

1 SB380
2 190804-2
3 By Senators Albritton, Holley and Orr
4 RFD: Governmental Affairs
5 First Read: 08-MAR-18

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8 SYNOPSIS: Under existing law, an agency subject to the
9 Administrative Procedure Act must file a notice of
10 any proposed rule change with the Legislative
11 Reference Service, and the agency proposing the
12 rule change must notify the public of the proposed
13 action on its website or a website maintained by
14 the executive branch. Under existing law, if, prior
15 to the end of the notice period, a business
16 notifies the agency it will be negatively impacted,
17 the agency proposing the action must prepare and
18 submit an economic impact statement to the Joint
19 Committee on Administrative Regulation Review for
20 the consideration of the joint committee.

21 Under existing law, an agency may certify a
22 rule once it has given 35 days' notice of the
23 proposed action, and, with certain exceptions, the
24 rule is effective 45 days after the certified rule
25 is filed with the Legislative Reference Service.
26 Under existing law, in a case in which the Joint
27 Committee on Administrative Regulation Review

1 determines that an economic impact statement is
2 warranted, the rule may not become effective for an
3 additional 45 days following the initial 45 days
4 after the certified rule is filed.

5 This bill would update terminology from
6 Legislative Reference Service to Legislative
7 Services Agency, Legal Division, to reflect current
8 law and make terminology consistent throughout.

9 This bill would specify that when a business
10 notifies an agency that it will be negatively
11 impacted, the agency must prepare a business impact
12 analysis. This bill would specify that the agency
13 must file the business impact analysis with the
14 Legislative Services Agency, Legal Division, at the
15 same time the agency files the certified rule. This
16 bill would specify that failure to file a business
17 impact analysis when required to do so invalidates
18 the action.

19 This bill would also revise the name of the
20 Joint Committee on Administrative Regulation Review
21 and specify what is a quorum for purposes of
22 conducting business.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
27

1 Relating to administrative procedures; to amend
2 Sections 41-22-2, 41-22-3, 41-22-5, 41-22-5.1, 41-22-5.2,
3 41-22-6, 41-22-7, 41-22-8, 41-22-22, 41-22-22.1, 41-22-23, and
4 41-22-27, Code of Alabama 1975; to update terminology; to
5 further specify when an agency is required to prepare a
6 business impact analysis; to require filing of the business
7 impact analysis with the Legislative Services Agency, Legal
8 Division; to specify that failure to file as required
9 invalidates the action; and to revise the name of the Joint
10 Committee on Administrative Regulation Review and establish
11 what is a quorum for purposes of conducting business.

12 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

13 Section 1. Sections 41-22-2, 41-22-3, 41-22-5,
14 41-22-5.1, 41-22-5.2, 41-22-6, 41-22-7, 41-22-8, 41-22-22,
15 41-22-22.1, 41-22-23, and 41-22-27 of the Code of Alabama
16 1975, are amended to read as follows:

17 "§41-22-2.

18 "(a) This chapter is intended to provide a minimum
19 procedural code for the operation of all state agencies when
20 they take action affecting the rights and duties of the
21 public. Nothing in this chapter is meant to discourage
22 agencies from adopting procedures conferring additional rights
23 upon the public; and, save for express provisions of this act
24 to the contrary, nothing in this chapter is meant to abrogate
25 in whole or in part any statute prescribing procedural duties
26 for an agency which are in addition to those provided herein.

1 "(b) The purposes of the Alabama Administrative
2 Procedure Act are:

3 "(1) To provide legislative oversight of powers and
4 duties delegated to administrative agencies;

5 "(2) To increase public accountability of
6 administrative agencies;

7 "(3) To simplify government by assuring a uniform
8 minimum procedure to which all agencies will be held in the
9 conduct of their most important functions;

10 "(4) To increase public access to governmental
11 information;

12 "(5) To increase public participation in the
13 formulation of administrative rules;

14 "(6) To increase the fairness of agencies in their
15 conduct of contested case proceedings; and

16 "(7) To simplify the process of judicial review of
17 agency action as well as increase its ease and availability.

18 "In accomplishing its objectives, the intention of
19 this chapter is to strike a fair balance between these
20 purposes and the need for efficient, economical and effective
21 government administration.

22 "(c) This chapter is not meant to alter the
23 substantive rights of any person or agency. Its impact is
24 limited to procedural rights with the expectation that better
25 substantive results will be achieved in the everyday conduct
26 of state government by improving the process by which those
27 results are attained.

