

Senate Bill 255

By: Senators Mullis of the 53rd, Johnson of the 1st, Price of the 56th, Stephens of the 51st,
Thomas of the 54th and others

A BILL TO BE ENTITLED
AN ACT

1 To be known as the "Regulatory Reform Act of 2001"; to provide for a short title, findings,
2 and a statement of purpose; to amend Chapter 3 of Title 1 of the Official Code of Georgia
3 Annotated, relating to laws and statutes, so as to provide that the state and each county,
4 municipality, consolidated government, school district, or political subdivision thereof shall
5 be bound by each statute enacted by the General Assembly and by any rule or regulation
6 adopted pursuant to such statute unless the words of the statute plainly, clearly, and
7 unmistakably show that the intention of the General Assembly is otherwise; to amend Code
8 Section 31-6-21.1 of the Official Code of Georgia Annotated, relating to procedures for rule
9 making by the Department of Community Health, so as to correct a cross-reference; to
10 amend Chapter 13 of Title 50 of the Official Code of Georgia Annotated, known as the
11 "Georgia Administrative Procedure Act," so as to provide requirements relative to the
12 formulation, drafting, and adoption of rules or amendments to existing rules; to provide a
13 definition; to provide for advisory committees; to provide for cost benefit analyses and risk
14 assessments; to provide for public records; to provide for notices and the contents thereof;
15 to provide for reduction of the economic impact of rules and amendments on small
16 businesses and citizens; to provide for and change certain existing procedures relating to the
17 review of proposed rules by committees of the General Assembly and the procedures
18 connected therewith; to provide for hearings and reports; to provide for the periodic review
19 of rules; to provide for additional duties of agencies; to provide for other matters relative to
20 the foregoing; to repeal conflicting laws; and for other purposes.

21 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

22 **SECTION 1.**

23 This Act shall be known and may be cited as the "Regulatory Reform Act of 2001."

1 may not adopt any such rule or part thereof which has been changed since having been
2 submitted to those committees unless:

3 (1) That change is to correct only typographical errors;

4 (2) That change is approved in writing by both committees and that approval expressly
5 exempts that change from being subject to the public notice and hearing requirements of
6 subsection (a) of Code Section 50-13-4;

7 (3) That change is approved in writing by both committees and is again subject to the
8 public notice and hearing requirements of subsection (a) of Code Section 50-13-4; or

9 (4) That change is again subject to the public notice and hearing requirements of
10 subsection (a) of Code Section 50-13-4 and the change is submitted and again subject to
11 committee objection as provided in this subsection.

12 Nothing in this subsection shall prohibit the department from adopting any rule or part
13 thereof without adopting all of the rules submitted to the committees if the rule or part so
14 adopted has not been changed since having been submitted to the committees and objection
15 thereto was not made by both committees."

16 SECTION 5.

17 Chapter 13 of Title 50 of the Official Code of Georgia Annotated, known as the "Georgia
18 Administrative Procedure Act," is amended by striking Code Section 50-13-4, relating to
19 procedural requirements for adoption, amendment, or repeal of rules, emergency rules,
20 limitations on actions to contest rules, and legislative override of rules, and inserting in lieu
21 thereof a new Code Section 50-13-4 to read as follows:

22 "50-13-4.

23 (a)(1) For purposes of this subsection, rules or amendments of a substantive nature shall
24 include those rules or amendments which affect the health, safety, or welfare of the
25 public, but shall not include rules or amendments which merely restate statutes or which
26 provide internal procedures for the administration of the agency.

27 (2) During the formulation or drafting of any proposed rule of a substantive nature or any
28 amendment to an existing rule of a substantive nature, the agency shall consult with a
29 representative sampling of individuals and representatives of businesses that might be
30 affected by the proposed rule or amendment. An agency is authorized to appoint an
31 advisory committee composed of representatives of those people, businesses, and
32 interests which might be affected by a proposed rule to assist the agency in the
33 formulation or drafting of such proposed rule.

34 (3) In the promulgation and adoption of any rule, each agency shall seek alternatives
35 which will legally and feasibly meet the stated objectives of the statutes and which will
36 be less expensive to those individuals and businesses, will produce more flexibility in

1 compliance and enforcement, and will provide better notice to and understanding by the
2 affected individuals and businesses of the reasons for and manner of enforcement of the
3 rule or amendment.

4 (4) Prior to giving the notice required by subparagraph (A) of paragraph (5) of this
5 subsection for any proposed rule or amendment of a substantive nature, the agency shall
6 complete or compile a cost benefit analysis and a risk assessment which shall include an
7 examination of any appropriate scientific research concerning the risk or condition which
8 the rule or amendment is designed to abate or control. Such cost benefit analysis and risk
9 assessment shall be public records and shall be made available for public inspection and
10 copying in the same manner as other public records of the agency.

