

HB89 INTRODUCED



1 BYL3J4-1
2 By Representative Sells
3 RFD: State Government
4 First Read: 07-Mar-23
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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 exclude from the definition communications within an agency or with another agency, including memoranda, directives, manuals, forms, or other types of communication which do not substantially affect the legal rights of, or procedures available to, the public or any segment thereof.

This bill would apply retroactively to October 1, 2022.

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 purposes of the Administrative Procedure Act to exclude from the definition certain communications within an agency or with another agency and to



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29 provide for retroactive effect.

30 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

33 "§41-22-3

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

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

50 (2) COMMITTEE. The Joint Committee on Administrative
51 Rule Review, comprised of the members of the Legislative
52 Council, or any successor of the Joint Committee on
53 Administrative Rule Review.

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



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57 required by law to be determined by an agency after an
58 opportunity for hearing. The term does not include
59 intra-agency personnel actions; and does not include those
60 hearings or proceedings in which the Alabama Board of Pardons
61 and Paroles considers the granting or denial of pardons,
62 paroles, restoration of civil and political rights, or
63 remission of fines and forfeitures.

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

69 (5) LICENSING. The agency process respecting the grant,
70 denial, renewal, revocation, suspension, annulment,
71 withdrawal, or amendment of a license or imposition of terms
72 for the exercise of a license.

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

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

84 (8) QUORUM. No less than a majority of the members of a



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85 multimember agency shall constitute a quorum authorized to act
86 in the name of the agency, unless provided otherwise by
87 statute.

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

105 a. Statements concerning only the internal management
106 of an agency and not affecting private rights or procedures
107 available to the public.

108 b. Declaratory rulings issued pursuant to Section
109 41-22-11.

110 c. ~~Intergovernmental, interagency, and intra-agency~~
111 Communication within an agency or with another agency,
112 including memoranda, directives, manuals, forms, or other



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113 ~~communications~~ types of communication which do not
114 substantially affect the legal rights of, or procedures
115 available to, the public or any segment thereof.

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

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

125 f. An order which applies to a specifically described
126 tract of real estate.

127 g. Any rules or actions relating to any of the
128 following:

129 1. The conduct of inmates of public institutions and
130 prisoners on parole.

131 2. The curriculum of public educational institutions or
132 the admission, conduct, discipline, or graduation of students
133 of the institutions; provided, however, that this exception
134 shall not extend to rules or actions of the State Department
135 of Education.

136 3. Opinions issued by the Attorney General of the State
137 of Alabama.

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

140 5. Advisory opinions issued by the Alabama Ethics



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141 Commission.

142 6. Hunting and fishing seasons or bag or creel limits
143 adopted by the Commissioner of the Department of Conservation
144 and Natural Resources.

145 h. Standards, specifications, codes, plans, manuals,
146 and publications used in the design, construction, repair, and
147 maintenance of highways, roads, and bridges under the
148 jurisdiction of the Department of Transportation."

149 Section 2. This act shall become effective immediately
150 upon its passage and approval by the Governor, or its
151 otherwise becoming law, and shall apply retroactively to
152 October 1, 2022.