1 "(d) Every state agency having express statutory
2 authority to promulgate rules ~~and regulations~~ shall be
3 governed by the provisions of this chapter and any additional
4 provisions required by statute, and shall also have the
5 authority to amend or repeal rules ~~and regulations~~, and to
6 prescribe methods and procedures required in connection
7 therewith. Nothing in this chapter shall be construed as
8 granting to any agency the authority to adopt or promulgate
9 rules ~~and regulations~~.

10 "(e) All agencies whose rules or administrative
11 decisions are subject to approval by the Supreme Court of
12 Alabama and the Department of Insurance of the State of
13 Alabama are exempted from the provisions of this chapter.

14 "§41-22-3.

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

19 "(1) AGENCY. Every board, bureau, commission,
20 department, officer, or other administrative office or unit of
21 the state, including the Alabama Department of Environmental
22 Management, other than the Legislature and its agencies, the
23 Alabama State Port Authority, the courts, the Alabama Public
24 Service Commission, or the State Banking Department, whose
25 administrative procedures are governed by Sections 5-2A-8 and
26 5-2A-9. The term ~~shall~~ does not include boards of trustees of
27 postsecondary institutions, boards of plans administered by

1 public pension systems, counties, municipalities, or any
2 agencies of local governmental units, unless they are
3 expressly made subject to this chapter by general or special
4 law.

5 "(2) COMMITTEE. The Joint Committee on
6 Administrative ~~Regulation~~ Rule Review ~~shall be,~~ comprised of
7 the members of the Legislative Council, or any successor of
8 the Joint Committee on Administrative Rule Review.

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

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

26 "(5) LICENSING. The agency process respecting the
27 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~~ The term includes any
9 limited form of participation in agency proceedings authorized
10 by agency rule for persons who are not eligible to become
11 parties.

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

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

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

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

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

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

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

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

19 "e. An order which is directed to a specifically
20 named person or to a group of specifically named persons which
21 does not constitute a general class, and the order is served
22 on the person or persons to whom it is directed by the
23 appropriate means applicable thereto. The fact that the named
24 person who is being regulated serves a group of unnamed
25 persons who will be affected does not make the order a rule.

26 "f. An order which applies to a specifically
27 described tract of real estate.

1 "g. Any rules or actions relating to any of the
2 following:

3 "1. The conduct of inmates of public institutions
4 and prisoners on parole.

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

10 "3. Opinions issued by the Attorney General of the
11 State of Alabama.

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

14 "5. Advisory opinions issued by the Alabama Ethics
15 Commission.

16 "6. Hunting and fishing seasons or bag or creel
17 limits promulgated by the Commissioner of the Department of
18 Conservation and Natural Resources.

19 "h. Standards, specifications, codes, plans,
20 manuals, and publications used in the design, construction,
21 repair, and maintenance of highways, roads, and bridges under
22 the jurisdiction of the Department of Transportation.

23 "§41-22-5.

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

26 "(1) Give at least 35 days' notice of its intended
27 action. Date of publication in the Alabama Administrative

1 Monthly shall constitute the date of notice. The notice shall
2 include a statement of either the terms or substance of the
3 intended action or a description of the subjects and issues
4 involved, shall specify a notice period ending not less than
5 35 days or more than 90 days from the date of the notice,
6 during which period interested persons may present their views
7 thereon, and shall specify the place where, and the manner in
8 which interested persons may present their views thereon. The
9 notice shall be given to the ~~chairman~~ chair of the ~~legislative~~
10 committee, 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 Services Agency, Legal Division.

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

1 "(b) (1) Notwithstanding any other provision of this
2 chapter to the contrary, if an agency finds that an immediate
3 danger to the public health, safety, or welfare requires
4 adoption of a rule upon fewer than 35 days' notice or that
5 action is required by or to comply with a federal statute or
6 regulation which requires adoption of a rule upon fewer than
7 35 days' notice and states in writing its reasons for that
8 finding to the committee, it may proceed without prior notice
9 or hearing or upon any abbreviated notice and hearing that it
10 finds practicable, to adopt an emergency rule. The rule shall
11 become effective immediately, unless otherwise stated therein,
12 upon the filing of the rule and a copy of the written
13 statement of the reasons therefor with the Legislative
14 ~~Reference Service~~ Services Agency, Legal Division, and the
15 secretary of the agency. The rule may be effective for a
16 period of not longer than 120 days and shall not be renewable.