11 (5) Prior to the adoption, amendment, or repeal of any rule, other than interpretive rules
12 or general statements of policy, the agency shall:

13 ~~(1)~~(A) Give at least 30 days' notice of its intended action. The notice shall include an
14 exact copy of the proposed rule, which has been developed after consultation with a
15 representative sample of affected businesses and individuals or an advisory committee,
16 and a synopsis of the proposed rule. The synopsis shall be distributed with and in the
17 same manner as the proposed rule. The synopsis shall contain a statement of the
18 purpose and the main features of the proposed rule, and, in the case of a proposed
19 amendatory rule, the synopsis also shall indicate the differences between the existing
20 rule and the proposed rule. If the proposed rule or amendment is a rule or amendment
21 of a substantive nature, the synopsis shall include the cost benefit analysis and risk
22 assessment required by paragraph (4) of this subsection. The notice shall also include
23 the exact date on which the agency shall consider the adoption of the rule and shall
24 include the time and place in order that interested persons may present their views
25 thereon. The notice shall also contain a citation of the authority pursuant to which the
26 rule is proposed for adoption and, if the proposal is an amendment or repeal of an
27 existing rule, the rule shall be clearly identified. The notice shall be mailed to all
28 persons and organizations who have requested in writing that they be placed upon a
29 mailing list which shall be maintained by the agency for advance notice of its
30 rule-making proceedings and who have tendered the actual cost of such mailing as from
31 time to time estimated by the agency. At the time the notice is mailed, a copy of the
32 notice and synopsis, including the cost benefit analysis and risk assessment required by
33 paragraph (4) of this subsection, shall be posted on the Internet and made available by
34 the agency for electronic access and downloading at no cost to any citizen seeking
35 electronic access to such information;

36 ~~(2)~~(B) Afford to all interested persons reasonable opportunity to submit data, views,
37 or arguments, orally or in writing. In the case of substantive rules, opportunity for oral

1 hearing must be granted if requested by 25 persons who will be directly affected by the
 2 proposed rule, by a governmental subdivision, by a standing committee of the General
 3 Assembly to which the proposed rule is referred pursuant to subsection (e) of this Code
 4 section, or by an association having not less than 25 members. The agency shall
 5 consider fully all written and oral submissions respecting the proposed rule. Upon
 6 adoption of a rule, the agency, if requested to do so by an interested person either prior
 7 to adoption or within 30 days thereafter, shall issue a concise statement of the principal
 8 reasons for and against its adoption and incorporate therein its reason for overruling the
 9 consideration urged against its adoption;

10 ~~(3)(C)~~ In the formulation and adoption of any rule which will have an economic impact
 11 on businesses in the state, work to reduce the economic impact of the rule on small
 12 businesses which are independently owned and operated, are not dominant in their
 13 field, and employ 100 employees or less by implementing one or more of the following
 14 actions when it is legal and feasible in meeting the stated objectives of the statutes
 15 which are the basis of the proposed rule:

16 ~~(A)(i)~~ Establish differing compliance or reporting requirements or timetables for
 17 small businesses;

18 ~~(B)(ii)~~ Clarify, consolidate, or simplify the compliance and reporting requirements
 19 under the rule for small businesses;

20 ~~(C)(iii)~~ Establish performance rather than design standards for small businesses; or

21 ~~(D)(iv)~~ Exempt small businesses from any or all requirements of the rules; and

22 ~~(4)(D)~~ In the formulation and adoption of any rule, an agency shall choose an
 23 alternative that does not impose excessive regulatory costs on any regulated person or
 24 entity which costs could be reduced by a less expensive alternative that fully
 25 accomplishes the stated objectives of the statutes which are the basis of the proposed
 26 rule.

27 (b) If any agency finds that an imminent peril to the public health, safety, or welfare,
 28 including, but not limited to, summary processes such as quarantines, contrabands,
 29 seizures, and the like authorized by law without notice, requires adoption of a rule upon
 30 fewer than 30 days' notice and states in writing its reasons for that finding, it may proceed
 31 without prior notice or hearing or upon any abbreviated notice and hearing that it finds
 32 practicable to adopt an emergency rule. The rule may be effective for a period of not longer
 33 than 120 days but the adoption of an identical rule under ~~paragraphs (1) and (2) of~~
 34 ~~subsection (a) subparagraphs (a)(5)(A) and (a)(5)(B)~~ of this Code section is not precluded.

35 (c) It is the intent of this Code section to establish basic minimum procedural requirements
 36 for the adoption, amendment, or repeal of administrative rules. Except for emergency rules
 37 which are provided for in subsection (b) of this Code section, the provisions of this Code

1 section are applicable to the exercise of any rule-making authority conferred by any statute,
2 but nothing in this Code section repeals or diminishes additional requirements imposed by
3 law or diminishes or repeals any summary power granted by law to the state or any agency
4 thereof.

