SB112
147004-2
RFD: Fiscal Responsibility and Accountability
First Read: 05-FEB-13
SYNOPSIS: Under existing law, the Legislative Council, sitting as the Joint Committee on Administrative Regulation Review, is required to review all rules proposed to be adopted pursuant to the Administrative Procedure Act. The committee may disapprove a rule which disapproval may be sustained by the adoption of a joint resolution at the next regular session of the Legislature.

This bill would provide that the Joint Committee on Legislative Operations, a proposed successor committee to the Legislative Council, would be required to affirmatively approve a proposed rule prior to its becoming effective. The bill further provides that the committee may make use of the Chief of Legislative Operations and other personnel and agencies of the legislative department when considering proposed rules. A proposed rule change could be disapproved by the committee or, if not affirmatively approved, the proposed rule would be deemed disapproved. The bill
further provides for an appeal process to the Lieutenant Governor upon the disapproval of a rule by the Joint Committee on Legislative Operations. If the Lieutenant Governor approves a rule, the Legislature may overrule the Lieutenant Governor's approval by joint resolution.

A BILL
TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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

"§41-22-5.

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

"(1) Give at least 60 days' notice of its intended action. Date of publication in the Alabama Administrative Monthly shall constitute the date of notice.
The notice shall include a statement of either the terms or substance of the intended action or a description of the subjects and issues involved, shall specify a notice period ending not less than 35 60 days or more than 90 days from the date of the notice, during which period interested persons may present their views thereon, and shall specify the place where, and the manner in which interested persons may present their views thereon. The notice shall be given to the chairman of the legislative committee and the Chief of Legislative Operations, as provided in Section 41-22-23, and mailed to all persons who pay the cost of such mailing and who have made timely request of the agency for advance notice of its rulemaking proceedings and shall be published, prior to any action thereon, in the Alabama Administrative Monthly. A complete copy of the proposed rule shall be filed with the secretary of the agency and the Legislative Reference Service.

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

"(b) Notwithstanding any other provision of this chapter to the contrary, if an agency finds that an immediate
danger to the public health, safety, or welfare requires adoption of a rule upon fewer than 60 days' notice or that action is required by or to comply with a federal statute or regulation which requires adoption of a rule upon fewer than 60 days' notice and states in writing its reasons for that finding, it may proceed without prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable, to adopt an emergency rule. The rule shall become effective immediately, unless otherwise stated therein, upon the filing of the rule and a copy of the written statement of the reasons therefor with the Legislative Reference Service and the secretary of the agency. The rule may be effective for a period of not longer than 120 days and shall not be renewable. An agency shall not adopt the same or a substantially similar emergency rule within one calendar year from its first adoption unless the agency clearly establishes it could not reasonably be foreseen during the initial 120-day period that such emergency would continue or would likely reoccur during the next nine months. The adoption of the same or a substantially similar rule by normal rule-making procedures is not precluded. In any subsequent action contesting the effective date of a rule adopted pursuant to this subsection, the burden of proof shall be on the agency to justify its finding. Prior to indexing and publication, the agency shall make reasonable efforts to apprise the persons who may be affected by its rules of the adoption of the emergency rule. An emergency rule shall be strictly construed
and shall have as narrow of an application as reasonably possible.

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

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

"§41-22-6.

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

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

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

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

"(2) A rule for which an earlier date is required by statute Upon adjournment of the next legislative session following the completion of the appeal process as set forth in Section 41-22-24, if the Legislature fails to take action to disapprove the rule after approval by the Lieutenant Governor."
(3) An emergency rule adopted pursuant to subsection (b) of Section 41-22-5 at the time specified in an emergency rule adopted pursuant to subsection (b) of Section 41-22-5.

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

§41-22-22.

