

1 AN ACT relating to administrative regulations and declaring an emergency.

2 ***Be it enacted by the General Assembly of the Commonwealth of Kentucky:***

3 ➔Section 1. KRS 13A.190 is amended to read as follows:

4 (1) An emergency administrative regulation is an administrative regulation that:

5 (a) An administrative body can clearly demonstrate, through documentary  
6 evidence submitted with the filing of the emergency administrative regulation,  
7 must be placed into effect immediately in order to:

8 1. Meet an imminent threat to public health, safety, welfare, or the  
9 environment;

10 2. Prevent an imminent loss of federal or state funds;

11 3. Meet an imminent deadline for the promulgation of an administrative  
12 regulation that is established by state statute or federal law; or

13 4. Comply with an executive order issued under KRS Chapter 39A; and

14 (b) 1. Is temporary in nature and will expire as provided in this section; or

15 2. Is temporary in nature and will be replaced by an ordinary  
16 administrative regulation as provided in this section.

17 For the purposes of this section, "imminent" means within two hundred seventy  
18 (270) days of the filing of the emergency administrative regulation.

19 (2) An agency's finding of an emergency pursuant to this section shall not be based on  
20 the agency's failure to timely process and file administrative regulations through the  
21 ordinary administrative regulation process.

22 (3) An emergency administrative regulation:

23 (a) Shall become effective and shall be considered as adopted upon filing;

24 (b) Shall be published in the Administrative Register in accordance with the  
25 publication deadline established in KRS 13A.050(3);

26 (c) Shall be subject to the public comment provisions established in KRS  
27 13A.270 and 13A.280;

- 1 (d) 1. May be reviewed at a subsequent meeting of a legislative committee  
2 after the filing of the emergency administrative regulation; and
- 3 2. May, by a vote of the majority of the legislative committee's  
4 membership as established by KRS 13A.020(4) and 13A.290(9), be  
5 found to be deficient, and the deficiency shall be reported to the  
6 Attorney General and the Governor pursuant to KRS 13A.330~~[(2)]~~; and
- 7 (e) May be amended:
- 8 1. By the promulgating administrative body after receiving public  
9 comments as established in KRS 13A.280. The amended after  
10 comments version shall:
- 11 a. Become effective upon filing; and
- 12 b. Not require a statement of emergency; or
- 13 2. At a legislative committee meeting as established in KRS 13A.320. The  
14 amendment shall be approved as established by KRS 13A.020(4) and  
15 KRS 13A.290(9). The amended version shall become effective upon  
16 adjournment of the meeting following the procedures established in  
17 KRS 13A.331.
- 18 (4) (a) Except as provided by paragraph (b) of this subsection, emergency  
19 administrative regulations shall expire two hundred seventy (270) days after  
20 the date of filing or when the same matter filed as an ordinary administrative  
21 regulation filed for review is adopted, whichever occurs first.
- 22 (b) If an administrative body extends the time for filing a statement of  
23 consideration for an ordinary administrative regulation as provided by KRS  
24 13A.280(2)(b), an emergency administrative regulation shall remain in effect  
25 for two hundred seventy (270) days after the date of filing plus the number of  
26 days extended under the provisions of KRS 13A.280(2)(b) or when the same  
27 matter filed as an ordinary administrative regulation filed for review is

1           adopted, whichever occurs first.

2           (c) Filing an emergency amended after comments administrative regulation shall  
3           not affect the expiration of an emergency regulation as established in  
4           paragraphs (a) and (b) of this subsection.

5           (5) Except as established in subsection (6) of this section, an emergency administrative  
6           regulation with the same number or title or governing the same subject matter shall  
7           not be filed for a period of two hundred seventy (270) days after it has been initially  
8           filed.

9           (6) If an emergency administrative regulation with the same number or title or  
10          governing the same subject matter as an emergency administrative regulation filed  
11          within the previous two hundred seventy (270) days is filed, it shall contain a  
12          detailed explanation of the manner in which it differs from the previously filed  
13          emergency administrative regulation. The detailed explanation shall be included in  
14          the statement of emergency required by subsection (7) of this section.

