

1 ~~Indicates Matter Stricken~~

2 Indicates New Matter

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4 COMMITTEE AMENDMENT ADOPTED

5 May 13, 2008

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H. 4328

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9 Introduced by Reps. Harrison, Delleney, Haskins, G.M. Smith,
10 Cotty, McLeod and Hart

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12 S. Printed 5/13/08--S.

[SEC 5/14/08 4:41 PM]

13 Read the first time February 6, 2008.

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A BILL

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 1-23-505 SO AS TO DEFINE CERTAIN TERMS; BY ADDING SECTION 1-23-535 SO AS TO PROVIDE THAT THE ADMINISTRATIVE LAW COURT SHALL HAVE AN OFFICIAL SEAL; TO AMEND SECTION 1-23-310, RELATING TO DEFINITIONS FOR PURPOSES OF ADMINISTRATIVE PROCEDURES, SO AS TO CHANGE A REFERENCE TO THE ADMINISTRATIVE LAW JUDGE DIVISION TO THE ADMINISTRATIVE LAW COURT; TO AMEND SECTION 1-23-320, RELATING TO CONTESTED CASE HEARINGS, SO AS TO DELETE A PROVISION REGARDING THE HANDLING OF ATTENDANCE AND TESTIMONY OF WITNESSES, PRODUCTION OF BOOKS, PAPERS, AND RECORDS, AND OTHER PROCEDURAL MATTERS AND TO PROVIDE FOR ENFORCEMENT OR RELIEF FROM AN AGENCY SUBPOENA BEFORE THE COURT; TO AMEND SECTION 1-23-380, AS AMENDED, RELATING TO JUDICIAL REVIEW AFTER EXHAUSTION OF ADMINISTRATIVE REMEDIES, SO AS TO DELETE REFERENCES TO THE ADMINISTRATIVE LAW COURT AND TO REVIEW BY AN ADMINISTRATIVE LAW JUDGE OF A FINAL DECISION IN A CONTESTED CASE TO CONFORM THE PROCEDURES TO OTHER PROCEDURAL PROVISIONS REGARDING THE COURT; TO AMEND SECTION 1-23-560, RELATING TO THE APPLICATION OF THE CODE OF JUDICIAL CONDUCT TO THE ADMINISTRATIVE LAW COURT, SO AS TO PROVIDE THAT THE CODE OF JUDICIAL CONDUCT SERVES AS THE SOLE GROUNDS FOR DISCIPLINE OF ADMINISTRATIVE LAW JUDGES AND TO ALLOW ADMINISTRATIVE LAW JUDGES AND SPOUSES TO ACCEPT INVITATIONS TO CERTAIN JUDICIAL-RELATED FUNCTIONS; TO AMEND SECTION 1-23-600, AS AMENDED, RELATING TO HEARINGS AND PROCEEDINGS OF THE ADMINISTRATIVE LAW COURT, SO

1 AS TO CONFORM THE PROCEDURES TO OTHER
2 PROCEDURAL PROVISIONS REGARDING THE COURT
3 AND TO PROHIBIT THE HEARING OF CERTAIN INMATE
4 APPEALS BY THE COURT; TO AMEND SECTION 1-23-610,
5 AS AMENDED, RELATING TO REVIEW OF DECISIONS OF
6 THE ADMINISTRATIVE LAW COURT, SO AS TO CONFORM
7 THE PROCEDURES TO OTHER PROCEDURAL PROVISIONS
8 REGARDING THE COURT AND TO DELETE THE
9 PROVISION REQUIRING APPROPRIATED MONIES TO BE
10 USED FOR THE SAME PURPOSE INDEFINITELY; AND TO
11 AMEND SECTION 1-23-640, RELATING TO THE VENUE
12 WHERE ADMINISTRATIVE LAW COURT CASES ARE
13 HEARD, SO AS TO PROVIDE THAT CONTESTED CASES
14 WILL BE HEARD AT THE PRINCIPAL OFFICES OR AT
15 ANOTHER SUITABLE LOCATION UNDER CERTAIN
16 CIRCUMSTANCES.

