

The House Committee on Judiciary offers the following substitute to SB 338:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 13 of Title 50 of the Official Code of Georgia Annotated,
2 relating to general provisions for administrative procedure, so as to modify requirements for
3 agency rule making; to modify procedures for legislative objections; to revise the effective
4 dates for rules; to revise procedures and requirements for filing with the Secretary of State;
5 to provide for related matters; to provide for applicability; to repeal conflicting laws; and for
6 other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

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

14 "50-13-4.

15 (a)(1) Prior to the adoption, which for the purposes of this Code section shall include the
16 amendment; or repeal, of any rule, other than interpretive rules or general statements of
17 policy, the each agency shall: publish on the agency's public website a notice of its intent
18 to adopt a rule at least 60 days prior to the date of the hearing in which such rule is to be
19 considered, provided that such hearing shall occur at least 30 days after the publishing
20 of the public notice required by this paragraph.

21 ~~(1)(2) Such Give at least 30 days' notice of its intended action. The notice shall include~~
22 ~~an:~~

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

25 ~~(B) A synopsis of the proposed rule. The synopsis shall be distributed with and in the~~
26 ~~same manner as the proposed rule. The synopsis shall contain containing a statement~~

27 of the purpose and the main features of the proposed rule, and, in the case of a proposed
 28 amendatory rule, ~~the synopsis also shall indicate the differences between the existing~~
 29 ~~rule and the proposed rule. The notice shall also include the exact date on which;~~

30 (C) The date, time, and location of the public hearing at which the agency shall
 31 consider the adoption of the rule ~~and shall include the time and place~~ in order that
 32 interested persons may present their views thereon. ~~The notice shall also contain a~~
 33 ~~citation of the; and~~

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

37 (3) The notice shall be mailed to all persons who have requested in writing that they be
 38 placed upon a mailing list which shall be maintained by the agency for advance notice
 39 of its rule-making proceedings and who have tendered the actual cost of such mailing as
 40 from time to time estimated by the agency;.

41 ~~(2)~~(4) The comment period shall:

42 (A) Afford to all interested persons reasonable opportunity to submit data, views, or
 43 arguments, orally or in writing, including, but not limited to, the public hearing as
 44 noticed in subparagraph (C) of paragraph (2) of this subsection; and. ~~In the case of~~
 45 ~~substantive rules, opportunity for oral hearing must be granted if requested by 25~~
 46 ~~persons who will be directly affected by the proposed rule, by a governmental~~
 47 ~~subdivision, or by an association having not less than 25 members. The agency shall~~
 48 ~~consider~~

49 (B) Consider fully all written and oral submissions respecting the proposed rule. Upon
 50 ~~adoption~~ approval of a rule for submission to the office of the Secretary of State, the
 51 agency, if requested to do so by an interested person either prior to ~~adoption~~ such
 52 approval or within 30 days thereafter, shall issue a concise statement of the principal
 53 reasons for and against its ~~adoption~~ approval and incorporate therein its reason for
 54 overruling the consideration urged against its ~~adoption;~~ approval.

55 ~~(3)~~(5) When making rules that have ~~In the formulation and adoption of any rule which~~
 56 ~~will have~~ an economic impact on businesses in the state, the agency shall:

57 (A) Reduce ~~reduce~~ the economic impact of the rule on small businesses which are
 58 independently owned and operated, are not dominant in their field, and employ 100
 59 employees or less by implementing one or more of the following actions when it is
 60 legal and feasible in meeting the stated objectives of the statutes which are the basis of
 61 the proposed rule:

62 ~~(A)~~(i) Establish differing compliance or reporting requirements or timetables for
 63 small businesses;

