**South Carolina General Assembly**

122nd Session, 2017-2018

**A134, R138, S105**

**STATUS INFORMATION**

General Bill

Sponsors: Senators Rankin, Goldfinch and Verdin

Document Path: l:\s-jud\bills\rankin\jud0013.pb.docx

Companion/Similar bill(s): 112, 3565

Introduced in the Senate on January 10, 2017

Introduced in the House on March 13, 2017

Last Amended on March 8, 2017

Passed by the General Assembly on February 28, 2018

Governor's Action: March 12, 2018, Signed

Summary: Automatic stay, contested cases in the Administrative Law Court

**HISTORY OF LEGISLATIVE ACTIONS**

 Date Body Action Description with journal page number

 12/13/2016 Senate Prefiled

 12/13/2016 Senate Referred to Committee on **Judiciary**

 1/10/2017 Senate Introduced and read first time ([Senate Journal‑page 61](file:///h%3A%5Csj%5C20170110.docx))

 1/10/2017 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 61](file:///h%3A%5Csj%5C20170110.docx))

 1/13/2017 Senate Referred to Subcommittee: Hembree (ch), McElveen, Gambrell

 1/26/2017 Senate Referred to Subcommittee: Massey (ch), McElveen, Gambrell

 2/22/2017 Senate Committee report: Favorable with amendment **Judiciary** ([Senate Journal‑page 9](file:///h%3A%5Csj%5C20170222.docx))

 3/7/2017 Senate Motion For Special Order Failed ([Senate Journal‑page 48](file:///h%3A%5Csj%5C20170307.docx))

 3/7/2017 Senate Roll call Ayes‑25 Nays‑15 ([Senate Journal‑page 48](file:///h%3A%5Csj%5C20170307.docx))

 3/7/2017 Senate Made Special Order Pursuant to Rule 33B ([Senate Journal‑page 48](file:///h%3A%5Csj%5C20170307.docx))

 3/7/2017 Senate Roll call Ayes‑24 Nays‑15 ([Senate Journal‑page 48](file:///h%3A%5Csj%5C20170307.docx))

 3/8/2017 Senate Committee Amendment Adopted ([Senate Journal‑page 53](file:///h%3A%5Csj%5C20170308.docx))

 3/8/2017 Senate Amended ([Senate Journal‑page 53](file:///h%3A%5Csj%5C20170308.docx))

 3/8/2017 Senate Read second time ([Senate Journal‑page 53](file:///h%3A%5Csj%5C20170308.docx))

 3/8/2017 Senate Roll call Ayes‑26 Nays‑6 ([Senate Journal‑page 53](file:///h%3A%5Csj%5C20170308.docx))

 3/9/2017 Scrivener's error corrected

 3/9/2017 Senate Read third time and sent to House ([Senate Journal‑page 56](file:///h%3A%5Csj%5C20170309.docx))

 3/13/2017 House Introduced and read first time ([House Journal‑page 16](file:///h%3A%5Chj%5C20170313.docx))

 3/13/2017 House Referred to Committee on **Judiciary** ([House Journal‑page 16](file:///h%3A%5Chj%5C20170313.docx))

 1/23/2018 House Committee report: Favorable **Judiciary** ([House Journal‑page 13](file:///h%3A%5Chj%5C20180123.docx))

 1/25/2018 House Requests for debate‑Rep(s). Weeks, Fry, Hill, Anthony, Bannister, West, Hardee, Wheeler, McGinnis, Clemmons, Bernstein, Cobb‑Hunter, Clary, Hiott, Murphy, Alexander, Funderburk, Norrell, Mack, B. Newton, Gilliard, Crosby, Hewitt, Ott, Hixon, Duckworth, Hosey, N. Newton, Douglas, Crawford, Erickson, McEachern ([House Journal‑page 34](file:///h%3A%5Chj%5C20180125.docx))

 1/25/2018 House Debate adjourned until Tues., 1‑30‑18 ([House Journal‑page 55](file:///h%3A%5Chj%5C20180125.docx))

 2/14/2018 House Debate adjourned until Thur., 2‑15‑18 ([House Journal‑page 36](file:///h%3A%5Chj%5C20180214.docx))

 2/15/2018 House Debate adjourned until Tues., 2‑20‑18 ([House Journal‑page 41](file:///h%3A%5Chj%5C20180215.docx))

 2/27/2018 House Read second time ([House Journal‑page 38](file:///h%3A%5Chj%5C20180227.docx))

