

**Government Operations Committee 1**

**Amendment No. 1 to HB2068**

**Faison  
Signature of Sponsor**

**AMEND Senate Bill No. 2389**

**House Bill No. 2068\***

by deleting all language after the enacting clause and substituting instead the following:

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.

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

(d)

(1) 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 convincing evidence, that consideration of the factors enumerated in subsection (e), in their totality, 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 prior to the hearing. To the extent reasonably practicable, the committees or subcommittees shall

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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.

(2) Whether an agency has met its burden of persuasion for the continued existence of a rule is solely within the discretion of the general assembly. Nothing in subdivision (d)(1) or subsection (e) creates a cause of action for any person to seek judicial review of whether the demonstration that an agency offered to justify the continued existence of a rule met the requirements of the evidence standard prescribed in subdivision (d)(1).

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

(e) As part of the review of agency rules, the agency has the burden of demonstrating, by convincing evidence, that consideration of the factors enumerated in this subsection (e) justify the continued existence of an agency rule. Such factors include:

- (1) Whether the agency is acting within its authority to adopt the rule;
- (2) Whether the rule, considered in its entirety, will be easily understood by persons directly affected by the rule;
- (3) Whether the rule is consistent, and not in conflict with or contradictory to existing law;

(4) Whether 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) Whether the rule is arbitrary or capricious;

(6) Whether the rule adversely impacts a person or a person's constitutional rights;

(7) Whether the rule unnecessarily adversely impacts business;

(8) Whether the rule will result in economic efficiency for persons served by the agency and persons affected by the rule; and

(9) Whether the rule exceeds the mandatory minimum requirements of any relevant federal law or 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:

(2) 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.