17 Amend Title To Conform

18

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

21

22 SECTION 1. Article 5, Chapter 23 of Title 1 of the 1976 Code is
23 amended by adding:

24

25 “Section 1-23-505. As used in this article:

26 (1) ‘Administrative law judge’ means a judge of the South
27 Carolina Administrative Law Court created pursuant to Section
28 1-23-500.

29 (2) ‘Agency’ means a state agency, department, board, or
30 commission whose action is the subject of a contested case hearing
31 or an appellate proceeding heard by an administrative law judge, or
32 a public hearing on a proposed regulation presided over by an
33 administrative law judge.

34 (3) ‘Contested case’ means a proceeding including, but not
35 restricted to, ratemaking, price fixing, and licensing, in which the
36 legal rights, duties, or privileges of a party are required by law or
37 by Article I, Section 22, Constitution of the State of South
38 Carolina, 1895, to be determined by an agency or the
39 Administrative Law Court after an opportunity for hearing.

40 (4) ‘License’ includes the whole or part of any agency permit,
41 franchise, certificate, approval, registration, charter, or similar
42 form of permission required by law, but does not include a license
43 required solely for revenue purposes.

1 (5) 'Party' means each person or agency named or admitted as
2 a party, or properly seeking and entitled as of right to be admitted
3 as a party.

4 (6) 'Person' means any individual, partnership, corporation,
5 association, governmental subdivision, or public or private
6 organization of any character other than an agency."

7
8 SECTION 2. Article 5, Chapter 23 of Title 1 of the 1976 Code is
9 amended by adding:

10
11 "Section 1-23-535. The Administrative Law Court shall have a
12 seal with a suitable inscription, an impression of which must be
13 filed with the Secretary of State."

14
15 SECTION 3. Section 1-23-310(1) and (2) of the 1976 Code is
16 amended to read:

17
18 "(1) 'Administrative law judge' means a judge of the South
19 Carolina ~~administrative law judge division~~ Administrative Law
20 Court created pursuant to Section 1-23-500;

21 (2) 'Agency' means each state board, commission, department,
22 or officer, other than the legislature, or the courts, ~~but to include the~~
23 ~~administrative law judge division or the Administrative Law Court,~~
24 authorized by law to determine contested cases;"

25
26 SECTION 4. Section 1-23-320 of the 1976 Code is amended to
27 read:

28
29 "Section 1-23-320. ~~(a)~~(A) In a contested case, all parties must
30 be afforded an opportunity for hearing after notice of not less than
31 thirty days, except in proceedings before the Employment Security
32 Commission, which ~~shall be~~ are governed by the provisions of
33 Section 41-35-680.

34 ~~(b)~~(B) The notice ~~shall~~ must include a:

35 (1) a statement of the time, place, and nature of the hearing;

36 (2) a statement of the legal authority and jurisdiction under
37 which the hearing is to be held;

38 (3) a reference to the particular sections of the statutes and
39 rules involved;

40 (4) a short and plain statement of the matters asserted. If the
41 agency or other party is unable to state the matters in detail at the
42 time the notice is served, the initial notice may be limited to a
43 statement of the issues involved. Thereafter, upon application, a
44 more definite and detailed statement ~~shall~~ must be furnished.

1 (e)(C) Any A party to ~~such~~ these proceedings may cause to be
2 taken the depositions of witnesses within or without the State and
3 either by commission or de bene esse. ~~Such depositions shall~~
4 Depositions must be taken in accordance with and subject to the
5 same provisions, conditions, and restrictions as apply to the taking
6 of like depositions in civil actions at law in the court of common
7 pleas; and the same rules with respect to the giving of notice to the
8 opposite party, the taking and transcribing of testimony, the
9 transmission and certification ~~thereof of it~~, and matters of practice
10 relating ~~thereto shall to it~~ apply.

