

1 SB46
2 170681-1
3 By Senator Sanford
4 RFD: Finance and Taxation General Fund
5 First Read: 04-AUG-15

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8 SYNOPSIS: Act 2015-291 of the 2015 Regular Session
9 amended the Alabama Administrative Procedure Act to
10 provide for the review by the Lieutenant Governor
11 of rules adopted by an agency and disapproved by
12 the Joint Committee on Administrative Regulation
13 Review.

14 This bill would specify that an agency may
15 appeal the disapproval of a rule to the Lieutenant
16 Governor within 15 days of the disapproval and the
17 Lieutenant Governor would have an additional 15
18 days to review the disapproved rule. The bill would
19 also specify that if the Office of the Lieutenant
20 Governor is vacant, the rule would be suspended
21 until adjournment of the next regular session and
22 would be reinstated at the time unless the
23 Legislature sustains the disapproval by joint
24 resolution. The bill would also specify that Act
25 2015-291 would operate prospectively to rulemaking
26 commenced by an agency on or after October 1, 2015.
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1 A BILL
2 TO BE ENTITLED
3 AN ACT
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5 Relating to the Alabama Administrative Procedure
6 Act; to amend Section 41-22-23 of the Code of Alabama 1975, as
7 amended by Act 2015-291 of the 2015 Regular Session, providing
8 for the review by the Lieutenant Governor of rules disapproved
9 by the Joint Committee on Administrative Regulation Review
10 under certain conditions; to specify the time an agency may
11 appeal from a disapproval by the committee; to specify that in
12 the event the Office of the Lieutenant Governor is vacant, the
13 rule would be suspended until adjournment of the next regular
14 session and would be reinstated at the time unless the
15 Legislature sustains the disapproval by joint resolution; and
16 to amend Section 4 of Act 2015-291 of the 2015 Regular
17 Session, to specify that Act 2015-291 shall be prospective in
18 operation to rulemaking commenced on or after October 1, 2015.
19 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

20 Section 1. Section 41-22-23 of the Code of Alabama
21 1975, as amended by Act 2015-291, is amended to read as
22 follows:

23 "§41-22-23.

24 "(a) The notice required by subdivision (a)(1) of
25 Section 41-22-5 shall be given, in addition to the persons
26 therein named, to each member of the committee and such other
27 persons in the legislative department as the committee

1 requires. The form of the proposed rule presented to the
2 committee shall be as follows: New language shall be
3 underlined and language to be deleted shall be typed and lined
4 through.

5 "(b) Within the 45-day period between the time a
6 rule is certified and the date it becomes effective, and
7 subject to subsection (h) of Section 41-22-5.1, the committee
8 shall study all proposed rules and may hold public hearings
9 thereon. The committee may adopt a policy providing when a
10 public hearing will be held on a rule meeting specified
11 criteria. In the event the committee fails to give notice to
12 the agency of either its approval or disapproval of the
13 proposed rule within 45 days after filing of the adopted rule
14 with the Legislative Reference Service pursuant to Section
15 41-22-6, the committee shall be deemed to have approved the
16 proposed rule for the purposes of this section. In the event
17 the committee disapproves a proposed rule or any part thereof,
18 it shall give notice of the disapproval to the agency. The
19 disapproval of any rule may be appealed to the Lieutenant
20 Governor by the agency that submitted the rule within 15 days
21 of disapproval. If the disapproval of a rule is appealed to
22 the Lieutenant Governor, the Lieutenant Governor, within the
23 15 days after the notice of appeal of the disapproval of the
24 rule is filed, may review the rule and hold public hearings he
25 or she determines necessary.

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 and the disapproval shall be final.

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 "If the Lieutenant Governor fails to either approve
12 or disapprove the rule within the 15 days after the notice of
13 appeal of the disapproval of the committee, the rule shall be
14 deemed approved and the rule shall become effective upon
15 adjournment of the next regular session of the Legislature
16 that commences after the deemed approval unless, prior to that
17 time, the Legislature adopts a joint resolution that overrides
18 the deemed approval of the Lieutenant Governor and sustains
19 the action of the committee. In the event the Office of the
20 Lieutenant Governor is vacant, a rule disapproved by the
21 committee shall be suspended until the adjournment of the next
22 regular session of the Legislature following the disapproval.
23 The rule shall be reinstated on adjournment of that regular
24 session unless the Legislature, by joint resolution, sustains
25 the disapproval.

26 "(c) The committee may propose an amendment to any
27 proposed rule and return it to the agency with the suggested

1 amendment. In the event the agency accepts the rule as
2 amended, the agency may resubmit the rule as amended to the
3 committee and the rule shall become effective on the date
4 specified in the rule, or on the date the amended rule is
5 submitted, whichever is later. In the event the agency does
6 not accept the amendment, the proposed amended rule shall be
7 deemed disapproved, as provided in subsection (b).

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

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

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

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

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

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

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

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

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

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

21 "(8) The uncertainties associated with the
22 estimation of particular benefits and burdens and the
23 difficulties involved in the comparison of qualitatively and
24 quantitatively dissimilar benefits and burdens. A
25 determination of the need for the regulation shall consider
26 qualitative and quantitative benefits and burdens.

1 "(9) The effect of the regulation on the environment
2 and public health.

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

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

8 "(1) Is there a statutory authority for the proposed
9 rule?

10 "(2) Would the absence of the rule or rules
11 significantly harm or endanger the public health, safety, or
12 welfare?

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

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

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

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

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

1 "(8) Any other criteria the committee may deem
2 appropriate."

3 Section 2. Section 4 of Act 2015-291 of the 2015
4 Regular Session is amended to read as follows:

5 "Section 4. This act shall become operative October
6 1, 2015, following its passage and approval by the Governor or
7 its otherwise becoming law and shall apply prospectively to
8 rulemaking commenced by an agency by the filing of a Notice of
9 Intent pursuant to Section 41-22-5, Code of Alabama 1975, on
10 or after October 1, 2015."

11 Section 3. This act shall become effective on
12 October 1, 2015.