

2018 Regular Session

SENATE CONCURRENT RESOLUTION NO. 117

BY SENATOR MARTINY

LEGIS POWERS/FUNCTIONS. Affirms actions taken by certain legislative committees as the sovereign action of Louisiana and the Louisiana Legislature.

1 A CONCURRENT RESOLUTION

2 To affirm actions taken in 2013 and 2017 by the Senate Committee on Commerce,  
3 Consumer Protection and International Affairs and the House Committee on  
4 Commerce, as affirmatively approving the promulgation of Louisiana Administrative  
5 Code 46:31101 as the sovereign action of Louisiana and the Louisiana Legislature.

6 WHEREAS, in 2009, the Louisiana Legislature enacted the Appraisal Management  
7 Company Licensing and Regulation Act, R.S. 37:3415.1 et seq., requiring appraisal  
8 management companies to obtain a license from the Louisiana Real Estate Appraisers Board  
9 (board) prior to providing appraisal management services in the state; and

10 WHEREAS, in 2010, the United States Congress enacted the Dodd-Frank Wall Street  
11 Reform and Consumer Protection Act, Title XIV, which required appraisal management  
12 companies to pay to appraisers customary and reasonable fees for appraisals for home  
13 mortgages, and further required that where states require licensing of appraisal management  
14 companies, state appraiser licensing agencies must meet minimum requirements to ensure  
15 appraisal management companies' compliance with Dodd-Frank's appraisal independence  
16 directives, including the customary and reasonable fee requirement; and

17 WHEREAS, in 2012, in response to the Dodd-Frank mandates, the Louisiana  
18 Legislature enacted R.S. 37:3415.15, which required appraisal management companies "to

1 compensate appraisers at a rate that is customary and reasonable for appraisals being  
2 performed in the market area of property being appraised", consistent with federal statutory  
3 and regulatory requirements; and

4 WHEREAS, pursuant to the rulemaking authority granted to the board under R.S.  
5 37:3415.21, the board proposed to promulgate La. Admin. Code 46:31101 (Rule 31101),  
6 and, pursuant to the provisions of R.S. 49:968 and R.S. 3415.21(B), submitted Rule 31101  
7 and required supporting material to the speaker of the House of Representatives, the  
8 president of the Senate, the chairman of the Senate Committee on Commerce, Consumer  
9 Protection and International Affairs, and the chairman of the House Committee on  
10 Commerce; and

11 WHEREAS, R.S. 37:3415.21(B) provides that "if the board submits its proposed  
12 rules for affirmative approval and the legislature is not in session, the proposed rules shall  
13 be deemed affirmatively approved if forty-five days have elapsed from the date the proposed  
14 rules are received by the oversight committees and no hearing is held by either committee";  
15 and

16 WHEREAS, at a November 13, 2013, public meeting the Senate Commerce  
17 Committee oversight subcommittee voted not to hold a hearing after reviewing the  
18 submission of the board and having been instructed that a vote not to hold a hearing would  
19 permit Rule 31101 to go into effect, and after a similar review, the House Commerce  
20 Committee oversight subcommittee also determined not to hold a hearing; and

21 WHEREAS, on May 30, 2017, the U.S. Federal Trade Commission filed a complaint  
22 under the Federal Trade Commission Act and contended that the board's promulgation of  
23 Rule 31101 may subject the board to antitrust liability because, inter alia, neither the  
24 legislature nor the executive branch "actively supervised" promulgation of Rule 31101; and

25 WHEREAS, on July 17, 2017, the governor issued Executive Order 17-16 providing  
26 for further review by the commissioner of administration of the repromulgation of Rule  
27 31101, after finding that federal antitrust law challenges to the board's actions "may prevent  
28 [the board] from faithfully executing mandates under the Dodd-Frank Act and Louisiana  
29 Law under R.S. 37:3415.15"; and

30 WHEREAS, the board having submitted its proposal to repromulgate Rule 31101 to

1 the commissioner of administration, along with the record relating thereto, the commissioner  
2 of administration and his general counsel determined that the proposed repromulgation of  
3 Rule 31101 "will further the public policy goals of the State of Louisiana"; and

4 WHEREAS, on October 10, 2017, the board transmitted to the speaker of the House  
5 of Representatives, the president of the Senate, the chairman of the House Committee on  
6 Commerce, and the chairman of the Senate Committee on Commerce, Consumer Protection  
7 and International Affairs the required report and supporting material on the repromulgation  
8 of Rule 31101, including the record thereof, and comments received on the Rule in writing  
9 and at a public hearing; and

10 WHEREAS, the oversight subcommittee having completed its review, Chairman  
11 Martiny of the Senate Committee on Commerce, Consumer Protection and International  
12 Affairs wrote to the board, "The Senate Commerce Committee oversight subcommittee has  
13 conducted a review of the report from the Louisiana Real Estate Appraisers Board, pursuant  
14 to Section 968(D) of the Louisiana Administrative Procedures Act, concerning the proposed  
15 re-adoption of Rule 31101 in Chapter 311: Compensation of Fee Appraisers . . . No member  
16 of the oversight subcommittee has requested to convene a hearing concerning the proposed  
17 Rule 31101. Therefore, in accordance with the Louisiana APA, it is the decision of the  
18 oversight subcommittee that no further review of the rule by the oversight subcommittee is  
19 necessary, and that the proposed Rule 31101 should become final and effective"; and

20 WHEREAS, the House Committee on Commerce oversight subcommittee  
21 communicated to the board a similar determination that, having reviewed the report and  
22 rulemaking record for the proposed repromulgation of Rule 31101, no member of the  
23 subcommittee had requested a hearing; and

24 WHEREAS, following the determination of the respective Senate and House of  
25 Representatives oversight subcommittees, repromulgated Rule 31101 was published in the  
26 November 20, 2017, Louisiana Register and became effective.

27 THEREFORE, BE IT RESOLVED, that the oversight subcommittees of Senate  
28 Committee on Commerce, Consumer Protection and International Affairs, and the House  
29 Committee on Commerce, having reviewed La. Admin. Code 46:31101 in accordance with  
30 the relevant provisions of the Louisiana Revised Statutes in 2013 and 2017, and

