

1 SB59
2 173112-1
3 By Senator Sanford
4 RFD: Governmental Affairs
5 First Read: 02-FEB-16
6 PFD: 01/29/2016

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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 or relates to or affects any
18 judicial decision concerning the subject matter of
19 the proposed rule. In that event, the notice of
20 intended action would be required to give an
21 explanation of how the proposed rule would relate
22 to or affect the litigation or judicial decision.

23
24 A BILL
25 TO BE ENTITLED
26 AN ACT
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1 Relating to the Alabama Administrative Procedure
2 Act; to amend Section 41-22-5 of the Code of Alabama 1975, as
3 amended by Act 2015-291 of the 2015 Regular Session, to
4 require the notice of intended action published prior to the
5 adoption, amendment, or repeal of a rule to contain a
6 statement whether the proposed rule relates to or affects any
7 litigation or judicial decision.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. Section 41-22-5 of the Code of Alabama
10 1975, as amended by Act 2015-291 of the 2015 Regular Session,
11 is amended to read as follows:

12 "§41-22-5.

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

15 "(1) Give at least 35 days' notice of its intended
16 action. Date of publication in the Alabama Administrative
17 Monthly shall constitute the date of notice. In addition to
18 the other requirements of this chapter, the notice shall state
19 whether the proposed adoption, amendment, or repeal of the
20 rule relates to or affects in any manner any litigation which
21 the agency is a party to or relates to or affects any judicial
22 decision concerning the subject matter of the proposed rule.
23 In that event, the notice of intended action shall give an
24 explanation of how the proposed adoption, amendment, or repeal
25 of the rule would relate to or affect the litigation or
26 judicial decision. The notice shall include a statement of
27 either the terms or substance of the intended action or a

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

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

24 "(b) Notwithstanding any other provision of this
25 chapter to the contrary, if an agency finds that an immediate
26 danger to the public health, safety, or welfare requires
27 adoption of a rule upon fewer than 35 days' notice or that

1 action is required by or to comply with a federal statute or
2 regulation which requires adoption of a rule upon fewer than
3 35 days' notice and states in writing its reasons for that
4 finding to the committee, it may proceed without prior notice
5 or hearing or upon any abbreviated notice and hearing that it
6 finds practicable, to adopt an emergency rule. The rule shall
7 become effective immediately, unless otherwise stated therein,
8 upon the filing of the rule and a copy of the written
9 statement of the reasons therefor with the Legislative
10 Reference Service and the secretary of the agency. The rule
11 may be effective for a period of not longer than 120 days and
12 shall not be renewable. An agency shall not adopt the same or
13 a substantially similar emergency rule within one calendar
14 year from its first adoption unless the agency clearly
15 establishes it could not reasonably be foreseen during the
16 initial 120-day period that such emergency would continue or
17 would likely reoccur during the next nine months. The adoption
18 of the same or a substantially similar rule by normal
19 rule-making procedures is not precluded. In any subsequent
20 action contesting the effective date of a rule adopted
21 pursuant to this subsection, the burden of proof shall be on
22 the agency to justify its finding. Prior to indexing and
23 publication, the agency shall make reasonable efforts to
24 apprise the persons who may be affected by its rules of the
25 adoption of the emergency rule. An emergency rule shall be
26 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 Section 2. This act shall become effective July 1,
22 2016.