 2/27/2018 House Roll call Yeas‑86 Nays‑30 ([House Journal‑page 39](file:///h%3A%5Chj%5C20180227.docx))

 2/28/2018 House Read third time and enrolled ([House Journal‑page 16](file:///h%3A%5Chj%5C20180228.docx))

 3/7/2018 Ratified R 138

 3/12/2018 Signed By Governor

 3/14/2018 Effective date 03/12/18

 3/20/2018 Act No. 134

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**VERSIONS OF THIS BILL**

[12/13/2016](file:///p%3A%5Cpprever%5C2017-18%5C105_20161213.docx)

[2/22/2017](file:///p%3A%5Cpprever%5C2017-18%5C105_20170222.docx)

[3/8/2017](file:///p%3A%5Cpprever%5C2017-18%5C105_20170308.docx)

[3/8/2017](file:///p%3A%5Cpprever%5C2017-18%5C105_20170308.docx)

[3/9/2017](file:///p%3A%5Cpprever%5C2017-18%5C105_20170309.docx)

[1/23/2018](file:///p%3A%5Cpprever%5C2017-18%5C105_20180123.docx)

[1/24/2018](file:///p%3A%5Cpprever%5C2017-18%5C105_20180124.docx)

(A134, R138, S105)

**AN ACT TO AMEND SECTION 1‑23‑600, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO HEARINGS AND PROCEEDINGS IN CONTESTED CASES IN THE ADMINISTRATIVE LAW COURT, SO AS TO FURTHER PROVIDE FOR THE IMPOSITION AND DURATION OF STAYS INVOLVING CONTESTED CASES BEFORE THE ADMINISTRATIVE LAW COURT, THE MANNER IN WHICH AND REQUIREMENTS UNDER WHICH THESE STAYS MAY BE LIFTED, EXCEPTIONS TO THE GENERAL PROVISION REGARDING THE LIFTING OF STAYS, AND WHEN THE COURT MUST RENDER A FINAL DECISION ON THE MERITS OF THE CONTESTED CASE; AND TO AMEND SECTION 1-23-670, RELATING TO FILING FEES AND RELATED MATTERS BEFORE THE ADMINISTRATIVE LAW COURT, SO AS TO FURTHER PROVIDE FOR THE SANCTIONS WHICH MAY BE IMPOSED REGARDING FRIVOLOUS CASES.**

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

**Stays and final decisions on contested cases**

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 considered not to affect those portions of such orders imposing substantive requirements.

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

 (4)(a) Ninety 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. The court shall lift the stay 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. The judge must issue an order no later than fifteen business days after the hearing is concluded. If the stay is lifted, action undertaken by the permittee or licensee does not moot and is not otherwise considered an adjudication of the issues raised by the request for a contested case hearing. Notwithstanding the provisions of this item, the process to lift a stay as provided in this item does not apply to a contested case concerning a permit or license involving hazardous waste as defined in Section 44‑56‑20(6), and a stay in such a contested case must not be lifted until the contested case is concluded and the Administrative Law Court has filed its final order in the matter.

 (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.”

**Sanctions for frivolous cases**

SECTION 2. Section 1‑23‑670 of the 1976 Code is amended to read:

 “Section 1‑23‑670. Each request for a contested case hearing, notice of appeal, or request for injunctive relief before the Administrative Law Court must be accompanied by a filing fee equal to that charged in circuit court for filing a summons and complaint, unless another filing fee schedule is established by rules promulgated by the Administrative Law Court, subject to review as in the manner of rules of procedure promulgated by the Supreme Court pursuant to Article V of the Constitution of this State. This fee must be retained by the Administrative Law Court in order to help defray the costs of the proceedings. No filing fee is required in administrative appeals by inmates from final decisions of the Department of Corrections or the Department of Probation, Parole and Pardon Services. However, if an inmate files three administrative appeals during a calendar year, then each subsequent filing during that year must be accompanied by a twenty‑five dollar filing fee. If the presiding administrative law judge determines at the conclusion of the proceeding that the case was frivolous or taken solely for the purpose of delay, the judge may impose such sanctions as the circumstances of the case and discouragement of like conduct in the future may require, including the sanctions authorized in the Frivolous Civil Proceedings Sanctions Act, Chapter 36, Title 15, and as otherwise provided by law.”

**Time effective**

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

Ratified the 7th day of March, 2018.

Approved the 12th day of March, 2018.

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