

House Bill 1147

By: Representatives Crawford of the 91st and Ray of the 108th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 2 of Title 2 of the Official Code of Georgia Annotated, relating to the
2 Department of Agriculture, so as to provide for orders issued by the Commissioner of
3 Agriculture; to provide for administrative and judicial review of such orders; to amend
4 Chapter 13 of Title 50 of the Official Code of Georgia Annotated, the "Georgia
5 Administrative Procedure Act," so as to change certain provisions relating to judicial review
6 of contested cases; to change certain provisions relating to applicability of certain provisions
7 relative to the Office of State Administrative Hearings; to repeal conflicting laws; and for
8 other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

10 Chapter 2 of Title 2 of the Official Code of Georgia Annotated, relating to the Department
11 of Agriculture, is amended by adding a new Code section to read as follows:

12 "2-2-9.1.

13 (a) As used in this Code Section, the term 'aggrieved or adversely affected' means that the
14 challenged action has caused or will cause the person injury in fact, and the injury is to an
15 interest within the zone of interests to be protected or regulated by the statute that the
16 Commissioner is empowered to administer and enforce.

17 (b) The Commissioner shall issue all orders, and perform actions to include
18 impoundments, quarantine, the issuance, suspension, denial, or revocation of registrations,
19 licenses, or permits, or approval or denial of applications for registrations, licenses, or
20 permits provided for in such federal and state laws as are to be enforced by the Department
21 of Agriculture.

22 (c) Any administrative order issued by the Commissioner shall specify the alleged
23 violation, prescribe a reasonable time for some type of action to be accomplished, and
24 provide notice of the right to a hearing. Any order issued pursuant to this Code section shall
25 become final unless the aggrieved or adversely affected registrant, licensee, permittee,
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1 applicant, equine owner, livestock owner, dog or cat owner, exotic and pet bird owner, or
2 farmer of crops or livestock, chickens, or other animals timely requests a hearing in writing
3 as provided by this Code section.

4 (d)(1) Any registrant, licensee, permittee, applicant, equine owner, livestock owner, dog
5 or cat owner, exotic and pet bird owner, or farmer of crops or livestock, chickens, or other
6 animals aggrieved or adversely affected by any order or action of the Commissioner to
7 include the issuance, suspension, denial, or revocation of a registration, license, permit,
8 or application, impoundment, quarantine or stop sale, stop use, or stop removal order,
9 upon petition within 30 days after the issuance of such order or the taking of such action,
10 shall have a right to a hearing before a hearing officer appointed or designated for such
11 purpose by the Commissioner. The decision of the hearing officer shall constitute an
12 initial decision of the Department of Agriculture, and any party to the hearing, including
13 the Commissioner, shall have the right to final agency review before the Commissioner
14 in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,'
15 and the provisions of this chapter.

16 (2) If the hearing involves the impoundment of equines under Chapter 13 of Title 4, the
17 'Georgia Humane Care for Equines Act,' the party requesting the hearing shall submit a
18 bond in the amount of \$250.00 per horse per month to be used for care of the animals
19 until resolution of the matter; and a minimum payment of six months shall be submitted
20 with additional bonds upon request. If any type of judicial remedy is initiated in the
21 superior courts, the party requesting such relief shall submit within 30 days of the
22 impoundment a bond in the amount of \$250.00 per horse per month to be used for care
23 of the animals until resolution of the matter; and a minimum payment of six months shall
24 be submitted with additional bonds upon request.

25 (3) If the hearing involves the impoundment of animals under Chapter 11 of Title 4, the
26 'Georgia Animal Protection Act,' the party requesting the hearing shall submit a bond in
27 the amount of \$200.00 per animal per month to be used for care of the animals until
28 resolution of the matter; and a minimum payment of six months shall be submitted with
29 additional bonds upon request.

30 (e) Where a statute which the Commissioner has responsibility for administration or
31 enforcement or a provision of Article 1 of Chapter 13 of Title 50 provides for different
32 administrative procedures in providing for a notice and opportunity to be heard other than
33 those specified in this Code section, the Commissioner may elect which procedure to be
34 used on a case-by-case basis.

35 (f) In the event the Commissioner asserts in response to the petition before the hearing
36 officer that the petitioner is not aggrieved or adversely affected, the hearing officer shall
37 take evidence and hear arguments on such issue and thereafter make a ruling on such issue

1 before continuing with the hearing. The burden of going forward with evidence on such
2 issue shall rest with the petitioner. The decision of the hearing officer shall constitute the
3 initial decision of the Commissioner; and any party to the hearing, including the
4 Commissioner, shall have the right for final agency review before the Commissioner in
5 accordance with Chapter 13 of Title 50.

6 (g) Prior to notice, hearing, or determination, the Commissioner is authorized to impose
7 civil penalties in settlement of contested cases through administrative consent orders. The
8 Commissioner is authorized to impose through administrative consent orders civil penalties
9 of up to and including \$1,000.00 per day per violation, except as otherwise provided by
10 Code Section 2-2-10.

