

1 SB112
2 147004-2
3 By Senators Holley, Marsh, Waggoner, Brewbaker, Allen, Ward,
4 Reed, Dial, Scofield, Smith, Taylor, Williams, Ross, Fielding,
5 Blackwell, Bussman, McGill, Glover, Whatley and Beason
6 RFD: Fiscal Responsibility and Accountability
7 First Read: 05-FEB-13

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8 SYNOPSIS: Under existing law, the Legislative
9 Council, sitting as the Joint Committee on
10 Administrative Regulation Review, is required to
11 review all rules proposed to be adopted pursuant to
12 the Administrative Procedure Act. The committee may
13 disapprove a rule which disapproval may be
14 sustained by the adoption of a joint resolution at
15 the next regular session of the Legislature.

16 This bill would provide that the Joint
17 Committee on Legislative Operations, a proposed
18 successor committee to the Legislative Council,
19 would be required to affirmatively approve a
20 proposed rule prior to its becoming effective. The
21 bill further provides that the committee may make
22 use of the Chief of Legislative Operations and
23 other personnel and agencies of the legislative
24 department when considering proposed rules. A
25 proposed rule change could be disapproved by the
26 committee or, if not affirmatively approved, the
27 proposed rule would be deemed disapproved. The bill

1 further provides for an appeal process to the
2 Lieutenant Governor upon the disapproval of a rule
3 by the Joint Committee on Legislative Operations.
4 If the Lieutenant Governor approves a rule, the
5 Legislature may overrule the Lieutenant Governor's
6 approval by joint resolution.

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8 A BILL
9 TO BE ENTITLED
10 AN ACT

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12 Relating to the Administrative Procedure Act; to
13 amend Sections 41-22-5, 41-22-6, 41-22-22, 41-22-23, and
14 41-22-24, Code of Alabama 1975, to further provide the
15 procedures for proposed rules to be approved or disapproved by
16 the Legislature and to provide for certain appeals to the
17 Lieutenant Governor.

18 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

19 Section 1. Sections 41-22-5, 41-22-6, 41-22-22,
20 41-22-23, and 41-22-24, Code of Alabama 1975, are amended to
21 read as follows:

22 "§41-22-5.

23 "(a) Prior to the adoption, amendment, or repeal of
24 any rule, the agency shall:

25 "(1) Give at least ~~35~~ 60 days' notice of its
26 intended action. Date of publication in the Alabama
27 Administrative Monthly shall constitute the date of notice.

1 The notice shall include a statement of either the terms or
2 substance of the intended action or a description of the
3 subjects and issues involved, shall specify a notice period
4 ending not less than ~~35~~ 60 days or more than 90 days from the
5 date of the notice, during which period interested persons may
6 present their views thereon, and shall specify the place
7 where, and the manner in which interested persons may present
8 their views thereon. The notice shall be given to the chairman
9 of the ~~legislative~~ committee and the Chief of Legislative
10 Operations, as provided in Section 41-22-23, and mailed to all
11 persons who pay the cost of such mailing and who have made
12 timely request of the agency for advance notice of its
13 rulemaking proceedings and shall be published, prior to any
14 action thereon, in the Alabama Administrative Monthly. A
15 complete copy of the proposed rule shall be filed with the
16 secretary of the agency and the Legislative Reference Service.

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

26 "(b) Notwithstanding any other provision of this
27 chapter to the contrary, if an agency finds that an immediate

1 danger to the public health, safety, or welfare requires
2 adoption of a rule upon fewer than ~~35~~ 60 days' notice or that
3 action is required by or to comply with a federal statute or
4 regulation which requires adoption of a rule upon fewer than
5 ~~35~~ 60 days' notice and states in writing its reasons for that
6 finding, it may proceed without prior notice or hearing or
7 upon any abbreviated notice and hearing that it finds
8 practicable, to adopt an emergency rule. The rule shall become
9 effective immediately, unless otherwise stated therein, upon
10 the filing of the rule and a copy of the written statement of
11 the reasons therefor with the Legislative Reference Service
12 and the secretary of the agency. The rule may be effective for
13 a period of not longer than 120 days and shall not be
14 renewable. An agency shall not adopt the same or a
15 substantially similar emergency rule within one calendar year
16 from its first adoption unless the agency clearly establishes
17 it could not reasonably be foreseen during the initial 120-day
18 period that such emergency would continue or would likely
19 reoccur during the next nine months. The adoption of the same
20 or a substantially similar rule by normal rule-making
21 procedures is not precluded. In any subsequent action
22 contesting the effective date of a rule adopted pursuant to
23 this subsection, the burden of proof shall be on the agency to
24 justify its finding. Prior to indexing and publication, the
25 agency shall make reasonable efforts to apprise the persons
26 who may be affected by its rules of the adoption of the
27 emergency rule. An emergency rule shall be strictly construed

1 and shall have as narrow of an application as reasonably
2 possible.

