 may significantly lessen competition and, if so, whether the
15 rule was made pursuant to a clearly articulated state policy
16 to displace competition.

17 "(b) If the Legislative ~~Reference Service~~ Services
18 Agency, Legal Division, determines that a rule subject to
19 subsection (a) may significantly lessen competition, it shall
20 determine whether the rule was made pursuant to a clearly
21 articulated state policy to displace competition, and shall
22 certify those determinations to the committee. The board or
23 commission shall submit a position paper, a transcript of any
24 public hearings regarding the rule, and any other material
25 collected during the consideration of the rule by the board or

1 commission to accompany the rule as it is submitted to the
2 committee. Upon receipt of a certification under this
3 subsection, the chair of the committee shall call a meeting of
4 the committee to review the substance of the rule, determine
5 whether the rule may significantly lessen competition, and if
6 so, whether it was made pursuant to a clearly articulated
7 state policy to displace competition. The committee shall
8 approve, disapprove, disapprove with a suggested amendment, or
9 allow the agency to withdraw the rule for revision. The
10 committee shall conduct public hearings and shall allow public
11 comment during its consideration of the rule. If the committee
12 approves the rule, it shall issue a written statement
13 explaining its rationale for approving the rule. If the
14 committee fails to act on a rule certified to it pursuant to
15 this subsection, the rule shall not become effective and shall
16 be placed on the agenda of the committee at each subsequent
17 meeting until the committee disposes of the rule.

18 "(c) A state board or commission that regulates a
19 profession, a controlling number of the members of which are
20 active market participants in the profession, may submit a
21 previously adopted rule, along with a position paper, a
22 transcript of any public hearings regarding the rule, and any
23 other material collected during the consideration of the rule,
24 to the Legislative ~~Reference Service~~ Services Agency, Legal
25 Division, for a determination of whether the previously

1 adopted rule may significantly lessen competition and whether
2 the rule was made pursuant to a clearly articulated state
3 policy to displace competition. If the Legislative ~~Reference~~
4 ~~Service~~ Services Agency, Legal Division, makes those
5 determinations, it shall notify the board or commission and
6 certify the determinations to the committee. Upon receipt of a
7 certification under this subsection, the chair of the
8 committee shall call a meeting of the committee to review the
9 substance of the rule and either approve the rule or notify
10 the board or commission that it agrees with the determination
11 of the Legislative ~~Reference Service~~ Services Agency, Legal
12 Division. If the committee approves the rule, it shall issue a
13 written statement explaining its rationale for approving the
14 rule. The committee shall take action on a rule submitted
15 under this subsection within 45 days of ~~receipt of~~ publication
16 of the notice of its certification from the Legislative
17 Reference Service in the Alabama Administrative Monthly.

18 "(d) The Legislative ~~Reference Service~~ Services
19 Agency, Legal Division, shall review each proposed action
20 submitted to it by a state board or commission that regulates
21 a profession, a controlling number of the members of which are
22 active market participants in the profession, to determine
23 whether the action proposed may significantly lessen
24 competition and, if so, whether the action was proposed

1 pursuant to a clearly articulated state policy to displace
2 competition.

3 "(e) If the Legislative ~~Reference Service~~ Services
4 Agency, Legal Division, determines that an action subject to
5 subsection (d) may significantly lessen competition, it shall
6 determine whether the action was proposed pursuant to a
7 clearly articulated state policy to displace competition, and
8 shall certify those determinations to the committee. The board
9 or commission shall submit a position paper, a transcript of
10 any public hearings regarding the action, and any other
11 material collected during the consideration of the action by
12 the board or commission to accompany the action as it is
13 submitted to the committee. Upon receipt of a certification
14 under this subsection, the chair of the committee shall call a
15 meeting of the committee to review the substance of the
16 action, determine whether the action may lessen or has
17 significantly lessened competition and, if so, whether it was
18 proposed pursuant to a clearly articulated state policy to
19 displace competition. The committee shall approve, disapprove,
20 or propose a modification of a proposed action. The committee
21 may conduct public hearings and solicit public comment during
22 its consideration of the action. When the committee approves,
23 disapproves, or proposes a modification of the action, it
24 shall issue a written statement explaining its rationale. If
25 the committee fails to act on an action certified to it

1 pursuant to subsection (d), the action shall be placed on the
2 agenda of the committee at each subsequent meeting until the
3 committee acts on the certified action. Due to the timely
4 nature of actions, the certified actions shall be given
5 priority in the work of the committee.

6 "(f) In addition to the fee levied under Section
7 41-22-7(i), the Legislative ~~Reference Service~~ Services Agency,
8 Legal Division, shall charge a board or commission that is
9 subject to subsection (a), which submits a previously adopted
10 rule to the Legislative ~~Reference Service~~ Services Agency,
11 Legal Division, under subsection (c), or which submits a
12 proposed action under subsection (d), a fee in the amount
13 necessary to recover the costs of the Legislative ~~Reference~~
14 ~~Service~~ Services Agency, Legal Division, in complying with
15 this section.

