

1 HB615
2 118527-1
3 By Representatives McClurkin, Wood, Hilliard, Hubbard,
4 McDaniel, Sanderford, Moore (P), Drake, Hall, Coleman, Todd
5 and Grantland
6 RFD: Government Operations
7 First Read: 23-FEB-10

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8 SYNOPSIS: Currently, the Alabama Clean Indoor Air Act
9 prohibits smoking in certain places and requests
10 that employers adopt a smoking policy and provide
11 smoke-free areas in places of employment.

12 This bill would repeal the Alabama Clean
13 Indoor Air Act.

14 This bill would establish the Alabama
15 Smokefree Air Act of 2010 to prohibit smoking in
16 enclosed public places, places of employment,
17 private clubs, enclosed residential facilities,
18 outdoor areas, and provide exceptions; would
19 require the posting of signs; would provide for
20 enforcement by the State Board of Health; and would
21 provide for various fines for individuals and
22 certain employers and owners or managers of public
23 places.

24
25 A BILL
26 TO BE ENTITLED
27 AN ACT

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To establish the Alabama Smokefree Air Act of 2010 to prohibit smoking in enclosed public places, places of employment, private clubs, enclosed residential facilities, and outdoor areas; to provide exceptions; to require the posting of signs; to provide for enforcement; to provide for a fine for a person who smokes in violation of this act; to provide for a fine for employers who retaliate against an employee; to provide for graduated fines for violations by owners or managers of public places; and to repeal Sections 22-15A-1 to 22-15A-10, inclusive, of the Code of Alabama 1975.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known as the Alabama Smokefree Air Act of 2010.

Section 2. The Legislature hereby finds and declares all of the following:

(1) The 2006 U.S. Surgeon General's Report, The Health Consequences of Involuntary Exposure to Tobacco Smoke, has concluded all of the following:

a. Secondhand smoke exposure causes disease and premature death in children and adults who do not smoke.

b. Children exposed to secondhand smoke are at an increased risk for sudden infant death syndrome (SIDS), acute respiratory problems, ear infections, and asthma attacks, and that smoking by parents causes respiratory symptoms and slows lung growth in their children.

1 c. Exposure of adults to secondhand smoke has
2 immediate adverse effects on the cardiovascular system and
3 causes coronary heart disease and lung cancer.

4 d. There is no risk-free level of exposure to
5 secondhand smoke.

6 e. Establishing smoke-free workplaces is the only
7 effective way to ensure that secondhand smoke exposure does
8 not occur in the workplace, because ventilation and other air
9 cleaning technologies cannot completely control for exposure
10 of nonsmokers to secondhand smoke.

11 f. Evidence from peer-reviewed studies shows that
12 smoke-free policies and laws do not have an adverse economic
13 impact on the hospitality.

14 (2) Numerous studies have found that tobacco smoke
15 is a major contributor to indoor air pollution, and that
16 breathing secondhand smoke, also known as environmental
17 tobacco smoke, is a cause of disease in healthy nonsmokers,
18 including heart disease, stroke, respiratory disease, and lung
19 cancer. The National Cancer Institute determined in 1999 that
20 secondhand smoke is responsible for the early deaths of
21 approximately 53,000 Americans annually.

22 (3) The Public Health Service's National Toxicology
23 Program (NTP) has listed secondhand smoke as a known
24 carcinogen.

25 (4) Based on a finding by the California
26 Environmental Protection Agency in 2005, the California Air
27 Resources Board has determined that secondhand smoke is a

1 toxic air contaminant, finding that exposure to secondhand
2 smoke has serious health effects, including low birth weight
3 babies; sudden infant death syndrome (SIDS); increased
4 respiratory infections in children; asthma in children and
5 adults; lung cancer, sinus cancer, and breast cancer in
6 younger, premenopausal women; heart disease; and death.

7 (5) Scientific evidence has firmly established that
8 there is no safe level of exposure to secondhand tobacco
9 smoke, a pollutant that causes serious illness in adults and
10 children. There is also indisputable evidence that
11 implementing 100 percent smoke-free environments is the only
12 effective way to protect the population from the harmful
13 effects of exposure to secondhand smoke.

