

The Senate Committee on Judiciary offered the following substitute to SB 338:

A BILL TO BE ENTITLED  
AN ACT

To amend Article 1 of Chapter 13 of Title 50 of the Official Code of Georgia Annotated, relating to general provisions for administrative procedure, so as to modify requirements for agency rule making; to modify legislative objections to and staying of proposed agency rules; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

Article 1 of Chapter 13 of Title 50 of the Official Code of Georgia Annotated, relating to general provisions for administrative procedure, is amended by revising Code Section 50-13-4, relating to procedural requirements for adoption, amendment, or repeal of rules, emergency rules, limitation on action to contest rule, and legislative override, as follows:

"50-13-4.

(a) Prior to the adoption, which for the purposes of this Code section shall include the amendment; or repeal, of any rule, other than interpretive rules or general statements of policy, ~~the~~ each agency shall:

(1) File a notice of its intent to adopt a rule at least 30 days prior to the effective date of the proposed adoption. ~~Give at least 30 days' notice of its intended action.~~ The notice shall include ~~an~~:

(A) An exact copy of the proposed rule and a if amending or repealing a rule the existing rule;

(B) A synopsis of the proposed rule. ~~The synopsis shall be distributed with and in the same manner as the proposed rule. The synopsis shall contain~~ containing a statement of the purpose and the main features of the proposed rule, and, in the case of a proposed amendatory rule, ~~the synopsis also shall indicate the differences between the existing rule and the proposed rule. The notice shall also include the exact date on which;~~

26 (C) The date, time, and location for when the agency shall consider the adoption of the  
 27 rule ~~and shall include the time and place in order that interested persons may present~~  
 28 ~~their views thereon. The notice shall also contain a citation of the; and~~

29 (D) A citation and concise explanation of the statutory or constitutional authority  
 30 pursuant to which the rule is proposed for adoption ~~and, if the proposal is an~~  
 31 ~~amendment or repeal of an existing rule, the rule shall be clearly identified.~~

32 The notice shall be mailed to all persons who have requested in writing that they be  
 33 placed upon a mailing list which shall be maintained by the agency for advance notice  
 34 of its rule-making proceedings and who have tendered the actual cost of such mailing as  
 35 from time to time estimated by the agency;

36 (2)(A) Afford to all interested persons reasonable opportunity to submit data, views,  
 37 or arguments, orally or in writing. ~~In the case of substantive rules, opportunity for oral~~  
 38 ~~hearing must be granted if~~

39 (B) Provide for an oral hearing if such an oral hearing is requested by 25 persons who  
 40 will be directly affected by the proposed rule, ~~by~~ a governmental subdivision, or ~~by~~ an  
 41 association having not less than 25 members. ~~The agency shall consider~~

42 (C) Consider fully all written and oral submissions respecting the proposed rule. Upon  
 43 adoption of a rule, the agency, if requested to do so by an interested person either prior  
 44 to adoption or within 30 days thereafter, shall issue a concise statement of the principal  
 45 reasons for and against its adoption and incorporate therein its reason for overruling the  
 46 consideration urged against its adoption;

47 (3) Reduce ~~In the formulation and adoption of any rule which will have an economic~~  
 48 ~~impact on businesses in the state, reduce~~ the economic impact of the rule on small  
 49 businesses which are independently owned and operated, are not dominant in their field,  
 50 and employ 100 employees or less by implementing one or more of the following actions  
 51 when it is legal and feasible in meeting the stated objectives of the statutes which are the  
 52 basis of the proposed rule:

53 (A) Establish differing compliance or reporting requirements or timetables for small  
 54 businesses;

55 (B) Clarify, consolidate, or simplify the compliance and reporting requirements under  
 56 the rule for small businesses;

57 (C) Establish performance rather than design standards for small businesses; or

58 (D) Exempt small businesses from any or all requirements of the rules; and

59 (4) Choose ~~In the formulation and adoption of any rule, an agency shall choose~~ an  
 60 alternative that does not impose excessive regulatory costs on any regulated person or  
 61 entity which costs could be reduced by a less expensive alternative that fully  
 62 accomplishes the stated objectives of the statutes which are the basis of the proposed rule.

63 (b)(1) If any agency finds that an imminent peril to the public health, safety, or welfare,  
 64 including but not limited to, summary processes such as quarantines, contrabands,  
 65 seizures, and the like authorized by law without notice, requires adoption of a rule upon  
 66 fewer than 30 days' notice and states in writing its reasons for that finding, it may proceed  
 67 without prior notice or hearing or upon any abbreviated notice and hearing that it finds  
 68 practicable to adopt an emergency rule.

