

SB248 INTRODUCED



1 SB248
2 L56QFYW-1
3 By Senators Orr, Butler
4 RFD: State Governmental Affairs
5 First Read: 18-Mar-25



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SYNOPSIS:

Under the Alabama Administrative Procedure Act, agency rulings in contested cases are required to be taken as prima facie just and reasonable by a reviewing court on questions of fact and the agency's interpretation of laws based on those facts.

This bill would revise the standard of judicial review to provide that a court may consider, not defer, to an agency's interpretation of law and to favor a reasonable interpretation which limits agency power and maximizes individual liberty.

A BILL
TO BE ENTITLED
AN ACT

Relating to the Alabama Administrative Procedure Act; to amend Section 41-22-20, Code of Alabama 1975; to revise the standard of judicial review of agency rulings.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 41-22-20 of the Code of Alabama 1975, is amended to read as follows:

"§41-22-20

(a) A person who has exhausted all administrative



SB248 INTRODUCED

29 remedies available within the agency, other than rehearing,
30 and who is aggrieved by a final decision in a contested case
31 is entitled to judicial review under this chapter. A
32 preliminary, procedural, or intermediate agency action or
33 ruling is immediately reviewable if review of the final agency
34 decision would not provide an adequate remedy.

35 (b) All proceedings for review may be instituted by
36 filing of notice of appeal or review and a cost bond with the
37 agency to cover the reasonable costs of preparing the
38 transcript of the proceeding under review, unless waived by
39 the agency or the court on a showing of substantial hardship.
40 A petition shall be filed either in the Circuit Court of
41 Montgomery County or in the circuit court of the county in
42 which the agency maintains its headquarters, or unless
43 otherwise specifically provided by statute, in the circuit
44 court of the county where a party other than an intervenor,
45 resides or if a party, other than an intervenor, is a
46 corporation, domestic or foreign, having a registered office
47 or business office in this state, then in the county of the
48 registered office or principal place of business within this
49 state.

50 (c) The filing of the notice of appeal or the petition
51 does not itself stay enforcement of the agency decision. If
52 the agency decision has the effect of suspending or revoking a
53 license, a stay or supersedeas shall be granted as a matter of
54 right upon such conditions as are reasonable, unless the
55 reviewing court, upon petition of the agency, determines that
56 a stay or supersedeas would constitute a probable danger to



SB248 INTRODUCED

57 the public health, safety, or welfare. In all other cases, the
58 agency may grant, or the reviewing court may order, a stay
59 upon appropriate terms, but, in any event, the order shall
60 specify the conditions upon which the stay or supersedeas is
61 granted; provided, however, if the appeal or proceedings for
62 review to any reviewing court is from an order of the agency
63 increasing or reducing or refusing to increase rates, fares,
64 or charges, or any of them, or any schedule or parts of any
65 schedule of rates, fares, or charges, the reviewing court
66 shall not direct or order a supersedeas or stay of the action
67 or order to be reviewed without requiring, as a condition
68 precedent to the granting of ~~such~~ the supersedeas, that the
69 party applying for supersedeas or stay shall execute and file
70 with the clerk of the court a bond as provided for and
71 required by statute or law. If the circuit court ~~shall fail~~
72 fails or ~~refuse~~ refuses to grant supersedeas or stay, the
73 party seeking ~~such~~ relief may petition the appropriate court
74 to which the appeal or review lies to order a supersedeas or
75 stay of the action or order of the agency from which review is
76 sought. After the required bond ~~shall have~~ has been filed and
77 approved by the clerk, ~~such~~ the agency order shall be stayed
78 and superseded, and it shall be lawful to charge the rates,
79 fares, or charges which have been reduced, refused, or denied
80 by the agency order, until the final disposition of the cause.
81 ~~The provisions of this~~ This subsection shall apply when
82 applicable, anything in Rule 60 of the Alabama Rules of Civil
83 Procedure restricting ~~the provisions of~~ this subsection to the
84 contrary notwithstanding.