14 (6) A significant amount of secondhand smoke
15 exposure occurs in the workplace. Employees who work in
16 smoke-filled businesses suffer a 25-50 percent higher risk of
17 heart attack and higher rates of death from cardiovascular
18 disease and cancer, as well as increased acute respiratory
19 disease and measurable decrease in lung function.

20 (7) Secondhand smoke is particularly hazardous to
21 elderly people, individuals with cardiovascular disease, and
22 individuals with impaired respiratory function, including
23 asthmatics and those with obstructive airway disease. The
24 Americans With Disabilities Act, which requires that disabled
25 persons have access to public places and workplaces, deems
26 impaired respiratory function to be a disability.

1 (8) The U.S. Centers for Disease Control and
2 Prevention has determined that the risk of acute myocardial
3 infarction and coronary heart disease associated with exposure
4 to tobacco smoke is nonlinear at low disease, increasing
5 rapidly with relatively small doses such as those received
6 from secondhand smoke or actively smoking one or two
7 cigarettes a day, and has warned that all patients at
8 increased risk of coronary heart disease or with known
9 coronary artery disease should avoid all indoor environments
10 that permit smoking.

11 (9) Given the fact that there is no safe level of
12 exposure to secondhand smoke, the American Society of Heating,
13 Refrigerating and Air Conditioning Engineers (ASHRAE) bases
14 its ventilation standards on totally smoke-free environments.
15 ASHRAE has determined that there is currently no air
16 filtration or other ventilation technology that can completely
17 eliminate all the carcinogenic components in secondhand smoke
18 and the health risks caused by secondhand smoke exposure, and
19 recommends that indoor environments be smoke free in their
20 entirety.

21 (10) During periods of active smoking, peak, and
22 average outdoor tobacco smoke (OTS) levels measured in outdoor
23 cafes and restaurant and bar patios near smokers rival indoor
24 tobacco smoke concentrations.

25 (11) Residual tobacco contamination, or "third-hand
26 smoke," from cigarettes, cigars, and other tobacco products is
27 left behind after smoking occurs and builds up on surfaces and

1 furnishings. This residue can linger in spaces long after
2 smoking has ceased and continue to expose people to tobacco
3 toxins. Sticky, highly toxic particulate matter, including
4 nicotine, can cling to walls and ceilings. Gases can be
5 absorbed into carpets, draperies, and other upholsteries, and
6 then be re-emitted (off-gassed) back into the air and
7 recombine to form harmful compounds. Tobacco residue is
8 noticeably present in dust throughout places where smoking has
9 occurred.

10 (12) Unregulated high tech smoking devices, commonly
11 referred to as electronic cigarettes, or "e-cigarettes,"
12 closely resemble and purposefully mimic the act of smoking by
13 having users inhale vaporized liquid nicotine created by heat
14 through an electronic ignition system. After testing a number
15 of e-cigarettes from two leading manufacturers, the Food and
16 Drug Administration (FDA) determined that various samples
17 tested contained not only nicotine but also detectable levels
18 of known carcinogens and toxic chemicals, including
19 tobacco-specific nitrosamines and diethylene glycol, a toxic
20 chemical used in antifreeze. The FDA's testing also suggested
21 that "quality control processes used to manufacture these
22 products are inconsistent or nonexistent." E-cigarettes
23 produce a vapor of undetermined and potentially harmful
24 substances, which may appear similar to the smoke emitted by
25 traditional tobacco products. Their use in workplaces and
26 public places where smoking of traditional tobacco products is

1 prohibited creates concern and confusion and leads to
2 difficulties in enforcing the smoking prohibitions.

3 (13) The Society of Actuaries had determined that
4 secondhand smoke costs the United States economy roughly \$10
5 billion a year, \$5 billion in estimated medical costs
6 associated with secondhand smoke exposure and \$4.6 billion in
7 lost productivity.

8 (14) Numerous economic analyses examining restaurant
9 and hotel receipts and controlling for economic variables have
10 shown either no difference or a positive economic impact after
11 enactment of laws requiring workplaces to be smoke free.
12 Creation of smoke-free workplaces is sound economic policy and
13 provides the maximum level of employee health and safety.