17 "(2) An agency shall not adopt the same or a
18 substantially similar emergency rule within one calendar year
19 from its first adoption unless the agency clearly establishes
20 it could not reasonably be foreseen during the initial 120-day
21 period that such emergency would continue or would likely
22 reoccur during the next nine months. The adoption of the same
23 or a substantially similar rule by normal rule-making
24 procedures is not precluded. In any subsequent action
25 contesting the effective date of a rule adopted pursuant to
26 this subsection, the burden of proof shall be on the agency to
27 justify its finding.

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

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

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

26 "§41-22-5.1.

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

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

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

1 agency in the normal course of business and utilizing the
2 expertise and experience of existing agency employees.

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

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

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

15 "(3) The consolidation or simplification of
16 compliance or reporting requirements for businesses.

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

20 "(e) ~~An agency shall include information on any~~
21 ~~business economic impact statement~~ The agency shall state in
22 the business impact analysis whether the proposed rule is
23 proposed as a result of a requirement issued by a federal
24 agency, and if so, the agency shall submit information
25 identifying the specific requirement issued by the federal
26 agency.

1 "(f) A business ~~economic impact statement~~ impact
2 analysis required to be filed pursuant to this section shall
3 be filed with the Legislative ~~Reference Service~~ Services
4 Agency, Legal Division, at the same time as the proposed rule
5 is certified ~~to the Legislative Reference Service~~ and shall be
6 available for public inspection.

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

13 "(h) If the committee ~~or its successor committee,~~
14 ~~agency, or service~~ determines that an agency or a division of
15 an agency exists primarily to perform certification or
16 licensing-related functions, the agency is not required to
17 comply with ~~the provisions of~~ this section unless the
18 committee ~~or its successor committee, agency, or service~~
19 determines in writing that an agency's proposal has such a
20 negative impact on businesses that the filing of a business
21 ~~economic impact statement~~ impact analysis is warranted.
22 Notwithstanding the provisions of subsection (c) of Section
23 41-22-6 providing that a rule is effective 45 days after
24 filing with the Legislative ~~Reference Service~~ Services Agency,
25 Legal Division, in any case in which the committee ~~or its~~
26 ~~successor committee, agency, or service~~ determines that the
27 filing of a business ~~economic impact statement~~ impact analysis

1 is warranted as provided ~~herein~~ in this section, the effective
2 date of the rule shall be 45 additional days after the
3 effective date specified in subsection (c) of Section 41-22-6.
4 In all other respects, the remainder of this chapter shall
5 continue to apply to the proposed rule.

6 "(i) An agency or department shall fulfill any
7 request for license or permit within 28 calendar days after
8 receiving the application or notify the applicant of the
9 reason for failure to issue the license or permit.

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

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

17 "§41-22-5.2.

18 "(a) Within five years of July 1, 2013, each agency
19 shall review all agency rules existing on that date to
20 determine whether the rules should be continued without
21 change, or should be amended or rescinded. The agency may
22 indicate compliance with the requirements of this section by
23 filing a notice in the Alabama Administrative Monthly
24 certifying its compliance. If the head of the agency
25 determines that completion of the review of existing rules is
26 not feasible by the established date, the agency shall publish
27 a statement certifying that determination.

1 "(b) A rule adopted after July 1, 2013, shall be
2 reviewed every five years in a manner consistent with
3 subsection (a).

4 "§41-22-6.

5 "(a) Each agency shall have an officer designated as
6 its secretary and shall file in the office of the secretary of
7 the agency a certified copy of each rule adopted by it,
8 including all rules, as defined in this chapter, existing on
9 October 1, 1981. Each rule ~~or regulation promulgated~~ adopted,
10 whether the original or a revision, and all copies thereof,
11 shall have the name or names of the author or authors,
12 respectively, on its face. The secretary of the agency shall
13 keep a permanent register of the rules open to public
14 inspection.

15 "(b) The secretary of each agency shall file in the
16 office of the Legislative ~~Reference Service~~ Services Agency,
17 Legal Division, no later than 15 days after the filing with
18 the secretary of the agency and within 90 days after
19 completion of the notice, in a form and manner prescribed by
20 the Legislative ~~Reference Service~~ Services Agency, Legal
21 Division, a certified copy of each rule adopted by it. If the
22 agency was required to prepare a business impact analysis
23 pursuant to subsection (c) of Section 41-22-5.1, the agency
24 shall file the business impact analysis at the same time as
25 the certified rule. As used in this section, "completion of
26 notice" means the end of the notice period specified pursuant
27 to subdivision (1) of subsection (a) of Section 41-22-5. A

1 rule that is not filed with the Legislative ~~Reference Service~~
2 Services Agency, Legal Division, within the time limits
3 prescribed in this ~~subdivision~~ subsection is invalid. If the
4 agency was required to prepare a business impact analysis and
5 either fails to prepare the analysis or fails to file a copy
6 of the analysis with the certified rule within the time limits
7 specified in this section, the rule is invalid. The
8 Legislative ~~Reference Service~~ Services Agency, Legal Division,
9 shall keep a permanent register of the rules open to public
10 inspection.

