

1 HB210  
2 163615-3  
3 By Representative Ball  
4 RFD: Internal Affairs  
5 First Read: 10-MAR-15

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ENROLLED, An Act,

Relating to the Administrative Procedure Act; to amend Sections 41-22-5, 41-22-5.1, 41-22-6, 41-22-22, and 41-22-23, as amended by Act 2014-457, of the 2014 Regular Session, and to repeal Section 41-22-24, Code of Alabama 1975, to further provide the procedures for proposed rules to be approved or disapproved by the Legislature, to provide for certain appeals to the Lieutenant Governor, and to delay the effective date of certain rules in certain circumstances.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 41-22-5, 41-22-5.1, 41-22-6, and 41-22-22, Code of Alabama 1975, are amended to read as follows:

"§41-22-5.

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

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

11               "(2) Afford all interested persons reasonable  
12      opportunity to submit data, views, or arguments, orally or in  
13      writing. The agency shall consider fully all written and oral  
14      submissions respecting the proposed rule. Upon adoption of a  
15      rule, the agency, if conflicting views are submitted on the  
16      proposed rule, shall issue a concise statement of the  
17      principal reasons for and against its adoption, incorporating  
18      therein its reasons for overruling any considerations urged  
19      against its adoption.

20               "(b) Notwithstanding any other provision of this  
21      chapter to the contrary, if an agency finds that an immediate  
22      danger to the public health, safety, or welfare requires  
23      adoption of a rule upon fewer than 35 days' notice or that  
24      action is required by or to comply with a federal statute or  
25      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 therein,  
6 upon the filing of the rule and a copy of the written  
7 statement of the reasons therefor with the Legislative  
8 Reference Service and the secretary of the agency. The rule  
9 may be effective for a period of not longer than 120 days and  
10 shall not be renewable. An agency shall not adopt the same or  
11 a substantially similar emergency rule within one calendar  
12 year from its first adoption unless the agency clearly  
13 establishes it could not reasonably be foreseen during the  
14 initial 120-day period that such emergency would continue or  
15 would likely reoccur during the next nine months. The adoption  
16 of the same or a substantially similar rule by normal  
17 rule-making procedures is not precluded. In any subsequent  
18 action contesting the effective date of a rule adopted  
19 pursuant to this subsection, the burden of proof shall be on  
20 the agency to justify its finding. Prior to indexing and  
21 publication, the agency shall make reasonable efforts to  
22 apprise the persons who may be affected by its rules of the  
23 adoption of the emergency rule. An emergency rule shall be  
24 strictly construed and shall not be valid except to the extent

1 necessary to prevent, mitigate, or resolve immediate danger to  
2 the public health, 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) of  
7 this section, the provisions of this section are applicable to  
8 the exercise of any rulemaking authority conferred by any  
9 statute, but nothing in this section repeals or diminishes  
10 additional requirements imposed by law or diminishes or  
11 repeals any summary power granted by law to the state or any  
12 agency thereof.

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

21 "§41-22-5.1.

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

24 "(b) When an agency files a notice of intent to  
25 adopt, amend, or repeal any rule, the agency shall make its

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

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

1           "(d) After receiving a business economic impact  
2 statement from an agency, the committee or its successor  
3 committee, agency, or service may require the agency to  
4 analyze and report to the committee or its successor  
5 committee, agency, or service the feasibility of some or all  
6 of the following methods of reducing the impact of the rule on  
7 businesses:

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

10           "(2) The establishment of less stringent schedules  
11 or deadlines for compliance or reporting requirements for  
12 businesses.

13           "(3) The consolidation or simplification of  
14 compliance or reporting requirements for businesses.

15           "(4) The establishment of performance standards for  
16 businesses to replace design or operational standards required  
17 in the rule.

18           "(e) An agency shall include information on any  
19 business economic impact statement whether the proposed rule  
20 is proposed as a result of a requirement issued by a federal  
21 agency.

22           "(f) A business economic impact statement required  
23 to be filed pursuant to this section shall be filed with the  
24 Legislative Reference Service at the same time as the proposed

1 rule is certified to the Legislative Reference Service and  
2 shall be available for public inspection.

3 "(g) Each agency that files a business economic  
4 impact statement, at the time it is filed, shall place that  
5 statement on its website in a location that is easily  
6 accessible by the general public, or, if the agency does not  
7 have a website, on a website operated or maintained by the  
8 executive branch.

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

1 remainder of this chapter shall continue to apply to the  
2 proposed rule.

3 "(i) An ~~However, any~~ agency or department shall  
4 fulfill any request for license or permit within 28 calendar  
5 days after receiving the application or notify applicant of  
6 the reason for ~~non-issuance of request~~ failure to issue the  
7 license or permit.

