**South Carolina General Assembly**

119th Session, 2011-2012

**H. 4575**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Atwater, Toole, Loftis, Taylor, Spires, Ballentine, Bingham, Quinn, Huggins, Owens, Brannon, Bikas, J.R. Smith, Crosby, Norman, Allison, Murphy, Crawford, Daning, Delleney, Horne, Lucas, McCoy, D.C. Moss, Pope, Putnam, Simrill, G.M. Smith, Sottile, Tallon, Thayer, Young, V.S. Moss, Clemmons, Bannister, Hamilton, Bedingfield, Willis, Stringer, Ryan, Corbin, Long, Patrick and Henderson

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Introduced in the House on January 11, 2012

Currently residing in the House Committee on **Judiciary**

Summary: Administrative Procedures Act

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

1/11/2012 House Introduced and read first time

1/11/2012 House Referred to Committee on **Judiciary**

1/17/2012 House Member(s) request name added as sponsor: Thayer

1/18/2012 House Member(s) request name added as sponsor: Young

1/26/2012 House Member(s) request name added as sponsor: V.S.Moss

2/29/2012 House Member(s) request name added as sponsor: Clemmons, Bannister, Hamilton, Bedingfield, Willis, Stringer, Ryan, Corbin, Long, Patrick, Henderson

**VERSIONS OF THIS BILL**

[1/11/2012](file:///p:\pprever\2011-12\4575_20120111.docx)

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 1‑23‑138 SO AS TO PROVIDE A REGULATION PROMULGATED UNDER THE ADMINISTRATIVE PROCEDURES ACT EXPIRES FIVE YEARS FROM THE DATE ON WHICH IT BECOMES EFFECTIVE; TO AMEND SECTION 1‑23‑120, AS AMENDED, RELATING TO THE APPROVAL OF REGULATIONS, SO AS TO DELETE LANGUAGE REQUIRING A STATE AGENCY TO PERIODICALLY REVIEW REGULATIONS IT PROMULGATES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Article 1, Chapter 23, Title 1 of the 1976 Code is amended by adding:

“Section 1‑23‑138. A regulation promulgated under this article expires five years from the date on which it becomes effective.”

SECTION 2. Section 1‑23‑120 of the 1976 Code, as last amended by Act 33 of 2011, is further amended to read:

“Section 1‑23‑120. (A) All regulations except those specifically exempted pursuant to subsection (H) must be filed with Legislative Council for submission to the General Assembly for review in accordance with this article; however, a regulation must not be filed with Legislative Council for submission to the General Assembly more than one year after publication of the drafting notice initiating the regulation pursuant to Section 1‑23‑110, except those regulations requiring a final assessment report as provided in Sections 1‑23‑270 and 1‑23‑280.

(B) To initiate the process of review, the agency shall file with the Legislative Council for submission to the President of the Senate and the Speaker of the House of Representatives a document containing:

(1) a copy of the regulations promulgated;

(2) in the case of regulations proposing to amend an existing regulation or any clearly identifiable subdivision or portion of a regulation, the full text of the existing regulation or the text of the identifiable portion of the regulation; text that is proposed to be deleted must be stricken through, and text that is proposed to be added must be underlined;

(3) a request for review;

(4) a brief synopsis of the regulations submitted which explains the content and any changes in existing regulations resulting from the submitted regulations;

(5) a copy of the final assessment report and the summary of the final report prepared by the division pursuant to Section 1‑23‑115. A regulation that does not require an assessment report because the regulation does not have a substantial economic impact must include a statement to that effect. A regulation exempt from filing an assessment report pursuant to Section 1‑23‑115(E) must include an explanation of the exemption;

(6) a copy of the fiscal impact statement prepared by the agency as required by Section 1‑23‑110;

(7) a detailed statement of rationale which states the basis for the regulation, including the scientific or technical basis, if any, and identifies any studies, reports, policies, or statements of professional judgment or administrative need relied upon in developing the regulation;

(8) a copy of the economic impact statement, as provided in Section 1‑23‑270(C)(1)(a); and

(9) a copy of the regulatory flexibility analysis, as provided in Section 1‑23‑270(C)(1)(b).

(C) Upon receipt of the regulation, the President and Speaker shall refer the regulation for review to the standing committees of the Senate and House which are most concerned with the function of the promulgating agency. A copy of the regulation or a synopsis of the regulation must be given to each member of the committee, and Legislative Council shall notify all members of the General Assembly when regulations are submitted for review either through electronic means or by addition of this information to the website maintained by Legislative Printing Information and Technology Services, or both. The committees to which regulations are referred have one hundred twenty days from the date regulations are submitted to the General Assembly to consider and take action on these regulations. However, if a regulation is referred to a committee and no action occurs in that committee on the regulation within sixty calendar days of receipt of the regulation, the regulation must be placed on the agenda of the full committee beginning with the next scheduled full committee meeting.