11 "(c) Each rule ~~hereafter~~ adopted is effective 45
12 days after filing the certified rule and, if required pursuant
13 to subsection (c) of Section 41-22-5.1, the business impact
14 analysis, with the Legislative ~~Reference Service~~ Services
15 Agency, Legal Division, unless it is any of the following:

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

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

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

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

24 "(5) A rule that takes effect upon adjournment of
25 the next legislative session following the completion of the
26 appeal process as set forth in Section 41-22-23, if the

1 Legislature fails to take action to disapprove the rule after
2 approval by the Lieutenant Governor.

3 "§41-22-7.

4 "(a) The secretary of ~~the~~ an agency shall establish
5 and maintain an official register of ~~regulations~~ rules which
6 shall be compiled, indexed, published in loose-leaf form, and
7 kept up to date by the secretary of the agency. This register
8 of ~~regulations~~ rules shall be known as "The (name of the
9 agency) Administrative Code," and it shall be made available,
10 upon request, at cost to all persons for copying and
11 inspection and to those persons who subscribe ~~thereto~~ to the
12 register. Supplementation shall be made as often as is
13 practicable, but at least once every year. The secretary of
14 ~~the~~ an agency shall number and renumber rules to conform with
15 a uniform numbering system devised by the Legislative
16 ~~Reference Service~~ Services Agency, Legal Division.

17 "(b) The secretary of ~~the~~ an agency may omit from
18 its administrative code rules that are general in form, but
19 are applicable to only one county or a part thereof. Rules so
20 omitted shall be filed with the secretary ~~of the agency~~, and
21 exclusion from publication shall not affect their validity or
22 effectiveness. The secretary ~~of the agency~~ shall publish a
23 compilation of and index to all rules so omitted at least
24 annually.

25 "(c) The secretary of ~~the~~ an agency shall make
26 copies of the agency's administrative code available on an
27 annual subscription basis, at cost.

1 "(d) The secretary of ~~the~~ an agency shall file with
2 the Legislative ~~Reference Service~~ Services Agency, Legal
3 Division, not later than 15 days after filing with the
4 secretary ~~of the agency~~, all rules or amendments or repeal of
5 rules ~~promulgated~~ adopted by the agency. In addition, the
6 ~~secretary~~ secretaries of the Alabama Public Service Commission
7 and the Alabama State Port Authority, respectively, shall file
8 with the Legislative ~~Reference Service~~ Services Agency, Legal
9 Division, not later than 15 days after filing with the
10 secretary ~~of the commission~~, all rules or amendments or repeal
11 of rules ~~promulgated~~ adopted by ~~that~~ the commission or
12 authority.

13 "(e) The Legislative ~~Reference Service~~ Services
14 Agency, Legal Division, shall establish and maintain an
15 official register of ~~regulations~~ rules which shall be so
16 compiled, indexed, published in loose-leaf form, and kept up
17 to date by the Legislative ~~Reference Service~~ Services Agency,
18 Legal Division. The register of ~~regulations~~ rules shall be
19 known as the "Alabama Administrative Code," and shall be made
20 available at cost, upon request, to all persons for inspection
21 and copying or who subscribe thereto. Supplementation shall be
22 made as often as is practicable, but at least once every year.
23 The Legislative ~~Reference Service~~ Services Agency, Legal
24 Division, shall devise a uniform numbering system for rules
25 and may renumber rules before publication to conform with the
26 system.

1 "(f) The Legislative ~~Reference Service~~ Services
2 Agency, Legal Division, shall publish a monthly bulletin
3 entitled the "Alabama Administrative Monthly," which shall
4 contain a statement of either the terms or substance of all
5 rules filed during the preceding month, excluding rules in
6 effect on October 1, 1982, together with other material
7 required by law and such other material the agency or
8 committee determines to be of general interest.