11 (d)(D) The agency hearing a contested case may issue
12 subpoenas in the name of the agency ~~subpoenas~~ for the attendance
13 and testimony of witnesses and the production and examination of
14 books, papers, and records on its own behalf or, upon request, on
15 behalf of ~~any other~~ another party to the case.

16 ~~The administrative law judge division shall, on application of~~
17 ~~any party to the proceeding enforce by proper proceedings the~~
18 ~~attendance and testimony of witnesses and the production and~~
19 ~~examination of books, papers, and records and shall have the~~
20 ~~power to punish as for contempt of court, by a fine, or~~
21 ~~imprisonment or both, the unexcused failure or refusal to attend~~
22 ~~and give testimony or produce books, papers, and records as may~~
23 ~~have been required in any subpoena issued by the agency. A person~~
24 ~~to whom a subpoena has been issued may move before the~~
25 ~~administrative law judge for an order quashing or modifying the~~
26 ~~subpoena. The agency may issue to the sheriff of the county in~~
27 ~~which any hearing is held a warrant requiring him to produce at the~~
28 ~~hearing any witness who shall have ignored or failed to comply~~
29 ~~with any subpoena issued by the agency and duly served upon~~
30 ~~such witness. Such a warrant shall authorize the sheriff to arrest~~
31 ~~and produce at the hearing such witness, and it shall be his duty to~~
32 ~~do so; but the failure of a witness so to appear in response to any~~
33 ~~such subpoena may be excused on the same grounds as provided~~
34 ~~by law in the courts of this State as to the attendance of witnesses~~
35 ~~and jurors~~A party to the proceeding may seek enforcement of or
36 relief from an agency subpoena before the Administrative Law
37 Court pursuant to Section 1-23-600(F).

38 (e)(E) Opportunity ~~shall~~ must be afforded all parties to respond
39 and present evidence and argument on all issues involved.

40 (f)(F) Unless precluded by law, informal disposition may be
41 made of ~~any~~ a contested case by stipulation, agreed settlement,
42 consent order, or default.

43 (g)(G) The record in a contested case ~~shall~~ must include:

- 1 (1) all pleadings, motions, intermediate rulings, and
2 depositions;
3 (2) evidence received or considered;
4 (3) a statement of matters officially noticed;
5 (4) questions and offers of proof, objections, and rulings
6 ~~thereon~~ on the contested case;
7 (5) proposed findings and exceptions;
8 (6) any decision, opinion, or report by the officer ~~or~~
9 ~~administrative law judge~~ presiding at the hearing.
10 ~~(H)~~ (H) Oral proceedings or any part ~~thereof~~ of the oral
11 proceedings shall must be transcribed on request of ~~any~~ a party.
12 ~~(I)~~ (I) Findings of fact ~~shall must~~ be based exclusively on the
13 evidence and on matters officially noticed.”
14

15 SECTION 5. Section 1-23-380 of the 1976 Code, as last amended
16 by Act 387 of 2006, is further amended to read:
17

18 “Section 1-23-380. ~~(A)~~ A party who has exhausted all
19 administrative remedies available within the agency and who is
20 aggrieved by a final decision in a contested case is entitled to
21 judicial review ~~under~~ pursuant to this article; ~~and~~ Article 1, ~~and~~
22 ~~Article 5.~~ This section does not limit utilization of or the scope of
23 judicial review available under other means of review, redress,
24 relief, or trial de novo provided by law. A preliminary, procedural,
25 or intermediate agency action or ruling is immediately reviewable
26 if review of the final agency decision would not provide an
27 adequate remedy. Except as otherwise provided by law, an appeal
28 is to the court of appeals.

29 (1) Proceedings for review are instituted by serving and
30 filing notice of appeal as provided in the South Carolina Appellate
31 Court Rules within thirty days after the final decision of the
32 agency or, if a rehearing is requested, within thirty days after the
33 decision is rendered. Copies of the notice of appeal must be
34 served upon the agency, ~~the Administrative Law Court,~~ and all
35 parties of record.