14 (15) Hundreds of communities in the United States,
15 plus numerous states, including Arizona, Delaware, Illinois,
16 Iowa, Massachusetts, New Jersey, New York, Ohio, Utah, and
17 Washington, have enacted laws requiring all workplace,
18 restaurants, bars, and other public places to be smoke free,
19 as have numerous countries, including Bhutan, France, Iceland,
20 Ireland, New Zealand, Norway, Singapore, Uruguay, and the
21 United Kingdom constituent countries of England, Northern
22 Ireland, Scotland, and Wales.

23 (16) There is no legal or constitutional "right to
24 smoke." Business owners have no legal or constitutional right
25 to expose their employees and customers to the toxic chemicals
26 in secondhand smoke. On the contrary, employers have a common

1 law duty to provide their workers with a workplace that is not
2 unreasonably dangerous.

3 (17) Smoking is a potential cause of fires;
4 cigarette and cigar burns and ash stains on merchandise and
5 fixtures cause economic damage to businesses.

6 (18) The smoking of tobacco is a form of air
7 pollution, a positive danger to health, and a material public
8 nuisance.

9 Section 3. The following terms shall have the
10 following meanings unless otherwise specified:

11 (1) BAR. An establishment that is devoted to the
12 serving of alcoholic beverages for consumption by guests on
13 the premises and in which the serving of food is only
14 incidental to the consumption of those beverages, including,
15 but not limited to, taverns, nightclubs, cocktail lounges, and
16 cabarets.

17 (2) BUSINESS. A sole proprietorship, partnership,
18 joint venture, corporation, or other business entity, either
19 for-profit or not-for-profit, including retail establishments
20 where goods or services are sold; professional corporations
21 and other entities where legal, medical, dental, engineering,
22 architectural, or other professional services are delivered;
23 and private clubs.

24 (3) E-CIGARETTE. Any electronic device composed of a
25 mouthpiece, heating element, battery, and electronic circuits
26 that provides a vapor of liquid nicotine or other substances
27 mixed with propylene glycol, or both, to the user as he or she

1 simulates smoking. The term shall include such devices whether
2 they are manufactured as e-cigarettes, e-cigars, or e-pipes,
3 or under any other product name.

4 (4) EMPLOYEE. A person who is employed by an
5 employer in consideration for direct or indirect monetary
6 wages or profit, and a person who volunteers his or her
7 services for a nonprofit entity.

8 (5) EMPLOYER. A person, business, partnership,
9 association, corporation, including a municipal corporation,
10 trust, or nonprofit entity that employs the services of one or
11 more individual persons.

12 (6) ENCLOSED AREA. All space between a floor and
13 ceiling that is enclosed on all sides by permanent or
14 temporary walls or windows, exclusive of doorways, which
15 extend from the floor to the ceiling.

16 (7) HEALTH CARE FACILITY. An office or institution
17 providing care or treatment of diseases, whether physical,
18 mental, or emotional, or other medical, physiological, or
19 psychological conditions, including, but not limited to,
20 hospitals, rehabilitation hospitals, or other clinics,
21 including weight control clinics, nursing homes, long-term
22 care facilities, homes for the aging or chronically ill,
23 laboratories, and offices of surgeons, chiropractors, physical
24 therapists, physicians, psychiatrists, dentists, and all
25 specialists within these professions. This definition shall
26 include all waiting rooms, hallways, private rooms,
27 semiprivate rooms, and wards within health care facilities.

1 (8) PLACE OF EMPLOYMENT. An area under the control
2 of a public or private employer that employees normally
3 frequent during the course of employment, including, but not
4 limited to, work areas, private offices, employee lounges,
5 restrooms, conference rooms, meeting rooms, classrooms,
6 employee cafeterias, hallways, and vehicles. A private
7 residence is not a place of employment unless it is used as a
8 child care, adult day care, or health care facility.

9 (9) PLAYGROUND. Any park or recreational area
10 designed in part to be used by children that has play or
11 sports equipment installed or that has been designated or
12 landscaped for play or sports activities, or any similar
13 facility located on public or private school grounds or on
14 city or county grounds.

