~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

February 22, 2017

**S. 105**

Introduced by Senators Rankin and Goldfinch

S. Printed 2/22/17--S.

Read the first time January 10, 2017.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (S. 105) to amend Section 1‑23‑600 of the 1976 Code, relating to hearings and proceedings in contested cases in the Administrative Law Court, etc., respectfully

**REPORT:**

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

Amend the bill, as and if amended, page 1, beginning on line 37, by striking SECTION 1 in its entirety and inserting therein the following:

/ SECTION 1. Section 1‑23‑600(H) of the 1976 Code is amended to read:

“(H)(1) This subsection applies to timely requests for a contested case hearing pursuant to this section of decisions by departments governed by a board or commission authorized to exercise the sovereignty of the State.

(2) A request for a contested case hearing for an agency order stays the order. A request for a contested case hearing for an order to revoke or suspend a license stays the revocation or suspension. A request for a contested case hearing for a decision to renew a license for an ongoing activity stays the renewed license, the previous license remaining in effect pending completion of administrative review. A request for a contested case hearing for a decision to issue a new license stays all actions for which the license is a prerequisite; however, matters not affected by the request may not be stayed by the filing of the request. If the request is filed for a subsequent license related to issues substantially similar to those considered in a previously licensed matter, the license may not be automatically stayed by the filing of the request. If the requesting party asserts in the request that the issues are not substantially similar to those considered in a previously licensed matter, then the license must be stayed until further order of the Administrative Law Court. Requests for contested case hearings challenging only the amount of fines or penalties must be ~~deemed~~ considered not to affect those portions of such orders imposing substantive requirements.

(3) The general rule of subsection (H)(2) does not stay emergency actions taken by an agency pursuant to an applicable statute or regulation.

(4)(a) ~~After~~ Forty-five days after a contested case is initiated before the Administrative Law Court, a party may move before the presiding administrative law judge to lift the stay imposed pursuant to this subsection or for a determination of the applicability of the automatic stay. A hearing must be held within thirty days after any party files a motion with the court and serves the motion upon the parties. ~~Upon motion by any party, the~~ The court shall lift the stay ~~for good cause shown or if no irreparable harm will occur, then the stay shall be lifted~~ unless the party that requested a contested case hearing proves: (i) the likelihood of irreparable harm if the stay is lifted, (ii) the substantial likelihood that the party requesting the contested case and stay will succeed on the merits of the case, (iii) the balance of equities weigh in favor of continuing the stay, and (iv) continuing the stay serves the public interest. ~~A hearing must be held within thirty days after the motion is filed with the court and served upon the parties to lift the automatic stay or for a determination of the applicability of the automatic stay.~~ The judge must issue an order no later than fifteen business days after the hearing is concluded.

(b) Notwithstanding any other provision of law, in a contested case arising under this subsection, the Administrative Law Court shall file a final decision on the merits of the case no later than twelve months after the contested case is filed with the Clerk of the Administrative Law Court, unless all parties to the contested case consent to an extension or the court finds substantial cause otherwise.

(5) A final decision issued by the Administrative Law Court in a contested case may not be stayed except by order of the Administrative Law Court or the court of appeals.

(6) Nothing contained in this subsection constitutes a limitation on the authority of the Administrative Law Court to impose a stay as otherwise provided by statute or by rule of court.”/

Renumber sections to conform.

Amend title to conform.

BRAD HUTTO for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

**Explanation of Fiscal Impact**

**Introduced on January 10, 2017**

**State Expenditure**

This bill pertains to hearings and proceedings of the Administrative Law Court and allows that a request for a contested case hearing stay an agency order for thirty days. This bill also provides that once a contested case is initiated a party may request injunctive relief from the Administrative Law Judge, and further provides that any injunction ordered by the Court requires posting of sufficient bond or security to cover a good faith estimate of the cost and expense of the litigation and project delay.