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 "§41-22-6.

22 "(a) Each agency shall have an officer designated as
23 its secretary and shall file in the office of the secretary of
24 the agency a certified copy of each rule adopted by it,
25 including all rules, as defined in this chapter, existing on
26 October 1, 1981. Each rule or regulation promulgated, whether
27 the original or a revision, and all copies thereof, shall have

1 the name or names of the author or authors, respectively, on
2 its face. The secretary of the agency shall keep a permanent
3 register of the rules open to public inspection.

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

17 "(c) Each rule hereafter adopted is effective ~~35~~
18 ~~days after filing with the Legislative Reference Service,~~
19 ~~unless it is:~~

20 "(1) ~~A rule for which a later date is required by~~
21 ~~statute or specified in the rule~~ Upon approval by the
22 committee.

23 "(2) ~~A rule for which an earlier date is required by~~
24 ~~statute~~ Upon adjournment of the next legislative session
25 following the completion of the appeal process as set forth in
26 Section 41-22-24, if the Legislature fails to take action to
27 disapprove the rule after approval by the Lieutenant Governor.

1 ~~"(3) An emergency rule adopted pursuant to~~
2 ~~subsection (b) of Section 41-22-5~~ At the time specified in an
3 ~~emergency rule adopted pursuant to subsection (b) of Section~~
4 ~~41-22-5.~~

5 ~~"(4) A rule which the committee disapproves of or~~
6 ~~proposes an amendment for pursuant to Section 41-22-23~~ If
7 ~~otherwise approved pursuant to the procedures of this chapter,~~
8 ~~at a later date as required by statute or specified in the~~
9 ~~rule.~~

10 ~~"§41-22-22.~~

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

1 resources of the legislative department and all agencies
2 thereof when conducting its review.

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

4 ~~"(1) Maintain a continuous review of the statutory~~
5 ~~authority on which each administrative rule is based, and~~
6 ~~whenever the authority is eliminated or significantly changed~~
7 ~~by repeal, amendment, or other factor, advise the agency~~
8 ~~concerned of the fact.~~

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

11 ~~"(3) Have the further duties prescribed in Section~~
12 ~~41-22-23.~~

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

16 ~~"§41-22-23.~~

17 "(a) The notice required by subdivision (a)(1) of
18 Section 41-22-5 shall be given, in addition to the persons
19 therein named, to the chair of the legislative committee. The
20 agency shall furnish the committee with 33 copies of the
21 proposed rule or rules, and no rule, except an emergency rule
22 issued pursuant to subsection (b) of Section 41-22-5 shall be
23 effective until these copies are so furnished. Any member of
24 the Senate or House of Representatives who requests a copy of
25 proposed agency rules from the Chair of the Joint Committee on
26 Administrative Regulation Review shall be provided a copy and
27 the agency proposing rules shall furnish additional copies of

1 ~~the proposed rule or rules immediately~~ each member of the
2 committee, to the Chief of Legislative Operations, and to such
3 other persons in the legislative department as the committee
4 requires. The form of the proposed rule presented to the
5 committee shall be as follows: New language shall be
6 underlined and language to be deleted shall be typed and lined
7 through.

8 " (b) Upon receipt of the proposed rule, the Chief of
9 Legislative Operations shall review the rule and make a
10 recommendation thereon to the committee. The committee shall
11 study all proposed rules and may hold public hearings thereon.
12 In the event the committee fails to give notice to the agency
13 of either its approval or disapproval of the proposed rule
14 within ~~35~~ 60 days after filing of the adopted rule with the
15 Legislative Reference Service pursuant to Section 41-22-6, the
16 committee shall be deemed to have ~~approved~~ disapproved the
17 proposed ~~regulation~~ rule for the purposes of this section. ~~In~~
18 ~~the event the committee disapproves a proposed rule or any~~
19 ~~part thereof, it shall give notice of the disapproval to the~~
20 ~~agency. Any disapproved rule shall be suspended until the~~
21 ~~adjournment of the next regular session of the Legislature~~
22 ~~following the date of disapproval and suspension of the~~
23 ~~committee or until the Legislature shall revoke, by joint~~
24 ~~resolution, the suspension of the committee. The rule shall be~~
25 ~~reinstated on the adjournment of the legislative session in~~
26 ~~the event the Legislature, by joint resolution, fails to~~
27 ~~sustain the disapproval and suspension of the committee.~~

1 "(c) The committee may propose an amendment to any
2 proposed rule and may ~~disapprove the proposed rule and~~ return
3 it to the agency with the suggested amendment. In the event
4 the agency accepts the rule as amended, the agency may
5 resubmit the rule as amended to the committee. In the event
6 the agency does not accept the amendment, the proposed amended
7 rule shall be ~~submitted to the Legislature as~~ deemed
8 ~~disapproved, as provided in Section 41-22-24.~~

9 "(d) An agency may withdraw a proposed rule by leave
10 of the committee. An agency may resubmit a rule so withdrawn
11 or returned under this section with minor modification. Such a
12 rule is a new filing and subject to this section but is not
13 subject to further notice as provided in subsection (a) of
14 Section 41-22-5.

15 "(e) The committee is authorized to review and
16 approve or disapprove any rule adopted prior to October 1,
17 1982.

18 "(f) A rule submitted to the committee which has an
19 economic impact shall be accompanied by a fiscal note prepared
20 by the agency in accordance with this subsection. Upon
21 receiving the fiscal note, the committee may require
22 additional information from the submitting agency, other state
23 agencies, or other sources. A state agency shall cooperate and
24 provide information to the committee. At a minimum, the fiscal
25 note submitted with a proposed rule shall include the
26 following:

1 "(1) A determination of the need for the regulation
2 and the expected benefit of the regulation.

3 "(2) A determination of the costs and benefits
4 associated with the regulation and an explanation of why the
5 regulation is considered to be the most cost effective,
6 efficient, and feasible means for allocating public and
7 private resources and for achieving the stated purpose.

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

9 "(4) The effect of the regulation on the cost of
10 living and doing business in the geographical area in which
11 the regulation would be implemented.

12 "(5) The effect of the regulation on employment in
13 the geographical area in which the regulation would be
14 implemented.

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

17 "(7) A conclusion on the short-term and long-term
18 economic impact upon all persons substantially affected by the
19 regulation, including an analysis containing a description of
20 which persons will bear the costs of the regulation and which
21 persons will benefit directly and indirectly from the
22 regulation.

23 "(8) The uncertainties associated with the
24 estimation of particular benefits and burdens and the
25 difficulties involved in the comparison of qualitatively and
26 quantitatively dissimilar benefits and burdens. A

1 determination of the need for the regulation shall consider
2 qualitative and quantitative benefits and burdens.

3 "(9) The effect of the regulation on the environment
4 and public health.

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

7 "(g) In determining whether to approve or disapprove
8 proposed rules, the committee shall consider the following
9 criteria:

10 "(1) Is there a statutory basis for the proposed
11 rule?

12 "~~(1)~~(2) Would the absence of the rule or rules
13 significantly harm or endanger the public health, safety, or
14 welfare?

15 "~~(2)~~(3) Is there a reasonable relationship between
16 the state's police power and the protection of the public
17 health, safety, or welfare?

18 "~~(3)~~(4) Is there another, less restrictive method of
19 regulation available that could adequately protect the public?

20 "~~(4)~~(5) Does the rule or do the rules have the
21 effect of directly or indirectly increasing the costs of any
22 goods or services involved and, if so, to what degree?

23 "~~(5)~~(6) Is the increase in cost, if any, more
24 harmful to the public than the harm that might result from the
25 absence of the rule or rules?

1 "~~(6)~~(7) Are all facets of the rulemaking process
2 designed solely for the purpose of, and so they have, as their
3 primary effect, the protection of the public?

4 "~~(7)~~(8) Any other criteria the committee may deem
5 appropriate.

6 "§41-22-24.

7 "~~On the first day of each regular session of the
8 Alabama Legislature the chairman of the committee shall submit
9 a joint resolution sustaining the disapproval under Section
10 41-22-23 by the joint committee of any proposed regulation to
11 each house of the Legislature for their study. Such resolution
12 with the disapproved rule attached shall be referred by the
13 Speaker of the House or the Lieutenant Governor or both to an
14 appropriate committee or committees, other than the Joint
15 Committee on Administrative Regulation Review, for
16 consideration and such committee or committees shall schedule
17 hearings thereon, if requested by an affected party or the
18 submitting agency. The Legislature may, by joint resolution,
19 sustain the disapproval of the committee under Section
20 41-22-23. In the event the Legislature fails to sustain such
21 committee disapproval by the adjournment of the next regular
22 session of the Legislature, the rule shall be reinstated.~~

23 "The disapproval of any rule may be appealed to the
24 Lieutenant Governor who may review the submission and may hold
25 public hearings thereon as determined necessary by the
26 Lieutenant Governor to consider the rule.

1 "If the Lieutenant Governor sustains the disapproval
2 of the rule, he or she shall notify the committee and return
3 the rule to the agency.

4 "If the Lieutenant Governor approves the rule, he or
5 she shall notify the chair of the committee. The rule shall
6 become effective upon adjournment of the next regular session
7 of the Legislature that commences after the approval unless,
8 prior to that time, the Legislature adopts a joint resolution
9 that overrules the approval by the Lieutenant Governor and
10 sustains the action of the committee."

11 Section 2. The provisions of this act are severable.
12 If any part of this act is declared invalid or
13 unconstitutional, that declaration shall not affect the part
14 which remains.

15 Section 3. This act shall become effective on the
16 effective date of SB_____ of the 2013 Regular Session.