15          (7) Each emergency administrative regulation shall contain a statement of:

16           (a) The nature of the emergency;

17           (b) The reasons why an ordinary administrative regulation is not sufficient;

18           (c) Whether or not the emergency administrative regulation will be replaced by  
19           an ordinary administrative regulation;

20           (d) If the emergency administrative regulation will be replaced by an ordinary  
21           administrative regulation, the following statement: "The ordinary  
22           administrative regulation (is or is not) identical to this emergency  
23           administrative regulation.";

24           (e) If the emergency administrative regulation will not be replaced by an ordinary  
25           administrative regulation, the reasons therefor; and

26           (f) If applicable, the explanation required by subsection (6) of this section.

27          (8) (a) An administrative body shall attach the:

- 1           1. Statement of emergency required by subsection (7) of this section to the  
2           front of the original and each copy of a proposed emergency  
3           administrative regulation;
  - 4           2. Public hearing and public comment period information required by KRS  
5           13A.270(2), regulatory impact analysis, tiering statement, federal  
6           mandate comparison, fiscal note, summary of material incorporated by  
7           reference if applicable, and other forms or documents required by the  
8           provisions of this chapter to the back of the emergency administrative  
9           regulation; and
  - 10          3. Documentary evidence submitted justifying the finding of an emergency  
11          in accordance with subsection (1) of this section to the back of the  
12          emergency regulation if it is:
    - 13           a. No more than four (4) pages in length; and
    - 14           b. Typewritten on white paper, size eight and one-half (8-1/2) by  
15           eleven (11) inches, and single-sided.
- 16           Larger volumes of documentary evidence shall be filed in a separate  
17           binder or on a CD-ROM or DVD disc.
- 18          (b) An administrative body shall file with the regulations compiler:
    - 19           1. The original and five (5) copies of the emergency administrative  
20           regulation; and
    - 21           2. At the same time as, or prior to, filing the paper version, an electronic  
22           version of the emergency administrative regulation and the attachments  
23           required by paragraph (a) of this subsection saved as a single document  
24           for each emergency administrative regulation in an electronic format  
25           approved by the regulations compiler.
  - 26          (c) The original and four (4) copies of each emergency administrative  
27          regulation shall be stapled in the top left corner. The fifth copy of each

1 emergency administrative regulation shall not be stapled. The original  
2 and the five (5) copies of each emergency administrative regulation shall  
3 be grouped together.

4 (9) The statement of emergency shall have a two (2) inch top margin. The number of  
5 the emergency administrative regulation shall be typed directly below the heading  
6 "Statement of Emergency." The number of the emergency administrative regulation  
7 shall be the same number as the ordinary administrative regulation followed by an  
8 "E."

9 (10) Each executive department emergency administrative regulation shall be signed by  
10 the head of the administrative body and countersigned by the Governor prior to  
11 filing with the Commission. These signatures shall be on the statement of  
12 emergency attached to the front of the emergency administrative regulation.

13 (11) If an emergency administrative regulation will be replaced by an ordinary  
14 administrative regulation, the ordinary administrative regulation shall be filed at the  
15 same time as the emergency administrative regulation that it will replace.

16 (12) If an ordinary administrative regulation that was filed to replace an emergency  
17 administrative regulation is withdrawn:

18 (a) The emergency administrative regulation shall expire on the date the ordinary  
19 administrative regulation is withdrawn; and

20 (b) The administrative body shall inform the regulations compiler of the reasons  
21 for withdrawal in writing.

22 (13) (a) If an emergency administrative regulation that was intended to be replaced by  
23 an ordinary administrative regulation is withdrawn, the emergency  
24 administrative regulation shall expire on the date it is withdrawn.

25 (b) If an emergency administrative regulation has been withdrawn, the ordinary  
26 administrative regulation that was filed with it shall not expire unless the  
27 administrative body informs the regulations compiler that the ordinary

1 administrative regulation is also withdrawn.

2 (c) If an emergency administrative regulation is withdrawn, the administrative  
3 body shall inform the regulations compiler of the reasons for withdrawal in  
4 writing.

5 (14) The administrative regulations compiler shall notify all legislative committees of  
6 the number, title, and subject matter of all emergency administrative regulations  
7 and shall forward any additional information filed about the emergency  
8 administrative regulation requested by a legislative committee.