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

12 "~~(j)~~ (k) This section shall not apply to the  
13 promulgation of an emergency rule adopted pursuant to  
14 subsection (b) of Section 41-22-5.

15 "§41-22-6.

16 "(a) Each agency shall have an officer designated as  
17 its secretary and shall file in the office of the secretary of  
18 the agency a certified copy of each rule adopted by it,  
19 including all rules, as defined in this chapter, existing on  
20 October 1, 1981. Each rule or regulation promulgated, whether  
21 the original or a revision, and all copies thereof, shall have  
22 the name or names of the author or authors, respectively, on  
23 its face. The secretary of the agency shall keep a permanent  
24 register of the rules open to public inspection.

1           "(b) The secretary of each agency shall file in the  
2 office of the Legislative Reference Service, no later than 15  
3 days after the filing with the secretary of the agency and  
4 within 90 days after completion of the notice, in a form and  
5 manner prescribed by the Legislative Reference Service, a  
6 certified copy of each rule adopted by it. As used in this  
7 section, "completion of notice" means the end of the notice  
8 period specified pursuant to subdivision (1) of subsection (a)  
9 of Section 41-22-5. A rule that is not filed with the  
10 Legislative Reference Service within the time limits  
11 prescribed in this subdivision is invalid. The Legislative  
12 Reference Service shall keep a permanent register of the rules  
13 open to public inspection.

14           "(c) Each rule hereafter adopted is effective ~~35~~ 45  
15 days after filing with the Legislative Reference Service,  
16 unless it is:

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

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

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

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

1           "(5) A rule that takes effect upon adjournment of  
2 the next legislative session following the completion of the  
3 appeal process as set forth in Section 41-22-23, if the  
4 Legislature fails to take action to disapprove the rule after  
5 approval by the Lieutenant Governor.

6           "§41-22-22.

7           "~~(a) There shall be a joint standing legislative~~  
8 ~~committee known as the Joint Committee on Administrative~~  
9 ~~Regulation Review, to review all agency rules. The committee~~  
10 ~~shall consist of the members of the Legislative Council,~~  
11 ~~including any member of the Legislative Council temporarily~~  
12 ~~serving in the place of a permanent member, and shall meet on~~  
13 ~~the call of the chair. The chair may name subcommittees to~~  
14 ~~meet and review agency rules and report to the full committee.~~  
15 ~~A quorum of the committee shall be the same as a quorum for~~  
16 ~~the Legislative Council as set forth in Section 29-6-3.~~  
17 ~~Members of the committee shall receive the same compensation,~~  
18 ~~expenses, and transportation allowances for meetings as they~~  
19 ~~receive for attendance at meetings of the Legislative Council.~~  
20 ~~All compensation and expenses authorized by this section shall~~  
21 ~~be paid from funds appropriated to the use of the Legislative~~  
22 ~~Council.~~

23           "~~(b) The committee shall do all of the following:~~

24           "~~(1) Maintain a continuous review of the statutory~~  
25 ~~authority on which each administrative rule is based, and~~

1 ~~whenever the authority is eliminated or significantly changed~~  
2 ~~by repeal, amendment, or other factor, advise the agency~~  
3 ~~concerned of the fact.~~

4 ~~"(2) Review administrative rules and advise the~~  
5 ~~agencies concerned of its findings.~~

6 ~~"(3) Have the further duties prescribed in Section~~  
7 ~~41-22-23.~~

8 ~~"(4) The committee shall determine and report~~  
9 ~~annually to the Legislature the total cost to the state~~  
10 ~~allocated to the implementation of this chapter.~~

11 "The committee shall review all agency rules prior  
12 to their adoption. The committee shall have full access to all  
13 resources of the legislative department and all agencies  
14 thereof when conducting its review."

15 Section 2. Section 41-22-23, as amended by Act  
16 2014-457 of the 2014 Regular Session, is amended to read as  
17 follows:

18 "§41-22-23.

19 "(a) The notice required by subdivision (a)(1) of  
20 Section 41-22-5 shall be given, in addition to the persons  
21 therein named, to ~~the chair of the legislative committee.~~ The  
22 ~~agency shall furnish the committee with 33 copies of the~~  
23 ~~proposed rule or rules, and no rule, except an emergency rule~~  
24 ~~issued pursuant to subsection (b) of Section 41-22-5 shall be~~  
25 ~~effective until these copies are so furnished. Any member of~~

1 ~~the Senate or House of Representatives who requests a copy of~~  
2 ~~proposed agency rules from the Chair of the Joint Committee on~~  
3 ~~Administrative Regulation Review shall be provided a copy and~~  
4 ~~the agency proposing rules shall furnish additional copies of~~  
5 ~~the proposed rule or rules immediately~~ each member of the  
6 committee and such other persons in the legislative department  
7 as the committee requires. The form of the proposed rule  
8 presented to the committee shall be as follows: New language  
9 shall be underlined and language to be deleted shall be typed  
10 and lined through.

