~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

February 15, 2017

**H. 3565**

Introduced by Reps. Fry, Crawford, Elliott, Burns, Clemmons, Allison, Jordan, Yow, Johnson, Atwater, Duckworth, Ryhal, Loftis, Hewitt, G.R. Smith, V.S. Moss, D.C. Moss, Daning, Hardee, Felder, Erickson, Bales, Hamilton, Huggins, Putnam, Anthony, Bedingfield, West, Atkinson, Bennett, B. Newton, Lucas, Arrington, Ballentine, Chumley, Crosby, Davis, Delleney, Forrester, Gagnon, Hixon, Long, Lowe, Murphy, Pitts, Pope, S. Rivers, Sandifer, Simrill, Stringer, Taylor, Thayer, White, Bannister, Tallon, McCravy, Quinn and McEachern

S. Printed 2/15/17--H.

Read the first time January 24, 2017.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3565) to amend Section 1‑23‑600, as amended, Code of Laws of South Carolina, 1976, relating to timely requests for contested case hearings under the administrative procedures, 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, Section 1-23-600(H), as contained in SECTION 1, by striking item (2) and inserting:

/ (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;~~ from an agency decision granting a license stays the license 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 for thirty days, 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 for thirty days. Requests for contested case hearings challenging only the amount of fines or penalties stays the obligation to pay such monetary fines and penalties until a final order is issued by the Administrative Law Court, but ~~must be deemed~~ does not ~~to~~ affect those portions of such orders imposing substantive requirements. /

Amend further, Section 1-23-600(H), as contained in SECTION 1, by striking item (4) and inserting:

/ (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.~~ When an agency revokes, suspends, renews, or denies a license, 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. /

Renumber sections to conform.

Amend title to conform.

F. GREGORY DELLENEY, JR. for Committee.

**A** **BILL**

TO AMEND SECTION 1‑23‑600, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO TIMELY REQUESTS FOR CONTESTED CASE HEARINGS UNDER THE ADMINISTRATIVE PROCEDURES ACT AND RELATED PROVISIONS, SO AS TO ESTABLISH AN AUTOMATIC STAY CONCERNING LICENSE ISSUANCES, RENEWALS AND THE LIKE, AND TO PROVIDE FOR THE CIRCUMSTANCES UNDER WHICH THE AUTOMATIC STAY MAY BE LIFTED.

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

SECTION 1. Section 1‑23‑600(H) of the 1976 Code, as last amended by Act 334 of 2008, is further 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;~~ from an agency decision granting a license stays the license 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 stays the obligation to pay such monetary fines and penalties until a final order is issued by the Administrative Law Court, but ~~must be deemed~~ does 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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