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 in the notice, to each member of the committee
20 and such other persons in the legislative department as the
21 committee requires. The form of the proposed rule presented to
22 the committee shall be as follows: New language shall be
23 underlined and language to be deleted shall be typed and lined
24 through.

1 "(b) (1) Within the 45-day period between the ~~time a~~
2 ~~rule is certified~~ date of publication in the Alabama
3 Administrative Monthly that a rule has been certified and the
4 date it becomes effective, and subject to subsection (h) of
5 Section 41-22-5.1, the committee shall study all proposed
6 rules and may hold public hearings ~~thereon~~. The committee may
7 adopt a policy providing when a public hearing will be held on
8 a rule meeting specified criteria. In the event the committee
9 fails to give notice to the agency of either its approval or
10 disapproval of the proposed rule within 45 days after ~~filing~~
11 ~~of the adopted rule~~ the notice is published in the Alabama
12 Administrative Monthly that the rule has been certified and
13 filed with the Legislative Reference Service Services Agency,
14 Legal Division, pursuant to Section 41-22-6, the committee
15 shall be deemed to have approved the proposed rule for the
16 purposes of this section.

17 "(2) In the event the committee disapproves a
18 proposed rule or any part thereof, it shall give notice of the
19 disapproval to the agency. The disapproval of any rule may be
20 appealed to the Lieutenant Governor in writing by the agency
21 that submitted the rule within 15 days of disapproval. The
22 Office of the Lieutenant Governor shall stamp the written
23 appeal to denote the date the appeal was received. If the
24 disapproval of a rule is appealed to the Lieutenant Governor,
25 the Lieutenant Governor, within the 15 days after the notice

1 of appeal of the disapproval of the rule is filed, may review
2 the rule and hold public hearings he or she determines
3 necessary.

4 "(3) If the Lieutenant Governor sustains the
5 disapproval of the rule, he or she shall notify the committee
6 and return the rule to the agency and the disapproval shall be
7 final.

8 "(4) If the Lieutenant Governor approves the rule,
9 he or she shall notify the chair of the committee. The rule
10 shall become effective upon adjournment of the next regular
11 session of the Legislature that commences after the approval
12 unless, prior to that time, the Legislature adopts a joint
13 resolution that overrules the approval by the Lieutenant
14 Governor and sustains the action of the committee.

15 "(5) If the Lieutenant Governor fails to either
16 approve or disapprove the rule within the 15 days after the
17 notice of appeal of the disapproval of the committee, the rule
18 shall be deemed approved and the rule shall become effective
19 upon adjournment of the next regular session of the
20 Legislature that commences after the deemed approval unless,
21 prior to that time, the Legislature adopts a joint resolution
22 that overrides the deemed approval of the Lieutenant Governor
23 and sustains the action of the committee. In the event the
24 Office of the Lieutenant Governor is vacant, a rule
25 disapproved by the committee shall be suspended until the

1 adjournment of the next regular session of the Legislature
2 following the disapproval. The rule shall be reinstated on
3 adjournment of that regular session unless the Legislature, by
4 joint resolution, sustains the disapproval.

5 "(c) The committee may propose an amendment to any
6 proposed rule and return it to the agency with the suggested
7 amendment. In the event the agency accepts the rule as
8 amended, the agency may resubmit the rule as amended to the
9 committee and the rule shall become effective on the date
10 specified in the rule, or on the date the amended rule is
11 submitted, whichever is later. In the event the agency does
12 not accept the amendment, the proposed amended rule shall be
13 deemed disapproved, as provided in subsection (b).

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

20 "(e) The committee is authorized to review and
21 approve or disapprove any rule adopted prior to October 1,
22 1982.

23 "(f) A rule submitted to the committee which has an
24 economic impact shall be accompanied by a fiscal note prepared
25 by the agency in accordance with this subsection. Upon

1 receiving the fiscal note, the committee may require
2 additional information from the submitting agency, other state
3 agencies, or other sources. A state agency shall cooperate and
4 provide information to the committee. At a minimum, the fiscal
5 note submitted with a proposed rule shall include the
6 following:

7 "(1) A determination of the need for the ~~regulation~~
8 rule and the expected benefit of the ~~regulation~~ rule.

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

14 "(3) The effect of the ~~regulation~~ rule on
15 competition.

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

19 "(5) The effect of the ~~regulation~~ rule on employment
20 in the geographical area in which the ~~regulation~~ rule would be
21 implemented.

22 "(6) The source of revenue to be used for
23 implementing and enforcing the ~~regulation~~ rule.

