

Abolishment Closer Than Ever Before for Beleaguered South Carolina Public Health and Environmental Agency

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Among the matters that made it across the South Carolina State House this legislative session is Senate Bill 2 (S 2), a piece of legislation Ralph Barbier and I wrote about last fall ([here](#)). S 2 proposes the elimination of one of the largest state agencies in South Carolina—the Department of Health and Environmental Control (DHEC). The massive overhaul of the state’s public health and environmental responsibilities would also be the end of the Department of Mental Health (DMH) and the Department of Alcohol and Other Drug Abuse Services (DAODAS), with the creation of two new state agencies: the Department of Public and Behavioral Health and the Department of Environmental Services.

As a reminder, the re-envisioning proposed in the Senate called for the following:

Creation of the Department of Public and Behavioral Health (DPBH).

- Governor appoints Director of DPBH with advice and consent of the Senate.
- All divisions, offices, and programs of DHEC that perform health-related functions will become a division of DPBH with the DPBH director being deemed the head of the division.
- All divisions, offices, and programs of the Department of Alcohol and Other Drug Abuse Services will become a division of DPBH with the DPBH director being deemed the head of the division.
- All divisions, offices, and programs of the Department of Mental Health will become a division of DPBH with the DPBH director being deemed the head of the division; except that the authority to establish, manage and operate veterans’ homes will be transferred to the Department of Veterans Affairs, and all powers and duties assigned to the Department of Mental Health regarding veterans’ homes being transferred to and devolved upon the Department of Veterans Affairs.

Creation of the Department of Environmental Services (DES).

- The Governor will appoint a Director of DES with the advice and consent of the Senate.
- The divisions, offices, and programs of DHEC that perform functions related to regulation and protection of the environment will become divisions, offices, and programs of DES with the director of DES being deemed the head of the divisions, offices, and programs; except that the food safety program in the Division of Food and Lead Risk Assessment and the Milk and Dairy Lab of DHEC will become a division of the Department of Agriculture with the director of that department being deemed the head of the division.
- The Water Resources Division of the Department of Natural Resources will become a division of DES with the director of DES being deemed the head of the division.

In recent months, the Senate further retooled its legislation with two amendments adopted before the third reading of the bill, at which point S 2 was sent across to the House of Representatives. The first amendment requires regulations that may be promulgated by DPBH, which must accord with the Administrative Procedures Act (APA). The second amendment is more notable, as it proposes to amend Section 600(H) of the APA (Title 1, Chapter 23), which Act has application beyond just DHEC.

Amendment No. 11A to S 2 makes major changes to the automatic stay procedures that apply to agency decisions when a request for administrative review is filed. See S.C. Code Ann. § 1-23-600(H) (Supp. 2018). These procedures themselves are relatively new—having been amended in March 2018 to change to the way agency decisions may be impacted by litigation. As amended, the provision would now only apply to DES and only to certain decisions of DES. As to those certain decisions (described as “decisions requiring a public hearing”), a stay is automatically imposed for five days, and a person seeking to continue the stay and challenge the decision must file a motion to do so, along with a request for contested case hearing with the South Carolina Administrative Law Court. These filings must be made before the expiration of the five days.

The significance of this amendment is its impact on the public health-related decisions that DHEC presently issues, including those related to the development of health services—such as Certificate of Need licenses and Medicaid nursing home permits, for example. In the Senate’s splintering of DHEC’s public health and environmental responsibilities, only the latter subjects move primarily to the new DES. Consequently, it would seem those public health-related decisions that previously had been subject to the APA’s automatic stay provision would no longer if S 2 as amended is ultimately enacted.

On March 29, 2022, S 2 was introduced in the House of Representatives and referred to the Committee on Ways and Means. With the legislative session coming to a close in a matter of weeks, it remains to be seen whether the House will adopt the Senate’s proposal, offer amendments, or decline to move forward. With the House’s similar legislation—House Bill No. 3766—yet to make its way out of the Judiciary Committee, it is unlikely any change will occur this session unless the House Ways and Means Committee makes moves very soon.