

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

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8 SYNOPSIS: Under existing law, an agency subject to the
9 Administrative Procedure Act must file a notice of
10 any proposed rule change with the Legislative
11 Reference Service, and the agency proposing the
12 rule change must notify the public of the proposed
13 action on its website or a website maintained by
14 the executive branch. Under existing law, if, prior
15 to the end of the notice period, a business
16 notifies the agency it will be negatively impacted,
17 the agency proposing the action must prepare and
18 submit an economic impact statement to the Joint
19 Committee on Administrative Regulation Review for
20 the consideration of the joint committee.

21 Under existing law, an agency may certify a
22 rule once it has given 35 days' notice of the
23 proposed action, and, with certain exceptions, the
24 rule is effective 45 days after the certified rule
25 is filed with the Legislative Reference Service. A
26 listing of rules certified during the month appears

1 in each issue of the Alabama Administrative
2 Monthly.

3 Under existing law, in a case in which the
4 Joint Committee on Administrative Regulation Review
5 determines that an economic impact statement is
6 warranted, the rule may not become effective for an
7 additional 45 days following the initial 45 days
8 after the certified rule is filed.

9 This bill would update terminology from
10 Legislative Reference Service to Legislative
11 Services Agency, Legal Division, to reflect current
12 law and make terminology consistent throughout.

13 This bill would provide that a certified
14 rule would become effective 45 days after notice of
15 the certification is published in the Alabama
16 Administrative Monthly or on a later date specified
17 in the rule.

18 This bill would specify that when a business
19 notifies an agency that it will be negatively
20 impacted, the agency must prepare a business impact
21 analysis. This bill would specify that the agency
22 must file the business impact analysis with the
23 Legislative Services Agency, Legal Division, at the
24 same time the agency files the certified rule. This
25 bill would specify that failure to file a business
26 impact analysis when required to do so invalidates
27 the action.

1 This bill would also revise the name of the
2 Joint Committee on Administrative Regulation Review
3 and specify what is a quorum for purposes of
4 conducting business.

5
6 A BILL
7 TO BE ENTITLED
8 AN ACT

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

26 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

1 Section 1. Sections 41-22-2, 41-22-3, Section
2 41-22-5, as amended by Act 2018-139, 2018 Regular Session,
3 Sections 41-22-5.1, 41-22-5.2, 41-22-6, 41-22-7, 41-22-8,
4 41-22-22, 41-22-22.1, 41-22-23, and 41-22-27 of the Code of
5 Alabama 1975, are amended to read as follows:

6 "§41-22-2.

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

16 "(b) The purposes of the Alabama Administrative
17 Procedure Act are:

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

20 "(2) To increase public accountability of
21 administrative agencies;

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

25 "(4) To increase public access to governmental
26 information;

1 "(5) To increase public participation in the
2 formulation of administrative rules;

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

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

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

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

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

26 "(e) All agencies whose rules or administrative
27 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.

25 "(3) CONTESTED CASE. A proceeding, including but not
26 restricted to ratemaking, price fixing, and licensing, in
27 which the legal rights, duties, or privileges of a party are

1 required by law to be determined by an agency after an
2 opportunity for hearing. The term ~~shall~~ does not include
3 intra-agency personnel actions; ~~shall~~ and does not include
4 those hearings or proceedings in which the Alabama Board of
5 Pardons and Paroles considers the granting or denial of
6 pardons, paroles, or restoration of civil and political
7 rights, or remission of fines and forfeitures; ~~and which are~~
8 ~~exempt from Sections 41-22-12 through 41-22-21, relating to~~
9 ~~contested cases.~~

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

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

19 "(6) PARTY. Each person or agency named or admitted
20 as a party or properly seeking and entitled as a matter of
21 right, whether established by constitution, statute, or agency
22 regulation or otherwise, to be admitted as a party, or
23 admitted as an intervenor under Section 41-22-14. ~~An agency~~
24 ~~may by rule authorize limited forms~~ The term includes any
25 limited form of participation in agency proceedings authorized
26 by agency rule for persons who are not eligible to become
27 parties.

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

4 "(8) QUORUM. No less than a majority of the members
5 of a multimember agency shall constitute a quorum authorized
6 to act in the name of the agency, unless provided otherwise by
7 statute.

8 "(9) RULE. Each agency rule, regulation, standard,
9 or statement of general applicability that implements,
10 interprets, or prescribes law or policy, or that describes the
11 organization, procedure, or practice requirements of any
12 agency and includes any form which imposes any requirement or
13 solicits any information not specifically required by statute
14 or by an existing rule or by federal statute or by federal
15 rule or regulation; provided, however, all forms shall be
16 filed with the secretary of the agency and with the
17 Legislative ~~Reference Service~~ Services Agency, Legal Division,
18 and all forms, except intergovernmental, interagency, and
19 intra-agency forms which do not affect the rights of the
20 public and emergency forms adopted pursuant to Section
21 41-22-5, shall be published in the Agency Administrative Code.
22 The term includes the amendment or repeal of all existing
23 rules, but does not include any of the following:

24 "a. Statements concerning only the internal
25 management of an agency and not affecting private rights or
26 procedures available to the public.

1 "b. Declaratory rulings issued pursuant to Section
2 41-22-11.

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

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

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

16 "f. An order which applies to a specifically
17 described tract of real estate.

18 "g. Any rules or actions relating to any of the
19 following:

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

22 "2. The curriculum of public educational
23 institutions or the admission, conduct, discipline, or
24 graduation of students of the institutions; provided, however,
25 that this exception shall not extend to rules or actions of
26 the State Department of Education.

1 "3. Opinions issued by the Attorney General of the
2 State of Alabama.

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

5 "5. Advisory opinions issued by the Alabama Ethics
6 Commission.

7 "6. Hunting and fishing seasons or bag or creel
8 limits promulgated by the Commissioner of the Department of
9 Conservation and Natural Resources.

10 "h. Standards, specifications, codes, plans,
11 manuals, and publications used in the design, construction,
12 repair, and maintenance of highways, roads, and bridges under
13 the jurisdiction of the Department of Transportation.

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
26 of the subjects and issues involved, shall specify a notice
27 period ending not less than 35 days or more than 90 days from

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

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) (1) 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 in the
6 rule, upon the filing of the rule and a copy of the written
7 statement of the reasons therefor with the Legislative
8 Services Agency, Legal Division, and the secretary of the
9 agency. The rule may be effective for a period of not longer
10 than 120 days and shall not be renewable.

11 "(2) An agency shall not adopt the same or a
12 substantially similar emergency rule within one calendar year
13 from its first adoption unless the agency clearly establishes
14 it could not reasonably be foreseen during the initial 120-day
15 period that such emergency would continue or would likely
16 reoccur during the next nine months. The adoption of the same
17 or a substantially similar rule by normal rulemaking
18 procedures is not precluded. In any subsequent action
19 contesting the effective date of a rule adopted pursuant to
20 this subsection, the burden of proof shall be on the agency to
21 justify its finding.

22 "(3) Prior to indexing and publication, the agency
23 shall make reasonable efforts to apprise the persons who may
24 be affected by its rules of the adoption of the emergency
25 rule. An emergency rule shall be strictly construed and shall
26 not be valid except to the extent necessary to prevent,

1 mitigate, or resolve immediate danger to the public health,
2 safety, or welfare.

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

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

20 "§41-22-5.1.

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

23 "(b) When an agency files a notice of intent to
24 adopt, amend, or repeal any rule, the agency shall make its
25 best efforts to notify the public of the proposed rule. At a
26 minimum, when the agency files the notice of intent, the
27 agency shall post the text of the rule the agency proposes to

1 adopt, amend, or repeal on its website or, if the agency has
2 no website, on a website operated or maintained by the
3 executive branch. Additionally, when the agency files a notice
4 of intent to adopt, amend, or repeal a rule, the agency shall
5 electronically notify any person who has registered with the
6 agency his or her desire to receive notification of any
7 proposal by the agency to adopt, amend, or repeal a rule.

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

23 "(d) After receiving a business ~~economic impact~~
24 ~~statement~~ impact analysis from an agency, the committee ~~or its~~
25 ~~successor committee, agency, or service~~ may require the agency
26 to analyze and report to the committee ~~or its successor~~
27 ~~committee, agency, or service~~ the feasibility of some or all

1 of the following methods of reducing the impact of the rule on
2 businesses:

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

5 "(2) The establishment of less stringent schedules
6 or deadlines for compliance or reporting requirements for
7 businesses.

8 "(3) The consolidation or simplification of
9 compliance or reporting requirements for businesses.

10 "(4) The establishment of performance standards for
11 businesses to replace design or operational standards required
12 in the rule.

13 "~~(e) An agency shall include information on any~~
14 ~~business economic impact statement~~ The agency shall state in
15 the business impact analysis whether the proposed rule is
16 proposed as a result of a requirement issued by a federal
17 agency, and if so, the agency shall submit information
18 identifying the specific requirement issued by the federal
19 agency.

20 "(f) A business ~~economic impact statement~~ impact
21 analysis required to be filed pursuant to this section shall
22 be filed with the Legislative ~~Reference Service~~ Services
23 Agency, Legal Division, at the same time as the ~~proposed~~
24 certified rule is filed ~~certified to the Legislative Reference~~
25 ~~Service~~ and shall be available for public inspection.

26 "(g) Each agency that files a business ~~economic~~
27 ~~impact statement~~ impact analysis, at the time it is filed,

1 shall place that statement on its website in a location that
2 is easily accessible by the general public, or, if the agency
3 does not have a website, on a website operated or maintained
4 by the executive branch.

5 " (h) If the committee ~~or its successor committee,~~
6 ~~agency, or service~~ determines that an agency or a division of
7 an agency exists primarily to perform certification or
8 licensing-related functions, the agency is not required to
9 comply with ~~the provisions of~~ this section unless the
10 committee ~~or its successor committee, agency, or service~~
11 determines in writing that an agency's proposal has such a
12 negative impact on businesses that the filing of a business
13 ~~economic impact statement~~ impact analysis is warranted.
14 Notwithstanding the provisions of subsection (c) of Section
15 41-22-6 providing that a rule is effective 45 days after
16 notice that the agency filed the certified rule ~~filing~~ with
17 the Legislative Reference Service Services Agency, Legal
18 Division, is published in the Alabama Administrative Monthly
19 in any case in which the committee ~~or its successor committee,~~
20 ~~agency, or service~~ determines that the filing of a business
21 ~~economic impact statement~~ impact analysis is warranted as
22 provided ~~herein~~ in this section, the effective date of the
23 rule shall be 45 additional days after the effective date
24 specified in subsection (c) of Section 41-22-6. In all other
25 respects, the remainder of this chapter shall continue to
26 apply to the proposed rule.

1 "(i) An agency or department shall fulfill any
2 request for license or permit within 28 calendar days after
3 receiving the application or notify the applicant of the
4 reason for failure to issue the license or permit.

5 "(j) An agency is not required to comply with this
6 section if the proposed rule is being adopted in order for the
7 agency to comply with membership requirements in a multi-state
8 or national membership organization.

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

12 "§41-22-5.2.

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

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

26 "§41-22-6.

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

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

1 either fails to prepare the analysis or fails to file a copy
2 of the analysis with the certified rule within the time limits
3 specified in this section, the rule is invalid. The
4 Legislative ~~Reference Service~~ Services Agency, Legal Division,
5 shall keep a permanent register of the rules open to public
6 inspection.

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

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

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

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

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

22 "(5) A rule that takes effect upon adjournment of
23 the next legislative session following the completion of the
24 appeal process as set forth in Section 41-22-23, if the
25 Legislature fails to take action to disapprove the rule after
26 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.
26 The Legislative ~~Reference Service~~ Services Agency, Legal
27 Division, shall devise a uniform numbering system for rules

1 and may renumber rules before publication to conform with the
2 system.

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

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

22 "(h) The Legislative ~~Reference Service~~ Services
23 Agency, Legal Division, shall make copies of the Alabama
24 Administrative Code and copies of the Alabama Administrative
25 Monthly available at cost on an annual subscription basis.

26 "(i) The Legislative ~~Reference Service~~ Services
27 Agency, Legal Division, shall charge each agency using the

1 Alabama Administrative Monthly a space rate computed to cover
2 all publishing or printing costs related to the Alabama
3 Administrative Monthly and shall charge each agency a per page
4 rate for each page published in the Alabama Administrative
5 Code to cover costs incurred by the Legislative ~~Reference~~
6 ~~Service~~ Services Agency, Legal Division, in publishing the
7 Alabama Administrative Code.

8 "§41-22-8.

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

21 "§41-22-22.

22 "The committee shall review all agency rules prior
23 to their adoption. The committee shall have full access to all
24 resources of the legislative department and all agencies
25 thereof when conducting its review. For purposes of conducting
26 business, six members of the committee, to include a minimum

1 of three members of the House of Representatives and three
2 members of the Senate, shall constitute a quorum.