9 ➔Section 2. KRS 13A.315 is amended to read as follows:

10 (1) An administrative regulation shall expire and shall not be reviewed by a legislative  
11 committee if:

12 (a) It has not been reviewed or approved by the official or administrative body  
13 with authority to review or approve;

14 (b) The statement of consideration and, if applicable, the amended after  
15 comments version are not filed on or before a deadline specified by this  
16 chapter;

17 (c) The administrative body has failed to comply with the provisions of this  
18 chapter governing the filing of administrative regulations, the public hearing  
19 and public comment period, or the statement of consideration; or

20 (d) The administrative regulation is deferred pursuant to KRS 13A.300(2) more  
21 than twelve (12) times.

22 (2) (a) An administrative regulation that has been found deficient by a legislative  
23 committee shall be:

24 **1. Automatically withdrawn in accordance with Section 3 of this Act; or**

25 **2. Withdrawn immediately if, pursuant to ~~KRS 13A.330,~~ the Governor**  
26 **has determined that it shall be withdrawn.**

27 (b) The Governor shall notify the regulations compiler in writing and by

1 telephone ~~if that~~ he or she has determined under paragraph (a)2. of this  
 2 subsection that the administrative regulation found deficient shall be  
 3 withdrawn.

4 (c) The written withdrawal of an administrative regulation governed by  
 5 paragraph (a)2.~~[the provisions]~~ of this subsection shall be made in a letter to  
 6 the regulations compiler in the following format: "Pursuant to KRS 13A.330,  
 7 I have determined that (administrative regulation number and title) shall be  
 8 (withdrawn, or withdrawn and amended to conform to the finding of  
 9 deficiency, as applicable). The administrative regulation, (administrative  
 10 regulation number and title), is hereby withdrawn."

11 (d) An administrative regulation governed by paragraph (a)2.~~[the provisions]~~ of  
 12 this subsection shall be considered withdrawn upon receipt by the regulations  
 13 compiler of the written withdrawal.

14 ➔Section 3. KRS 13A.330 is amended to read as follows:

15 (1) (a) For any filed administrative regulation that has been found deficient by a  
 16 legislative committee under the provisions of this chapter:

17 1. The administrative body may appeal within ten (10) days of the finding  
 18 to the Attorney General. The administrative body shall provide written  
 19 notice of the appeal to the regulations compiler; and

20 2. The Attorney General shall make a final determination within twenty  
 21 (20) days of receipt of the appeal whether the finding shall be:

22 a. Upheld, in which case the administrative regulation shall be  
 23 automatically withdrawn and shall cease going through the  
 24 administrative regulations process; or

25 b. Overruled, in which case the administrative regulation shall  
 26 continue going through the administrative regulations process.

27 (b) The Attorney General shall transmit this determination to the Governor, the

1 *Commission, and the regulations compiler.*

2 *(c) The administrative regulation shall be automatically withdrawn and shall*  
 3 *cease going through the administrative regulations process:*

4 *1. Upon receipt by the regulations compiler of the Attorney General's*  
 5 *determination upholding the finding of deficiency; or*

6 *2. At the end of the ten (10) day appeal period if no notice of appeal was*  
 7 *received by the regulations compiler.*

8 **(2)** (a) If a filed ordinary administrative regulation has been found deficient, the  
 9 legislative committee shall transmit to the *Attorney General, the* Governor,  
 10 and the regulations compiler:

11 1. A copy of the finding of deficiency and other relevant findings,  
 12 recommendations, or comments; and

13 2. A request that the Governor determine, *if the finding of deficiency is*  
 14 *overruled by the Attorney General,* whether the administrative  
 15 regulation shall:

16 a. Be withdrawn;

17 b. Be amended at a legislative committee meeting pursuant to KRS  
 18 13A.320 to conform to the finding of deficiency; or

19 c. Become effective pursuant to the provisions of this section  
 20 notwithstanding the finding of deficiency.

21 (b) *If the finding of deficiency is overruled by the Attorney General,* the  
 22 Governor shall transmit his or her determination to the Commission and the  
 23 regulations compiler.

