

Senate Bill 190

By: Senators Tolleson of the 20th, Bulloch of the 11th, Johnson of the 1st and Pearson of the 51st

AS PASSED SENATE

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 12-2-2 of the Official Code of Georgia Annotated, relating to the
2 Environmental Protection Division, the Environmental Advisory Council, duties of the
3 council, its members, and the director of the division, procedure for aggrieved persons, and
4 inspections, so as to provide that the filing of a petition shall result in a stay of a decision; to
5 amend Code Section 50-13-19 of the Official Code of Georgia Annotated, relating to judicial
6 review of contested cases, so as to provide that the filing of a petition in certain instances
7 shall not result in a stay of a decision except under certain conditions; to repeal conflicting
8 laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

11 Code Section 12-2-2 of the Official Code of Georgia Annotated, relating to the
12 Environmental Protection Division, the Environmental Advisory Council, duties of the
13 council, its members, and the director of the division, procedure for aggrieved persons, and
14 inspections, is amended by striking paragraph (2) of subsection (c) and inserting in lieu
15 thereof the following:

16 "(2) Any person who is aggrieved or adversely affected by any order or action of the
17 director shall, upon petition within 30 days after the issuance of such order or the taking
18 of such action, have a right to a hearing before an administrative law judge appointed by
19 the Board of Natural Resources. In cases involving the grant of a permit, permit
20 amendment, or variance by the director, the filing of such a petition by any person to
21 whom such order or action is not directed shall stay such order or action for a period of
22 30 days from the date of such filing. The hearing before the administrative law judge
23 shall be conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative
24 Procedure Act,' and the rules and regulations adopted by the board pursuant thereto. Any
25 administrative law judge so appointed by the board shall fully meet and qualify as to all

1 applicable conflict of interest requirements provided for in Section 304(h)(2)(D) of the
2 Federal Water Pollution Control Act of 1972, as amended, and the rules, regulations, and
3 guidelines promulgated thereunder. The decision of the administrative law judge shall
4 constitute the final decision of the board and any party to the hearing, including the
5 director, shall have the right of judicial review thereof in accordance with Chapter 13 of
6 Title 50."

7 **SECTION 2.**

8 Code Section 50-13-19 of the Official Code of Georgia Annotated, relating to judicial review
9 of contested cases, is amended by striking subsection (d) and inserting in lieu thereof the
10 following:

11 "(d)(1) The filing of the petition does not itself stay enforcement of the agency decision.
12 Except as otherwise provided in this subsection, the agency may grant, or the reviewing
13 court may order, a stay upon appropriate terms for good cause shown.

14 (2) In cases involving the grant of a permit, permit amendment, or variance by the
15 director of the Environmental Protection Division of the Department of Natural
16 Resources in which the petition was filed by any person to whom such contested order
17 or action in is not directed, a stay shall not be granted except upon order of the superior
18 court after consideration of the same equitable factors applicable to grants of injunctive
19 relief under Code Section 9-11-65, any person seeking a stay shall have the right to seek
20 a temporary restraining order under OCGA 9-11-65.

21 (3) In contested cases involving a license to practice medicine or a license to practice
22 dentistry in this state, a reviewing court may order a stay or an agency may grant a stay
23 only if the court or agency makes a finding that the public health, safety, and welfare will
24 not be harmed by the issuance of the stay."

25 **SECTION 3.**

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