11 " (b) ~~The~~ Within the 45-day period between the time a  
12 rule is certified and the date it becomes effective, and  
13 subject to subsection (h) of Section 41-22-5.1, the committee  
14 shall study all proposed rules and may hold public hearings  
15 thereon. The committee may adopt a policy providing when a  
16 public hearing will be held on a rule meeting specified  
17 criteria. In the event the committee fails to give notice to  
18 the agency of either its approval or disapproval of the  
19 proposed rule within ~~35~~ 45 days after filing of the adopted  
20 rule with the Legislative Reference Service pursuant to  
21 Section 41-22-6, the committee shall be deemed to have  
22 approved the proposed ~~regulation~~ rule for the purposes of this  
23 section. In the event the committee disapproves a proposed  
24 rule or any part thereof, it shall give notice of the  
25 disapproval to the agency. ~~Any disapproved rule shall be~~

1 ~~suspended until the adjournment of the next regular session of~~  
2 ~~the Legislature following the date of disapproval and~~  
3 ~~suspension of the committee or until the Legislature shall~~  
4 ~~revoke, by joint resolution, the suspension of the committee.~~  
5 ~~The rule shall be reinstated on the adjournment of the~~  
6 ~~legislative session in the event the Legislature, by joint~~  
7 ~~resolution, fails to sustain the disapproval and suspension of~~  
8 ~~the committee. The disapproval of any rule may be appealed to~~  
9 ~~the Lieutenant Governor by the agency that submitted the rule.~~  
10 ~~If the disapproval of a rule is appealed to the Lieutenant~~  
11 ~~Governor, the Lieutenant Governor, within the 15 days after~~  
12 ~~the disapproval of the rule, may review the rule and hold~~  
13 ~~public hearings he or she determines necessary.~~

14 ~~"If the Lieutenant Governor sustains the disapproval~~  
15 ~~of the rule, he or she shall notify the committee and return~~  
16 ~~the rule to the agency.~~

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

24 ~~"If the Lieutenant Governor fails to either approve~~  
25 ~~or disapprove the rule within the 15 days after the~~

1 disapproval of the committee, the rule shall be deemed  
2 approved and the rule shall become effective upon adjournment  
3 of the next regular session of the Legislature that commences  
4 after the deemed approval unless, prior to that time, the  
5 Legislature adopts a joint resolution that overrides the  
6 deemed approval of the Lieutenant Governor and sustains the  
7 action of the committee.

8           "(c) The committee may propose an amendment to any  
9 proposed rule and ~~may disapprove the proposed rule and return~~  
10 it to the agency with the suggested amendment. In the event  
11 the agency accepts the rule as amended, the agency may  
12 resubmit the rule as amended to the committee. and the rule  
13 shall become effective on the date specified in the rule, or  
14 on the date the amended rule is submitted, whichever is later.  
15 In the event the agency does not accept the amendment, the  
16 proposed amended rule shall be ~~submitted to the Legislature as~~  
17 deemed disapproved, as provided in subsection (b) Section  
18 ~~41-22-24~~.

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

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

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

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

1           "(5) The effect of the regulation on employment in  
2 the geographical area in which the regulation would be  
3 implemented.

4           "(6) The source of revenue to be used for  
5 implementing and enforcing the regulation.

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

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

18           "(9) The effect of the regulation on the environment  
19 and public health.

20           "(10) The detrimental effect on the environment and  
21 public health if the regulation is not implemented.

22           "(g) In determining whether to approve or disapprove  
23 proposed rules, the committee shall consider the following  
24 criteria:

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

3           "~~(1)~~(2) Would the absence of the rule or rules  
4 significantly harm or endanger the public health, safety, or  
5 welfare?

6           "~~(2)~~(3) Is there a reasonable relationship between  
7 the state's police power and the protection of the public  
8 health, safety, or welfare?

9           "~~(3)~~(4) Is there another, less restrictive method of  
10 regulation available that could adequately protect the public?

11           "~~(4)~~(5) Does the rule or do the rules have the  
12 effect of directly or indirectly increasing the costs of any  
13 goods or services involved and, if so, to what degree?

14           "~~(5)~~(6) Is the increase in cost, if any, more  
15 harmful to the public than the harm that might result from the  
16 absence of the rule or rules?

17           "~~(6)~~(7) Are all facets of the rulemaking process  
18 designed solely for the purpose of, and so they have, as their  
19 primary effect, the protection of the public?

20           "~~(7)~~(8) Any other criteria the committee may deem  
21 appropriate."

22           Section 3. Section 41-22-24 of the Code of Alabama  
23 1975, is repealed.

1                   Section 4. This act shall become operative October  
2           1, 2015, following its passage and approval by the Governor or  
3           its otherwise becoming law.

