

HB399 INTRODUCED



1 AIE0SQ-1
2 By Representative Sells
3 RFD: State Government
4 First Read: 27-Apr-23
5
6 2023 Regular Session



1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SYNOPSIS:

Under existing law, the Alabama Administrative Procedure Act establishes the minimum procedural code for the adoption of administrative rules affecting the rights and duties of the public.

This bill would revise the definition of rule for purposes of the Administrative Procedure Act to provide that the exception for intergovernmental, interagency, and intra-agency memoranda, directives, manuals, or other communications which do not substantially affect the legal rights of, or procedures available to, the public shall not apply to any communication establishing the process to be used by tax officials to value real property for ad valorem tax purposes.

A BILL
TO BE ENTITLED
AN ACT

Relating to the Alabama Administrative Procedure Act; to amend Section 41-22-3, Code of Alabama 1975, to revise the definition of rule for the purposes of the Administrative Procedure Act, to provide that the exception for



HB399 INTRODUCED

29 intergovernmental, interagency, and intra-agency memoranda,
30 directives, manuals, or other communications which do not
31 substantially affect the legal rights of, or procedures
32 available to, the public shall not apply to any communicaiton
33 establishing the process to be used by tax officials to value
34 real property for ad valorem tax purposes.

35 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

36 Section 1. Section 41-22-3, Code of Alabama 1975, is
37 amended to read as follows:

38 "§41-22-3

39 The following words and phrases when used in this
40 chapter shall have the meanings respectively ascribed to them
41 in this section, except when the context otherwise requires:

42 (1) AGENCY. Every board, bureau, commission,
43 department, officer, or other administrative office or unit of
44 the state, including the Alabama Department of Environmental
45 Management, other than the Legislature and its agencies, the
46 Alabama State Port Authority, the courts, the Alabama Public
47 Service Commission, or the State Banking Department, whose
48 administrative procedures are governed by Sections 5-2A-8 and
49 5-2A-9. The term does not include boards of trustees of
50 postsecondary institutions, boards of plans administered by
51 public pension systems, counties, municipalities, or any
52 agencies of local governmental units, unless they are
53 expressly made subject to this chapter by general or special
54 law.

55 (2) COMMITTEE. The Joint Committee on Administrative
56 Rule Review, comprised of the members of the Legislative



HB399 INTRODUCED

57 Council, or any successor of the Joint Committee on
58 Administrative Rule Review.

59 (3) CONTESTED CASE. A proceeding, including but not
60 restricted to ratemaking, price fixing, and licensing, in
61 which the legal rights, duties, or privileges of a party are
62 required by law to be determined by an agency after an
63 opportunity for hearing. The term does not include
64 intra-agency personnel actions; and does not include those
65 hearings or proceedings in which the Alabama Board of Pardons
66 and Paroles considers the granting or denial of pardons,
67 paroles, restoration of civil and political rights, or
68 remission of fines and forfeitures.

69 (4) LICENSE. The whole or part of any agency franchise,
70 permit, certificate, approval, registration, charter, or
71 similar form of permission required by law, but not a license
72 required solely for revenue purposes when issuance of the
73 license is merely a ministerial act.

74 (5) LICENSING. The agency process respecting the grant,
75 denial, renewal, revocation, suspension, annulment,
76 withdrawal, or amendment of a license or imposition of terms
77 for the exercise of a license.

78 (6) PARTY. Each person or agency named or admitted as a
79 party or properly seeking and entitled as a matter of right,
80 whether established by constitution, statute, or agency
81 regulation or otherwise, to be admitted as a party, or
82 admitted as an intervenor under Section 41-22-14. The term
83 includes any limited form of participation in agency
84 proceedings authorized by agency rule for persons who are not



HB399 INTRODUCED

85 eligible to become parties.

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

89 (8) QUORUM. No less than a majority of the members of a
90 multimember agency shall constitute a quorum authorized to act
91 in the name of the agency, unless provided otherwise by
92 statute.

93 (9) RULE. Each agency rule, regulation, standard, or
94 statement of general applicability that implements,
95 interprets, or prescribes law or policy, or that describes the
96 organization, procedure, or practice requirements of any
97 agency and includes any form which imposes any requirement or
98 solicits any information not specifically required by statute
99 or by an existing rule or by federal statute or by federal
100 rule or regulation; provided, however, all forms shall be
101 filed with the secretary of the agency and with the
102 Legislative Services Agency, Legal Division, and all forms,
103 except intergovernmental, interagency, and intra-agency forms
104 which do not affect the rights of the public and emergency
105 forms adopted pursuant to Section 41-22-5, shall be published
106 in the Agency Administrative Code. The term includes the
107 amendment or repeal of all existing rules, but does not
108 include any of the following:

109 a. Statements concerning only the internal management
110 of an agency and not affecting private rights or procedures
111 available to the public.

112 b. Declaratory rulings issued pursuant to Section



HB399 INTRODUCED

113 41-22-11.

114 c. Intergovernmental, interagency, and intra-agency
115 memoranda, directives, manuals, or other communications which
116 do not substantially affect the legal rights of, or procedures
117 available to, the public or any segment thereof. This
118 exception shall not apply to any communication establishing
119 the process to be used by tax officials to value real property
120 for ad valorem tax purposes.

121 d. Determinations, decisions, orders, statements of
122 policy, and interpretations that are made in contested cases.

123 e. An order which is directed to a specifically named
124 person or to a group of specifically named persons which does
125 not constitute a general class, and the order is served on the
126 person or persons to whom it is directed by the appropriate
127 means applicable thereto. The fact that the named person who
128 is being regulated serves a group of unnamed persons who will
129 be affected does not make the order a rule.

130 f. An order which applies to a specifically described
131 tract of real estate.

132 g. Any rules or actions relating to any of the
133 following:

134 1. The conduct of inmates of public institutions and
135 prisoners on parole.

136 2. The curriculum of public educational institutions or
137 the admission, conduct, discipline, or graduation of students
138 of the institutions; provided, however, that this exception
139 shall not extend to rules or actions of the State Department
140 of Education.



HB399 INTRODUCED

141 3. Opinions issued by the Attorney General of the State
142 of Alabama.

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

145 5. Advisory opinions issued by the Alabama Ethics
146 Commission.

147 6. Hunting and fishing seasons or bag or creel limits
148 adopted by the Commissioner of the Department of Conservation
149 and Natural Resources.

150 h. Standards, specifications, codes, plans, manuals,
151 and publications used in the design, construction, repair, and
152 maintenance of highways, roads, and bridges under the
153 jurisdiction of the Department of Transportation."

154 Section 2. This act shall become effective on October
155 1, 2023, following its passage and approval by the Governor,
156 or its otherwise becoming law.