SB248 INTRODUCED

85 (d) The notice of appeal or review shall be filed
86 within 30 days after the receipt of the notice of or other
87 service of the final decision of the agency upon the
88 petitioner or, if a rehearing is requested under Section
89 41-22-17, within 30 days after the receipt of the notice of or
90 other service of the decision of the agency thereon. The
91 petition for judicial review in the circuit court shall be
92 filed within 30 days after the filing of the notice of appeal
93 or review. Copies of the petition shall be served upon the
94 agency and all parties of record. Any person aggrieved who is
95 not a party may petition to become a party by filing a motion
96 to intervene as provided in Section 41-22-14. Failure to file
97 ~~such~~ the petition within the time stated shall operate as a
98 waiver of the right of ~~such~~ the person to review under this
99 chapter, except that for good cause shown, the judge of the
100 reviewing court may extend the time for filing, not to exceed
101 an additional 30 days, or, within four months after the
102 issuance of the agency order, issue an order permitting a
103 review of the agency decision under this chapter
104 notwithstanding ~~such~~ the waiver. Any notice required ~~herein in~~
105 this subsection which is mailed by the petitioner, certified
106 mail return receipt requested, shall be deemed to have been
107 filed as of the date ~~it~~ the notice is postmarked. This section
108 shall apply to judicial review from the final order or action
109 of all agencies, and amends the judicial review statutes
110 relating to all agencies to provide a period of 30 days within
111 which to appeal or to institute judicial review.

112 (e) If there has been no hearing prior to agency action



SB248 INTRODUCED

113 and the reviewing court finds that the validity of the action
114 depends upon disputed facts, the court shall order the agency
115 to conduct a prompt fact-finding proceeding under this chapter
116 after having a reasonable opportunity to reconsider its
117 determination on the record of the proceedings.

118 (f) Unreasonable delay on the part of an agency in
119 reaching a final decision shall be justification for any
120 person whose rights, duties, or privileges are adversely
121 affected by ~~such~~ the delay to seek a court order compelling
122 action by the agency.

123 (g) Within 30 days after receipt of the notice of
124 appeal or within such additional time as the court may allow,
125 the agency shall transmit to the reviewing court the original
126 or a certified copy of the entire record and transcript of the
127 proceedings under review. With the permission of the court,
128 the record of the proceedings under review may be shortened by
129 stipulation of all parties to the review proceedings. Any
130 party found by the reviewing court to have unreasonably
131 refused to stipulate to limit the record may be taxed by the
132 court for ~~such~~ the additional costs as may be occasioned by
133 the refusal. The court may require or permit subsequent
134 corrections or additions to the record when deemed desirable.

135 (h) The petition for review shall name the agency as
136 respondent and shall contain a concise statement of:

137 (1) The nature of the agency action which is the
138 subject of the petition;

139 (2) The particular agency action appealed from;

140 (3) The facts and law on which jurisdiction and venue



SB248 INTRODUCED

141 are based;

142 (4) The grounds on which relief is sought; and

143 (5) The relief sought.

144 (i) In proceedings for judicial review of agency action
145 in a contested case, except where appeal or judicial review is
146 by a trial de novo, a reviewing court shall not itself hear or
147 accept any further evidence with respect to those issues of
148 fact whose determination was entrusted by law to the agency in
149 that contested case proceeding; provided, however, that
150 evidence may be introduced in the reviewing court as to fraud
151 or misconduct of some person engaged in the administration of
152 the agency or procedural irregularities before the agency not
153 shown in the record and the affecting order, ruling, or award
154 from which review is sought, and proof thereon may be taken in
155 the reviewing court. If, before the date set for hearing a
156 petition for judicial review of agency action in a contested
157 case, it is shown to the satisfaction of the court that
158 additional evidence is material and that there were good
159 reasons for failure to present ~~it~~ that additional evidence in
160 the contested case proceeding before the agency, the court may
161 remand to the agency and order that the additional evidence be
162 taken before the agency upon conditions determined by the
163 court. The agency may modify its findings and decision in the
164 case by reason of the additional evidence and shall file that
165 evidence and any modification, new findings, or decision with
166 the reviewing court and mail copies of the new findings, or
167 decision to all parties.