9 "(g) The Legislative ~~Reference Service~~ Services
10 Agency, Legal Division, may omit from the Alabama
11 Administrative Monthly and the Alabama Administrative Code
12 rules that are general in form, but are applicable to only one
13 county or a part thereof. Rules so omitted shall be filed with
14 the Legislative ~~Reference Service~~ Services Agency, Legal
15 Division, and exclusion from publication shall not affect
16 their validity or effectiveness. The Legislative ~~Reference~~
17 ~~Service~~ Services Agency, Legal Division, shall publish a
18 compilation of, and index to, all rules so omitted at least
19 annually.

20 "(h) The Legislative ~~Reference Service~~ Services
21 Agency, Legal Division, shall make copies of the Alabama
22 Administrative Code and copies of the Alabama Administrative
23 Monthly available at cost on an annual subscription basis.

24 "(i) The Legislative ~~Reference Service~~ Services
25 Agency, Legal Division, shall charge each agency using the
26 Alabama Administrative Monthly a space rate computed to cover
27 all publishing or printing costs related to the Alabama

1 Administrative Monthly and shall charge each agency a per page
2 rate for each page published in the Alabama Administrative
3 Code to cover costs incurred by the Legislative ~~Reference~~
4 ~~Service~~ Services Agency, Legal Division, in publishing the
5 Alabama Administrative Code.

6 "§41-22-8.

7 "Each agency shall prescribe by rule the form for
8 petition requesting the adoption, amendment, or repeal of a
9 rule and the procedure for submission, consideration, and
10 disposition thereof. Within 60 days after submission of a
11 petition, the agency either shall deny the petition in writing
12 on the merits, stating its reasons for the denial, or initiate
13 rule-making proceedings in accordance with Section 41-22-5;
14 provided, however, an agency which has its next regularly
15 scheduled meeting beyond ~~said~~ the 60-day period, may by
16 written notice extend ~~said~~ the period for not more than 30
17 days during which it shall deny or initiate rule-making
18 proceedings.

19 "§41-22-22.

20 "The committee shall review all agency rules prior
21 to their adoption. The committee shall have full access to all
22 resources of the legislative department and all agencies
23 thereof when conducting its review. For purposes of conducting
24 business, six members of the committee, to include a minimum
25 of three members of the House of Representatives and three
26 members of the Senate, shall constitute a quorum.

27 "§41-22-22.1.

1 "(a) The Legislative ~~Reference Service~~ Services
2 Agency, Legal Division, shall review each rule certified to it
3 by a state board or commission that regulates a profession, a
4 controlling number of the members of which are active market
5 participants in the profession, to determine whether the rule
6 may significantly lessen competition and, if so, whether the
7 rule was made pursuant to a clearly articulated state policy
8 to displace competition.

9 "(b) If the Legislative ~~Reference Service~~ Services
10 Agency, Legal Division, determines that a rule subject to
11 subsection (a) may significantly lessen competition, it shall
12 determine whether the rule was made pursuant to a clearly
13 articulated state policy to displace competition, and shall
14 certify those determinations to the committee. The board or
15 commission shall submit a position paper, a transcript of any
16 public hearings regarding the rule, and any other material
17 collected during the consideration of the rule by the board or
18 commission to accompany the rule as it is submitted to the
19 committee. Upon receipt of a certification under this
20 subsection, the chair of the committee shall call a meeting of
21 the committee to review the substance of the rule, determine
22 whether the rule may significantly lessen competition, and if
23 so, whether it was made pursuant to a clearly articulated
24 state policy to displace competition. The committee shall
25 approve, disapprove, disapprove with a suggested amendment, or
26 allow the agency to withdraw the rule for revision. The
27 committee shall conduct public hearings and shall allow public

1 comment during its consideration of the rule. If the committee
2 approves the rule, it shall issue a written statement
3 explaining its rationale for approving the rule. If the
4 committee fails to act on a rule certified to it pursuant to
5 this subsection, the rule shall not become effective and shall
6 be placed on the agenda of the committee at each subsequent
7 meeting until the committee disposes of the rule.