36 (2) Except as otherwise provided in this chapter, the serving
37 and filing of the notice of appeal does not itself stay enforcement
38 of the agency decision. The serving and filing of a notice of
39 appeal by a licensee for review of a fine or penalty or of its license
40 stays only those provisions for which review is sought and matters
41 not affected by the notice of appeal are not stayed. The serving or
42 filing of a notice of appeal does not automatically stay the
43 suspension or revocation of a permit or license authorizing the sale
44 of beer, wine, or alcoholic liquor. The agency ~~or administrative~~

1 law judge may grant, or the reviewing court may order, a stay upon
2 appropriate terms, upon the filing of a petition under Rule 65 of
3 the South Carolina Rules of Civil Procedure.

4 (3) If a timely application is made to the court for leave to
5 present additional evidence, and it is shown to the satisfaction of
6 the court that the additional evidence is material and that there
7 were good reasons for failure to present it in the proceeding before
8 the agency, the court may order that the additional evidence be
9 taken before the agency upon conditions determined by the court.
10 The agency may modify its findings and decision by reason of the
11 additional evidence and shall file the evidence and modifications,
12 new findings, or decisions with the reviewing court.

13 (4) The review must be conducted by the court and must be
14 confined to the record. In cases of alleged irregularities in
15 procedure before the agency ~~or the Administrative Law Court~~, not
16 shown in the record, and established by proof satisfactory to the
17 court, the case may be remanded to the agency ~~or the~~
18 ~~Administrative Law Court~~ for action as the court considers
19 appropriate.

20 (5) The court may not substitute its judgment for the
21 judgment of the agency as to the weight of the evidence on
22 questions of fact. The court may affirm the decision of the agency
23 or remand the case for further proceedings. The court may
24 reverse or modify the decision if substantial rights of the appellant
25 have been prejudiced because the administrative findings,
26 inferences, conclusions, or decisions are:

27 (a) in violation of constitutional or statutory provisions;

28 (b) in excess of the statutory authority of the agency;

29 (c) made upon unlawful procedure;

30 (d) affected by other error of law;

31 (e) clearly erroneous in view of the reliable, probative,
32 and substantial evidence on the whole record; or

33 (f) arbitrary or capricious or characterized by abuse of
34 discretion or clearly unwarranted exercise of discretion.

35 ~~(B) Review by an administrative law judge of a final decision~~
36 ~~in a contested case, heard in the appellate jurisdiction of the~~
37 ~~Administrative Law Court, must be in the same manner prescribed~~
38 ~~in subsection (A) for judicial review of final agency decisions,~~
39 ~~with the presiding administrative law judge exercising the same~~
40 ~~authority as the court of appeals; provided, that a party aggrieved~~
41 ~~by a final decision of an administrative law judge is entitled to~~
42 ~~judicial review of that decision by the court of appeals pursuant to~~
43 ~~the provisions of subsection (A) and Section 1-23-610(C)."~~

1 SECTION 6. Section 1-23-560 of the 1976 Code is amended to
2 read:

3
4 “Section 1-23-560. Administrative law judges are bound by the
5 Code of Judicial Conduct, as contained in Rule 501 of the South
6 Carolina Appellate Court Rules. The sole grounds for discipline
7 and sanctions for administrative law judges are those contained in
8 the Code of Judicial Conduct in Rule 502, Rule 7, of the South
9 Carolina Appellate Court Rules. The State Ethics Commission,
10 which is responsible for enforcement and administration of those
11 rules pursuant to shall use the procedure contained in Section
12 8-13-320. Notwithstanding another provision of law, an
13 administrative law judge and the judge’s spouse or guest may
14 accept an invitation to attend a judicial-related or bar-related
15 function, or an activity devoted to the improvement of the law,
16 legal system, or the administration of justice.”
17