15 (10) PRIVATE CLUB. An organization, whether
16 incorporated or not, which is the owner, lessee, or occupant
17 of a building or portion thereof used exclusively for club
18 purposes at all times, which is operated solely for a
19 recreational, fraternal, social, patriotic, political,
20 benevolent, or athletic purpose, but not for pecuniary gain,
21 and which only sells alcoholic beverages incidental to its
22 operation. The affairs and management of the organization are
23 conducted by a board of directors, executive committee, or
24 similar body chosen by the members at an annual meeting. The
25 organization has established bylaws or a constitution, or
26 both, to govern its activities. The organization has been

1 granted an exemption from the payment of federal income tax as
2 a club pursuant to 26 U.S.C. Section 501.

3 (11) PUBLIC PLACE. An enclosed area to which the
4 public is invited or in which the public is permitted,
5 including, but not limited to, banks, bars, educational
6 facilities, gaming facilities, health care facilities, hotels
7 and motels, laundromats, public transportation vehicles and
8 facilities, reception areas, restaurants, retail food
9 production and marketing establishments, retail service
10 establishments, retail stores, shopping malls, sports arenas,
11 theaters, and waiting rooms. A private residence is not a
12 "public place" unless it is used as a child care, adult day
13 care, or health care facility.

14 (12) RESTAURANT. An eating establishment, including,
15 but not limited to, coffee shops, cafeterias, sandwich stands,
16 and private and public school cafeterias, which gives or
17 offers for sale food to the public, guests, or employees, as
18 well as kitchens and catering facilities in which food is
19 prepared on the premises for serving elsewhere. The term
20 "restaurant" shall include a bar area within the restaurant.

21 (13) SERVICE LINE. An indoor or outdoor line in
22 which one or more persons are waiting for or receiving service
23 of any kind, whether or not the service involves the exchange
24 of money, including, but not limited to, ATM lines, concert
25 lines, food vendor lines, movie ticket lines, and sporting
26 event lines.

1 (14) SHOPPING MALL. An enclosed public walkway or
2 hall area that serves to connect retail or professional
3 establishments.

4 (15) SMOKING. Inhaling, exhaling, burning, or
5 carrying any lighted or heated cigar, cigarette, or pipe, or
6 any other lighted or heated tobacco or plant product intended
7 for inhalation, in any manner or in any form. "Smoking" also
8 includes the use of an e-cigarette which creates a vapor, in
9 any manner or in any form, or the use of any oral smoking
10 device for the purpose of circumventing the prohibition of
11 smoking pursuant to this act.

12 (16) SPORTS ARENA. Sports pavilions, stadiums,
13 gymnasiums, health spas, boxing arenas, swimming pools, roller
14 and ice rinks, bowling alleys, and other similar places where
15 members of the general public assemble to engage in physical
16 exercise, participate in athletic competition, or witness
17 sports or other events.

18 Section 4. All enclosed facilities, including
19 buildings and vehicles owned, leased, or operated by any
20 governmental entity of the state, county, or municipality
21 shall be subject to this act.

22 Section 5. Smoking shall be prohibited in all
23 enclosed public places within the state, including, but not
24 limited to, the following places:

25 (1) Aquariums, galleries, libraries, and museums.

26 (2) Areas available to and customarily used by the
27 general public in businesses and nonprofit entities patronized

1 by the public, including, but not limited to, banks,
2 laundromats, professional offices, and retail service
3 establishments.

4 (3) Bars.

5 (4) Bingo facilities.

6 (5) Child care and adult day care facilities.

7 (6) Convention facilities.

8 (7) Educational facilities, both public and private.

9 (8) Elevators.

10 (9) Gaming facilities.

11 (10) Health care facilities.

12 (11) Hotels and motels.

13 (12) Lobbies, hallways, and other common areas in
14 apartment buildings, condominiums, trailer parks, retirement
15 facilities, nursing homes, and other multiple-unit residential
16 facilities.

17 (13) Polling places.

18 (14) Public transportation vehicles, including buses
19 and taxicabs, under the authority of a county or municipality
20 and ticket, boarding, and waiting areas of public
21 transportation facilities, including bus, train, and airport
22 facilities.

23 (15) Restaurants.

24 (16) Restrooms, lobbies, reception areas, hallways,
25 and other common-use areas.

26 (17) Retail stores.

1 (18) Rooms, chambers, places of meeting or public
2 assembly, including school buildings, under the control of an
3 agency, board, commission, committee, or council of the state
4 or any of its subdivisions, to the extent the place is subject
5 to the jurisdiction of the state.

6 (19) Service lines.