**Administrative Law Court.** The Administrative Law Court indicates that there will be no expenditure impact on the general fund, federal funds, or other funds, since the bill does not affect the number of hearings or materially impact the proceedings of the court.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

**A** **BILL**

TO AMEND SECTION 1‑23‑600 OF THE 1976 CODE, RELATING TO HEARINGS AND PROCEEDINGS IN CONTESTED CASES IN THE ADMINISTRATIVE LAW COURT, TO PROVIDE THAT A STAY OF AN AGENCY ORDER REMAINS IN EFFECT FOR THIRTY DAYS, RATHER THAN FOR AN UNDETERMINED TERM, OR UNTIL AN ORDER HAS BEEN ISSUED REGARDING A PRELIMINARY INJUNCTION; TO REVISE THE PROCEDURE FOR STAYS CONCERNING THE REVOCATION, SUSPENSION, OR RENEWAL OF A LICENSE AND PAYMENT OF FINES; TO DELETE THE PROVISION THAT THE COURT SHALL LIFT THE STAY FOR GOOD CAUSE SHOWN OR IF NO IRREPARABLE HARM WILL OCCUR AND ALSO DELETE THE REQUIREMENT THAT A HEARING MUST BE HELD WITHIN THIRTY DAYS TO LIFT THE AUTOMATIC STAY OR FOR A DETERMINATION OF THE APPLICABILITY OF THE AUTOMATIC STAY; TO PROVIDE THAT ANY PRELIMINARY INJUNCTION ORDERED BY THE ADMINISTRATIVE LAW COURT MAY REQUIRE THE POSTING OF A BOND OR OTHER SUFFICIENT SECURITY; AND TO EXEMPT STATE AGENCIES FROM THE REQUIREMENT TO POST A BOND UNDER THIS SECTION.

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

SECTION 1. Section 1‑23‑600(H) of the 1976 Code is amended to read:

“(H)(1) This subsection applies to timely requests for a contested case hearing pursuant to this section of decisions by departments governed by a board or commission authorized to exercise the sovereignty of the State.

(2) A request for a contested case hearing ~~for an agency order stays the order.~~ from an agency decision granting a license stays the license ~~A request for a contested case hearing for an order to revoke or suspend a license stays the revocation or suspension. A request for a contested case hearing for a decision to renew a license for an ongoing activity stays the renewed license, the previous license remaining in effect pending completion of administrative review. A request for a contested case hearing for a decision to issue a new license stays all actions for which the license is a prerequisite;~~ for thirty days and, if a request for preliminary injunctive relief is filed with the Administrative Law Court, until an order granting or denying preliminary injunctive relief is issued by the Administrative Law Court at which time the stay is lifted; provided, however, that matters not affected by the request may not be stayed by the filing of the request. If the request is filed for a subsequent license related to issues substantially similar to those considered in a previously licensed matter, the license may not be automatically stayed by the filing of the request. If the requesting party asserts in the request that the issues are not substantially similar to those considered in a previously licensed matter, then the license must be stayed until further order of the Administrative Law Court. A request for a contested case hearing for a decision to renew a license for an ongoing activity stays the renewed license, the previous license remaining in effect pending completion of administrative review. A request for a contested case hearing of an order to revoke, enforce, or suspend a license stays the revocation or suspension. Requests for contested case hearings challenging only the amount of fines or penalties stay the obligation to pay such monetary fines and penalties until a final order is issued by the Administrative Law Court, but ~~must be deemed~~ do not ~~to~~ affect those portions of such orders imposing substantive requirements.

(3) The general rule of subsection (H)(2) does not stay emergency actions taken by an agency pursuant to an applicable statute or regulation.

(4) After a contested case is initiated before the Administrative Law Court, a party may move before the presiding administrative law judge ~~to lift the stay imposed pursuant to this subsection~~ for preliminary injunctive relief pursuant to applicable law. ~~Upon motion by any party, the court shall lift the stay for good cause shown or if no irreparable harm will occur, then the stay shall be lifted. A hearing must be held within thirty days after the motion is filed with the court and served upon the parties to lift the automatic stay or for a determination of the applicability of the automatic stay. The judge must issue an order no later than fifteen business days after the hearing is concluded.~~ Any preliminary injunction ordered by the Administrative Law Court may require the posting of a bond or other security sufficient for the cost and expense of the litigation and project delay as demonstrated by an affidavit made on a good faith estimate of the cost and expense. State agencies are exempt from the requirement to post a bond under this section.

(5) A final decision issued by the Administrative Law Court in a contested case may not be stayed except by order of the Administrative Law Court or the court of appeals.

(6) Nothing contained in this subsection constitutes a limitation on the authority of the Administrative Law Court to impose a stay as otherwise provided by statute or by rule of court.”

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

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