8 "(c) A state board or commission that regulates a
9 profession, a controlling number of the members of which are
10 active market participants in the profession, may submit a
11 previously adopted rule, along with a position paper, a
12 transcript of any public hearings regarding the rule, and any
13 other material collected during the consideration of the rule,
14 to the Legislative ~~Reference Service~~ Services Agency, Legal
15 Division, for a determination of whether the previously
16 adopted rule may significantly lessen competition and whether
17 the rule was made pursuant to a clearly articulated state
18 policy to displace competition. If the Legislative ~~Reference~~
19 ~~Service~~ Services Agency, Legal Division, makes those
20 determinations, it shall notify the board or commission and
21 certify the determinations to the committee. Upon receipt of a
22 certification under this subsection, the chair of the
23 committee shall call a meeting of the committee to review the
24 substance of the rule and either approve the rule or notify
25 the board or commission that it agrees with the determination
26 of the Legislative ~~Reference Service~~ Services Agency, Legal
27 Division. If the committee approves the rule, it shall issue a

1 written statement explaining its rationale for approving the
2 rule. The committee shall take action on a rule submitted
3 under this subsection within 45 days of receipt of
4 certification from the Legislative ~~Reference Service~~ Services
5 Agency, Legal Division.

6 "(d) The Legislative ~~Reference Service~~ Services
7 Agency, Legal Division, shall review each proposed action
8 submitted to it by a state board or commission that regulates
9 a profession, a controlling number of the members of which are
10 active market participants in the profession, to determine
11 whether the action proposed may significantly lessen
12 competition and, if so, whether the action was proposed
13 pursuant to a clearly articulated state policy to displace
14 competition.

15 "(e) If the Legislative ~~Reference Service~~ Services
16 Agency, Legal Division, determines that an action subject to
17 subsection (d) may significantly lessen competition, it shall
18 determine whether the action was proposed pursuant to a
19 clearly articulated state policy to displace competition, and
20 shall certify those determinations to the committee. The board
21 or commission shall submit a position paper, a transcript of
22 any public hearings regarding the action, and any other
23 material collected during the consideration of the action by
24 the board or commission to accompany the action as it is
25 submitted to the committee. Upon receipt of a certification
26 under this subsection, the chair of the committee shall call a
27 meeting of the committee to review the substance of the

1 action, determine whether the action may lessen or has
2 significantly lessened competition and, if so, whether it was
3 proposed pursuant to a clearly articulated state policy to
4 displace competition. The committee shall approve, disapprove,
5 or propose a modification of a proposed action. The committee
6 may conduct public hearings and solicit public comment during
7 its consideration of the action. When the committee approves,
8 disapproves, or proposes a modification of the action, it
9 shall issue a written statement explaining its rationale. If
10 the committee fails to act on an action certified to it
11 pursuant to subsection (d), the action shall be placed on the
12 agenda of the committee at each subsequent meeting until the
13 committee acts on the certified action. Due to the timely
14 nature of actions, the certified actions shall be given
15 priority in the work of the committee.

16 "(f) In addition to the fee levied under Section
17 41-22-7(i), the Legislative ~~Reference Service~~ Services Agency,
18 Legal Division, shall charge a board or commission that is
19 subject to subsection (a), which submits a previously adopted
20 rule to the Legislative ~~Reference Service~~ Services Agency,
21 Legal Division, under subsection (c), or which submits a
22 proposed action under subsection (d), a fee in the amount
23 necessary to recover the costs of the Legislative ~~Reference~~
24 ~~Service~~ Services Agency, Legal Division, in complying with
25 this section.

26 "§41-22-23.

1 "(a) The notice required by subdivision (a)(1) of
2 Section 41-22-5 shall be given, in addition to the persons
3 ~~therein~~ named in the notice, to each member of the committee
4 and such other persons in the legislative department as the
5 committee requires. The form of the proposed rule presented to
6 the committee shall be as follows: New language shall be
7 underlined and language to be deleted shall be typed and lined
8 through.

9 "(b) (1) Within the 45-day period between the time a
10 rule is certified and the date it becomes effective, and
11 subject to subsection (h) of Section 41-22-5.1, the committee
12 shall study all proposed rules and may hold public hearings
13 ~~thereon~~. The committee may adopt a policy providing when a
14 public hearing will be held on a rule meeting specified
15 criteria. In the event the committee fails to give notice to
16 the agency of either its approval or disapproval of the
17 proposed rule within 45 days after filing of the adopted rule
18 with the Legislative ~~Reference Service~~ Services Agency, Legal
19 Division, pursuant to Section 41-22-6, the committee shall be
20 deemed to have approved the proposed rule for the purposes of
21 this section.

22 "(2) In the event the committee disapproves a
23 proposed rule or any part thereof, it shall give notice of the
24 disapproval to the agency. The disapproval of any rule may be
25 appealed to the Lieutenant Governor in writing by the agency
26 that submitted the rule within 15 days of disapproval. The
27 Office of the Lieutenant Governor shall stamp the written

1 appeal to denote the date the appeal was received. If the
2 disapproval of a rule is appealed to the Lieutenant Governor,
3 the Lieutenant Governor, within the 15 days after the notice
4 of appeal of the disapproval of the rule is filed, may review
5 the rule and hold public hearings he or she determines
6 necessary.