7 (20) Shopping malls.

8 (21) Sports arenas, including enclosed places in
9 outdoor arenas.

10 (22) Theaters and other facilities primarily used
11 for exhibiting motion pictures, stage dramas, lectures,
12 musical recitals, or other similar performances.

13 Section 6. (a) Smoking shall be prohibited in all
14 enclosed facilities within places of employment without
15 exception. This shall include common work areas, auditoriums,
16 classrooms, conference and meeting rooms, private offices,
17 elevators, hallways, medical facilities, cafeterias, employee
18 lounges, stairs, restrooms, vehicles, and all other enclosed
19 facilities.

20 (b) The prohibition on smoking shall be communicated
21 to all existing employees upon the effective date of this act
22 and to all prospective employees upon their application for
23 employment.

24 Section 7. Smoking shall be prohibited in all
25 private clubs.

26 Section 8. Smoking shall be prohibited in all of the
27 following enclosed residential facilities:

1 (1) All private and semiprivate rooms in nursing
2 homes.

3 (2) At least 80 percent of hotel and motel rooms
4 that are rented to guests.

5 Section 9. Smoking shall be prohibited in all of the
6 following outdoor places:

7 (1) Within a reasonable distance of 15 to 20 feet
8 outside entrances, operable windows, and ventilation systems
9 of enclosed areas where smoking is prohibited, so as to insure
10 that tobacco smoke does not enter those areas.

11 (2) In, and within 15 to 20 feet of, outdoor seating
12 or serving areas of restaurants.

13 (3) In all outdoor arenas, stadiums, and
14 amphitheatres. Smoking shall also be prohibited in, and within
15 15 to 20 feet of, bleachers and grandstands for use by
16 spectators at sporting and other public events.

17 (4) In, and within 15 to 20 feet of, all outdoor
18 public transportation stations, platforms, and shelters under
19 the authority of any county or municipal governmental entity.

20 (5) In all outdoor service lines.

21 (6) In outdoor common areas of apartment buildings,
22 condominiums, trailer parks, retirement facilities, nursing
23 homes, and other multiple-unit residential facilities, except
24 in designated smoking areas, not to exceed 25 percent of the
25 total outdoor common area, which must be located at least 15
26 to 20 feet outside entrances, operable windows, and

1 ventilation systems of enclosed areas where smoking is
2 prohibited.

3 (7) In, and within 15 to 20 feet of, outdoor
4 playgrounds.

5 Section 10. Notwithstanding any other provision of
6 this act to the contrary, the following areas shall be exempt
7 from the provisions of Sections 5 and 6:

8 (1) Private residences, except when used as a child
9 care, adult day care, or health care facility, and except as
10 provided in Section 7.

11 (2) Not more than 20 percent of hotel and motel
12 rooms rented to guests and designated as smoking rooms. All
13 smoking rooms on the same floor shall be contiguous and smoke
14 from these rooms shall not infiltrate into areas where smoking
15 is prohibited pursuant to this act. The status of rooms as
16 smoking or nonsmoking may not be changed, except to add
17 additional nonsmoking rooms.

18 (3) Outdoor areas of places of employment except
19 those covered by the provisions of Section 8.

20 Section 11. Notwithstanding any other provision of
21 this act, an owner, operator, manager, or other person in
22 control of an establishment, facility, or outdoor area may
23 declare that entire establishment, facility, or outdoor area
24 as a nonsmoking place. Smoking shall be prohibited in any
25 place in which a sign conforming to the requirements of
26 subsection (a) of Section 12 is posted.

1 Section 12. (a) No smoking signs or the
2 international "No Smoking" symbol, consisting of a pictorial
3 representation of a burning cigarette enclosed in a red circle
4 with a red bar across it, shall be clearly and conspicuously
5 posted in every public place and place of employment where
6 smoking is prohibited by this act, by the owner, operator,
7 manager, or other person in control of that place.

8 (b) Every public place and place of employment where
9 smoking is prohibited by this act shall have posted at every
10 entrance a conspicuous sign clearly stating that smoking is
11 prohibited. Every vehicle that constitutes a place of
12 employment under this act shall have at least one conspicuous
13 sign, visible from the exterior of the vehicle, clearly
14 stating that smoking is prohibited.

