

1 HB30
2 160504-2
3 By Representative Gaston
4 RFD: State Government
5 First Read: 14-JAN-14
6 PFD: 10/18/2013

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ENROLLED, An Act,

To amend Sections 41-22-3 and 41-22-23 of the Code of Alabama 1975, relating to the Alabama Administrative Procedure Act; to revise the definition of agency for purposes of the Administrative Procedure Act; and to allow an agency to withdraw a proposed or certified rule.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Sections 41-22-3 and 41-22-23 of the Code of Alabama 1975, is amended to read as follows:

"§41-22-3.

"The following words and phrases when used in this chapter shall, for the purpose of this chapter, have meanings respectively ascribed to them in this section, except when the context otherwise requires:

"(1) AGENCY. Every board, bureau, commission, department, officer, or other administrative office or unit of the state, including the Alabama Department of Environmental Management, other than the Legislature and its agencies, the Alabama State Port Authority, the courts, the Alabama Public Service Commission, or the State Banking Department, whose administrative procedures are governed by Sections 5-2A-8 and 5-2A-9. The term shall not include boards of trustees of postsecondary institutions, boards of plans administered by public pension systems, counties, municipalities, or any

1 agencies of local governmental units, unless they are
2 expressly made subject to this chapter by general or special
3 law.

4 "(2) COMMITTEE. The Joint Committee on
5 Administrative Regulation Review shall be the members of the
6 Legislative Council.

7 "(3) CONTESTED CASE. A proceeding, including but not
8 restricted to ratemaking, price fixing, and licensing, in
9 which the legal rights, duties, or privileges of a party are
10 required by law to be determined by an agency after an
11 opportunity for hearing. The term shall not include
12 intra-agency personnel actions; shall not include those
13 hearings or proceedings in which the Alabama Board of Pardons
14 and Paroles considers the granting or denial of pardons,
15 paroles or restoration of civil and political rights or
16 remission of fines and forfeitures; and which are exempt from
17 Sections 41-22-12 through 41-22-21, relating to contested
18 cases.

19 "(4) LICENSE. The whole or part of any agency
20 franchise, permit, certificate, approval, registration,
21 charter, or similar form of permission required by law, but
22 not a license required solely for revenue purposes when
23 issuance of the license is merely a ministerial act.

24 "(5) LICENSING. The agency process respecting the
25 grant, denial, renewal, revocation, suspension, annulment,

1 withdrawal, or amendment of a license or imposition of terms
2 for the exercise of a license.

3 "(6) PARTY. Each person or agency named or admitted
4 as a party or properly seeking and entitled as a matter of
5 right, whether established by constitution, statute, or agency
6 regulation or otherwise, to be admitted as a party, or
7 admitted as an intervenor under Section 41-22-14. An agency
8 may by rule authorize limited forms of participation in agency
9 proceedings for persons who are not eligible to become
10 parties.

11 "(7) PERSON. Any individual, partnership,
12 corporation, association, governmental subdivision, or public
13 or private organization of any character other than an agency.

14 "(8) QUORUM. No less than a majority of the members
15 of a multimember agency shall constitute a quorum authorized
16 to act in the name of the agency, unless provided otherwise by
17 statute.

18 "(9) RULE. Each agency regulation, standard, or
19 statement of general applicability that implements,
20 interprets, or prescribes law or policy, or that describes the
21 organization, procedure, or practice requirements of any
22 agency and includes any form which imposes any requirement or
23 solicits any information not specifically required by statute
24 or by an existing rule or by federal statute or by federal
25 rule or regulation; provided, however, all forms shall be

1 filed with the secretary of the agency and with the
2 Legislative Reference Service and all forms, except
3 intergovernmental, interagency, and intra-agency forms which
4 do not affect the rights of the public and emergency forms
5 adopted pursuant to Section 41-22-5, shall be published in the
6 Agency Administrative Code. The term includes the amendment or
7 repeal of all existing rules, but does not include any of the
8 following:

9 "a. Statements concerning only the internal
10 management of an agency and not affecting private rights or
11 procedures available to the public.

12 "b. Declaratory rulings issued pursuant to Section
13 41-22-11.

14 "c. Intergovernmental, interagency, and intra-agency
15 memoranda, directives, manuals, or other communications which
16 do not substantially affect the legal rights of, or procedures
17 available to, the public or any segment thereof.

18 "d. Determinations, decisions, orders, statements of
19 policy, and interpretations that are made in contested cases.

