

SB96 INTRODUCED



1 SB96
2 NR5PBJ8-1
3 By Senators Kelley, Sessions, Givhan, Orr, Barfoot, Stutts,
4 Kitchens
5 RFD: Fiscal Responsibility and Economic Development
6 First Read: 13-Jan-26



SYNOPSIS:

Under the Alabama Administrative Procedures Act, an agency may adopt an emergency rule if the agency finds that an immediate danger to the public health, safety, or welfare requires the adoption of the emergency rule.

This bill would require the Governor to certify the immediate danger to the public health, safety, or welfare justifies the need for the emergency rule before the rule may become effective.

A BILL
TO BE ENTITLED
AN ACT

Relating to administrative rules; to amend Section Section 41-22-5, Code of Alabama 1975, to require the Governor to certify the need for an emergency rule before the rule may become effective.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Section 41-22-5, Code of Alabama 1975, is amended to read as follows:

"§41-22-5

(a) Prior to the adoption, amendment, or repeal of any



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rule, the agency shall:

(1) Give at least 35 days' notice of its intended action. Date of publication in the Alabama Administrative Monthly shall constitute the date of notice. In addition to the other requirements of this chapter, the notice shall state whether the proposed adoption, amendment, or repeal of the rule relates to or affects in any manner any litigation which the agency is a party to concerning the subject matter of the proposed rule. The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, shall specify a notice period ending not less than 35 days or more than 90 days from the date of the notice, during which period interested persons may present their views, and shall specify the place where, and the manner in which, interested persons may present their views. The notice shall be given to the chair of the committee, as provided in Section 41-22-23, and mailed to all persons who pay the cost of the mailing and who have made timely request of the agency for advance notice of its rulemaking proceedings and shall be published, prior to any action, in the Alabama Administrative Monthly. A complete copy of the proposed rule shall be filed with the secretary of the agency and the Legislative Services Agency, Legal Division.

(2) Afford all interested persons reasonable opportunity to submit data, views, or arguments, orally or in writing. The agency shall consider fully all written and oral submissions respecting the proposed rule. Upon adoption of a rule, the agency, if conflicting views are submitted on the



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proposed rule, shall issue a concise statement of the principal reasons for and against its adoption, incorporating therein its reasons for overruling any considerations urged against its adoption.

(b) (1) Notwithstanding any other provision of this chapter to the contrary, if an agency finds that an immediate danger to the public health, safety, or welfare requires adoption of a rule upon fewer than 35 days' notice or that action is required by or to comply with a federal statute or regulation which requires adoption of a rule upon fewer than 35 days' notice and states in writing its reasons for that finding to the committee, the agency may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule shall become effective immediately, unless otherwise stated in the rule, upon both of the following occurring: (i) the filing of the rule and a copy of the written statement of the reasons therefor with the Legislative Services Agency, Legal Division, and the secretary of the agency; and (ii) certification by the Governor that the immediate danger to the public health, safety, or welfare justifies the need for the emergency rule. The rule may be effective for a period of not longer than 120 days after the day the agency files the emergency rule with the Legislative Services Agency, Legal Division, and shall not be renewable.

(2) An agency shall not adopt the same or a substantially similar emergency rule within one calendar year from its first adoption unless: (i) the agency clearly



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establishes it could not reasonably be foreseen during the initial 120-day period that ~~such emergency~~ the immediate danger to the health, safety, and welfare would continue or would likely reoccur during the next nine months; and (ii) the Governor certifies that the immediate danger to the public health, safety, or welfare continues to justify the need for the emergency rule. The adoption of the same or a substantially similar rule by normal rulemaking procedures is not precluded. In any subsequent action contesting the effective date of a rule adopted pursuant to this subsection, the burden of proof shall be on the agency to justify its finding.

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

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



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113 (d) No rule adopted after October 1, 1982, is valid
114 unless adopted in substantial compliance with this section. A
115 proceeding to contest any rule on the ground of noncompliance
116 with the procedural requirements of this section must be
117 commenced within two years from the effective date of the
118 rule; provided, however, that a proceeding to contest a rule
119 based on failure to provide notice as required in this section
120 may be commenced at any time."

121 Section 2. This act shall become effective on June 1,
122 2026.