24 (c) A filed ordinary administrative regulation that has been found deficient shall  
 25 be considered as adopted and become effective after:

26 1. a. The review period established in this chapter has been completed;

27 *b. The finding of deficiency is overruled by the Attorney General;*



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and

~~c. [b.]~~ The regulations compiler has received the Governor's determination that the administrative regulation shall become effective pursuant to the provisions of this section notwithstanding the finding of deficiency; or

2. The legislative committee that found the filed administrative regulation deficient subsequently determines that it is not deficient ~~in accordance with KRS 13A.335~~, provided that this determination was made prior to:

**a. The end of the ten (10) day appeal period if the finding was not appealed; or**

**b. Receipt by the regulations compiler of the Attorney General's or Governor's determination if the finding was appealed.**

~~(3) [(2)]~~ (a) If an emergency administrative regulation has been found deficient, the legislative committee finding it deficient shall transmit to the **Attorney General, the** Governor, and the regulations compiler:

1. A copy of the finding of deficiency and other relevant findings, recommendations, or comments; and

2. A request that the Governor determine, **if the finding of deficiency is overruled by the Attorney General,** whether the emergency administrative regulation shall:

- a. Be withdrawn;
- b. Be amended at a legislative committee meeting pursuant to KRS 13A.320 to conform to the finding of deficiency; or
- c. Remain effective as established in KRS 13A.190(4) notwithstanding the finding of deficiency.

(b) **If the finding of deficiency is overruled by the Attorney General,** the Governor shall transmit his or her determination to the Commission and the

1 regulations compiler.

2 (c) The legislative committee that found the emergency administrative regulation  
3 deficient may subsequently determine that it is not deficient **provided that this**  
4 **determination was made prior to:**

5 **1. The end of the ten (10) day appeal period if the finding was not**  
6 **appealed; or**

7 **2. Receipt by the regulations compiler of the Attorney General's or**  
8 **Governor's determination if the finding was appealed**~~in accordance~~  
9 ~~with KRS 13A.335].~~

10 ~~(4)~~~~(3)~~ **For any effective ordinary administrative regulation that has been found**  
11 **deficient by a legislative committee under the provisions of this chapter:**

12 **(a) The administrative body may appeal within ten (10) days of the finding to**  
13 **the Attorney General. The administrative body shall provide written notice**  
14 **of the appeal to the regulations compiler.**

15 **(b) The Attorney General shall make a final determination within twenty (20)**  
16 **days of receipt of the appeal whether the finding shall be:**

17 **1. Upheld, in which case the administrative regulation shall be null, void,**  
18 **and unenforceable; or**

19 **2. Overruled, in which case the administrative regulation shall remain in**  
20 **effect.**

21 **(c) The Attorney General shall transmit this determination to the Governor, the**  
22 **Commission, and the regulations compiler.**

23 **(d) The administrative regulation shall be null, void, and unenforceable:**

24 **1. Upon receipt by the regulations compiler of the Attorney General's**  
25 **determination upholding the finding of deficiency; or**

26 **2. At the end of the ten (10) day appeal period if no notice of appeal was**  
27 **received by the regulations compiler.**

- 1 (5) (a) If an effective ordinary administrative regulation has been found deficient by  
2 a legislative committee, the legislative committee shall transmit to the  
3 Attorney General, the Governor, and the regulations compiler:
- 4 1. A copy of its finding of deficiency and other findings,  
5 recommendations, or comments it deems appropriate; and
- 6 2. A request that the Governor determine, if the finding of deficiency is  
7 overruled by the Attorney General, whether the administrative  
8 regulation shall:
- 9 a. Be repealed;
- 10 b. Be filed as an amended administrative regulation to conform to  
11 the finding of deficiency; or
- 12 c. Remain effective notwithstanding the finding of deficiency.
- 13 (b) If the finding of deficiency is overruled by the Attorney General, the  
14 Governor shall transmit this determination to the Commission and the  
15 regulations compiler.
- 16 (c) The legislative committee that found the administrative regulation deficient  
17 may subsequently determine that it is not deficient, provided that this  
18 determination was made prior to:
- 19 1. The end of the ten (10) day appeal period if the finding was not  
20 appealed; or
- 21 2. Receipt by the regulations compiler of the Attorney General's or  
22 Governor's determination if the finding was appealed.
- 23 (6) Notwithstanding any provision of the Kentucky Revised Statutes to the contrary,  
24 an administrative body shall not promulgate an administrative regulation that is  
25 identical to, or substantially the same as, any administrative regulation whose  
26 deficiency finding was upheld by the Attorney General for at least one (1) year  
27 after the date the Attorney General upheld the deficiency finding.