20 "e. An order which is directed to a specifically
21 named person or to a group of specifically named persons which
22 does not constitute a general class, and the order is served
23 on the person or persons to whom it is directed by the
24 appropriate means applicable thereto. The fact that the named

1 person who is being regulated serves a group of unnamed
2 persons who will be affected does not make the order a rule.

3 "f. An order which applies to a specifically
4 described tract of real estate.

5 "g. Any rules or actions relating to any of the
6 following:

7 "1. The conduct of inmates of public institutions
8 and prisoners on parole.

9 "2. The curriculum of public educational
10 institutions or the admission, conduct, discipline, or
11 graduation of students of the institutions; provided, however,
12 that this exception shall not extend to rules or actions of
13 the State Department of Education.

14 "3. Opinions issued by the Attorney General of the
15 State of Alabama.

16 "4. The conduct of commissioned officers, warrant
17 officers, and enlisted persons in the military service.

18 "5. Advisory opinions issued by the Alabama Ethics
19 Commission.

20 "6. Hunting and fishing seasons or bag or creel
21 limits promulgated by the Commissioner of the Department of
22 Conservation and Natural Resources.

23 "h. Standards, specifications, codes, plans,
24 manuals, and publications used in the design, construction,

1 repair, and maintenance of highways, roads, and bridges under
2 the jurisdiction of the Department of Transportation.

3 "§41-22-23.

4 "(a) The notice required by subdivision (a)(1) of
5 Section 41-22-5 shall be given, in addition to the persons
6 therein named, to the chair of the legislative committee. The
7 agency shall furnish the committee with 33 copies of the
8 proposed rule or rules, and no rule, except an emergency rule
9 issued pursuant to subsection (b) of Section 41-22-5 shall be
10 effective until these copies are so furnished. Any member of
11 the Senate or House of Representatives who requests a copy of
12 proposed agency rules from the Chair of the Joint Committee on
13 Administrative Regulation Review shall be provided a copy and
14 the agency proposing rules shall furnish additional copies of
15 the proposed rule or rules immediately. The form of the
16 proposed rule presented to the committee shall be as follows:
17 New language shall be underlined and language to be deleted
18 shall be typed and lined through.

19 "(b) The committee shall study all proposed rules
20 and may hold public hearings thereon. In the event the
21 committee fails to give notice to the agency of either its
22 approval or disapproval of the proposed rule within 35 days
23 after filing of the adopted rule with the Legislative
24 Reference Service pursuant to Section 41-22-6, the committee
25 shall be deemed to have approved the proposed regulation for

1 the purposes of this section. In the event the committee
2 disapproves a proposed rule or any part thereof, it shall give
3 notice of the disapproval to the agency. Any disapproved rule
4 shall be suspended until the adjournment of the next regular
5 session of the Legislature following the date of disapproval
6 and suspension of the committee or until the Legislature shall
7 revoke, by joint resolution, the suspension of the committee.
8 The rule shall be reinstated on the adjournment of the
9 legislative session in the event the Legislature, by joint
10 resolution, fails to sustain the disapproval and suspension of
11 the committee.

12 "(c) The committee may propose an amendment to any
13 proposed rule and may disapprove the proposed rule and return
14 it to the agency with the suggested amendment. In the event
15 the agency accepts the rule as amended, the agency may
16 resubmit the rule as amended to the committee. In the event
17 the agency does not accept the amendment, the proposed amended
18 rule shall be submitted to the Legislature as disapproved, as
19 provided in Section 41-22-24.

20 "(d) An agency may withdraw a proposed or certified
21 ~~rule by leave of the committee~~. An agency may resubmit a rule
22 so withdrawn or returned under this section with minor
23 modification. Such a rule is a new filing and subject to this
24 section but is not subject to further notice as provided in
25 subsection (a) of Section 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) Would the absence of the rule or rules
2 significantly harm or endanger the public health, safety, or
3 welfare?

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

7 "(3) Is there another, less restrictive method of
8 regulation available that could adequately protect the public?

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

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

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

18 "(7) Any other criteria the committee may deem
19 appropriate."

20 Section 2. This act shall become effective
21 immediately following its passage and approval by the
22 Governor, or its otherwise becoming law.

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Speaker of the House of Representatives

President and Presiding Officer of the Senate

House of Representatives

I hereby certify that the within Act originated in
and was passed by the House 23-JAN-14.

Jeff Woodard
Clerk

Senate	<hr/> 03-APR-14 <hr/>	Amended and Passed
House	<hr/> 03-APR-14 <hr/>	Concurred in Sen- ate Amendment