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COMMITTEE REPORT

May 18, 2011

**S. 420**

Introduced by Senators McConnell, Peeler, Campbell, Rose and Ford

S. Printed 5/18/11--H.

Read the first time April 26, 2011.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 420) to amend Section 1‑23‑120, as amended, Code of Laws of South Carolina, 1976, relating to the General Assembly review of regulations, including, among other things, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass:

JAMES H. HARRISON for Committee.

**A** **BILL**

TO AMEND SECTION 1‑23‑120, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE GENERAL ASSEMBLY REVIEW OF REGULATIONS, INCLUDING, AMONG OTHER THINGS, GROUNDS FOR EXEMPTION FROM REVIEW, SO AS TO PROVIDE THAT A REGULATION EXEMPT FROM GENERAL ASSEMBLY REVIEW BECAUSE IT WAS PROMULGATED TO COMPLY WITH FEDERAL LAW HAS THE SAME LEGAL STATUS AS THE FEDERAL LAW, SUCH THAT IF THE FEDERAL LAW IS VACATED OR OTHERWISE RENDERED WITHOUT LEGAL FORCE AND EFFECT THE STATE REGULATION IS SIMILARLY VACATED OR OTHERWISE RENDERED WITHOUT LEGAL FORCE AND EFFECT.

Whereas, the underlying premise of the State of South Carolina is that all regulations should be subject to review by the General Assembly except under limited circumstances; and

Whereas, certain regulations are promulgated without legislative review to maintain state compliance with certain federal laws and programs; and

Whereas, the underlying federal law for the state regulation may, by action of the federal courts, Congress, or executive agency, be repealed, vacated, or otherwise lose its legal force; and

Whereas, if the underlying federal law is without force and effect, the state regulation should similarly be without force and effect as it would otherwise be a state regulation that had not withstood legislative review and no longer satisfied the exemption; and

Whereas, notwithstanding the vacatur, repeal, or other revocation of legal status of a state regulation, state agencies should encourage and support efforts by persons implementing measures more stringent than applicable law, including, but not limited to, encouraging and supporting efforts toward compliance with the state regulation that has been vacated, repealed, or otherwise has lost its force and effect pursuant to this statutory provision; and

Whereas, upon such vacatur, repeal, or other revocation of legal status, to maintain the continuity of regulatory authority the prior, underlying regulation should be deemed valid and effective, such that a substantive standard, for example, would be rolled back to the prior legal effective standard; and

Whereas, if the regulation vacated, repealed, or otherwise rendered without legal effect implemented a new standard or program, then no prior underlying regulation would exist and no law would govern; and

Whereas, the citizens of the State should be given notice when any such situation arises, and an agency should publish notice in the State Register of the vacatur, repeal, or other action invalidating or suspending the legal validity of the federal law and the commensurate state regulation, and whether such impact results in a rollback to a prior standard or program. Now, therefore,

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

SECTION 1. Section 1‑23‑120(H)(1) of the 1976 Code, as last amended by Act 104 of 2007, is further amended to read:

“(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;”

SECTION 2. This act takes effect upon approval by the Governor.

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