

House Bill 790

By: Representatives Efration of the 104th, Rogers of the 10th, Rhodes of the 120th, Coomer of the 14th, Willard of the 51st, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 13 of Title 50 of the Official Code of Georgia Annotated,
2 relating to the Office of State Administrative Hearings, so as to implement recommendations
3 of the Court Reform Council to improve efficiencies and achieve best practices for the
4 administration of justice; to provide administrative law judges with authority to issue final
5 decisions; to provide for exceptions; to require agencies to forward a request for a hearing
6 to the Office of State Administrative Hearings; to provide administrative law judges with the
7 power to enforce subpoenas and sanction parties; to provide for related matters; to provide
8 for an effective date; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

11 Article 2 of Chapter 13 of Title 50 of the Official Code of Georgia Annotated, relating to the
12 Office of State Administrative Hearings, is amended by revising Code Section 50-13-41,
13 relating to hearing procedures, powers of administrative law judge, issuance of decision, and
14 review, as follows:

15 "50-13-41.

16 (a)(1) Whenever a state agency authorized by law to determine contested cases initiates
17 or receives a request for a hearing in a contested case which is not presided over by the
18 agency head or board or body which is the ultimate decision maker, the hearing shall be
19 conducted by the Office of State Administrative Hearings, and such hearings shall be
20 conducted in accordance with the provisions of this chapter and the rules and regulations
21 promulgated under this article. Whenever an agency under this paragraph receives a
22 request for a hearing in a contested case, such agency shall forward such request for a
23 hearing to the Office of State Administrative Hearings within a reasonable period of time
24 not to exceed 30 days after receipt of such request, and if the agency fails to do so, the
25 party requesting the hearing may petition the Office of State Administrative Hearings for

26 an order permitting such party to file a request for a hearing directly with the Office of
 27 State Administrative Hearings.

28 (2) An administrative law judge shall have the power to do all things specified in
 29 paragraph (6) of subsection (a) of Code Section 50-13-13. An administrative law judge
 30 shall have the power to impose civil penalties pursuant to paragraph (3) of this subsection
 31 for failing to obey any lawful process or order of the administrative law judge or any rule
 32 or regulation promulgated under this article, for any indecorous or improper conduct
 33 committed in the presence of the administrative law judge, or for submitting pleadings
 34 or papers for an improper purpose or containing frivolous arguments or arguments that
 35 have no evidentiary support. The superior court of the county in which the violation is
 36 committed shall, on application of the administrative law judge or any party, enforce by
 37 proper proceedings any lawful process or order for civil penalties of the administrative
 38 law judge.

39 (3) An administrative law judge may impose a civil penalty for any violation provided
 40 for in paragraph (2) of this subsection of not less than \$100.00 nor more than \$1,000.00
 41 per violation. Any violator who is assessed a civil penalty may also be assessed the cost
 42 of collection. The administrative law judge shall have the power to issue writs of fieri
 43 facias to collect such penalties and costs assessed, which shall be enforced in the same
 44 manner as a similar writ issued by a superior court. All penalties and costs assessed shall
 45 be tendered and made payable to the Office of State Administrative Hearings and shall
 46 be deposited in the general fund of the state treasury.

47 (b) An administrative law judge shall have all the powers of the ~~referring~~ ultimate decision
 48 maker in the agency with respect to a contested case. ~~Subpoenas issued by an~~
 49 ~~administrative law judge shall be enforced in the manner set forth in paragraph (7) of~~
 50 ~~subsection (a) of Code Section 50-13-13. Article 2 of Chapter 13 of Title 24 shall govern~~
 51 ~~the issuance of subpoenas issued under this article, except that the administrative law judge~~
 52 ~~shall carry out the functions of the court, and the clerk of the Office of State Administrative~~
 53 ~~Hearings shall carry out the functions of the clerk of the court. Subpoenas shall be~~
 54 ~~enforced pursuant to subsection (a) of this Code Section. Nothing in this article shall~~
 55 ~~affect, alter, or change the ability of the parties to reach informal disposition of a contested~~
 56 ~~case in accordance with paragraph (4) of subsection (a) of Code Section 50-13-13.~~

