

House Bill 1370

By: Representatives Smith of the 70th, Lane of the 167th, and Hill of the 180th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 12 of the Official Code of Georgia Annotated, relating to conservation and
2 natural resources, and Title 50 of the Official Code of Georgia Annotated, relating to state
3 government, so as to revise provisions relating to the grant or denial of certain permits
4 relating to environmental protection; to provide for deference by administrative law judges
5 on technical issues within the specialized knowledge of the agency decision-maker when
6 reviewing permits; to specify the level of professional registration required for reviews and
7 certain kinds of applications relating to permits issued by the Environmental Protection
8 Division; to provide that no water withdrawal, water diversion, or water impoundment permit
9 or other permit issued by the director shall be deemed invalid on grounds that any employee
10 reviewing the application was or was not registered or licensed by a professional licensing
11 board; to provide that certain applications for air emission permits must be certified by a
12 professional engineer registered to practice in Georgia; to provide that the Office of State
13 Administrative Hearings shall assign one or more administrative law judges, as needed, to
14 review the grant or denial of environmental permits, variances, or other approvals; to provide
15 an effective date; to provide for applicability; to repeal conflicting laws; and for other
16 purposes.

17 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

18 **SECTION 1.**
19 Title 12 of the Official Code of Georgia Annotated, relating to conservation and natural
20 resources, is amended in Code Section 12-1-2, relating to references to an administrative law
21 judge or hearing officer, references to final decision of Board of Natural Resources, and
22 filing request for administrative review, by adding a new subsection (d) to read as follows:
23 "(d) In any administrative review of the grant or denial of any permit, variance, or other
24 approval provided for in this title where the decision to grant or deny involves specialized
25 technical or scientific expertise on the part of the person or entity making the decision, an

26 administrative law judge shall afford deference to the action by such person or entity on
 27 technical or scientific issues within the specialized knowledge of such person or entity, so
 28 long as the grant or denial of such permit, variance, or other approval is not contrary to law
 29 and not unreasonable."

30 **SECTION 2.**

31 Said title is further amended in Code Section 12-2-2, relating to the Environmental Protection
 32 Division of the Department of Natural Resources, by adding a new subparagraph (c)(2)(E)
 33 to read as follows:

34 "(c)(2)(E) No water withdrawal, water diversion, or water impoundment permit or any
 35 other permit, permit amendment, variance, or other approval issued by the director shall
 36 be deemed invalid on the grounds that the employee reviewing the permit application
 37 was or was not licensed or registered by a professional licensing board as defined in
 38 paragraph (3) of Code Section 43-1-1 so long as the reviewing employee has the
 39 training, qualification, and expertise specified by the director or the board as necessary
 40 to carry out such review."

41 **SECTION 3.**

42 Said title is further amended in Code Section 12-9-7, relating to the permit required for air
 43 emissions, by revising subsection (b) as follows:

44 "(b) Applications for permits shall be submitted in such manner, on such forms, and
 45 contain such information as the director prescribes and which ~~he~~ the director deems
 46 necessary to make a determination of compliance with this article and the rules and
 47 ~~regulation~~ regulations promulgated pursuant to this article. The director may develop and
 48 require the use of standard application forms and establish evaluation criteria for
 49 expediently determining the completeness of such applications; provided, however, that the
 50 director at a minimum shall establish forms and criteria necessary to comply with the
 51 federal act. In addition to any other criteria established by the director, all permit
 52 applications shall be accompanied by:

- 53 (1) A compliance plan containing such schedules, reports, plans, documentation, and
 54 other information as may be required by the rules or regulations promulgated pursuant
 55 to this article and such additional information as the director may require to demonstrate
 56 a source's or facility's compliance or proposed compliance with the requirements of this
 57 article and the rules and regulations promulgated pursuant to this article; ~~and~~
 58 (2) Any and all applicable fees for processing the permit application and any other fee
 59 which the source or facility must pay pursuant to this article; and

60 (3) For those permits that must comply with the technology based standards set forth in
 61 the federal act, 42 U.S.C. Sections 7412, 7475, and 7503, as implemented by the rules
 62 and regulations promulgated pursuant to this article, a certificate from a professional
 63 engineer registered to practice in Georgia stating that he or she is responsible for the
 64 required pollution control technology review and that the proposed permit emission limit
 65 or limits meet the applicable technology based standards of the federal act, the rules and
 66 regulations promulgated under the federal act, and the rules and regulations promulgated
 67 pursuant to this article."

68 **SECTION 4.**

69 Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended
 70 in Code Section 50-13-40, relating to creation of the Office of State Administrative Hearings,
 71 by adding a new subsection (f) and redesignating former subsection (f) as follows:

72 "(f)(1) The General Assembly finds that the review of the grant or denial of permits
 73 under Title 12, relating to conservation and natural resources, frequently involves
 74 specialized technical or scientific expertise on the part of the person or entity making the
 75 decision. The General Assembly finds that review of such matters frequently requires
 76 utilization of a hearing officer with special knowledge of the subject matter, but that
 77 review of such matters should continue to be handled through the Office of State
 78 Administrative Hearings to ensure an independent administrative review.

79 (2) The chief state law administrative judge shall assign one or more of the full-time
 80 assistant administrative law judges to review exclusively or primarily the matters referred
 81 to in paragraph (1) of this subsection, as needed, to ensure that all or most of such matters
 82 shall be reviewed by a full-time assistant administrative law judge who is so assigned.
 83 To the maximum extent possible, the chief state law administrative judge shall conduct
 84 the selection and training of the full-time assistant administrative law judges so assigned
 85 to attain the goal of having such full-time assistant administrative law judges have the
 86 special knowledge referred to in paragraph (1) of this subsection. Nothing in this
 87 subsection, however, shall be construed to prohibit the assignment of such a matter to a
 88 special assistant administrative law judge as provided in paragraph (2) or (4) of
 89 subsection (e) of this Code section.

90 (f)(g) The chief state administrative law judge and any administrative law judge employed
 91 on a full-time basis: (1) shall not otherwise engage in the practice of law; and (2) shall not,
 92 except in the performance of his or her duties in a contested case, render legal advice or
 93 assistance to any state board, bureau, commission, department, agency, or officer."

94 **SECTION 5.**

95 This Act shall become effective upon its approval by the Governor or upon its becoming law
96 without such approval. Section 1 of this Act shall apply with respect to all administrative
97 decisions on or after such effective date.

98 **SECTION 6.**

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