15 (c) All ashtrays shall be removed from any area
16 where smoking is prohibited by this act by the owner,
17 operator, manager, or other person having control of the area.

18 Section 13. (a) No person or employer shall
19 discharge, refuse to hire, or in any manner retaliate against
20 an employee, applicant for employment, or customer because
21 that employee, applicant, or customer exercises any rights
22 afforded by this act or reports or attempts to prosecute a
23 violation of this act.

24 (b) An employee who works in a setting where an
25 employer allows smoking does not waive or otherwise surrender
26 any legal rights the employee may have against the employer or
27 any other party.

1 (c) Notwithstanding Section 15, a violation of
2 subsection (a) or (b) shall be punishable by a fine not to
3 exceed one thousand dollars (\$1,000) for each violation.

4 Section 14. (a) This act shall be enforced by the
5 State Board of Health or an authorized designee.

6 (b) Notice of the provisions of this act shall be
7 given to all applicants for a business license in any county
8 or municipality.

9 (c) Any citizen who desires to register a complaint
10 under this act may initiate enforcement with the State Board
11 of Health.

12 (d) The State Board of Health or fire department, or
13 their designees, while an establishment is undergoing
14 otherwise mandated inspections, shall inspect for compliance
15 with this act.

16 (e) An owner, manager, operator, or employee of an
17 establishment regulated by this act shall inform persons
18 violating this act of the appropriate provisions thereof.

19 (f) Notwithstanding any other provision of this act,
20 an employee or private citizen may bring legal action to
21 enforce this act.

22 (g) In addition to the remedies provided by this
23 section, the State Board of Health or any person aggrieved by
24 the failure of the owner, operator, manager, or other person
25 in control of a public place or a place of employment to
26 comply with the provisions of this act may apply for

1 injunctive relief to enforce those provisions in any court of
2 competent jurisdiction.

3 Section 15. (a) A person who smokes in an area where
4 smoking is prohibited pursuant to this act shall be guilty of
5 a violation punishable by a fine not exceeding fifty dollars
6 (\$50).

7 (b) Except as otherwise provided in subsection (c)
8 of Section 13, a person who owns, manages, operates, or
9 otherwise controls a public place or place of employment and
10 who fails to comply with this act shall be punishable by the
11 following:

12 (1) A fine not exceeding one hundred dollars (\$100)
13 for a first violation within one year.

14 (2) A fine not exceeding two hundred dollars (\$200)
15 for a second violation within one year.

16 (3) A fine not exceeding five hundred dollars (\$500)
17 for a third or additional violation within one year.

18 (c) In addition to the fines established by this
19 section, a violation of this act by a person who owns,
20 manages, operates, or otherwise controls a public place or
21 place of employment may result in the suspension or revocation
22 of any permit or license issued to the person for the premises
23 on which the violation occurred.

24 (d) A violation of this act is declared to be a
25 public nuisance, which may be abated by the State Board of
26 Health by restraining order, preliminary and permanent
27 injunction, or other means provided for by law, and the State

1 Board of Health may take action to recover the costs of the
2 nuisance abatement.

3 (e) Each day on which a violation of this act occurs
4 shall be considered a separate and distinct violation.

5 Section 16. The State Board of Health shall engage
6 in a continuing program to explain and clarify the purposes
7 and requirements of this act to citizens affected by it, and
8 to guide owners, operators, and managers in their compliance
9 with it. The program may include publication of a brochure for
10 affected businesses and individuals explaining the provisions
11 of this ordinance.

12 Section 17. The State Board of Health shall annually
13 request other governmental and educational agencies having
14 facilities within the state to establish local operating
15 procedures in cooperation and compliance with this act. This
16 includes urging all federal, state, county, city, and school
17 district agencies to update their existing smoking control
18 regulations to be consistent with the current health findings
19 regarding secondhand smoke.

20 Section 18. This act shall not be interpreted or
21 construed to permit smoking where it is otherwise restricted
22 by other applicable laws.

23 Section 19. Sections 22-15A-1 to 22-15A-10,
24 inclusive, of the Code of Alabama 1975, relating to the
25 Alabama Clean Indoor Act are specifically repealed.

1 Section 20. This act shall become effective on the
2 first day of the third month following its passage and
3 approval by the Governor, or its otherwise becoming law.