3 "§41-22-22.1.

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

12 "(b) If the Legislative ~~Reference Service~~ Services
13 Agency, Legal Division, determines that a rule subject to
14 subsection (a) may significantly lessen competition, it shall
15 determine whether the rule was made pursuant to a clearly
16 articulated state policy to displace competition, and shall
17 certify those determinations to the committee. The board or
18 commission shall submit a position paper, a transcript of any
19 public hearings regarding the rule, and any other material
20 collected during the consideration of the rule by the board or
21 commission to accompany the rule as it is submitted to the
22 committee. Upon receipt of a certification under this
23 subsection, the chair of the committee shall call a meeting of
24 the committee to review the substance of the rule, determine
25 whether the rule may significantly lessen competition, and if
26 so, whether it was made pursuant to a clearly articulated
27 state policy to displace competition. The committee shall

1 approve, disapprove, disapprove with a suggested amendment, or
2 allow the agency to withdraw the rule for revision. The
3 committee shall conduct public hearings and shall allow public
4 comment during its consideration of the rule. If the committee
5 approves the rule, it shall issue a written statement
6 explaining its rationale for approving the rule. If the
7 committee fails to act on a rule certified to it pursuant to
8 this subsection, the rule shall not become effective and shall
9 be placed on the agenda of the committee at each subsequent
10 meeting until the committee disposes of the rule.

11 "(c) A state board or commission that regulates a
12 profession, a controlling number of the members of which are
13 active market participants in the profession, may submit a
14 previously adopted rule, along with a position paper, a
15 transcript of any public hearings regarding the rule, and any
16 other material collected during the consideration of the rule,
17 to the Legislative ~~Reference Service~~ Services Agency, Legal
18 Division, for a determination of whether the previously
19 adopted rule may significantly lessen competition and whether
20 the rule was made pursuant to a clearly articulated state
21 policy to displace competition. If the Legislative ~~Reference~~
22 ~~Service~~ Services Agency, Legal Division, makes those
23 determinations, it shall notify the board or commission and
24 certify the determinations to the committee. Upon receipt of a
25 certification under this subsection, the chair of the
26 committee shall call a meeting of the committee to review the
27 substance of the rule and either approve the rule or notify

1 the board or commission that it agrees with the determination
2 of the Legislative ~~Reference Service~~ Services Agency, Legal
3 Division. If the committee approves the rule, it shall issue a
4 written statement explaining its rationale for approving the
5 rule. The committee shall take action on a rule submitted
6 under this subsection within 45 days of ~~receipt of~~ publication
7 of the notice of its certification from the Legislative
8 Reference Service in the Alabama Administrative Monthly.

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

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

1 submitted to the committee. Upon receipt of a certification
2 under this subsection, the chair of the committee shall call a
3 meeting of the committee to review the substance of the
4 action, determine whether the action may lessen or has
5 significantly lessened competition and, if so, whether it was
6 proposed pursuant to a clearly articulated state policy to
7 displace competition. The committee shall approve, disapprove,
8 or propose a modification of a proposed action. The committee
9 may conduct public hearings and solicit public comment during
10 its consideration of the action. When the committee approves,
11 disapproves, or proposes a modification of the action, it
12 shall issue a written statement explaining its rationale. If
13 the committee fails to act on an action certified to it
14 pursuant to subsection (d), the action shall be placed on the
15 agenda of the committee at each subsequent meeting until the
16 committee acts on the certified action. Due to the timely
17 nature of actions, the certified actions shall be given
18 priority in the work of the committee.

19 "(f) In addition to the fee levied under Section
20 41-22-7(i), the Legislative ~~Reference Service~~ Services Agency,
21 Legal Division, shall charge a board or commission that is
22 subject to subsection (a), which submits a previously adopted
23 rule to the Legislative ~~Reference Service~~ Services Agency,
24 Legal Division, under subsection (c), or which submits a
25 proposed action under subsection (d), a fee in the amount
26 necessary to recover the costs of the Legislative ~~Reference~~

1 ~~Service~~ Services Agency, Legal Division, in complying with
2 this section.

3 "§41-22-23.

4 "(a) The notice required by subdivision (a)(1) of
5 Section 41-22-5 shall be given, in addition to the persons
6 ~~therein~~ named in the notice, to each member of the committee
7 and such other persons in the legislative department as the
8 committee requires. The form of the proposed rule presented to
9 the committee shall be as follows: New language shall be
10 underlined and language to be deleted shall be typed and lined
11 through.