69 (2) Any such rule adopted relative to a public health emergency shall be submitted as  
 70 promptly as reasonably practicable to the House of Representatives and Senate  
 71 Committees on Judiciary. ~~The rule may~~

72 (3) Emergency rules shall not be effective for a period of not longer than 120 days but  
 73 the; provided, however, that:

74 (A) The adoption of an identical rule under paragraphs (1) and (2) of subsection (a) of  
 75 this Code section is not precluded; provided, however, that such a and

76 (B) An emergency rule adopted pursuant to discharge of responsibility under an  
 77 executive order declaring a state of emergency or disaster exists as a result of a public  
 78 health emergency, as defined in Code Section 38-3-3, shall be effective for the duration  
 79 of the emergency or disaster and for a period of not more than 120 days thereafter.

80 (c) ~~It is the intent of this Code section to establish basic minimum procedural requirements~~  
 81 ~~for the adoption, amendment, or repeal of administrative rules. Except for emergency rules~~  
 82 ~~which are provided for in subsection (b) of this Code section, the provisions of this Code~~  
 83 ~~section are applicable to the exercise of any rule-making authority conferred by any statute,~~  
 84 ~~but nothing in this Code section repeals or diminishes additional requirements imposed by~~  
 85 ~~law or diminishes or repeals any summary power granted by law to the state or any agency~~  
 86 ~~thereof.~~

87 (d) No rule adopted after April 3, 1978, shall be valid unless adopted in exact compliance  
 88 with subsections (a) and (e) of this Code section and in substantial compliance with the  
 89 remainder of this Code section. ~~A; provided, however, that a proceeding to contest any~~  
 90 ~~rule on the ground of noncompliance with the procedural requirements of this Code section~~  
 91 ~~must be commenced within two years from the effective date of the rule or the rule shall~~  
 92 ~~be deemed valid, for the purposes of this Code section, from its date of adoption.~~

93 (e)(1) ~~Each~~ The agency shall transmit a copy of the notice provided for in paragraph (1)  
 94 of subsection (a) of this Code section to the legislative counsel. ~~The notice shall be~~  
 95 ~~transmitted~~ at least 30 days prior to the date of the agency's intended action.

96 (2)(A) Within three days after receipt of the notice, if possible, the legislative counsel  
 97 shall furnish the presiding officers of each ~~house~~ branch of the General Assembly with  
 98 a copy of the notice, and the presiding officers shall assign the notice to the chairperson  
 99 of the appropriate standing committee in each ~~house~~ branch for review and any member

100 thereof who makes a standing written request. ~~If In the event~~ a presiding officer is  
 101 unavailable for the purpose of making the assignment within the time limitations, the  
 102 legislative counsel shall assign the notice to the chairperson of the appropriate standing  
 103 committee.

104 (B) The legislative counsel shall also transmit within the time limitations provided in  
 105 this subsection a notice of the assignment to the chairperson of the appropriate standing  
 106 committee. Each standing committee of the Senate and the House of Representatives  
 107 is granted all the rights provided for interested persons and governmental subdivisions  
 108 in paragraph (2) of subsection (a) of this Code section.

109 ~~(f)(1)(A) Any In the event a~~ standing committee to which a notice is assigned as  
 110 provided in subsection (e) of this Code section ~~files an objection may, by a majority~~  
 111 vote of the total number of members of such committee, object to a proposed rule prior  
 112 to its adoption and ~~the agency adopts the proposed rule over the objection, the rule may~~  
 113 ~~be considered by the branch of the General Assembly whose committee objected to its~~  
 114 ~~adoption by the introduction of a resolution for the purpose of overriding the rule at any~~  
 115 ~~time within the first 30 days of the next regular session of the General Assembly.~~  
 116 Members may vote in person or by telephone.

117 (B) It shall be the duty of any agency which adopts a proposed rule over such objection  
 118 so to notify the presiding officers of the Senate and the House of Representatives, the  
 119 chairpersons of the Senate and House committees to which the rule was referred, and  
 120 the legislative counsel within ten days after the adoption of the rule. ~~In the event~~

121 (C)(i) Such a rule adopted over objection may be considered by the branch of the  
 122 General Assembly whose committee objected to its adoption by the introduction, prior  
 123 to the adjournment of the next regular session, of a resolution for the purpose of  
 124 overriding the rule.

125 (ii) If the resolution for the purpose of overriding the rule is adopted by such branch  
 126 of the General Assembly, it shall be immediately transmitted to the other branch of  
 127 the General Assembly.

128 (iii) It shall be the duty of the presiding officer of the other branch of the General  
 129 Assembly to have such branch, within five days after the receipt of the resolution, to  
 130 consider the resolution for the purpose of overriding the rule. ~~In the event the~~

131 (iv) If such resolution is adopted by ~~two-thirds~~ a majority of the votes of each branch  
 132 of the General Assembly, the rule shall be void on the day after the adoption of the  
 133 resolution by the second branch of the General Assembly. ~~In the event the resolution~~  
 134 ~~is ratified by less than two-thirds of the votes of either branch, the resolution shall be~~  
 135 ~~submitted to the Governor for his or her approval or veto. In the event of his or her~~

136 ~~veto, the rule shall remain in effect. In the event of his or her approval, the rule shall~~  
 137 ~~be void on the day after the date of his or her approval.~~

