

ADOPTED

Senator Tolleson of the 20th offered the following amendment:

1 *Amend SB 486 by revising lines 1 through 5 to read as follows:*

2 To amend Title 12 of the Official Code of Georgia Annotated, relating to conservation and
3 natural resources, so as to extensively revise various provisions relating to administrative law
4 cases relative to the Department of Natural Resources and divisions thereof; to provide for
5 judges, hearings, procedure, decisions, and review relative to such cases; to provide an
6 effective date; to

7 *By redesignating Sections 2 and 3 as Sections 15 and 16, respectively.*

8 *By revising lines 9 through 19 to read as follows:*

9 Title 12 of the Official Code of Georgia Annotated, relating to conservation and natural
10 resources, is amended in Code Section 12-1-2, relating to references to administrative law
11 judge or hearing officer, references to final decision of Board of Natural Resources, and
12 filing request for administrative review, by deleting and reserving subsection (b) and by
13 revising subsection (a) as follows:

14 "(a) Any reference in this title to an administrative law judge or hearing officer shall mean
15 an administrative law judge appointed by the chief state administrative law judge. Any
16 hearing before an administrative law judge shall be conducted in accordance with Chapter
17 13 of Title 50, the 'Georgia Administrative Procedure Act,' and the rules and regulations
18 adopted by the board pursuant thereto. ~~The decision of an administrative law judge shall~~
19 ~~constitute the final administrative decision in any matter, and any~~ Any party to the matter,
20 including without limitation the department, the director of the Environmental Protection
21 Division, the Asbestos Licensing Board, and the Shore Protection and Coastal Marshlands
22 Protection Committees, shall have the right of ~~judicial~~ review in accordance with Chapter
23 13 of Title 50, including the right of judicial review as provided in said chapter."

24 **SECTION 2.**

25 Said title is further amended in Code Section 12-2-2, relating to Environmental Protection
26 Division, Environmental Advisory Council, duties of council and its members and director,
27 procedure for aggrieved persons, permit applications, and inspections, by revising
28 subparagraph (c)(2)(D) and paragraph (4) of subsection (c) as follows:

29 ~~"(D) The decision of the administrative law judge shall constitute the final decision of~~
30 ~~the board and any party to the hearing, including the director, shall have the right of~~

31 ~~judicial review thereof in accordance with Chapter 13 of Title 50~~ The hearing and
 32 decision of the administrative law judge and any review thereof shall be subject to Code
 33 Section 12-1-2."

34 "(4) Notwithstanding any other law to the contrary, in seeking civil penalties for the
 35 violation of those laws to be enforced by the division and where the imposition of such
 36 penalties is provided for therein, the director upon written request may cause a hearing
 37 to be conducted before an administrative law judge ~~appointed by the Board of Natural~~
 38 ~~Resources~~ for the purpose of determining whether such civil penalties should be imposed
 39 in accordance with the law there involved. ~~The hearing before the administrative law~~
 40 ~~judge shall be conducted in accordance with Chapter 13 of Title 50, the 'Georgia~~
 41 ~~Administrative Procedure Act,' and the rules and regulations adopted by the board~~
 42 ~~pursuant thereto. The decision of the administrative law judge shall constitute the final~~
 43 ~~decision of the board and any party to the hearing, including the director, shall have the~~
 44 ~~right of judicial review thereof in accordance with Chapter 13 of Title 50.~~ The hearing
 45 and decision of the administrative law judge and any review thereof shall be subject to
 46 Code Section 12-1-2."

47 **SECTION 3.**

48 Said title is further amended in Code Section 12-3-50.2, relating to Georgia Register of
 49 Historic Places, by revising subsection (e) as follows:

50 "(e) Any person who is aggrieved or adversely affected by any order or action of the
 51 department pursuant to this Code section shall, upon petition within 30 days after the
 52 issuance of such order or taking of such action, have a right to a hearing before an
 53 administrative law judge, ~~appointed by the Board of Natural Resources. The hearing~~
 54 ~~before the administrative law judge shall be conducted in accordance with Chapter 13 of~~
 55 ~~Title 50, the 'Georgia Administrative Procedure Act.'~~ The decision of the administrative
 56 law judge shall constitute the final decision of the board and any party to the hearing,
 57 including the department, shall have the right of judicial review thereof in accordance with
 58 ~~Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'~~ The hearing and
 59 decision of the administrative law judge and any review thereof shall be subject to Code
 60 Section 12-1-2."