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

1 "(2) In the event the committee disapproves a
2 proposed rule or any part thereof, it shall give notice of the
3 disapproval to the agency. The disapproval of any rule may be
4 appealed to the Lieutenant Governor in writing by the agency
5 that submitted the rule within 15 days of disapproval. The
6 Office of the Lieutenant Governor shall stamp the written
7 appeal to denote the date the appeal was received. If the
8 disapproval of a rule is appealed to the Lieutenant Governor,
9 the Lieutenant Governor, within the 15 days after the notice
10 of appeal of the disapproval of the rule is filed, may review
11 the rule and hold public hearings he or she determines
12 necessary.

13 "(3) If the Lieutenant Governor sustains the
14 disapproval of the rule, he or she shall notify the committee
15 and return the rule to the agency and the disapproval shall be
16 final.

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

24 "(5) If the Lieutenant Governor fails to either
25 approve or disapprove the rule within the 15 days after the
26 notice of appeal of the disapproval of the committee, the rule
27 shall be deemed approved and the rule shall become effective

1 upon adjournment of the next regular session of the
2 Legislature that commences after the deemed approval unless,
3 prior to that time, the Legislature adopts a joint resolution
4 that overrides the deemed approval of the Lieutenant Governor
5 and sustains the action of the committee. In the event the
6 Office of the Lieutenant Governor is vacant, a rule
7 disapproved by the committee shall be suspended until the
8 adjournment of the next regular session of the Legislature
9 following the disapproval. The rule shall be reinstated on
10 adjournment of that regular session unless the Legislature, by
11 joint resolution, sustains the disapproval.

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

21 "(d) An agency may withdraw a proposed or certified
22 rule. An agency may resubmit a rule so withdrawn or returned
23 under this section with minor modification. Such a rule is a
24 new filing and subject to this section but is not subject to
25 further notice as provided in subsection (a) of Section
26 41-22-5.

1 "(e) The committee is authorized to review and
2 approve or disapprove any rule adopted prior to October 1,
3 1982.

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

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

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

20 "(3) The effect of the ~~regulation~~ rule on
21 competition.

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

25 "(5) The effect of the ~~regulation~~ rule on employment
26 in the geographical area in which the ~~regulation~~ rule would be
27 implemented.

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

3 "(7) A conclusion on the short-term and long-term
4 economic impact upon all persons substantially affected by the
5 ~~regulation~~ rule, including an analysis containing a
6 description of which persons will bear the costs of the
7 ~~regulation~~ rule and which persons will benefit directly and
8 indirectly from the ~~regulation~~ rule.

9 "(8) The uncertainties associated with the
10 estimation of particular benefits and burdens and the
11 difficulties involved in the comparison of qualitatively and
12 quantitatively dissimilar benefits and burdens. A
13 determination of the need for the ~~regulation~~ rule shall
14 consider qualitative and quantitative benefits and burdens.

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

17 "(10) The detrimental effect on the environment and
18 public health if the ~~regulation~~ rule is not implemented.

19 "(g) In determining whether to approve or disapprove
20 proposed rules, the committee shall consider the following
21 criteria:

22 "(1) Is there a statutory authority for the proposed
23 rule?

24 "(2) Would the absence of the rule or rules
25 significantly harm or endanger the public health, safety, or
26 welfare?

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

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

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

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

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

15 "(8) Any other criteria the committee may deem
16 appropriate.

17 "§41-22-27.

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

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

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

12 "(c) Any rule in effect before 12:01 A.M., October
13 1, 1983, except those adopted following a public hearing that
14 was required by statute, shall ~~forthwith~~ be reviewed by the
15 agency concerned on the written request of a person
16 substantially affected by the rule involved. The agency
17 concerned shall initiate the rule making procedures provided
18 by this chapter within 90 days after receiving such written
19 request. If the agency concerned fails to initiate the rule
20 making procedures within 90 days, the operation of the rule
21 shall be suspended. The right of review established by this
22 subsection shall be exercisable no earlier than October 1,
23 1983.

24 "(d) All rules in effect on September 30, 1983,
25 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
26 October 1, 1986, under procedures in effect at the times such
27 rules were adopted shall be valid, and all such rules adopted

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

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