138 (2)(A) ~~If~~ ~~In the event~~ each standing committee to which a notice is assigned as  
 139 provided in subsection (e) of this Code section ~~files an objection, by a majority vote of~~  
 140 the total number of members of such committee, objects to a proposed rule prior to its  
 141 adoption ~~by a two-thirds' vote of the members of the committee who were voting~~  
 142 ~~members on the tenth day of the current session, after having given public notice of the~~  
 143 ~~time, place, and purpose of such vote at least 48 hours in advance, as well as the~~  
 144 ~~opportunity and allowing~~ for members of the public ~~including and~~ the promulgating  
 145 agency; to have a reasonable time to comment on the proposed committee ~~action~~  
 146 objection at the hearing, the ~~effectiveness~~ adoption of such rule shall be stayed until the  
 147 thirtieth legislative day of the next regular legislative session. Members may vote in  
 148 person or by telephone. ~~at which time the rule may be considered by the~~

149 (B)(i) The General Assembly may, by the introduction of a resolution in either  
 150 branch of the General Assembly ~~for the purpose of overriding, override~~ the rule at any  
 151 time within the first 30 legislative days of the next regular session of the General  
 152 Assembly. ~~In the event the~~

153 (ii) If such a resolution is adopted by the branch of the General Assembly in which  
 154 it was introduced, it shall be immediately transmitted to the other branch of the  
 155 General Assembly. It and it shall be the duty of the presiding officer of the other  
 156 branch of the General Assembly to have such branch, within five days after the  
 157 receipt of the resolution, to consider the resolution for the purpose of overriding the  
 158 rule. In the event

159 (iii) If the resolution is adopted by two-thirds a majority of the votes of each branch  
 160 of the General Assembly, the rule shall be void on the day after the adoption of the  
 161 resolution by the second branch of the General Assembly. In the event the resolution  
 162 is ratified by less than two-thirds of the votes of either branch, the resolution shall be  
 163 submitted to the Governor for his or her approval or veto. In the event of his or her  
 164 veto, the rule shall remain in effect. In the event of his or her approval, the rule shall  
 165 be void on the day after the date of his or her approval.

166 (iv) If after the thirtieth legislative day of the legislative session of which the  
 167 challenged rule was to be considered the General Assembly has not considered an  
 168 override of the challenged rule pursuant to this subsection, the rule shall then  
 169 immediately take effect.

170 (g)(1) Subsection (f) of this Code section shall not apply to the Environmental Protection  
 171 Division of the Department of Natural Resources as to any rule for which, as part of the  
 172 notice required by paragraph (1) of subsection (a) of this Code section, the director of the

173 division certifies that such rule is required for compliance with federal statutes or  
 174 regulations or to exercise certain powers delegated by the federal government to the state  
 175 to implement federal statutes or regulations, but paragraph (2) of this subsection shall  
 176 apply to the Environmental Protection Division of the Department of Natural Resources  
 177 as to any rule so certified. As part of such certification, the director shall cite the specific  
 178 section or sections of federal statutes or regulations which the proposed rule is intended  
 179 to comply with or implement. General references to the name or title of a federal statute  
 180 or regulation shall not suffice for the purposes of this paragraph. Any proposed rule or  
 181 rules that are subject to this paragraph shall be noticed separately from any proposed rule  
 182 or rules that are not subject to this paragraph.

183 (2) ~~If in the event~~ the chairperson of any standing committee to which a proposed rule  
 184 certified by the director of the division pursuant to paragraph (1) of this subsection is  
 185 assigned notifies the director that the committee objects to the adoption of the rule or has  
 186 questions concerning the purpose, nature, or necessity of such rule, it shall be the duty of  
 187 the director to consult with the committee prior to the adoption of the rule.

188 (h) The provisions of subsections (e) and (f) of this Code section shall apply to any rule  
 189 of the Department of Public Health that is promulgated pursuant to Code Section 31-2A-11  
 190 or 31-45-10, except that the presiding officer of the Senate is directed to assign the notice  
 191 of such a rule to the chairperson of the Senate Science and Technology Committee and the  
 192 presiding officer of the House of Representatives is directed to assign the notice of such  
 193 a rule to the chairperson of the House Committee on Industry and Labor. As used in this  
 194 subsection, the term 'rule' shall have the same meaning as provided in paragraph (6) of  
 195 Code Section 50-13-2 and shall include interpretive rules and general statements of policy,  
 196 notwithstanding any provision of subsection (a) of this Code section to the contrary.

197 (i) This Code section shall not apply to any comprehensive state-wide water management  
 198 plan or revision thereof prepared by the Environmental Protection Division of the  
 199 Department of Natural Resources and proposed, adopted, amended, or repealed pursuant  
 200 to Article 8 of Chapter 5 of Title 12; provided, however, that this Code section shall apply  
 201 to any rules or regulations implementing such a plan."

202 **SECTION 2.**

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