**South Carolina General Assembly**

119th Session, 2011-2012

**H. 4744**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. Hardwick, Herbkersman, Erickson, Patrick, Barfield, Murphy, Hiott, Corbin, Chumley, Loftis, Henderson, Horne and Hixon

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Introduced in the House on February 7, 2012

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

Summary: Coastal management program

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

2/7/2012 House Introduced and read first time ([House Journal‑page 19](file:///h:\hj%20archive\2012\02-07-12.docx))

2/7/2012 House Referred to Committee on **Judiciary** ([House Journal‑page 19](file:///h:\hj%20archive\2012\02-07-12.docx))

2/8/2012 House Member(s) request name added as sponsor: Hixon

**VERSIONS OF THIS BILL**

[2/7/2012](file:///p:\pprever\2011-12\4744_20120207.docx)

**A** **BILL**

TO AMEND SECTION 1‑23‑600, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO HEARINGS AND PROCEEDINGS BEFORE THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT, SO AS TO PROVIDE A REQUEST FOR A CONTESTED CASE HEARING FOR AN AGENCY ORDER DOES NOT STAY THE ORDER, TO DELETE PROVISIONS ALLOWING CERTAIN STAYS, TO PROVIDE A PARTY TO A CONTESTED CASE BEFORE THE COURT MAY SEEK AN INJUNCTION OF AN ACTION AUTHORIZED BY AN AGENCY ORDER, TO REQUIRE THE COURT MUST HOLD A HEARING FOR A DETERMINATION OF A MOTION SEEKING AN INJUNCTION OF AN AGENCY ORDER WITH A SPECIFIED PERIOD, AND TO MAKE TECHNICAL CORRECTIONS; AND TO AMEND SECTION 48‑39‑80, RELATING TO THE COASTAL MANAGEMENT PROGRAM, SO AS TO LIMIT THE SCOPE OF THE DEPARTMENT’S REVIEW OF CERTAIN FEDERAL, STATE, AND LOCAL PERMITS AND LICENSES.

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~~ does not stay 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~~ does not stay any 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 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. 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~~ enjoin an action authorized by the order or license that is the subject of a request for a contested case. This motion must be subject to the applicable requirements for the imposition of an injunction in circuit court including Rule 65 of South Carolina Rules of Civil Procedure. The ALC must hold a hearing for a determination on the motion seeking an injunction 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.

(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. Section 48‑39‑80(B)(11) of the 1976 Code is amended to read:

“(11) Develop a system ~~whereby~~ in which the department only shall have the authority to review all state and federal permit applications in the coastal zone, and to certify that these do not contravene the management plan. Notwithstanding another provision of law or any provision of the management plan, state permits and local licenses and other authorizations must not be subject to review for consistency with the management plan. In reviewing federal permit applications for consistency with the management plan, the department only shall consider impacts to wetlands as these areas are delineated by the Army Corps of Engineers or another agency of the United States government authorized to issue permits pursuant to Section 404 of the Clean Water Act, 33 U.S.C. Section 1344, and the department may not consider impacts to wetlands that may be impacted by any federal permit or license or project unless these wetlands are considered subject to the jurisdiction of the United States government pursuant to Section 404 of the Clean Water Act, 33 U.S.C. Section 1344.”

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

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