1           ➔Section 4. KRS 13A.335 is amended to read as follows:

2       (1) (a) A filed administrative regulation found deficient by a legislative committee  
3           shall not be considered deficient if:

4           1. **The Attorney General overrules the deficiency finding; and**

5           **2. a.** A subsequent amendment of that administrative regulation is filed  
6           with the Commission by the administrative body;

7           **b.**~~[2.]~~ The legislative committee that found the administrative regulation  
8           deficient approves a motion that the subsequent amendment  
9           corrects the deficiency; and

10          **c.**~~[3.]~~ Any legislative committee that reviews the administrative  
11          regulation under the provisions of KRS Chapter 13A finds that the  
12          administrative regulation is not deficient.

13       (b) A filed administrative regulation found deficient by the Administrative  
14       Regulation Review Subcommittee shall not be considered deficient if:

15          1. **The Attorney General overrules the deficiency finding; and**

16          **2. a.** The administrative regulation is amended to correct the deficiency  
17          at a meeting of the legislative committee to which it was assigned  
18          by the Commission;

19          **b.**~~[2.]~~ That legislative committee does not determine that the  
20          administrative regulation is deficient for any other reason; and

21          **c.**~~[3.]~~ The Administrative Regulation Review Subcommittee approves a  
22          motion that the deficiency has been corrected and that the  
23          administrative regulation should not be considered deficient.

24       (c) A filed administrative regulation found deficient by a legislative committee  
25       with subject matter jurisdiction shall not be considered deficient if:

26          **1. The Attorney General overrules the deficiency finding; and**

27          **2.** The legislative committee:

1            a.~~[1.]~~ Reconsiders the administrative regulation and its finding of  
2            deficiency; and

3            b.~~[2.]~~ Approves a motion that the administrative regulation is not  
4            deficient.

5            (d) If an amendment to an effective administrative regulation is going through the  
6            KRS Chapter 13A promulgation process and is found deficient by a  
7            legislative committee, the administrative regulation shall not be considered  
8            deficient if the:

- 9            1. Administrative regulation was found deficient due to the amendment;
- 10           2. Promulgating administrative body has withdrawn the proposed  
11           amendment of the existing administrative regulation; and

12           3. a. Regulations compiler has not received the Attorney General's  
13           determination, and if necessary, the Governor's determination  
14           pursuant to KRS 13A.330 if the finding was appealed; or

15           b. Ten (10) day appeal period has not expired if the finding was not  
16           appealed.

17           (2) ~~If~~ An effective administrative regulation ~~is~~ found deficient by a legislative  
18           committee~~, the administrative regulation~~ shall not be considered deficient if:

19           (a) The Attorney General overrules the deficiency finding; and

20           (b) The legislative committee:

21           1.~~[(a)]~~ Reconsiders the administrative regulation and its finding of  
22           deficiency; and

23           2.~~[(b)]~~ Approves a motion that the administrative regulation is not  
24           deficient.

25           (3) (a) If an administrative regulation has been found deficient by a legislative  
26           committee and the Attorney General overrules the finding, the regulations  
27           compiler shall add the following notice to the administrative regulation: "This

1 administrative regulation was found deficient by the [name of legislative  
2 committee] on [date]." This notice shall be the last section of the  
3 administrative regulation.

4 (b) If an administrative regulation has been found deficient by a legislative  
5 committee and the Attorney General overrules the finding, subsequent  
6 amendments of that administrative regulation filed with the Commission shall  
7 contain the notice provided in paragraph (a) of this subsection.

8 (c) If an administrative regulation that has been found deficient by a legislative  
9 committee has subsequently been determined not to be deficient under the  
10 provisions of this section, the regulations compiler shall delete the notice  
11 required by paragraph (a) of this subsection.

12 ➔Section 5. KRS 13A.336 is amended to read as follows:

13 (1) (a) After the last regularly scheduled meeting of the Administrative Regulation  
14 Review Subcommittee in a calendar year, but by the thirty-first day of  
15 December of that calendar year, the staff of the Administrative Regulation  
16 Review Subcommittee shall submit a report to the co-chairs of that  
17 subcommittee regarding administrative regulations that were found deficient  
18 by any legislative committee of the Commission during that calendar year.