11 (h)(1) The Commissioner may seek civil penalties for the violation of those laws to be
12 enforced by the Department of Agriculture; and where the imposition of such penalties
13 is provided for therein, the Commissioner upon written request may cause a hearing to
14 be conducted before a hearing officer appointed or designated by the Commissioner for
15 the purpose of determining whether such civil penalties should be imposed in accordance
16 with the applicable law.

17 (2) The decision of the hearing officer shall constitute the initial decision of the
18 Commissioner; and any party to the hearing, including the Commissioner, shall have the
19 right of final agency review before the Commissioner in accordance with Chapter 13 of
20 Title 50.

21 (3) In rendering a decision on a requested civil penalty, the hearing officer shall consider
22 all relevant factors including, but not limited to, the following:

23 (A) The amount of civil penalty necessary to ensure immediate and continued
24 compliance and the extent to which the violator may have profited by failing or
25 delaying to comply;

26 (B) The conduct of the person incurring the civil penalty in promptly taking all feasible
27 steps or procedures necessary or appropriate to comply with or to correct the violation
28 or failure to comply;

29 (C) Any prior violations of, or failures by, such person to comply with statutes, rules,
30 regulations, or orders administered, adopted, or issued by the Commissioner;

31 (D) The character and degree of injury to or interference with public health or safety
32 which is caused or threatened to be caused by such violation or failure to comply;

33 (E) The character and degree of injury to or interference with reasonable use of
34 property which is caused or threatened to be caused by such violation or failure to
35 comply; and

36 (F) The character and degree of intent with which the conduct of the person incurring
37 the civil penalty was carried out.

1 (i)(1) Once the hearing officer issues an initial decision, that decision may be appealed
2 by any party to the Commissioner for final agency review. The party requesting final
3 agency review shall have 30 days from notice of the initial decision to file an application
4 for final agency review. If the initial decision is not appealed within 30 days by any party,
5 it shall be deemed final without need of any further proceedings. Further, if the initial
6 decision is not appealed, then a party's right to judicial review in the superior court under
7 Code Section 50-13-19 shall be extinguished.

8 (2) In application, the party requesting final agency review from the Commissioner shall
9 include a short and plain statement of:

10 (A) The reasons for seeking review; and

11 (B) Any alleged errors in the initial decision.

12 (3) The Commissioner may in his or her discretion seek review on his or her own motion
13 pursuant to subsection (a) of Code Section 50-13-17.

14 (4) Opposing parties may submit statements in response within 20 days of service of an
15 application for final agency review.

16 (5) A copy of any application for final agency review or in opposition of application for
17 review shall be served on all parties and their counsel as well as the Commissioner.

18 (j)(1) The standard for final agency review of the initial decision shall be de novo
19 review.

20 (2) The Commissioner may only review the record considered by the hearing officer in
21 the initial decision hearing. The Commissioner shall not rely on investigative files.

22 (3) The Commissioner shall possess all the powers that the hearing officer had during
23 the initial decision hearing.

24 (4) There shall be a presumption of correctness for the hearing officer's credibility
25 determination of witnesses appearing before the hearing officer.

26 (5) The Commissioner shall not base his or her decision on conjecture, speculation, or
27 impermissible inferences.

28 (k)(1) The hearing officer shall forward to the Commissioner prior to review:

29 (A) A copy of the record of the case including the initial decision;

30 (B) All pleadings;

31 (C) Transcripts of the hearing; and

32 (D) All exhibits.

33 (2) During the final agency review, the Commissioner may hear or take testimony from
34 any party, including the registrant, licensee, permittee, applicant, equine owner, livestock
35 owner, dog or cat owner, exotic and pet bird owner, or farmer of crops or livestock,
36 chickens, or other animals based on such authority as existed during the initial decision
37 hearing.

1 (3) A party may file a motion not less than 14 days prior to the date of the final agency
 2 review to introduce evidence not submitted at the initial decision hearing. Additional
 3 evidence may be admitted only if it is material and if good cause exists for not presenting
 4 the evidence at the initial decision hearing. Opposing parties may submit responding
 5 motions in support of suppression of additional evidence seven days prior to the final
 6 agency review. Copies of all motions shall be served on the other party and its counsel
 7 as well as the Commissioner.

8 (1)(1) The final decision shall be in writing, and if an initial decision is modified, the
 9 Commissioner shall give his or her reasons therefor in the form of findings of fact and
 10 conclusions of law, separately stated, along with the effective date of the final decision.
 11 If the Commissioner does not issue a final decision within 30 days, the initial decision
 12 shall be deemed final without need of further proceedings. Further, once the initial
 13 decision is final, a party's right to judicial review shall be extinguished.

14 (2) The Commissioner's decision must be rendered not later than 30 days following the
 15 date the initial decision was issued.