18 SECTION 7. Section 1-23-600 of the 1976 Code, as last amended
19 by Act 111 of 2007, is further amended to read:

20
21 “Section 1-23-600. (A) ~~A full and complete record must be kept~~
22 ~~of all contested cases and regulation hearings before an~~
23 ~~administrative law judge. All testimony must be reported, but need~~
24 ~~not be transcribed unless a transcript is requested by any party.~~
25 ~~The party requesting a transcript is responsible for the costs~~
26 ~~involved. Proceedings before administrative law judges are open~~
27 ~~to the public unless confidentiality is allowed or required by law.~~
28 ~~The presiding administrative law judge must render the decision in~~
29 ~~a written order. The decisions or orders of administrative law~~
30 ~~judges are not required to be published but are available for public~~
31 ~~inspection unless confidentiality is allowed or required by law.~~

32 (B) An administrative law judge shall preside over all hearings
33 of contested cases as defined in Section ~~1-23-310~~ 1-23-505 or
34 Article I, Section 22, Constitution of the State of South Carolina,
35 1895, involving the departments of the executive branch of
36 government as defined in Section 1-30-10 in which a single
37 hearing officer, or an administrative law judge, is authorized or
38 permitted by law or regulation to hear and decide these cases,
39 except those arising under the:

40 (1) Occupational Safety and Health Act, ~~those matters~~
41 ~~arising under the;~~

42 (2) Consolidated Procurement Code, ~~those matters heard by~~
43 ~~the;~~

44 (3) Public Service Commission, ~~the;~~

1 (4) Employment Security Commission, ~~the~~;
2 (5) Workers' Compensation Commission; or
3 (6) other cases or hearings which are prescribed for or
4 mandated by federal law or regulation, unless otherwise by statute
5 or regulation specifically assigned to the jurisdiction of the
6 Administrative Law Court. Unless otherwise provided by statute,
7 the standard of proof in a contested case is by a preponderance of
8 the evidence. The South Carolina Rules of Evidence apply in all
9 contested case proceedings before the Administrative Law Court.
10 ~~(C)~~(B) All requests for a hearing before the Administrative Law
11 Court must be filed in accordance with the court's rules of
12 procedure. ~~Any~~ A party that files a request for a hearing with the
13 Administrative Law Court must simultaneously serve a copy of the
14 request on the affected agency. Upon the filing of the request, the
15 chief judge shall assign an administrative law judge to the case.
16 Notice of the contested case hearing must be issued in accordance
17 with the rules of procedure of the Administrative Law Court.
18 (C) A full and complete record must be kept of all contested
19 cases and regulation hearings before an administrative law judge.
20 All testimony must be reported, but need not be transcribed unless
21 a transcript is requested by a party. The party requesting a
22 transcript is responsible for the costs involved. Proceedings before
23 administrative law judges are open to the public unless
24 confidentiality is allowed or required by law. The presiding
25 administrative law judge shall render the decision in a written
26 order. The decisions or orders of administrative law judges are not
27 required to be published but are available for public inspection
28 unless confidentiality is allowed or required by law.
29 (D) An administrative law judge also shall preside over all
30 appeals from final decisions of contested cases pursuant to the
31 Administrative Procedures Act, Article I, Section 22, Constitution
32 of the State of South Carolina, 1895, or another law, except that an
33 appeal from a final order of the Public Service Commission and
34 the State Ethics Commission is to the Supreme Court or the court
35 of appeals as provided in the South Carolina Appellate Court
36 Rules, an appeal from the Procurement Review Panel is to the
37 circuit court as provided in Section 11-35-4410, an appeal from the
38 Workers' Compensation Commission is to the court of appeals as
39 provided in Section 42-17-60, and an appeal from the Employment
40 Security Commission is to the circuit court as provided in Section
41 41-35-750. An administrative law judge shall not hear an appeal
42 from an inmate in the custody of the Department of Corrections
43 involving the loss of the opportunity to earn sentence-related
44 credits pursuant to Section 24-13-210(A) or Section 24-13-230(A)

1 or an appeal involving the denial of parole to a potentially eligible
2 inmate by the Department of Probation, Parole and Pardon
3 Services.