19 (b) The report in paragraph (a) of this subsection shall contain:

- 20 1. Effective administrative regulations that were found deficient; and  
21 2. Administrative regulations filed with the Commission that were found  
22 deficient.

23 (2) The report shall not contain any administrative regulation that was found deficient  
24 and:

25 (a) Has been withdrawn; or

26 (b) Is no longer considered deficient under KRS 13A.335.

27 (3) The report shall contain at least the following information for each administrative

1 regulation in the report:

- 2 (a) Administrative regulation number and title;
- 3 (b) Name of the promulgating agency;
- 4 (c) Date of deficiency determination;
- 5 (d) Name of the legislative committee that made the deficiency determination;
- 6 (e) Effective date, if it is in effect;
- 7 (f) The finding of deficiency and any other findings, recommendations, or
- 8 comments sent to the Attorney General and the Governor;
- 9 (g) The Attorney General's decision to either uphold or overrule the finding of
- 10 deficiency; and

11 ~~(h)(g)~~ If applicable under KRS 13A.330, the Governor's determination

12 regarding the deficiency, if received by the Commission.

13 (4) The first page of the report required by subsection (1) of this section shall contain

14 the following text, in fourteen (14) point font or larger:

15 "To ratify the deficiency findings listed in this report, a co-chair or other legislator

16 may request that Legislative Research Commission staff prepare a bill:

- 17 (a) Declaring that one (1) or more administrative regulations listed in the report
- 18 shall be void; or
- 19 (b) Amending the relevant subject matter statutes in conformity with the findings
- 20 of deficiency."

21 ➔Section 6. KRS 15.020 is amended to read as follows:

22 (1) The Attorney General is the chief law officer of the Commonwealth of Kentucky

23 and all of its departments, commissions, agencies, and political subdivisions, and

24 the legal adviser of all state officers, departments, commissions, and agencies, and

25 when requested in writing shall furnish to them his or her written opinion touching

26 any of their official duties, and shall prepare proper drafts of all instruments of

27 writing required for public use, and shall exercise all common law duties and

1 authority pertaining to the office of the Attorney General under the common law,  
2 except when modified by statutory enactment.

3 (2) The Attorney General shall communicate with the Legislative Research  
4 Commission as required by KRS 418.075.

5 (3) Except as otherwise provided in KRS 48.005 and 2000 Ky. Acts ch. 483, sec. 8, the  
6 Attorney General shall appear for the Commonwealth in all cases in the Supreme  
7 Court or Court of Appeals wherein the Commonwealth is interested, and shall also  
8 commence all actions or enter an appearance in all cases, hearings, and proceedings  
9 in and before all other courts, tribunals, or commissions in or out of the state, and  
10 attend to all litigation and legal business in or out of the state required of the office  
11 by law, or in which the Commonwealth has an interest, and any litigation or legal  
12 business that any state officer, department, commission, or agency may have in  
13 connection with, or growing out of, his, her, or its official duties, except where it is  
14 made the duty of the Commonwealth's attorney or county attorney to represent the  
15 Commonwealth. When any attorney is employed for any said agency, the same  
16 shall have the approval of such agency before such employment.

17 (4) Notwithstanding any other statute or provision to the contrary, the Attorney General  
18 may:

19 (a) Bring any action challenging the constitutionality of a Kentucky statute,  
20 executive order, administrative regulation, or order of any cabinet, program  
21 cabinet, or department under KRS Chapter 12. The action may be brought in  
22 any county where the alleged constitutional harm has occurred or could be  
23 reasonably presumed to occur; and

24 (b) *Review an administrative regulation under Section 3 of this Act to address a*  
25 *legislative committee's finding of deficiency relating to that administrative*  
26 *regulation.*

27 (5) If any funds of any kind or nature whatsoever are recovered by or on behalf of the



1 Commonwealth, in any action, including an ex rel. action where the Attorney  
2 General has entered an appearance or is a party according to statutory or common  
3 law authority, those funds shall be handled under KRS 48.005.

4 ➔Section 7. Whereas the Administrative Regulation Review Subcommittee is a  
5 statutory committee meeting monthly and addressing items brought before it at those  
6 meetings, and it is imperative to ensure that the mechanisms involving administrative  
7 regulations are effectual, an emergency is declared to exist, and this Act takes effect upon  
8 its passage and approval by the Governor or upon its otherwise becoming a law.