(a) There shall be a joint standing legislative committee known as the Joint Committee on Administrative Regulation Review, to review all agency rules. The committee shall consist of the members of the Legislative Council, including any member of the Legislative Council temporarily serving in the place of a permanent member, and shall meet on the call of the chair. The chair may name subcommittees to meet and review agency rules and report to the full committee. A quorum of the committee shall be the same as a quorum for the Legislative Council as set forth in Section 29-6-3. Members of the committee shall receive the same compensation, expenses, and transportation allowances for meetings as they receive for attendance at meetings of the Legislative Council. All compensation and expenses authorized by this section shall be paid from funds appropriated to the use of the Legislative Council. The committee shall review all agency rules prior to their adoption. The committee shall have full access to all
resources of the legislative department and all agencies thereof when conducting its review.

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

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

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

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

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

"§41-22-23.

"(a) The notice required by subdivision (a)(1) of Section 41-22-5 shall be given, in addition to the persons therein named, to the chair of the legislative committee. The agency shall furnish the committee with 33 copies of the proposed rule or rules, and no rule, except an emergency rule issued pursuant to subsection (b) of Section 41-22-5 shall be effective until these copies are so furnished. Any member of the Senate or House of Representatives who requests a copy of proposed agency rules from the Chair of the Joint Committee on Administrative Regulation Review shall be provided a copy and the agency proposing rules shall furnish additional copies of
the proposed rule or rules immediately each member of the
committee, to the Chief of Legislative Operations, and to such
other persons in the legislative department as the committee
requires. The form of the proposed rule presented to the
committee shall be as follows: New language shall be
underlined and language to be deleted shall be typed and lined
through.

"(b) Upon receipt of the proposed rule, the Chief of
Legislative Operations shall review the rule and make a
recommendation thereon to the committee. The committee shall
study all proposed rules and may hold public hearings thereon.
In the event the committee fails to give notice to the agency
of either its approval or disapproval of the proposed rule
within 25 60 days after filing of the adopted rule with the
Legislative Reference Service pursuant to Section 41-22-6, the
committee shall be deemed to have approved disapproved the
proposed regulation rule for the purposes of this section. In
the event the committee disapproves a proposed rule or any
part thereof, it shall give notice of the disapproval to the
agency. Any disapproved rule shall be suspended until the
adjournment of the next regular session of the Legislature
following the date of disapproval and suspension of the
committee or until the Legislature shall revoke, by joint
resolution, the suspension of the committee. The rule shall be
reinstated on the adjournment of the legislative session in
the event the Legislature, by joint resolution, fails to
sustain the disapproval and suspension of the committee."
"(c) The committee may propose an amendment to any proposed rule and may disapprove the proposed rule and return it to the agency with the suggested amendment. In the event the agency accepts the rule as amended, the agency may resubmit the rule as amended to the committee. In the event the agency does not accept the amendment, the proposed amended rule shall be submitted to the Legislature as deemed disapproved, as provided in Section 41-22-24.

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

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

"(f) A rule submitted to the committee which has an economic impact shall be accompanied by a fiscal note prepared by the agency in accordance with this subsection. Upon receiving the fiscal note, the committee may require additional information from the submitting agency, other state agencies, or other sources. A state agency shall cooperate and provide information to the committee. At a minimum, the fiscal note submitted with a proposed rule shall include the following:
"(1) A determination of the need for the regulation and the expected benefit of the regulation.

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

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

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

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

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

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

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


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

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

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

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

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

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

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

"(6) Is the increase in cost, if any, more harmful to the public than the harm that might result from the absence of the rule or rules?
"(6)(7) Are all facets of the rulemaking process designed solely for the purpose of, and so they have, as their primary effect, the protection of the public?

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

"§41-22-24.

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

"The disapproval of any rule may be appealed to the Lieutenant Governor who may review the submission and may hold public hearings thereon as determined necessary by the Lieutenant Governor to consider the rule.
"If the Lieutenant Governor sustains the disapproval of the rule, he or she shall notify the committee and return the rule to the agency."

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

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

Section 3. This act shall become effective on the effective date of SB____ of the 2013 Regular Session.