168 (j) The review shall be conducted by the court without



SB248 INTRODUCED

169 a jury and, except as herein provided, shall in the review of
170 contested cases be confined to the record and the additions
171 thereto as may be made under subsection (i) ~~of this section~~.
172 Judicial review shall be by trial de novo in the circuit court
173 where review is sought from tax assessments, tax
174 determinations or tax redeterminations, rulings of the ~~Revenue~~
175 Department of Revenue granting, denying, or revoking licenses,
176 or rulings on petitions for tax refunds, or, unless a
177 subsequent agency statute provides otherwise, where an agency
178 statute existing on the effective date of Act No. 81-855, 1981
179 Acts of Alabama, or thereafter enacted provides for a trial de
180 novo on appeal to or review by the courts; provided, however,
181 in the review of tax assessments, tax determinations, or tax
182 redeterminations, rulings of the ~~Revenue~~ Department of Revenue
183 granting, denying, or revoking licenses, or rulings on
184 petitions for tax refunds, the administrative record and
185 transcript shall be transmitted to the reviewing court as
186 provided in subsection (g) ~~of this section~~, and, on motion of
187 either party, shall be admitted into evidence in the trial de
188 novo, subject to the rights of either party to assign errors,
189 objections, or motions to exclude calling attention to any
190 testimony or evidence in the administrative record or
191 transcript which is deemed objectionable or inadmissible.
192 Provided further that, with the consent of all parties,
193 judicial review may be on the administrative record and
194 transcript. The court, upon request, shall hear oral argument
195 and receive written briefs.

196 (k) ~~Except where judicial review is by trial de novo,~~



SB248 INTRODUCED

197 ~~the agency order shall be taken as prima facie just and~~
198 ~~reasonable and the court shall not substitute its judgment for~~
199 ~~that of the agency as to the weight of the evidence on~~
200 ~~questions of fact, except where otherwise authorized by~~

201 ~~statute.~~ The court may affirm the agency action or remand the
202 case to the agency for taking additional testimony and
203 evidence or for further proceedings. The court may reverse or
204 modify the decision or grant other appropriate relief from the
205 agency action, equitable or legal, including declaratory
206 relief, if the court finds that the agency action is due to be
207 set aside or modified under standards set forth in appeal or
208 review statutes applicable to that agency or if substantial
209 rights of the petitioner have been prejudiced because the
210 agency action is any one or more of the following:

211 (1) In violation of constitutional or statutory
212 provisions~~;~~.

213 (2) In excess of the statutory authority of the
214 agency~~;~~.

215 (3) In violation of any pertinent agency rule~~;~~.

216 (4) Made upon unlawful procedure~~;~~.

217 (5) Affected by other error of law~~;~~.

218 (6) Clearly erroneous in view of the reliable,
219 probative, and substantial evidence on the whole record~~;~~or.

220 (7) Unreasonable, arbitrary, or capricious, or
221 characterized by an abuse of discretion or a clearly
222 unwarranted exercise of discretion.

223 (1) During the review, when interpreting any statute or
224 rule, the court may consider but shall not defer to an



SB248 INTRODUCED

225 agency's interpretation and shall instead interpret its
226 meaning and effect de novo. In an action brought by or against
227 an agency, after applying all customary tools of
228 interpretation, the court shall exercise any remaining doubt
229 in favor of a reasonable interpretation which limits agency
230 power and maximizes individual liberty.

231 ~~(l)~~ (m) Unless the court affirms the decision of the
232 agency, the court shall set out in writing, which writing
233 shall become a part of the record, the reasons for its
234 decision."

235 Section 2. This act shall become effective on October
236 1, 2025.