

HOUSE BILL 2068

By Daniel

AN ACT to amend Tennessee Code Annotated, Title 4,  
Chapter 5, relative to the Uniform Administrative  
Procedures Act.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 4-5-103(a), is amended by deleting the language:

; and this chapter shall be given a liberal construction and any doubt as to the existence or the extent of a power conferred shall be resolved in favor of the existence of the power

and substituting instead the language:

. Administrative agencies shall have no inherent, general, or common law powers, and shall only exercise the powers conferred on them by statute or by the federal or state constitutions. This chapter shall be narrowly construed as it applies to agency powers, and any doubt as to the existence or the extent of such powers conferred to an agency shall be resolved against the agency

SECTION 2. Tennessee Code Annotated, Section 4-5-226(d), is amended by deleting the subsection and substituting the following:

In conducting the review required by subsection (c), the committees or subcommittees shall hold at least one (1) public hearing to receive testimony from the public and from the administrative head of the agency. At such hearing, the agency shall have the burden of demonstrating, by clear and convincing evidence, that consideration of the factors enumerated in subsection (e) justifies the continued existence of an agency rule. Notice of the time and place of the public hearing shall be

on the general assembly web site no less than fourteen (14) days prior to the hearing. To the extent reasonably practicable, the committees or subcommittees shall conduct hearings on newly filed rules, other than emergency rules, during the ninety-day period immediately following the filing of the original of such rule in the office of the secretary of state.

SECTION 3. Tennessee Code Annotated, Section 4-5-226(e), is amended by deleting the subsection and substituting the following:

As part of the review of agency rules, the agency has the burden of demonstrating, by clear and convincing evidence, that:

- (1) The agency is acting within its authority to adopt the rule;
- (2) The rule, considered in its entirety, is clear and will be easily understood by persons directly affected by the rule;
- (3) The rule is consistent, and not in conflict with or contradictory to existing law;
- (4) The rule is necessary to secure the health, safety, or welfare of the public, and that the rule is necessary and essential for the agency to serve persons affected by the rule;
- (5) The rule is not arbitrary or capricious;
- (6) The rule does not adversely impact a person's constitutional rights;
- (7) The rule does not adversely impact business; and
- (8) The rule will result in economic efficiency for persons served by the agency and persons affected by the rule.

SECTION 4. Tennessee Code Annotated, Section 4-5-226(f), is amended by deleting the subsection and substituting the following:

- (f) As used in subsection (e):
  - (1) "Arbitrary or capricious" means a willful or unreasonable agency action without consideration of or in disregard of facts or law; and

(2) "Authority" means provisions of law that permit or obligate the agency to adopt, amend, or repeal a rule.

SECTION 5. Tennessee Code Annotated, Section 4-5-226(i)(1), is amended by deleting subdivision (D) and substituting the following:

(D) Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule or the necessity to promulgate the rule;

SECTION 6. Tennessee Code Annotated, Section 4-5-226(j)(2), is amended by deleting the subdivision and substituting the following:

In the event an agency fails to comply with the committee's request to repeal, amend, or withdraw a rule within a reasonable time and before the established expiration date, the committee may vote to request the general assembly to repeal the rule, or to suspend any or all of such agency's rulemaking authority for any reasonable period of time or with respect to any particular subject matter, by legislative enactment.

SECTION 7. This act shall take effect July 1, 2016, the public welfare requiring it.