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

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

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~~ rule shall
10 consider qualitative and quantitative benefits and burdens.

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

13 "(10) The detrimental effect on the environment and
14 public health if the ~~regulation~~ rule 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 "(2) Would the absence of the rule or rules
21 significantly harm or endanger the public health, safety, or
22 welfare?

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

1 "(4) Is there another, less restrictive method of
2 regulation available that could adequately protect the public?

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

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

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

12 "(8) Any other criteria the committee may deem
13 appropriate.

14 "§41-22-27.

15 "(a) This chapter shall take effect at 12:01 A.M.,
16 October 1, 1982; provided, however, that Section 41-22-22
17 shall take effect October 1, 1981. In order that the
18 Legislative ~~Reference Service~~ Services Agency, Legal Division,
19 may appoint and hire an aide to receive the rules and in order
20 to promulgate the Alabama Administrative Code and the Alabama
21 Administrative Monthly as soon as possible, subsections (a)
22 and (b) of Section 41-22-6 and subsections (a) through (e) of
23 Section 41-22-7 shall also become effective October 1, 1981.
24 It shall be the duty of all agencies in existence on the
25 passage of this chapter and all agencies created thereafter to

1 cooperate with the office of the Legislative ~~Reference Service~~
2 Services Agency, Legal Division, in compiling the Alabama
3 Administrative Code and the Alabama Administrative Monthly by
4 submitting to the committee all rules now and hereafter in
5 effect, and all proposed rules.

6 "(b) All existing rules shall be indexed by October
7 1, 1983, and the administrative code of each agency shall be
8 completed and up-to-date at that time and the Alabama
9 Administrative Code shall be completed and up-to-date by
10 November 15, 1983.

11 "(c) Any rule in effect before 12:01 A.M., October
12 1, 1983, except those adopted following a public hearing that
13 was required by statute, shall ~~forthwith~~ be reviewed by the
14 agency concerned on the written request of a person
15 substantially affected by the rule involved. The agency
16 concerned shall initiate the rule making procedures provided
17 by this chapter within 90 days after receiving such written
18 request. If the agency concerned fails to initiate the rule
19 making procedures within 90 days, the operation of the rule
20 shall be suspended. The right of review established by this
21 subsection shall be exercisable no earlier than October 1,
22 1983.

23 "(d) All rules in effect on September 30, 1983,
24 shall be and become invalid on October 1, 1983, unless:

1 "(1) Such rules are properly filed, indexed, and
2 included within the administrative code of the agency in
3 accordance with all the provisions of this chapter; and

4 "(2) Such rules adopted prior to October 1, 1982,
5 were validly adopted under procedures in effect prior to those
6 provided in this chapter, or were readopted pursuant to the
7 requirements of this chapter; or

8 "(3) Such rules adopted on or subsequent to October
9 1, 1982, were validly adopted pursuant to the requirements of
10 this chapter.

11 "(e) All contested cases and other adjudicative
12 proceedings conducted pursuant to any provision of the
13 statutes of this state that were begun prior to October 1,
14 1983, shall be continued to a conclusion, including judicial
15 review, under the provisions of such statutes, except that
16 contested cases and other adjudicative proceedings that have
17 not progressed to the stage of a hearing may, with the consent
18 of all parties and the agency conducting the proceedings, be
19 conducted in accordance with the provisions of this chapter as
20 nearly as feasible.

21 "(f) Sections 41-22-1 through 41-22-11 and 41-22-22
22 through 41-22-27 shall take effect with regard to the Alabama
23 Department of Environmental Management at 12:01 A.M. on
24 October 1, 1986. All rules which were validly adopted by the
25 Alabama Department of Environmental Management prior to

1 October 1, 1986, under procedures in effect at the times such
2 rules were adopted shall be valid, and all such rules adopted
3 by the aforesaid department shall be properly filed, indexed
4 and included within the administrative code of the aforesaid
5 department in accordance with all the provisions of this
6 chapter by October 1, 1987. The Alabama Department of
7 Environmental Management shall be exempt from the provisions
8 of Sections 41-22-12 through 41-22-19. Except as provided in
9 subdivision (6) of subsection (c) of Section 22-22A-7,
10 judicial review of any order of the environmental management
11 commission modifying, approving or disapproving an
12 administrative action of the Alabama Department of
13 Environmental Management shall be in accordance with the
14 provisions for review of final agency decisions of contested
15 cases in Sections 41-22-20 and 41-22-21."

16 Section 2. This act shall become effective on the
17 first day of the third month following its passage and
18 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 Representatives

SB204

Senate 23-APR-19

I hereby certify that the within Act originated in and passed the Senate.

Patrick Harris,
Secretary.

House of Representatives
Passed: 29-MAY-19

By: Senator Albritton