4 (E) Review by an administrative law judge of a final decision
5 in a contested case, heard in the appellate jurisdiction of the
6 Administrative Law Court, must be in the same manner as
7 prescribed in Section 1-23-380(A) for judicial review of final
8 agency decisions with the presiding administrative law judge
9 exercising the same authority as the court of appeals, provided that
10 a party aggrieved by a final decision of an administrative law
11 judge is entitled to judicial review of the decision by the court of
12 appeals pursuant to the provisions of Section 1-23-610.

13 (F) Notwithstanding another provision of law, a state agency
14 authorized by law to seek injunctive relief may apply to the
15 Administrative Law Court for injunctive or equitable relief
16 pursuant to Section 1-23-630. The provisions of this section do
17 not affect the authority of an agency to apply for injunctive relief
18 as part of a civil action filed in the court of common pleas.

19 ~~(F)~~(G) Notwithstanding another provision of law, the
20 Administrative Law Court has jurisdiction to review and enforce
21 an administrative process issued by an agency or by a department
22 of the executive branch of government, as defined in Section
23 1-30-10, such as a subpoena, administrative search warrant, cease
24 and desist order, or other similar administrative order or process.
25 A department or agency of the executive branch of government
26 authorized by law to seek an administrative process may apply to
27 the ~~chief administrative law judge or his designee~~ Administrative
28 Law Court to issue or enforce an administrative process. A party
29 aggrieved by an administrative process issued by a department or
30 agency of the executive branch of government may apply to the
31 ~~chief administrative law judge~~ Administrative Law Court for relief
32 from the process as provided in the Rules of the Administrative
33 Law Court.

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

38 (2) A request for a contested case hearing for an agency
39 order stays the order. A request for a contested case hearing for an
40 order to revoke or suspend a license stays the revocation or
41 suspension. A request for a contested case hearing for a decision
42 to renew a license for an ongoing activity stays the renewed
43 license, the previous license remaining in effect pending
44 completion of administrative review. A request for a contested

1 case hearing for a decision to issue a new license stays all actions
2 for which the license is a prerequisite; however, matters not
3 affected by the request may not be stayed by the filing of the
4 request and matters for which a license has already been issued
5 and a request is filed for a subsequent license related to the
6 previously licensed matter may not be stayed by the filing of the
7 request. Requests for contested case hearings challenging only the
8 amount of fines or penalties must be deemed not to affect those
9 portions of orders imposing substantive requirements.

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

13 (4) After a contested case is initiated before the
14 Administrative Law Court, ~~any~~ a party may move before the
15 presiding administrative law judge to lift the stay imposed
16 pursuant to this subsection. Upon motion by any party, the court
17 shall lift the stay for good cause shown or if no irreparable harm
18 will occur, then the stay shall be lifted. A hearing must be held
19 within three days after the motion is filed with the court and served
20 upon the parties. The judge must issue an order no later than three
21 business days after the hearing is concluded.

22 (5) A final decision issued by the Administrative Law Court
23 in a contested case may not be stayed except by order of the
24 Administrative Law Court; ~~or the court of appeals, or in cases~~
25 ~~when Section 1-23-610(A) applies, the appropriate board or~~
26 ~~commission.~~

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

30 ~~(H)(I)~~ If a ~~petition for judicial review of a final order of the~~
31 ~~Administrative Law Court is not filed~~ appealed in accordance with
32 the provisions of Section ~~1-23-600~~ 1-23-610, upon request of a
33 party to the proceedings, the clerk of the Administrative Law Court
34 ~~must~~ shall file a certified copy of the final order with a clerk of the
35 circuit court, as requested, or court of competent jurisdiction, as
36 requested. After filing, the certified order has the same effect as a
37 judgment of the court where filed and may be recorded, enforced,
38 or satisfied in the same manner as a judgment of that court.”