5 (d) No rule adopted after April 3, 1978, shall be valid unless adopted in exact compliance
6 with subsections paragraph (5) of subsection (a) and subsection (e) of this Code section and
7 in substantial compliance with the remainder of this Code section. A proceeding to contest
8 any rule on the ground of noncompliance with the procedural requirements of this Code
9 section must be commenced within two years from the effective date of the rule.

10 (e) The agency shall transmit the notice provided for ~~in paragraph (1) of subsection (a)~~
11 subparagraph (a)(5)(A) of this Code section to the legislative counsel. The notice shall be
12 transmitted at least 30 days prior to the date of the agency's intended action. Within three
13 days after receipt of the notice, if possible, the legislative counsel shall furnish the
14 presiding officers of each house with a copy of the notice, and the presiding officers shall
15 assign the notice to the chairperson of the appropriate standing committee in each house
16 for review and any member thereof who makes a standing written request. In the event a
17 presiding officer is unavailable for the purpose of making the assignment within the time
18 limitations, the legislative counsel shall assign the notice to the chairperson of the
19 appropriate standing committee. The legislative counsel shall also transmit within the time
20 limitations provided in this subsection a notice of the assignment to the chairperson of the
21 appropriate standing committee. Each standing committee of the Senate and the House of
22 Representatives is to which a proposed rule is assigned pursuant to this subsection and each
23 member of such standing committee are granted all the rights provided for interested
24 persons and governmental subdivisions in ~~paragraph (2) of subsection (a) subparagraph~~
25 (a)(5)(B) of this Code section.

26 (f) In the event a standing committee to which a notice is assigned as provided in
27 subsection (e) of this Code section files an objection to a proposed rule prior to its
28 adoption, it shall be the duty of the chairperson of such standing committee to conduct a
29 meeting of such committee within 20 days of the date such objection is filed for the
30 purpose of receiving the comments of the public and the agency concerning the legality of,
31 the necessity for, the impact of, and the appropriateness of such proposed rule. It shall be
32 the duty of the agency head or a representative thereof to attend such standing committee
33 meeting and respond to questions concerning such proposed rule. All comments and
34 testimony given at such meeting and any recommendations of the committee shall be
35 reduced to writing and a copy thereof shall be furnished to the agency and made a part of
36 the record in the proceeding for the adoption of such rule. If the committee which filed the
37 objection is then satisfied that the proposed rule is appropriate or needs some alteration to

1 make it appropriate, the committee may thereupon withdraw or modify the objection, in
 2 writing, and shall file a copy of such withdrawal or modification of the objection with the
 3 agency. If the objection is not withdrawn and the agency adopts the proposed rule over the
 4 objection, the rule may be considered by the branch of the General Assembly whose
 5 committee objected to its adoption by the introduction of a resolution for the purpose of
 6 overriding the rule at any time within the first 30 days of the next regular session of the
 7 General Assembly. It shall be the duty of any agency which adopts a proposed rule over
 8 such objection so to notify the presiding officers of the Senate and the House of
 9 Representatives, the ~~chairmen~~ chairpersons of the Senate and House committees to which
 10 the rule was referred, and the legislative counsel within ten days after the adoption of the
 11 rule. In the event the resolution is adopted by such branch of the General Assembly, it shall
 12 be immediately transmitted to the other branch of the General Assembly. It shall be the
 13 duty of the presiding officer of the other branch of the General Assembly to have such
 14 branch, within five days after the receipt of the resolution, to consider the resolution for the
 15 purpose of overriding the rule. In the event the resolution is adopted by two-thirds of the
 16 votes of each branch of the General Assembly, the rule shall be void on the day after the
 17 adoption of the resolution by the second branch of the General Assembly. In the event the
 18 resolution is ratified by less than two-thirds of the votes of either branch, the resolution
 19 shall be submitted to the Governor for his or her approval or veto. In the event of his the
 20 Governor's veto, the rule shall remain in effect. In the event of his the Governor's
 21 approval, the rule shall be void on the day after the date of his or her approval.

22 ~~(g)(1) Subsection (f) of this Code section shall not apply to the Environmental Protection~~
 23 ~~Division of the Department of Natural Resources, but paragraph (2) of this subsection shall~~
 24 ~~apply to the Environmental Protection Division of the Department of Natural Resources.~~
 25 ~~(2) In the event the chairman of any standing committee to which a proposed rule relative~~
 26 ~~to the Environmental Protection Division of the Department of Natural Resources is~~
 27 ~~assigned notifies the agency that the committee objects to the adoption of the rule or has~~
 28 ~~questions concerning the purpose, nature, or necessity of the rule, it shall be the duty of the~~
 29 ~~agency to consult with the committee prior to the adoption of the rule. In the event a~~
 30 ~~proposed rule which is assigned to a standing committee pursuant to subsection (e) of this~~
 31 ~~Code section is projected to have an economic impact of \$1 million or more, as determined~~
 32 ~~by the cost benefit analysis, on businesses and citizens in this state, it shall be the duty of~~
 33 ~~the chairperson of such standing committee to conduct a meeting of the committee within~~
 34 ~~20 days of the date such rule is assigned to the committee for the purpose of receiving the~~
 35 ~~comments of the public and the agency concerning the legality of, the necessity for, the~~
 36 ~~impact of, and the appropriateness of such proposed rule. It shall be the duty of the agency~~
 37 ~~head or a representative thereof to attend such standing committee meeting and respond to~~