16 (3) The Commissioner may increase sanctions after review of an initial decision on
 17 appeal, stating the sanctions in the final decision. The Commissioner shall not have to
 18 make separate findings of fact to justify increased sanctions.

19 (4) The period of decision may be extended due to complexity of issues or volume of
 20 record materials. All parties involved shall be notified of any extension. A decision shall
 21 be rendered as soon as practicable.

22 (5) The Commissioner shall serve on the:

- 23 (A) Opposing party;
- 24 (B) Opposing party's counsel;
- 25 (C) Agency counsel; and
- 26 (D) Original hearing officer

27 any resulting decision or notify the above parties if there is no change to the initial
 28 decision along with a statement of rights on appeal to the opposing party and counsel
 29 within 30 days of any such decision.

30 (m)(1) A party, or the Commissioner on his or her own motion, may seek reconsideration
 31 by the Commissioner of a final agency decision.

32 (2) A party's written request for reconsideration must be submitted to the Commissioner
 33 within ten days of service of the final decision. The request shall include a short and plain
 34 statement of:

- 35 (A) All matters alleged to have been erroneously decided; and
- 36 (B) Any newly discovered factual matters and the reasons why any matters were not
 37 raised previously.

1 (3) Opposing parties may submit statements in response within 20 days of service of the
2 request of the consideration.

3 (4) All requests for reconsideration and statements in opposition shall be served on all
4 parties and the Commissioner.

5 (5) If the final agency decision is modified, the Commissioner shall give his or her
6 reasons therefor in the form of findings of fact and conclusions of law along with the
7 effective date of the decision.

8 (6) The Commissioner's decision shall be rendered within 30 days following the latest
9 filing deadline.

10 (n) Judicial review of the Commissioner's final decision may be had in accordance with
11 Code Section 50-13-19.

12 (o)(1) Any order issued by the Commissioner under the laws of this state to be enforced
13 by the Department of Agriculture pursuant to a final decision, either unappealed from as
14 provided by law or affirmed or modified on any review or appeal, and from which no
15 further review is taken or allowed, may be filed, by certified copy of the order or final
16 decision from the department, in the superior court of the county wherein the person
17 under order resides, or if such person is a corporation in the county wherein the
18 corporation maintains its principal place of business, or in the county wherein the
19 violation occurred or in which jurisdiction is appropriate; whereupon such superior court
20 shall render judgment in accordance therewith and notify the parties. Such judgment shall
21 have the same effect, and all proceedings in relation thereto shall thereafter be the same,
22 as though such judgment had been rendered in an action duly heard and determined by
23 such court.

24 (2) The Commissioner may commence an action in any superior court of proper venue
25 to enforce any order issued by him or her and made an order of the superior court
26 pursuant to this Code section."

27 **SECTION 2.**

28 Chapter 13 of Title 50 of the Official Code of Georgia Annotated, the "Georgia
29 Administrative Procedure Act," is amended by striking subsection (b) of Code Section
30 50-13-19, relating to judicial review of contested cases, and inserting in lieu thereof the
31 following:

32 "(b) Proceedings for review are instituted by filing a petition within 30 days after the
33 service of the final decision of the agency or, if a rehearing is requested, within 30 days
34 after the decision thereon. The petition may be filed in the Superior Court of Fulton County
35 or in the superior court of the county of residence of the petitioner. When the petitioner is
36 a corporation, the action may be brought in the Superior Court of Fulton County or in the

1 superior court of the county where the petitioner maintains its principal place of doing
 2 business in this state. All proceedings for review, however, with respect to orders, rules,
 3 regulations, or other decisions or directives of the Public Service Commission or the
 4 Commissioner of Agriculture must be brought in the Superior Court of Fulton County.
 5 Copies of the petition shall be served upon the agency and all parties of record. The petition
 6 shall state the nature of the petitioner's interest, the fact showing that the petitioner is
 7 aggrieved by the decision, and the ground as specified in subsection (h) of this Code
 8 section upon which the petitioner contends that the decision should be reversed or
 9 modified. The petition may be amended by leave of court."

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SECTION 3.

11 Said chapter is further amended in Code Section 50-13-42, relating to applicability of certain
 12 provisions relative to the Office of State Administrative Hearings, by striking subsection (a)
 13 and inserting in lieu thereof the following:

14 "(a) In addition to those agencies expressly exempted from the operation of this chapter
 15 under paragraph (1) of Code Section 50-13-2, this article shall not apply to the
 16 Commissioner of Agriculture, the Public Service Commission, the Health Planning Review
 17 Board, or the Department of Community Health or to the Department of Labor with respect
 18 to unemployment insurance benefit hearings conducted under the authority of Chapter 8
 19 of Title 34. Such exclusion does not prohibit ~~these~~ such office or agencies from contracting
 20 with the Office of State Administrative Hearings on a case-by-case basis."

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SECTION 4.

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