39
40 SECTION 8. Section 1-23-610 of the 1976 Code, as last amended
41 by Act 387 of 2006, is further amended to read:

42
43 “Section 1-23-610. (A)~~(1)~~ For quasi-judicial review of any final
44 ~~decision of an administrative law judge of cases involving~~

1 departments governed by a board or commission authorized to
2 exercise the sovereignty of the State, except the Department of
3 Natural Resources and the Department of Health and
4 Environmental Control, a petition by an aggrieved party must be
5 filed with the appropriate board or commission and served on the
6 opposing party not more than thirty days after the party receives
7 the final decision and order of the administrative law judge.
8 Appeal in these matters is by right. A party aggrieved by a final
9 decision of a board in such a case is entitled to judicial review of
10 that decision by the court of appeals under the provisions of (A) of
11 this section.

12 (B) For judicial review of a final decision of an administrative
13 law judge of cases in which review is not governed by subsection
14 (A), including cases involving the Department of Natural
15 Resources and the Department of Health and Environmental
16 Control, a notice of appeal by an aggrieved party must be served
17 and filed with the court of appeals as provided in the South
18 Carolina Appellate Court Rules in civil cases and served on the
19 opposing party and the Administrative Law Court not more than
20 thirty days after the party receives the final decision and order of
21 the administrative law judge. Appeal in these matters is by right.

22 (2) Except as otherwise provided in this chapter, the serving
23 and filing of the notice of appeal does not itself stay enforcement
24 of the administrative law judge's decision. The serving and filing
25 of a notice of appeal by a licensee for review of a fine or penalty or
26 of its license stays only those provisions for which review is
27 sought and matters not affected by the notice of appeal are not
28 stayed. The serving or filing of a notice of appeal does not
29 automatically stay the suspension or revocation of a permit or
30 license authorizing the sale of beer, wine, or alcoholic liquor.
31 Upon motion, the administrative law judge may grant, or the court
32 of appeals may order, a stay upon appropriate terms.

33 (C)(B) The review of the administrative law judge's order must
34 be confined to the record. The court may not substitute its
35 judgment for the judgment of the administrative law judge as to
36 the weight of the evidence on questions of fact. The reviewing
37 tribunal court of appeals may affirm the decision or remand the
38 case for further proceedings; or it may reverse or modify the
39 decision if the substantive rights of the petitioner have been
40 prejudiced because of the finding, conclusion, or decision is:

- 41 (a) in violation of constitutional or statutory provisions;
- 42 (b) in excess of the statutory authority of the agency;
- 43 (c) made upon unlawful procedure;
- 44 (d) affected by other error of law;

1 (e) clearly erroneous in view of the reliable, probative, and
2 substantial evidence on the whole record; or

3 (f) arbitrary or capricious or characterized by abuse of
4 discretion or clearly unwarranted exercise of discretion.

5 ~~(D) Where appropriations in the annual general appropriations~~
6 ~~act, or where fees, fines, forfeitures, or revenues imposed or~~
7 ~~collected by agencies or commissions were required to be used for~~
8 ~~the hearing of contested cases, these appropriations or monies must~~
9 ~~continue to be used for these purposes after the effective date of~~
10 ~~this article."~~

11
12 SECTION 9. Section 1-23-640 of the 1976 Code is amended to
13 read:

14
15 "Section 1-23-640. The ~~division~~ court shall maintain its
16 principal offices in the City of Columbia. However, judges of the
17 ~~division court~~ shall hear contested cases at the ~~offices or location~~
18 ~~of the involved department or commission as prescribed by the~~
19 ~~agency or commission, at the division's court's~~ offices; or at a
20 ~~suitable locations~~ location outside the City of Columbia ~~as when~~
21 determined by the chief judge."

22
23 SECTION 10. This act takes effect upon approval by the
24 Governor.

25 ----XX----