57 (c) Within 30 days after the close of the record, an administrative law judge shall issue a
 58 decision to all parties in the case except when it is determined that the complexity of the
 59 issues and the length of the record require an extension of this period and an order is issued
 60 by an administrative law judge so providing. Every decision of an administrative law judge
 61 shall contain findings of fact, conclusions of law, and a ~~recommended~~ disposition of the
 62 case. Except as provided in subsection (d) of this Code section, every decision of an

63 administrative law judge shall be a final decision as set forth in subsection (b) of Code
 64 Section 50-13-17. Code Section 50-13-20.1 shall govern judicial review of every final
 65 decision of an administrative law judge, except that any aggrieved party, including the
 66 agency, may seek judicial review.

67 (d)(1) As used in this subsection, the term 'reviewing agency' shall mean the ultimate
 68 decision maker in a contested case that is a constitutional board or commission; an
 69 elected constitutional officer in the executive branch of this state; or a board, bureau,
 70 commission, or other agency of the executive branch of this state created for the purpose
 71 of licensing or otherwise regulating or controlling any profession, business, or trade if
 72 members thereof are appointed by the Governor.

73 (2) Except as otherwise provided in this article, in all contested cases referred by a
 74 reviewing agency, every decision of an administrative law judge shall be treated as an
 75 initial decision as set forth in subsection (a) of Code Section 50-13-17, including, but not
 76 limited to, the taking of additional testimony or remanding the case to the administrative
 77 law judge for such purpose. On review, the reviewing agency shall consider the whole
 78 record or such portions of it as may be cited by the parties. In reviewing initial decisions
 79 by the Office of State Administrative Hearings, the reviewing agency shall give due
 80 regard to the administrative law judge's opportunity to observe witnesses. If the reviewing
 81 agency rejects or modifies a proposed finding of fact or a proposed decision, it shall give
 82 reasons for doing so in writing in the form of findings of fact and conclusions of law.

83 ~~(e)(1)(3)~~ (3) A reviewing agency shall have a period of 30 days following the entry of the
 84 decision of the administrative law judge in which to reject or modify such decision. If a
 85 reviewing agency fails to reject or modify the decision of the administrative law judge
 86 within such 30 day period, then the decision of the administrative law judge shall stand
 87 affirmed by the reviewing agency by operation of law.

88 ~~(2)(4)~~ (4) A reviewing agency may prior to the expiration of the review period provided for
 89 in paragraph ~~(1)~~ (3) of this subsection extend such review period by order of the
 90 reviewing agency in any case wherein unusual and compelling circumstances render it
 91 impracticable for the reviewing agency to complete its review within such period. Any
 92 such order shall recite with particularity the circumstances which render it impracticable
 93 for the reviewing agency to complete its review within such review period. Any such
 94 extension by the reviewing agency shall be for a period of time not to exceed 30 days.
 95 Prior to the expiration of the extended review period, the review period may be further
 96 extended by further order of the reviewing agency for one additional period not to exceed
 97 30 days if unusual and compelling circumstances render it impracticable to complete the
 98 review within the extended review period. Such further order further extending the
 99 review period shall likewise recite with particularity the circumstances which render it

100 impracticable for the reviewing agency to complete its review within the review period
101 as previously extended. If a reviewing agency fails to reject or modify the decision of the
102 administrative law judge within the extended review period, then the decision of the
103 administrative law judge shall stand affirmed by the reviewing agency by operation of
104 law.

105 ~~(3)~~(5) An agency may provide by rule that proposed decisions in all or in specified
106 classes of cases before the Office of State Administrative Hearings will become final
107 without further agency action and without expiration of the 30 day review period
108 otherwise provided for in this subsection."

109 **SECTION 2.**

110 This Act shall become effective upon its approval by the Governor or upon its becoming law
111 without such approval.

112 **SECTION 3.**

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