61 **SECTION 4.**

62 Said title is further amended in Code Section 12-3-52, relating to archeological exploration,
 63 excavation, or surveying and administrative appeal of department orders, by revising
 64 subsection (e) as follows:

65 "(e) Any person who is aggrieved or adversely affected by any order or action of the
 66 department shall, upon petition within 30 days after the issuance of such order or taking of
 67 such action, have a right to a hearing before an administrative law judge, ~~appointed by the~~
 68 ~~Board of Natural Resources. The hearing before the administrative law judge shall be~~
 69 ~~conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative~~
 70 ~~Procedure Act.'~~ The hearing and decision of the administrative law judge
 71 and any review thereof shall be subject to Code Section 12-1-2. The decision of the administrative law judge shall constitute the final
 72 decision of the board and any party to the hearing, including the department, shall have the
 73 right of judicial review thereof in accordance with Chapter 13 of Title 50, the 'Georgia
 74 Administrative Procedure Act.' The hearing and decision of the administrative law judge
 75 and any review thereof shall be subject to Code Section 12-1-2. Persons are 'aggrieved or
 76 adversely affected' where the challenged action has caused or will cause them injury in fact
 77 and where the injury is to an interest within the zone of interests to be protected or
 78 regulated by the statutes that the department is empowered to administer and enforce. In
 79 the event the department asserts in response to the petition before the administrative law
 80 judge that the petitioner is not aggrieved or adversely affected, the administrative law judge
 81 shall take evidence and hear arguments on this issue and thereafter make a ruling on same
 82 before continuing on with the hearing. The burden of going forward with evidence on this
 issue shall rest with the petitioner."

83

SECTION 5.

84

Said title is further amended in Code Section 12-4-48, relating to actions by director to
 85 enforce provisions relative to deep drilling for oil, gas, and other minerals, civil penalties,
 86 and effect of Code section on cause of action by royalty owners, lienholders, or other
 87 claimants, by revising subsections (a), (b), and (d) as follows:

88

"(a) Whenever the director has reason to believe that any person is violating the provisions
 89 of this part or any rule or regulation adopted pursuant to this part, the director may issue
 90 an administrative order to that person. The order shall specify the provisions of this part
 91 alleged to have been violated and shall order that corrective action be taken within a
 92 reasonable period of time prescribed in the order. Any such order shall become final and
 93 enforceable unless the person or persons named therein request in writing a hearing before
 94 an administrative law judge ~~appointed by the board~~ no later than 30 days after the issuance
 95 of the order.

96

(b) Whenever the director finds that an emergency exists requiring immediate action to
 97 protect the public interest, the director may issue a provisional order reciting the existence
 98 of such an emergency and requiring that such action be taken as is reasonably necessary
 99 to meet the emergency under the circumstances, provided that such an emergency order
 100 shall be issued only after an affidavit has been filed with the director showing specific facts

101 of such an emergency condition. Such order shall be effective immediately. Any person
 102 against whom such order is directed shall upon appropriate notice comply therewith
 103 immediately but on application to the director shall be afforded a hearing before an
 104 administrative law judge ~~appointed by the board~~ within ten days of receipt of such
 105 application by the director or, if the party applying so requests, within 48 hours of receipt
 106 of such application by the director. Prior to such hearing, the director shall be authorized
 107 to modify or revoke such order. After the hearing, the administrative law judge shall be
 108 authorized to make such order as is just and reasonable, including an order continuing,
 109 revoking, or modifying such provisional order."

110 "(d) Any person who willfully or negligently violates any provision of this part, any rule
 111 or regulation adopted under this part, or any permit or final or emergency order of the
 112 director shall be subject to a civil penalty of not less than \$50.00, but in any event not to
 113 exceed \$10,000.00 for each act of violation. Each day of continued violation shall subject
 114 such person to a separate civil penalty. An administrative law judge ~~appointed by the~~
 115 ~~board~~, after a hearing, shall determine whether or not any person has violated any provision
 116 of this part or any rule or regulation adopted under this part or any permit or final or
 117 emergency order of the director, and shall upon proper finding issue an order imposing
 118 such civil penalties as provided in this Code section. ~~Any person so penalized under this~~
 119 ~~Code section is entitled to judicial review. In this connection, all hearings and proceedings~~
 120 ~~for judicial review under this Code section shall be in accordance with Chapter 13 of Title~~
 121 ~~50, the 'Georgia Administrative Procedure Act.'~~ The hearing and decision of the
 122 administrative law judge and any review thereof shall be subject to Code Section 12-1-2.
 123 All civil penalties recovered by the director as provided by this chapter shall be paid into
 124 the state treasury to the credit of the general fund."

125

SECTION 6.

126 Said title is further amended in Code Section 12-5-31, relating to permits for withdrawal,
 127 diversion, or impoundment of surface waters, by revising paragraph (1) of subsection (o) as
 128 follows:

129 "(o)(1) Except as otherwise provided in subsection (l) of this Code section for emergency
 130 orders, any person who is aggrieved or adversely affected by any order or action of the
 131 director pursuant to this Code section shall, upon petition within 30 days after the
 132 issuance of such order or the taking of such action, have a right to a hearing before an
 133 administrative law judge ~~appointed by the Board of Natural Resources. The hearing~~
 134 ~~before the administrative law judge shall be conducted in accordance with Chapter 13 of~~
 135 ~~Title 50, the 'Georgia Administrative Procedure Act,' and the rules and regulations~~
 136 ~~adopted by the board pursuant thereto. Any administrative law judge so appointed by the~~

137 ~~board conducting such hearing shall fully meet and qualify as to all applicable conflict~~
 138 ~~of interest requirements provided for in Section 304(h)(2)(D) of the Federal Water~~
 139 ~~Pollution Control Act of 1972, as amended, and the rules, regulations, and guidelines~~
 140 ~~promulgated thereunder. The decision of the administrative law judge shall constitute the~~
 141 ~~final decision of the board. Any party to the hearing, including the director, shall have~~
 142 ~~the right of judicial review thereof in accordance with Chapter 13 of Title 50, including~~
 143 ~~the right to seek judicial review in the superior court of the county of the applicant's or~~
 144 ~~permittee's residence. The hearing and decision of the administrative law judge and any~~
 145 ~~review thereof shall be subject to Code Section 12-1-2.~~"

146 **SECTION 7.**

147 Said title is further amended in Code Section 12-5-96, relating to permits to withdraw,
 148 obtain, or use ground water, by revising paragraph (1) of subsection (h) as follows:

149 "(h)(1) Except as otherwise provided in Code Section 12-5-102 for emergency orders,
 150 any person who is aggrieved or adversely affected by any order or action of the director
 151 pursuant to this Code section shall, upon petition within 30 days after the issuance of such
 152 order or the taking of such action, have a right to a hearing before an administrative law
 153 judge ~~appointed by the Board of Natural Resources. The hearing before the~~
 154 ~~administrative law judge shall be conducted in accordance with Chapter 13 of Title 50,~~
 155 ~~the 'Georgia Administrative Procedure Act,' and the rules and regulations adopted by the~~
 156 ~~board pursuant thereto. Any administrative law judge so appointed by the board~~
 157 ~~conducting such hearing shall fully meet and qualify as to all applicable conflict of~~
 158 ~~interest requirements provided for in Section 304(h)(2)(D) of the Federal Water Pollution~~
 159 ~~Control Act Amendments of 1972, as amended, and the rules, regulations, and guidelines~~
 160 ~~promulgated thereunder. The decision of the administrative law judge shall constitute the~~
 161 ~~final decision of the board. Any party to the hearing, including the director, shall have~~
 162 ~~a right of judicial review thereof in accordance with Chapter 13 of Title 50, including the~~
 163 ~~right to seek judicial review in the superior court in the county of the applicant's or~~
 164 ~~permittee's residence. For the purposes of this part, such review is also specifically~~
 165 ~~subject to subsection (a) of Code Section 50-13-19. The hearing and decision of the~~
 166 ~~administrative law judge and any review thereof shall be subject to Code Section 12-1-2.~~"

167 **SECTION 8.**

168 Said title is further amended in Code Section 12-5-129, relating to suspension and revocation
 169 of licenses relative to water well standards, hearings, reissuance of revoked licenses,
 170 injunction, cessation of well operation, and seizure of equipment, by revising subsection (e)
 171 as follows:

172 "(e) The director shall be authorized to order the cessation of operation of any well
 173 operated in violation of this part and the seizure of all drilling equipment used in such
 174 drilling operation; provided, however, that the operator of any such drilling operation shall
 175 be afforded a hearing before the administrative law judge ~~of the Department of Natural~~
 176 ~~Resources~~ on such order of the director within 48 hours."

177 SECTION 9.

178 Said title is further amended in Code Section 12-5-244, relating to administrative and judicial
 179 review relative to shore protection, by revising subsection (a) as follows:

180 "(a) Any person who is aggrieved or adversely affected by any order or action of the
 181 committee shall, upon petition within 30 days after the issuance of such order or taking of
 182 such action, have a right to a hearing before an administrative law judge ~~appointed by the~~
 183 ~~board. The hearing before the administrative law judge shall be conducted in accordance~~
 184 ~~with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' and the rules and~~
 185 ~~regulations adopted by the board pursuant thereto. The decision of the administrative law~~
 186 ~~judge shall constitute the final decision of the board and any party to the hearing, including~~
 187 ~~the committee, shall have the right of judicial review thereof in accordance with Chapter~~
 188 ~~13 of Title 50. The hearing and decision of the administrative law judge and any review~~
 189 ~~thereof shall be subject to Code Section 12-1-2."~~

190 SECTION 10.

191 Said title is further amended in Code Section 12-5-247, relating to enforcement of provisions
 192 relative to shore protection, by revising paragraph (2) of subsection (a) and subsection (b)
 193 as follows:

194 "(2) Whenever the committee finds that an emergency exists requiring immediate action
 195 to protect the public or private interest where the public interest is served, it may issue
 196 an order reciting the existence of such an emergency and requiring or allowing that such
 197 action be taken as it deems necessary to meet the emergency. Notwithstanding any other
 198 provision of this part, such order shall be effective immediately. If an order requiring a
 199 person to take action is issued pursuant to this paragraph, such person shall be entitled to
 200 a hearing within ten days of the date of issuance of the order. Any person who is
 201 aggrieved or adversely affected by an emergency order of the committee, upon petition
 202 within ten days after issuance of such order, shall have a right to a hearing before an
 203 administrative law judge ~~appointed by the board~~. The committee shall hold a meeting no
 204 sooner than 30 days after the issuance of an emergency order to review such order to
 205 determine whether the order has been complied with, whether the order should continue
 206 in force, and any possible effects of such order on the sand-sharing system;"

207 "(b) Any person who violates any provision of this part or any rule or regulation adopted
 208 under this part, any permit issued under this part, or final or emergency order of the
 209 department shall be subject to a civil penalty not to exceed \$10,000.00 for each act of
 210 violation. Each day of continued violation shall subject said person to a separate civil
 211 penalty. An administrative law judge ~~appointed by the board after a hearing conducted in~~
 212 ~~accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,'~~ after
 213 a hearing, shall determine whether or not any person has violated any provision of this part,
 214 any rule or regulation adopted under this part, any permit, or any final or emergency order
 215 of the department or permit-issuing authority and shall upon proper finding issue an order
 216 imposing such civil penalties as provided in this subsection. ~~Review of such order shall~~
 217 ~~be available as provided in subsection (a) of Code Section 12-5-244.~~ The hearing and
 218 decision of the administrative law judge and any review thereof shall be subject to Code
 219 Section 12-1-2. All civil penalties recovered by the department as provided in this
 220 subsection shall be paid into the state treasury to the credit of the general fund."

221 **SECTION 11.**

222 Said title is further amended in Code Section 12-5-283, relating to Coastal Marshlands
 223 Protection Committee, members, powers, per diem and expenses, administrative hearings and
 224 review, and permits for minor alterations, by revising subsection (b) as follows:

225 "(b) Any person who is aggrieved or adversely affected by any order or action of the
 226 committee shall, upon petition within 30 days after the issuance of such order or the taking
 227 of such action, have a right to a hearing before an administrative law judge ~~appointed by~~
 228 ~~the board. The hearing before the administrative law judge shall be conducted in~~
 229 ~~accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' and~~
 230 ~~the rules and regulations adopted by the board pursuant thereto. The decision of the~~
 231 ~~administrative law judge shall constitute the final decision of the board and any party to the~~
 232 ~~hearing, including the committee, shall have the right of judicial review thereof in~~
 233 ~~accordance with Chapter 13 of Title 50.~~ The hearing and decision of the administrative law
 234 judge and any review thereof shall be subject to Code Section 12-1-2."

235 **SECTION 12.**

236 Said title is further amended in Code Section 12-8-30.6, relating to civil penalties for
 237 violations relative to solid waste management and procedures, by revising subsection (b) as
 238 follows:

239 "(b) Whenever the director has reason to believe that any person has violated any provision
 240 of this part or any rule or regulation effective under this part or has failed or refused to
 241 comply with any final order or emergency order of the director, he may upon written

242 request cause a hearing to be conducted before an administrative law judge ~~appointed by~~
 243 ~~the board~~. Upon finding that said person has violated any provision of this part or any rule
 244 or regulation effective under this part or has failed or refused to comply with any final
 245 order or emergency order of the director, the administrative law judge shall issue his
 246 decision imposing civil penalties as provided in this Code section. ~~Such hearing and any~~
 247 ~~administrative or judicial review thereof shall be conducted in accordance with subsection~~
 248 ~~(c) of Code Section 12-2-2. The hearing and decision of the administrative law judge and~~
 249 any review thereof shall be subject to Code Section 12-1-2."

250 SECTION 13.

251 Said title is further amended in Code Section 12-9-15, relating to hearing and judicial review
 252 relative to air quality, by revising paragraph (1) of subsection (a) as follows:

253 "(a)(1) Any person who is aggrieved or adversely affected by any order or action of the
 254 director pursuant to this article shall, upon petition within 30 days after the issuance of
 255 such order or the taking of such action, have a right to a hearing before an administrative
 256 law judge ~~appointed by the Board of Natural Resources~~ ~~The hearing before the~~
 257 ~~administrative law judge shall be conducted in accordance with Chapter 13 of Title 50,~~
 258 ~~the 'Georgia Administrative Procedure Act.'~~ ~~The decision of the administrative law judge~~
 259 ~~shall constitute the final decision of the board. Any party to the hearing, including the~~
 260 ~~director, shall have the right of judicial review thereof in accordance with Chapter 13 of~~
 261 ~~Title 50. Such action shall be filed in the Superior Court of Fulton County or in the~~
 262 ~~superior court of the county of residence of the petitioner. The hearing and decision of~~
 263 the administrative law judge and any review thereof shall be subject to Code Section
 264 12-1-2."

265 SECTION 14.

266 Said title is further amended in Code Section 12-12-16, relating to civil penalty for violation,
 267 hearing and judicial review, and disposition of penalties relative to asbestos safety, by
 268 revising subsection (b) as follows:

269 "(b) Whenever the director has reason to believe that any person has violated any provision
 270 of this chapter or any rules or regulations under this chapter or has failed or refused to
 271 comply with any final order issued under this chapter, he or she may, upon written notice,
 272 require a hearing before an administrative law judge ~~appointed by the board to determine~~
 273 ~~whether applicable civil penalties should be imposed. The decision of the administrative~~
 274 ~~law judge shall constitute the final decision of the board and any party to the hearing,~~
 275 ~~including the director, shall have a right of judicial review as provided in this chapter.~~
 276 ~~Such hearing and judicial review shall be conducted in accordance with subsection (c) of~~

277 ~~Code Section 12-2-2.~~ The hearing and decision of the administrative law judge and any
278 review thereof shall be subject to Code Section 12-1-2."