7 "(3) If the Lieutenant Governor sustains the
8 disapproval of the rule, he or she shall notify the committee
9 and return the rule to the agency and the disapproval shall be
10 final.

11 "(4) If the Lieutenant Governor approves the rule,
12 he or she shall notify the chair of the committee. The rule
13 shall become effective upon adjournment of the next regular
14 session of the Legislature that commences after the approval
15 unless, prior to that time, the Legislature adopts a joint
16 resolution that overrules the approval by the Lieutenant
17 Governor and sustains the action of the committee.

18 "(5) If the Lieutenant Governor fails to either
19 approve or disapprove the rule within the 15 days after the
20 notice of appeal of the disapproval of the committee, the rule
21 shall be deemed approved and the rule shall become effective
22 upon adjournment of the next regular session of the
23 Legislature that commences after the deemed approval unless,
24 prior to that time, the Legislature adopts a joint resolution
25 that overrides the deemed approval of the Lieutenant Governor
26 and sustains the action of the committee. In the event the
27 Office of the Lieutenant Governor is vacant, a rule

1 disapproved by the committee shall be suspended until the
2 adjournment of the next regular session of the Legislature
3 following the disapproval. The rule shall be reinstated on
4 adjournment of that regular session unless the Legislature, by
5 joint resolution, sustains the disapproval.

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

15 "(d) An agency may withdraw a proposed or certified
16 rule. An agency may resubmit a rule so withdrawn or returned
17 under this section with minor modification. Such a rule is a
18 new filing and subject to this section but is not subject to
19 further notice as provided in subsection (a) of Section
20 41-22-5.

21 "(e) The committee is authorized to review and
22 approve or disapprove any rule adopted prior to October 1,
23 1982.

24 "(f) A rule submitted to the committee which has an
25 economic impact shall be accompanied by a fiscal note prepared
26 by the agency in accordance with this subsection. Upon
27 receiving the fiscal note, the committee may require

1 additional information from the submitting agency, other state
2 agencies, or other sources. A state agency shall cooperate and
3 provide information to the committee. At a minimum, the fiscal
4 note submitted with a proposed rule shall include the
5 following:

6 "(1) A determination of the need for the ~~regulation~~
7 rule and the expected benefit of the ~~regulation~~ rule.

8 "(2) A determination of the costs and benefits
9 associated with the ~~regulation~~ rule and an explanation of why
10 the ~~regulation~~ rule is considered to be the most cost
11 effective, efficient, and feasible means for allocating public
12 and private resources and for achieving the stated purpose.

13 "(3) The effect of the ~~regulation~~ rule on
14 competition.

15 "(4) The effect of the ~~regulation~~ rule on the cost
16 of living and doing business in the geographical area in which
17 the ~~regulation~~ rule would be implemented.

18 "(5) The effect of the ~~regulation~~ rule on employment
19 in the geographical area in which the ~~regulation~~ rule would be
20 implemented.

21 "(6) The source of revenue to be used for
22 implementing and enforcing the ~~regulation~~ rule.

23 "(7) A conclusion on the short-term and long-term
24 economic impact upon all persons substantially affected by the
25 ~~regulation~~ rule, including an analysis containing a
26 description of which persons will bear the costs of the

1 ~~regulation~~ rule and which persons will benefit directly and
2 indirectly from the ~~regulation~~ rule.

3 "(8) The uncertainties associated with the
4 estimation of particular benefits and burdens and the
5 difficulties involved in the comparison of qualitatively and
6 quantitatively dissimilar benefits and burdens. A
7 determination of the need for the ~~regulation~~ rule shall
8 consider qualitative and quantitative benefits and burdens.

9 "(9) The effect of the ~~regulation~~ rule on the
10 environment and public health.

11 "(10) The detrimental effect on the environment and
12 public health if the ~~regulation~~ rule is not implemented.

13 "(g) In determining whether to approve or disapprove
14 proposed rules, the committee shall consider the following
15 criteria:

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

18 "(2) Would the absence of the rule or rules
19 significantly harm or endanger the public health, safety, or
20 welfare?

21 "(3) Is there a reasonable relationship between the
22 state's police power and the protection of the public health,
23 safety, or welfare?

24 "(4) Is there another, less restrictive method of
25 regulation available that could adequately protect the public?

