

The Senate Agriculture and Consumer Affairs Committee offered the following substitute to HB 1147:

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) Any registrant, licensee, permittee, applicant, equine owner, livestock owner, dog or
5 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, or
8 application, impoundment, quarantine or stop sale, stop use, or stop removal order, upon
9 petition within 30 days after the issuance of such order or the taking of such action, shall
10 have a right to a hearing before a hearing officer appointed or designated for such purpose
11 by the Commissioner. The decision of the hearing officer shall constitute an initial
12 decision of the Department of Agriculture, and any party to the hearing, including the
13 Commissioner, shall have the right to final agency review before the Commissioner in
14 accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' and
15 the provisions of this chapter.

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

21 (f) In the event the Commissioner asserts in response to the petition before the hearing
22 officer that the petitioner is not aggrieved or adversely affected, the hearing officer shall
23 take evidence and hear arguments on such issue and thereafter make a ruling on such issue
24 before continuing with the hearing. The burden of going forward with evidence on such
25 issue shall rest with the petitioner. The decision of the hearing officer shall constitute the
26 initial decision of the Commissioner; and any party to the hearing, including the
27 Commissioner, shall have the right for final agency review before the Commissioner in
28 accordance with Chapter 13 of Title 50.

29 (g) Prior to notice, hearing, or determination, the Commissioner is authorized to impose
30 civil penalties in settlement of contested cases through administrative consent orders. The
31 Commissioner is authorized to impose through administrative consent orders civil penalties
32 of up to and including \$1,000.00 per violation, except as otherwise authorized by law.

33 (h)(1) The Commissioner may seek civil penalties for the violation of those laws to be
34 enforced by the Department of Agriculture; and where the imposition of such penalties
35 is provided for therein, the Commissioner upon written request may cause a hearing to
36 be conducted before a hearing officer appointed or designated by the Commissioner for

1 the purpose of determining whether such civil penalties should be imposed in accordance
2 with the applicable law.

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

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

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

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

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

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

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

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

24 (i)(1) Once the hearing officer issues an initial decision, that decision may be appealed
25 by any party to the Commissioner for final agency review. The party requesting final
26 agency review shall have 30 days from notice of the initial decision to file an application
27 for final agency review. If the initial decision is not appealed within 30 days by any party,
28 it shall be deemed final without need of any further proceedings.

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

31 (A) The reasons for seeking review; and

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

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

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

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

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

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

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

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

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

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

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

15 (B) All pleadings;

16 (C) Transcripts of the hearing; and

17 (D) All exhibits.

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

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

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

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

1 (3) The Commissioner may modify sanctions after review of an initial decision on
2 appeal, stating the sanctions in the final decision. The Commissioner shall not have to
3 make separate findings of fact to justify modified sanctions.

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

7 (5) The Commissioner shall serve on the:

- 8 (A) Opposing party;
- 9 (B) Opposing party's counsel;
- 10 (C) Agency counsel; and
- 11 (D) Original hearing officer

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

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

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

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

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

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

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

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

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

34 (o)(1) Any order issued by the Commissioner under the laws of this state to be enforced
35 by the Department of Agriculture pursuant to a final decision, either unappealed from as
36 provided by law or affirmed or modified on any review or appeal, and from which no
37 further review is taken or allowed, may be filed, by certified copy of the order or final

1 decision from the department, in the superior court of the county wherein the person
 2 under order resides, or if such person is a corporation in the county wherein the
 3 corporation maintains its principal place of business, or in the county wherein the
 4 violation occurred or in which jurisdiction is appropriate; whereupon such superior court
 5 shall render judgment in accordance therewith and notify the parties. Such judgment shall
 6 have the same effect, and all proceedings in relation thereto shall thereafter be the same,
 7 as though such judgment had been rendered in an action duly heard and determined by
 8 such court.

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

12 (p)(1) If a judicial review of the Commissioner's final decision is sought in accordance
 13 with Code Section 50-13-19, and the matter involves the impoundment of equines under
 14 Chapter 13 of Title 4, the 'Georgia Humane Care for Equines Act,' the Commissioner
 15 shall, along with his or her answer to the petition, include a statement of the costs
 16 incurred in the impoundment and care of the impounded animal or animals and an
 17 estimate of the future costs expected to be incurred in the care of the impounded animal
 18 or animals. The judge of the superior court may then require the petitioner to submit a
 19 surety bond to the court in an amount necessary to provide for the reasonable costs of
 20 care for the impounded animal or animals. In lieu of a surety bond, the court may accept
 21 a cash bond or property bond, which shall in all respects be subject to the same claims
 22 and actions as would exist against a surety bond.

23 (2) Upon the entering of a final adverse decision against an aggrieved party by the
 24 superior court, the Commissioner shall within 15 days deliver to the court and to the
 25 aggrieved party a statement of the costs incurred in the impoundment and care of the
 26 impounded animal or animals. The aggrieved party shall then render payment of such
 27 costs to the Commissioner within 15 days after the service of the statement of the costs.
 28 If the aggrieved party fails to render payment to the Commissioner within the time period
 29 required in this paragraph, the Commissioner may commence and maintain an action
 30 against the principal and surety on the bond of the aggrieved party as in any civil action."

31 SECTION 2.

32 Chapter 13 of Title 50 of the Official Code of Georgia Annotated, the "Georgia
 33 Administrative Procedure Act," is amended by striking subsection (b) of Code Section
 34 50-13-19, relating to judicial review of contested cases, and inserting in lieu thereof the
 35 following:

