

Senate Bill 148

By: Senators Shafer of the 48th, Pearson of the 51st, Hamrick of the 30th, Hill of the 32nd,
Wiles of the 37th and others

VETOED

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 43 of the Official Code of Georgia Annotated, relating to professions and
2 business, so as to provide for review of existing regulatory entities to determine the need for
3 change to their current regulations; to provide for the evaluation of the regulations of existing
4 regulatory entities; to amend Chapter 4 of Title 50 of the Official Code of Georgia
5 Annotated, relating to the organization of the executive branch generally, so as to establish
6 the "Georgia Government Accountability Act"; to provide for the duties and responsibilities
7 of the appropriations committees; to authorize the committees to review and evaluate state
8 agencies' productivity, efficiency, and responsiveness; to provide for the automatic abolition
9 of certain state agencies; to provide for exceptions; to provide for related matters; to repeal
10 conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

13 Title 43 of the Official Code of Georgia Annotated, relating to professions and businesses,
14 is amended by revising Chapter 1A, relating to occupational regulation legislation review,
15 as follows:

16 style="text-align:center">"CHAPTER 1A

17 43-1A-1.

18 This chapter shall be known and may be cited as the 'Georgia Occupational Regulation
19 Review Law.'

20 43-1A-2.

21 The General Assembly finds that the need for and the effectiveness of establishing
 22 occupational licensure and certification in this state has not been systematically evaluated.
 23 It is the purpose of this chapter to ensure that no programs of licensure and certification
 24 shall hereafter be imposed upon any profession or business unless required for the safety
 25 and well-being of the citizens of ~~the~~ this state. It is the further purpose of this chapter to
 26 authorize the periodic review of existing regulatory entities to ensure that the authority of
 27 such regulatory entities is applicable and necessary with relation to the current professional
 28 and business conditions of this state. Any actions of the council pursuant to this chapter
 29 are solely recommendations and shall be nonbinding.

30 43-1A-3.

31 As used in this chapter, the term:

32 (1) 'Applicant group' means any business or professional group or organization, any
 33 individual, or any other interested party which proposes that any business or professional
 34 group not presently regulated be regulated by the state.

35 (2) 'Certificate' or 'certification' means a voluntary process by which a statutory
 36 regulatory entity grants recognition to an individual who has met certain prerequisite
 37 qualifications specified by that regulatory entity and who may assume or use 'certified'
 38 in the title or designation to perform prescribed occupational tasks.

39 (3) 'Council' means the Georgia Occupational Regulation Review Council.

40 (4) 'Grandfather clause' means a provision in a regulatory statute applicable to
 41 individuals engaged in the regulated business or profession prior to the effective date of
 42 the regulatory statute which exempts the individuals from meeting prerequisite
 43 qualifications set forth in the regulatory statute to perform prescribed occupational tasks.

44 (5) 'Legislative committee of reference' means the standing legislative committee
 45 designated by the Speaker of the House of Representatives or the President of the Senate
 46 to consider proposed legislation introduced in their respective houses of the General
 47 Assembly to regulate any business or occupation not previously regulated.

48 (6) 'License,' 'licensing,' or 'licensure' means authorization to engage in a business or
 49 profession which would otherwise be unlawful in the state in the absence of
 50 authorization. A license is granted to those individuals who meet prerequisite
 51 qualifications to perform prescribed business or professional tasks, who use a particular
 52 title, or who perform those tasks and use a particular title.

53 (7) 'Regulate' or 'regulation' means the process of licensure or certification as defined in
 54 this Code section.

55 (8) 'Regulatory entity' means any state agency which regulates one or more professions,
56 occupations, industries, businesses, or other endeavors in this state.

57 (9) 'State agency' means each state board, bureau, commission, department, division,
58 office, or other separate unit of state government created or established by law.

59 43-1A-4.

60 (a) There is created the Georgia Occupational Regulation Review Council.

61 (b) The council shall consist of ten members:

62 (1) The Comptroller General or his or her designee;

63 (2) The Secretary of State or his or her designee;

64 (3) The commissioner of human resources or his designee services, commissioner of
65 community health, or the executive director of the Georgia Composite Medical Board or
66 his or her designee, as deemed most appropriate by the chairperson of the council to
67 address the issues raised by the prospective regulation of the applicant group;

68 (4) The director of the Office of Planning and Budget or his or her designee;

69 (5) The commissioner of natural resources or his or her designee;

70 (6) The state revenue commissioner or his or her designee;

71 (7) The Commissioner of Agriculture or his or her designee;

72 (8) The administrator of the 'Fair Business Practices Act of 1975' or his or her designee;

73 (9) The chairperson of the legislative committee of reference or that person's designee
74 from that committee, but only when legislation referred by such committee is being
75 considered by the council; and

76 (10) The chairperson of that standing committee of the General Assembly appointed by
77 the presiding officer thereof pursuant to subsection (b) of Code Section 43-1A-5 or that
78 chairperson's designee from that committee, but only when legislation of which that
79 presiding officer was notified under subsection (b) of Code Section 43-1A-5 is being
80 considered by the council.

81 (c) The director of the Office of Planning and Budget or his or her designee shall serve as
82 chairperson of the council.

83 (d) Legislative members of the council appointed thereto pursuant to paragraphs (9) and
84 (10) of subsection (b) of this Code section shall receive for their attendance of meetings of
85 the council the same expense and mileage allowance authorized for legislative members
86 of interim legislative committees.

87 43-1A-5.

88 (a) It shall be the duty of the council to:

89 (1) Review ~~review~~ all bills introduced in the General Assembly to license or certify a
90 profession or business, which is not currently licensed or certified by the state, based on
91 the criteria outlined in Code Section 43-1A-6; and
92 (2) Review each existing regulatory entity that is currently regulated pursuant to this title
93 to determine the applicability and necessity of such regulatory entity's authority with
94 relation to the current professional and business conditions of this state. The council shall
95 conduct such review a minimum of once every seven years. All council meetings relating
96 to a review of an existing regulatory entity pursuant to this paragraph shall be conducted
97 in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.'

98 (b) The chairperson of the legislative committee of reference shall provide written
99 notification to the council of any proposed legislation introduced in that house of the
100 General Assembly of which that committee is a standing committee if that legislation
101 provides for the licensure or certification of a business or profession not currently licensed
102 or certified by the state. That chairperson at the same time shall provide written notification
103 of that legislation to the presiding officer of the house of the General Assembly in which
104 that legislation was not introduced, and that presiding officer shall then appoint the
105 chairperson of a standing committee of that house to serve as a member of the council for
106 the purpose of considering that legislation, except that the chairperson so appointed may
107 instead designate another member of that standing committee to serve as a member of the
108 council for that purpose. Within a period of time not to exceed nine months from the date
109 of such notification to the council, but in no event later than the convening date of the next
110 succeeding regular session of the General Assembly, the council shall provide a formal
111 report evaluating the need to regulate the business or profession based on the factors and
112 information provided under Code Section 43-1A-7 to the chairperson of the legislative
113 committee of reference, the committee chairperson appointed to the council pursuant to
114 paragraph (10) of subsection (b) of Code Section 43-1A-4, the presiding officers of the
115 House of Representatives and the Senate, and the legislative counsel. If, subsequent to a
116 review pursuant to paragraph (2) of subsection (a) of this Code section, the council
117 concludes changes are needed to the regulations of an existing regulatory entity, or that a
118 regulatory entity's existence is no longer necessary or in the interests of the state, a formal
119 report recommending such changes shall be completed and distributed in the same manner
120 described previously herein. If the council determines a need for regulation, the report
121 shall recommend an appropriate type of regulation and an appropriate state agency to
122 oversee the regulation.

123 (c) The council shall work with the applicant group, the legislative committee of reference,
124 and other interested parties in formulating its formal report.

125 (d) The head of a regulatory entity subject to review pursuant to paragraph (2) of
 126 subsection (a) of this Code section shall have the right to testify to the council to contribute
 127 its perspective and recommendations regarding potential changes to how such regulatory
 128 entity is regulated.

129 43-1A-6.

130 All bills introduced in the General Assembly to newly regulate a profession or business
 131 ~~should~~ and all reviews of existing regulatory entities pursuant to paragraph (2) of
 132 subsection (a) of Code Section 43-1A-5 shall be reviewed according to the following
 133 criteria. In evaluating how or whether a profession or business shall hereafter be regulated,
 134 the following factors shall be considered:

135 (1) Whether the unregulated practice of ~~an~~ the occupation may harm or endanger the
 136 health, safety, and welfare of citizens of ~~the~~ this state and whether the potential for harm
 137 is recognizable and not remote;

138 (2) Whether the practice of ~~an~~ the occupation requires specialized skill or training and
 139 whether the public needs and will benefit by assurances of initial and continuing
 140 occupational ability;

141 (3) Whether the citizens of this state are or may be effectively protected by other means;
 142 ~~and~~

143 (4) Whether the overall cost effectiveness and economic impact would be positive for
 144 citizens of ~~the state~~ this state; and

145 (5) Whether there are means other than state regulation to protect the interests of the
 146 state.

147 43-1A-7.

148 ~~After July 1, 1986, applicant~~ Applicant groups and other interested parties shall explain in
 149 writing each of the following factors to the extent requested by the council and the
 150 legislative committee of reference:

151 (1) A definition of the problem and why regulation is necessary:

152 (A) The nature of the potential harm to the public if the business or profession is not
 153 regulated, and the extent to which there is a threat to public health and safety; and

154 (B) The extent to which consumers need and will benefit from a method of regulation
 155 identifying competent individuals engaged in the business or profession;

156 (2) The efforts made to address the problem:

157 (A) Voluntary efforts, if any, by members of the business or profession to establish a
 158 code of ethics or help resolve disputes between the business or professional group and
 159 consumers; and

- 160 (B) Recourse to and the extent of use of applicable law and whether it could be
161 strengthened to control the problem;
- 162 (3) The alternatives considered:
- 163 (A) Regulation of business or professional employers rather than employees;
- 164 (B) Regulation of the program or service rather than the individuals;
- 165 (C) Registration of all individuals;
- 166 (D) Certification of all individuals;
- 167 (E) Other alternatives;
- 168 (F) Why the use of the alternatives specified in this paragraph would not be adequate
169 to protect the public interest; and
- 170 (G) Why licensure would serve to protect the public interest;
- 171 (4) The benefit to the public if regulation is granted:
- 172 (A) The extent to which the incidence of specific problems present in the unregulated
173 business or profession can reasonably be expected to be reduced by regulation;
- 174 (B) Whether the public can identify qualified individuals;
- 175 (C) The extent to which the public can be confident that regulated individuals are
176 competent:
- 177 (i) Whether the proposed regulatory entity would be a board composed of members
178 of the profession and public members, or a state agency, or both and, if appropriate,
179 their respective responsibilities in administering the system of certification or
180 licensure, including the composition of the board; the powers and duties of the board
181 or state agency regarding examinations, investigations, and the disciplining of
182 certified or licensed individuals; the promulgation of rules and a code of ethics; and
183 how fees would be levied and collected to cover the expenses of administering and
184 operating the regulatory system;
- 185 (ii) If there is a grandfather clause, whether such individuals will be required to meet
186 the prerequisite qualifications established by the regulatory entity at a later date;
- 187 (iii) The nature of the standards proposed for certification or licensure as compared
188 with the standards of other jurisdictions;
- 189 (iv) Whether the regulatory entity would be authorized to enter into reciprocity
190 agreements with other jurisdictions; and
- 191 (v) The nature and duration of any training and whether applicants will be required
192 to pass an examination; and, if an examination is required, by whom it will be
193 developed and how the cost of development will be met; and
- 194 (D) Assurance to the public that regulated individuals have maintained their
195 competence:
- 196 (i) Whether the certification or license will carry an expiration date; and

- 197 (ii) Whether renewal will be based only upon payment of a fee or whether renewal
 198 will involve reexamination, satisfactory completion of continuing education, peer
 199 review, or other enforcement;
- 200 (5) The extent to which regulation might harm the public:
- 201 (A) The extent to which regulation might restrict entry into the business or profession
 202 and whether the proposed standards are more restrictive than necessary to ensure safe
 203 and effective performance; and
- 204 (B) Whether there are similar professions to that of the applicant group which should
 205 be included in, or portions of the applicant group which should be excluded from, the
 206 proposed legislation;
- 207 (6) A description of the group proposed for regulation, including a list of associations,
 208 organizations, and other groups representing the business or profession in this state, an
 209 estimate of the number of individuals in each group, and whether the groups represent
 210 different levels of business or professional activity;
- 211 (7) The expected cost of regulation:
- 212 (A) The impact regulation might have on the costs of service to the public;
- 213 (B) The impact regulation might have on various types of insurance; and
- 214 (C) The initial and long-term cost to the state and to the general public of
 215 implementing the proposed legislation; and
- 216 (8) Any additional information requested by the council or the legislative committee of
 217 reference.

218 43-1A-8.

- 219 (a) After evaluating the report of the council and any other desired information based on
 220 the criteria outlined in Code Section 43-1A-6 and considering governmental and societal
 221 costs and benefits, if the General Assembly finds that it is necessary to regulate a business
 222 or profession not previously regulated by law, the most appropriate alternative method of
 223 regulation should be implemented, consistent with the public interest and this Code section:
- 224 (1) Where the consumer may have a substantial basis for relying on the services of a
 225 profession or business, a system of certification should be implemented;
- 226 (2) Where apparent that adequate regulation cannot be achieved by means other than
 227 licensing, a system of licensing should be implemented; or
- 228 (3) Where regulation as defined in this chapter is deemed too restrictive and unnecessary
 229 to protect the public health and welfare, a less restrictive means of ensuring public
 230 protection, including, but not limited to, stricter civil action or criminal penalties,
 231 inspection requirements, or a system of registration, may be considered.

232 (b) With regard to an existing regulatory entity, after evaluating the report of the council
 233 and any other desired information based on the criteria outlined in Code Section 43-1A-6
 234 and considering governmental and societal costs and benefits, the General Assembly shall:

235 (1) Take no action if it has determined that such existing regulatory agency is efficiently
 236 regulated and that no action is necessary in the interests of the state;

237 (2) Amend the enabling legislation of such existing regulatory entity if it has determined
 238 that making such amendments shall more efficiently regulate such regulatory entity in a
 239 manner that is in the best interests of the state; or

240 (3) Repeal the enabling legislation of such existing regulatory entity if it has determined
 241 that the continuing regulation of such regulatory entity is no longer in the interests of the
 242 state.

243 43-1A-9.

244 Nothing in this chapter shall be construed to limit the authority of the General Assembly
 245 to legislate as authorized by the Constitution."

246 **SECTION 2.**

247 Chapter 4 of Title 50 of the Official Code of Georgia Annotated, relating to the organization
 248 of the executive branch generally, is amended by designating Code Sections 50-4-1 through
 249 50-4-7 as Article 1 and by adding a new article to read as follows:

250 "ARTICLE 2

251 50-4-20.

252 This article shall be known and may be cited as the 'Georgia Government Accountability
 253 Act.' It is the intent of the General Assembly to establish a method by which the efficiency
 254 of state government shall be reviewed and the productivity of each agency evaluated. This
 255 article is meant to ensure that the valuable resources of the state are best utilized and that
 256 state agencies are held accountable for their service to the public and responsiveness to the
 257 needs of the citizens of this state.

258 50-4-21.

259 (a) The Senate and House appropriations committees meeting jointly shall constitute the
 260 Legislative Sunset Committee.

261 (b) As used in this article, the term 'committee' means the Legislative Sunset Committee.

262 (c) In carrying out its function under this article, the committee may request, through the
 263 cochairpersons, the assistance of any state agency or office. When so requested, a state

264 agency and its personnel shall assist the committee and may be required to appear before
265 the committee. The committee or its designated staff member may inspect, review, and
266 copy the records, documents, and files of any state agency. All records, documents, and
267 files requested by the committee shall be made available by the agency to the committee
268 for review and copying within three business days.

269 50-4-22.

270 (a) The committee shall review all state agencies, including all boards, departments,
271 advisory committees, authorities, bureaus, offices, and any other state entity of the
272 executive branch of state government regardless of its designation. The committee shall
273 be responsible for establishing a schedule for the routine review of all such state agencies.
274 Each agency shall be scheduled for review a minimum of once every eight years. The
275 committee shall have the discretion to add any agency to the review schedule or to modify
276 an agency's scheduled review.

277 (b) Where a report of review issued by the committee under Code Section 50-4-24 finds
278 that an agency should be automatically abolished as provided in this Code section, the
279 report of review shall be filed by the committee with the Secretary of State, the Secretary
280 of the Senate, and the Clerk of the House of Representatives. Where a report of review
281 issued by the committee finds that an agency should be so abolished, the agency shall be
282 abolished by operation of law on July 1 following the next regular session of the General
283 Assembly which follows the filing of the report of review issued by the committee, unless
284 the General Assembly by law continues the agency prior to that July 1. When an agency
285 is so abolished, the general appropriations Act or amended general appropriations Act
286 adopted at the regular session prior to the abolishment of the agency may designate the
287 agency to which any assets and obligations of the abolished agency shall be transferred;
288 and in the absence of such designation in an appropriations Act, the transfer shall be as
289 directed by the Governor.

290 (c) Any agency established by constitutional provision shall not be subject to automatic
291 abolishment as provided in subsection (b) of this Code section. Following the review and
292 recommendations of the committee, the committee shall report to the General Assembly
293 any recommended constitutional amendment needed for the reorganizing or abolishing of
294 such constitutionally created agency.

295 (d) Except as may otherwise be expressly provided by law, abolishment of a state agency
296 shall not affect the rights and duties that matured, penalties that were incurred, civil or
297 criminal liabilities that arose, or proceedings that were begun before the abolishment.

298 50-4-23.

299 (a) Not later than 90 days following a request by the committee, an agency shall provide
300 the committee with a report outlining the agency's efficiency and productivity and the
301 extent to which the agency utilizes state resources to best meet the needs of the public.

302 (b) The report required by this Code section shall, at a minimum, include the following:

303 (1) A comprehensive list of state programs and services performed by the agency,
304 including all special purpose activities undertaken to realize identifiable goals and
305 objectives in order to achieve the agency's mission and legislative intent;

306 (2) An accounting of state resources spent by the agency;

307 (3) An explanation of factors that have contributed to any failure to achieve legislated
308 standards or directives;

309 (4) The extent to which the agency has encouraged participation by the public in making
310 its rules and decisions and the extent to which public participation has resulted in rules
311 compatible with the objectives of the agency;

312 (5) A statement of any statutory objectives intended for each program and activity, the
313 problem or need that the program and activity are intended to address, and the extent to
314 which these objectives have been achieved;

315 (6) An assessment of the extent to which the jurisdiction of the agency and its programs
316 overlap or duplicate those of other agencies and the extent to which those programs can
317 be consolidated with those of other agencies;

318 (7) A self-examining assessment of the agency's efficiency and areas of needed
319 improvement, including goals and objectives for improvement, and the means by which
320 the agency intends to meet these goals and objectives;

321 (8) Recommendations for statutory or budgetary changes that would improve the
322 agency's programs and operations, reduce costs, or improve services to state residents;

323 (9) The effect of federal intervention or loss of federal funds if the agency, or any of its
324 programs or activities, is abolished;

325 (10) An assessment of alternative methods of providing services for which the agency
326 is responsible which would reduce costs or improve performance while adequately
327 protecting the public interest;

328 (11) A detailed summary of the agency's hiring and retention patterns for the previous
329 five years;

330 (12) An assessment of the extent to which the agency has corrected any deficiencies and
331 implemented recommendations contained in any state or federal audits or court decisions;

332 (13) A list of all advisory committees and boards, whether established in statute or by
333 the agency; their purposes, activities, composition, and expenses; and an assessment of

334 the extent to which their purposes have been achieved and the rationale for continuing or
 335 eliminating each advisory committee or board;

336 (14) A list of agency programs or functions that are performed without specific statutory
 337 authority; and

338 (15) Other information as requested by the committee or any study committee created
 339 under the committee's direction.

340 (c) Information and data reported by the agency shall be validated by the agency's chief
 341 executive before submission to the committee.

342 50-4-24.

343 (a) No later than six months following the committee's request for a report from an agency
 344 pursuant to Code Section 50-4-23, the committee shall:

345 (1) Review the information submitted by or concerning the agency;

346 (2) Consult with or hear testimony from any individual, agency, private company, or
 347 other expert as needed;

348 (3) If the committee deems necessary, hold public hearings to consider this information
 349 as well as testimony; and

350 (4) Present a report of review on an agency reviewed by the committee. In the report of
 351 review, the committee shall include its specific findings and recommendations regarding
 352 each agency reviewed and indicate whether a public need exists for the continuation of
 353 an agency or for the functions of the agency.

354 By majority vote, the committee may extend the time provided for review of an agency if
 355 the committee determines that additional time for review is needed to adequately evaluate
 356 an agency.

357 (b) The committee shall consider the following criteria in determining whether a public
 358 need exists for the continuation of a state agency or agency function:

359 (1) The efficiency with which the agency operates;

360 (2) The statutory objectives of the agency and the problem or need that the agency is
 361 intended to address, the extent to which the objectives have been achieved, and any
 362 activities of the agency in addition to those granted by statute and the authority for these
 363 activities;

364 (3) An assessment of less restrictive or alternative methods of providing any regulatory
 365 function for which the agency is responsible while adequately protecting the public;

366 (4) The extent to which an advisory committee or board is needed or used;

367 (5) The extent to which the jurisdiction of the agency and the programs administered by
 368 the agency overlap or duplicate those of other agencies and the extent to which the

369 programs administered by the agency can be consolidated with the programs of other
 370 agencies;

371 (6) Whether the agency has recommended to the legislature statutory changes calculated
 372 to be of benefit to the public;

373 (7) The promptness and effectiveness with which the agency responds to the public's
 374 complaints and the extent to which the agency has encouraged participation by the public
 375 in making its rules and decisions;

376 (8) The extent to which the agency has satisfied requirements of state law, safeguarded
 377 public health, safety, and welfare, and utilized state resources;

378 (9) The extent to which the agency accurately reports performance measures used to
 379 justify state spending on each of its activities, services, and programs;

380 (10) The effect of probable federal intervention or loss of federal funds if the agency or
 381 an agency function is abolished; and

382 (11) The extent to which changes are necessary in the enabling statutes of the agency so
 383 that the agency can adequately comply with the criteria of this article.

384 (c) In its report of review, the committee may make a finding that the agency should be
 385 automatically abolished as provided in Code Section 50-4-22, in which case the provisions
 386 of that Code section shall apply.

387 (d) In the absence of a finding that the agency should be automatically abolished, the
 388 committee may make recommendations on the abolition, continuation, or reorganization
 389 of such agency and on the need for the continuation of the functions of such agency. The
 390 report of review may also make recommendations on the consolidation, transfer, or
 391 reorganization of an agency's programs when those programs are duplicated by another
 392 agency. It shall be the responsibility of the committee to prepare drafts of legislation
 393 necessary to carry out the committee's recommendations under this subsection.

394 50-4-25.

395 This article shall not apply to any commodity commission provided for by Chapter 8 of
 396 Title 2, the Georgia Seed Development Commission provided for by Chapter 4 of Title 2,
 397 or any cotton growers' organization certified for purposes of Article 5 of Chapter 7 of
 398 Title 2."

399 **SECTION 3.**

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