1 questions concerning such proposed rule. All comments and testimony given at such
 2 meeting shall be reduced to writing and a copy thereof shall be furnished to the agency and
 3 made a part of the record in the proceeding for the adoption of such rule.

4 (h) Subsections (a) through (g) of this Code section shall not apply to environmental
 5 protection programs delegated by the federal government to the Environmental Protection
 6 Division of the Georgia Department of Natural Resources. However, subsections (a)
 7 through (g) shall apply to environmental programs not federally delegated.

8 ~~(h)~~(i) The provisions of subsections (e) and (f) of this Code section shall apply to any rule
 9 of the Department of Human Resources that is promulgated pursuant to Code Section
 10 31-2-7 or 31-45-10, except that the presiding officer of the Senate is directed to assign the
 11 notice of such a rule to the chairperson of the Senate Defense, Science and Technology
 12 Committee and the presiding officer of the House of Representatives is directed to assign
 13 the notice of such a rule to the chairperson of the House Committee on Industry. As used
 14 in this subsection, the term 'rule' shall have the same meaning as provided in paragraph (6)
 15 of Code Section 50-13-2 and shall include interpretive rules and general statements of
 16 policy, notwithstanding any provision of subsection (a) of this Code section to the
 17 contrary."

18 **SECTION 6.**

19 Said chapter is further amended by adding a new Code Section 50-13-4.1 following Code
 20 Section 50-13-4 to read as follows:

21 "50-13-4.1.

22 (a) At least once in each four-year period, beginning with the four-year period
 23 commencing on January 1, 2000, each agency shall review all of its rules to determine
 24 whether any existing rule is no longer necessary, is obsolete, or seeks to accomplish a result
 25 which could be accomplished in a more efficient, less burdensome, or less costly manner.
 26 After conducting such review, each agency shall prepare a written report summarizing its
 27 findings, its supporting reasons, and any proposed course of action. For each rule, the
 28 report must include a concise statement of:

29 (1) The rule's effectiveness in achieving its objectives, including a summary of any
 30 available data supporting the conclusions reached;

31 (2) Criticisms of the rule received during the four-year period immediately preceding the
 32 date of the report, including a summary of any petitions or requests for waiver of or
 33 exceptions to the rule tendered to the agency or granted by the agency; and

34 (3) Alternative solutions to the criticisms and the reasons they were rejected or the
 35 changes made in the rule in response to those criticisms and the reasons for the changes.

1 (b) A copy of the report shall be sent to the Governor, the Secretary of State, the President
 2 of the Senate, the Secretary of the Senate, the Speaker of the House of Representatives, the
 3 Clerk of the House of Representatives, and the legislative counsel. The agency, the
 4 Secretary of State, the Secretary of the Senate, and the Clerk of the House of
 5 Representatives shall make copies of the report available for public inspection and copying.
 6 (c) It shall be the duty of the President of the Senate and the Speaker of the House of
 7 Representatives to assign each such report to one or more standing committees of the
 8 Senate and House of Representatives for review and comment. The chairpersons of the
 9 committees to which any such report is assigned shall call a joint meeting or meetings of
 10 the committees to review such report and make suggestions to the agency and to the
 11 General Assembly concerning any changes in the rules or the statutes which the
 12 committees feel are appropriate."

13 **SECTION 7.**

14 Said chapter is further amended by striking paragraph (4) of subsection (a) of Code Section
 15 50-13-13, relating to opportunity for hearings in contested cases, in its entirety and inserting
 16 in lieu thereof a new paragraph (4) to read as follows:

17 "(4) Unless precluded by law, informal disposition may be made of any contested case
 18 by stipulation, agreed settlement, consent order, or default. It shall be the duty of every
 19 agency to provide reasonable assistance and education concerning the requirements of
 20 the laws of this state and the rules of the agency to any person or entity in order to
 21 achieve compliance with such laws and rules before commencing any contested case. A
 22 contested case shall be undertaken only after a reasonable attempt to achieve compliance
 23 with the laws and rules has failed to achieve such compliance;"

24 **SECTION 8.**

25 All laws and parts of laws in conflict with this Act are repealed.