(D) If a joint resolution to approve a regulation is not enacted within one hundred twenty days after the regulation is submitted to the General Assembly or if a joint resolution to disapprove a regulation has not been introduced by a standing committee to which the regulation was referred for review, the regulation is effective upon publication in the State Register. Upon introduction of the first joint resolution disapproving a regulation by a standing committee to which the regulation was referred for review, the one‑hundred‑twenty‑day period for automatic approval is tolled. A regulation may not be filed under the emergency provisions of Section 1‑23‑130 if a joint resolution to disapprove the regulation has been introduced by a standing committee to which the regulation was referred. Upon a negative vote by either the Senate or House of Representatives on the resolution disapproving the regulation and the notification in writing of the negative vote to the Speaker of the House of Representatives and the President of the Senate by the Clerk of the House in which the negative vote occurred, the remainder of the period begins to run. If the remainder of the period is less than ninety days, additional days must be added to the remainder to equal ninety days. The introduction of a joint resolution by the committee of either house does not prevent the introduction of a joint resolution by the committee of the other house to either approve or disapprove the regulations concerned. A joint resolution approving or disapproving a regulation must include:

(1) the synopsis of the regulation as required by subsection (B)(4);

(2) the summary of the final assessment report prepared by the division pursuant to Section 1‑23‑115 or, as required by subsection (B)(5), the statement or explanation that an assessment report is not required or is exempt.

(E) The one‑hundred‑twenty‑day period of review begins on the date the regulation is filed with the President and Speaker. Sine die adjournment of the General Assembly tolls the running of the period of review, and the remainder of the period begins to run upon the next convening of the General Assembly excluding special sessions called by the Governor.

(F) Any member of the General Assembly may introduce a joint resolution approving or disapproving a regulation thirty days following the date the regulations concerned are referred to a standing committee for review and no committee joint resolution approving or disapproving the regulations has been introduced and the regulations concerned have not been withdrawn by the promulgating agency pursuant to Section 1‑23‑125, but the introduction does not toll the one‑hundred‑twenty‑day period of automatic approval.

(G) A regulation is deemed withdrawn if it has not become effective, as provided in this article, by the date of publication of the next State Register published after the end of the two‑year session in which the regulation was submitted to the President and Speaker for review. Other provisions of this article notwithstanding, a regulation deemed withdrawn pursuant to this subsection may be resubmitted by the agency for legislative review during the next legislative session without repeating the requirements of Section 1‑23‑110, 1‑23‑111, or 1‑23‑115 if the resubmitted regulation contains no substantive changes for the previously submitted version.

(H) General Assembly review is not required for regulations promulgated:

(1) to maintain compliance with federal law including, but not limited to, grant programs; however, the synopsis of the regulation required to be submitted by subsection (B)(4) must include citations to federal law, if any, mandating the promulgation of or changes in the regulation justifying this exemption. If the underlying federal law which constituted the basis for the exemption of a regulation from General Assembly review pursuant to this item is vacated, repealed, or otherwise does not have the force and effect of law, the state regulation is deemed repealed and without legal force and effect as of the date the promulgating state agency publishes notice in the State Register that the regulation is deemed repealed. The agency must publish the notice in the State Register no later than sixty days from the effective date the underlying federal law was rendered without legal force and effect. Upon publication of the notice, the prior version of the state regulation, if any, is reinstated and effective as a matter of law. The notice published in the State Register shall identify the specific provisions of the state regulation that are repealed as a result of the invalidity of the underlying federal law and shall provide the text of the prior regulation, if any, which is reinstated. The agency may promulgate additional amendments to the regulation by complying with the applicable requirements of this chapter;

(2) by the State Board of Financial Institutions in order to authorize state‑chartered banks, state‑chartered savings and loan associations, and state‑chartered credit unions to engage in activities that are authorized pursuant to Section 34‑1‑110;

(3) by the South Carolina Department of Revenue to adopt regulations, revenue rulings, revenue procedures, and technical advice memoranda of the Internal Revenue Service so as to maintain conformity with the Internal Revenue Code as defined in Section 12‑6‑40;

(4) as emergency regulations under Section 1‑23‑130.

(I) For purposes of this section, only those calendar days occurring during a session of the General Assembly, excluding special sessions, are included in computing the days elapsed.

~~(J)~~ ~~Each state agency, which promulgates regulations or to which the responsibility for administering regulations has been transferred, shall by July 1, 1997, and every five years thereafter, conduct a formal review of all regulations which it has promulgated or for which it has been transferred the responsibility of administering, except that those regulations described in subsection (H) are not subject to this review. Upon completion of the review, the agency shall submit to the Code Commissioner a report which identifies those regulations:~~

~~(1)~~ ~~for which the agency intends to begin the process of repeal in accordance with this article;~~

~~(2)~~ ~~for which the agency intends to begin the process of amendment in accordance with this article; and~~

~~(3)~~ ~~which do not require repeal or amendment.~~

~~Nothing in this subsection may be construed to prevent an agency from repealing or amending a regulation in accordance with this article before or after it is identified in the report to the Code Commissioner.~~”

SECTION 3. This act takes effect upon approval by the Governor.

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