

House Bill 1147 (AS PASSED HOUSE AND SENATE)

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:

10 **SECTION 1.**

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

13 "2-2-9.1.

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

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

23 (c) Any administrative order issued by the Commissioner shall specify the alleged
24 violation, prescribe a reasonable time for some type of action to be accomplished, and
25 provide notice of the right to a hearing. Any order issued pursuant to this Code section shall
26 become final unless the aggrieved or adversely affected registrant, licensee, permittee,

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.

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

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

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

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

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

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

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

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

(B) All pleadings;

(C) Transcripts of the hearing; and

(D) All exhibits.

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

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

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

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

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

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

(5) The Commissioner shall serve on the:

(A) Opposing party;

(B) Opposing party's counsel;

(C) Agency counsel; and

(D) Original hearing officer

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

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

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

(A) All matters alleged to have been erroneously decided; and

(B) Any newly discovered factual matters and the reasons why any matters were not raised previously.

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

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

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

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

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

(o)(1) Any order issued by the Commissioner under the laws of this state to be enforced by the Department of Agriculture pursuant to a final decision, either unappealed from as provided by law or affirmed or modified on any review or appeal, and from which no 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:

1 "(b) Proceedings for review are instituted by filing a petition within 30 days after the
2 service of the final decision of the agency or, if a rehearing is requested, within 30 days
3 after the decision thereon. The petition may be filed in the Superior Court of Fulton County
4 or in the superior court of the county of residence of the petitioner. ~~When; or, if the~~
5 petitioner is a corporation, the action may be brought in the Superior Court of Fulton
6 County or in the superior court of the county where the petitioner maintains its principal
7 place of doing business in this state; and provided, further, that all proceedings for review
8 with respect to orders, rules, regulations, or other decisions or directives of the
9 Commissioner of Agriculture may also be brought in the Superior Court of Tift County or
10 the Superior Court of Chatham County. All proceedings for review, however, with respect
11 to orders, rules, regulations, or other decisions or directives of the Public Service
12 Commission must be brought in the Superior Court of Fulton County. Copies of the
13 petition shall be served upon the agency and all parties of record. The petition shall state
14 the nature of the petitioner's interest, the fact showing that the petitioner is aggrieved by
15 the decision, and the ground as specified in subsection (h) of this Code section upon which
16 the petitioner contends that the decision should be reversed or modified. The petition may
17 be amended by leave of court."

18 SECTION 3.

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

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

29 SECTION 4.

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