1 "(5) Does the rule or do the rules have the effect
2 of directly or indirectly increasing the costs of any goods or
3 services involved and, if so, to what degree?

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

7 "(7) Are all facets of the rulemaking process
8 designed solely for the purpose of, and so they have, as their
9 primary effect, the protection of the public?

10 "(8) Any other criteria the committee may deem
11 appropriate.

12 "§41-22-27.

13 "(a) This chapter shall take effect at 12:01 A.M.,
14 October 1, 1982; provided, however, that Section 41-22-22
15 shall take effect October 1, 1981. In order that the
16 Legislative ~~Reference Service~~ Services Agency, Legal Division,
17 may appoint and hire an aide to receive the rules and in order
18 to promulgate the Alabama Administrative Code and the Alabama
19 Administrative Monthly as soon as possible, subsections (a)
20 and (b) of Section 41-22-6 and subsections (a) through (e) of
21 Section 41-22-7 shall also become effective October 1, 1981.
22 It shall be the duty of all agencies in existence on the
23 passage of this chapter and all agencies created thereafter to
24 cooperate with the office of the Legislative ~~Reference Service~~
25 Services Agency, Legal Division, in compiling the Alabama
26 Administrative Code and the Alabama Administrative Monthly by

1 submitting to the committee all rules now and hereafter in
2 effect, and all proposed rules.

3 "(b) All existing rules shall be indexed by October
4 1, 1983, and the administrative code of each agency shall be
5 completed and up-to-date at that time and the Alabama
6 Administrative Code shall be completed and up-to-date by
7 November 15, 1983.

8 "(c) Any rule in effect before 12:01 A.M., October
9 1, 1983, except those adopted following a public hearing that
10 was required by statute, shall ~~forthwith~~ be reviewed by the
11 agency concerned on the written request of a person
12 substantially affected by the rule involved. The agency
13 concerned shall initiate the rule making procedures provided
14 by this chapter within 90 days after receiving such written
15 request. If the agency concerned fails to initiate the rule
16 making procedures within 90 days, the operation of the rule
17 shall be suspended. The right of review established by this
18 subsection shall be exercisable no earlier than October 1,
19 1983.

20 "(d) All rules in effect on September 30, 1983,
21 shall be and become invalid on October 1, 1983, unless:

22 "(1) Such rules are properly filed, indexed, and
23 included within the administrative code of the agency in
24 accordance with all the provisions of this chapter; and

25 "(2) Such rules adopted prior to October 1, 1982,
26 were validly adopted under procedures in effect prior to those

1 provided in this chapter, or were readopted pursuant to the
2 requirements of this chapter; or

3 "(3) Such rules adopted on or subsequent to October
4 1, 1982, were validly adopted pursuant to the requirements of
5 this chapter.

6 "(e) All contested cases and other adjudicative
7 proceedings conducted pursuant to any provision of the
8 statutes of this state that were begun prior to October 1,
9 1983, shall be continued to a conclusion, including judicial
10 review, under the provisions of such statutes, except that
11 contested cases and other adjudicative proceedings that have
12 not progressed to the stage of a hearing may, with the consent
13 of all parties and the agency conducting the proceedings, be
14 conducted in accordance with the provisions of this chapter as
15 nearly as feasible.

16 "(f) Sections 41-22-1 through 41-22-11 and 41-22-22
17 through 41-22-27 shall take effect with regard to the Alabama
18 Department of Environmental Management at 12:01 A.M. on
19 October 1, 1986. All rules which were validly adopted by the
20 Alabama Department of Environmental Management prior to
21 October 1, 1986, under procedures in effect at the times such
22 rules were adopted shall be valid, and all such rules adopted
23 by the aforesaid department shall be properly filed, indexed
24 and included within the administrative code of the aforesaid
25 department in accordance with all the provisions of this
26 chapter by October 1, 1987. The Alabama Department of
27 Environmental Management shall be exempt from the provisions

1 of Sections 41-22-12 through 41-22-19. Except as provided in
2 subdivision (6) of subsection (c) of Section 22-22A-7,
3 judicial review of any order of the environmental management
4 commission modifying, approving or disapproving an
5 administrative action of the Alabama Department of
6 Environmental Management shall be in accordance with the
7 provisions for review of final agency decisions of contested
8 cases in Sections 41-22-20 and 41-22-21."

9 Section 2. This act shall become effective on the
10 first day of the third month following its passage and
11 approval by the Governor, or its otherwise becoming law.