

1 SB33
2 180559-1
3 By Senator Sanford
4 RFD: Governmental Affairs
5 First Read: 07-FEB-17
6 PFD: 01/30/2017

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8 SYNOPSIS: Under existing law, the Alabama
9 Administrative Procedure Act (AAPA) requires an
10 agency to publish in the Alabama Administrative
11 Monthly a notice of intended action prior to the
12 adoption, amendment, or repeal of a rule.

13 This bill would require the notice of
14 intended action on a proposed rule to contain a
15 statement whether the proposed rule relates to or
16 affects in any manner any litigation which the
17 agency is a party to concerning the subject matter
18 of the proposed rule.

19
20 A BILL
21 TO BE ENTITLED
22 AN ACT

23
24 Relating to the Alabama Administrative Procedure
25 Act; to amend Section 41-22-5 of the Code of Alabama 1975, to
26 require the notice of intended action published prior to the
27 adoption, amendment, or repeal of a rule to contain a

1 statement whether the proposed rule relates to or affects any
2 litigation to which the agency is a party.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

6 "§41-22-5.

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

9 "(1) Give at least 35 days' notice of its intended
10 action. Date of publication in the Alabama Administrative
11 Monthly shall constitute the date of notice. In addition to
12 the other requirements of this chapter, the notice shall state
13 whether the proposed adoption, amendment, or repeal of the
14 rule relates to or affects in any manner any litigation which
15 the agency is a party to concerning the subject matter of the
16 proposed rule. The notice shall include a statement of either
17 the terms or substance of the intended action or a description
18 of the subjects and issues involved, shall specify a notice
19 period ending not less than 35 days or more than 90 days from
20 the date of the notice, during which period interested persons
21 may present their views thereon, and shall specify the place
22 where, and the manner in which interested persons may present
23 their views thereon. The notice shall be given to the chairman
24 of the legislative committee, as provided in Section 41-22-23,
25 and mailed to all persons who pay the cost of such mailing and
26 who have made timely request of the agency for advance notice
27 of its rulemaking proceedings and shall be published, prior to

1 any action thereon, in the Alabama Administrative Monthly. A
2 complete copy of the proposed rule shall be filed with the
3 secretary of the agency and the Legislative Reference Service.

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

13 "(b) Notwithstanding any other provision of this
14 chapter to the contrary, if an agency finds that an immediate
15 danger to the public health, safety, or welfare requires
16 adoption of a rule upon fewer than 35 days' notice or that
17 action is required by or to comply with a federal statute or
18 regulation which requires adoption of a rule upon fewer than
19 35 days' notice and states in writing its reasons for that
20 finding to the committee, it may proceed without prior notice
21 or hearing or upon any abbreviated notice and hearing that it
22 finds practicable, to adopt an emergency rule. The rule shall
23 become effective immediately, unless otherwise stated therein,
24 upon the filing of the rule and a copy of the written
25 statement of the reasons therefor with the Legislative
26 Reference Service and the secretary of the agency. The rule
27 may be effective for a period of not longer than 120 days and

1 shall not be renewable. An agency shall not adopt the same or
2 a substantially similar emergency rule within one calendar
3 year from its first adoption unless the agency clearly
4 establishes it could not reasonably be foreseen during the
5 initial 120-day period that such emergency would continue or
6 would likely reoccur during the next nine months. The adoption
7 of the same or a substantially similar rule by normal
8 rule-making procedures is not precluded. In any subsequent
9 action contesting the effective date of a rule adopted
10 pursuant to this subsection, the burden of proof shall be on
11 the agency to justify its finding. Prior to indexing and
12 publication, the agency shall make reasonable efforts to
13 apprise the persons who may be affected by its rules of the
14 adoption of the emergency rule. An emergency rule shall be
15 strictly construed and shall not be valid except to the extent
16 necessary to prevent, mitigate, or resolve immediate danger to
17 the public health, safety, or welfare.

18 "(c) It is the intent of this section to establish
19 basic minimum procedural requirements for the adoption,
20 amendment, or repeal of administrative rules. Except for
21 emergency rules which are provided for in subsection (b) of
22 this section, the provisions of this section are applicable to
23 the exercise of any rulemaking authority conferred by any
24 statute, but nothing in this section repeals or diminishes
25 additional requirements imposed by law or diminishes or
26 repeals any summary power granted by law to the state or any
27 agency thereof.

1 "(d) No rule adopted after October 1, 1982, is valid
2 unless adopted in substantial compliance with this section. A
3 proceeding to contest any rule on the ground of noncompliance
4 with the procedural requirements of this section must be
5 commenced within two years from the effective date of the
6 rule; provided, however, that a proceeding to contest a rule
7 based on failure to provide notice as herein required may be
8 commenced at any time."

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.