- 64 ~~(B)(ii)~~ Clarify, consolidate, or simplify the compliance and reporting requirements
 65 under the rule for small businesses;
- 66 ~~(C)(iii)~~ Establish performance rather than design standards for small businesses; or
 67 ~~(D)(iv)~~ Exempt small businesses from any or all requirements of the rules; and
- 68 ~~(4)(B) Choose~~ In the formulation and adoption of any rule, an agency shall choose an
 69 alternative that does not impose excessive regulatory costs on any regulated person or
 70 entity which costs could be reduced by a less expensive alternative that fully
 71 accomplishes the stated objectives of the statutes which are the basis of the proposed
 72 rule.
- 73 ~~(b) If any agency finds that an imminent peril to the public health, safety, or welfare,~~
 74 ~~including but not limited to, summary processes such as quarantines, contrabands, seizures,~~
 75 ~~and the like authorized by law without notice, requires adoption of a rule upon fewer than~~
 76 ~~30 days' notice and states in writing its reasons for that finding, it may proceed without~~
 77 ~~prior notice or hearing or upon any abbreviated notice and hearing that it finds practicable~~
 78 ~~to adopt an emergency rule. Any such rule adopted relative to a public health emergency~~
 79 ~~shall be submitted as promptly as reasonably practicable to the House of Representatives~~
 80 ~~and Senate Committees on Judiciary. The rule may be effective for a period of not longer~~
 81 ~~than 120 days but the adoption of an identical rule under paragraphs (1) and (2) of~~
 82 ~~subsection (a) of this Code section is not precluded; provided, however, that such a rule~~
 83 ~~adopted pursuant to discharge of responsibility under an executive order declaring a state~~
 84 ~~of emergency or disaster exists as a result of a public health emergency, as defined in Code~~
 85 ~~Section 38-3-3, shall be effective for the duration of the emergency or disaster and for a~~
 86 ~~period of not more than 120 days thereafter. Where an agency complies with subsection~~
 87 ~~(a) of this Code section, such rule shall be deemed adopted upon the date of filing with the~~
 88 ~~office of the Secretary of State for purposes of Code Section 50-13-6, and such filing shall~~
 89 ~~include the public notice that noticed such rule. The agency shall also concurrently submit~~
 90 ~~such rule to the legislative counsel and such submission shall include the public notice that~~
 91 ~~noticed such rule.~~
- 92 ~~(c)(1) Except as provided for in subsection (d) or (f) of this Code section, rules adopted:~~
 93 ~~(A) On or before December 1 shall become effective as of March 15 of the following~~
 94 ~~calendar year; and~~
 95 ~~(B) After December 1 shall become effective as of March 15 in the calendar year~~
 96 ~~following the next calendar year. It is the intent of this Code section to establish basic~~
 97 ~~minimum procedural requirements for the adoption, amendment, or repeal of~~
 98 ~~administrative rules. Except for emergency rules which are provided for in subsection~~
 99 ~~(b) of this Code section, the provisions of this Code section are applicable to the~~
 100 ~~exercise of any rule-making authority conferred by any statute, but nothing in this Code~~

101 ~~section repeals or diminishes additional requirements imposed by law or diminishes or~~
 102 ~~repeals any summary power granted by law to the state or any agency thereof.~~

103 (2)(A) In accordance with rules established by the General Assembly and with
 104 subsection (h) of this Code section, the legislative counsel shall distribute rules
 105 submitted pursuant to this subsection to the presiding officers of each branch of the
 106 General Assembly and the presiding officers or legislative counsel shall distribute the
 107 rules to the chairperson of the appropriate standing committee in each branch for review
 108 and to any member thereof who makes a standing written request.

109 (B) Any standing committee to which a rule is distributed may, by a majority vote of
 110 the total number of members of such committee, object to a rule. Members may vote
 111 in person or by telephone if permitted by rules of the Senate or House of
 112 Representatives. Such objection to a rule may form a basis for, but shall not be
 113 required for, the introduction of a joint resolution disapproving of such rule as provided
 114 for in subsection (d) of this Code section.

115 ~~(d)(1) No rule adopted after April 3, 1978, shall be valid unless adopted in exact~~
 116 ~~compliance with subsections (a) and (e) of this Code section and in substantial compliance~~
 117 ~~with the remainder of this Code section. A proceeding to contest any rule on the ground~~
 118 ~~of noncompliance with the procedural requirements of this Code section must be~~
 119 ~~commenced within two years from the effective date of the rule. Any rule adopted~~
 120 ~~pursuant to subsection (b) or (f) of this Code section may be subject to a joint resolution:~~

121 (A) To provide an earlier effective date for the rule; or

122 (B) To disapprove the rule.

123 (2) A joint resolution for the purposes provided in paragraph (1) of this subsection may
 124 be introduced in either branch of the General Assembly.

125 (3) A joint resolution adopted by a majority vote of a branch of the General Assembly
 126 shall be immediately transmitted to the other branch of the General Assembly for
 127 consideration by that branch. It shall be the duty of the presiding officer of the other
 128 branch of the General Assembly to have such branch, within five legislative days after
 129 receiving the joint resolution but before the fortieth legislative day, consider the joint
 130 resolution for adoption by that branch by majority vote.

131 (4) A joint resolution adopted by both branches of the General Assembly shall be
 132 submitted to the Governor for his or her approval or veto.

133 (A) In the event of the Governor's veto, the rule shall be effective as otherwise
 134 provided for under subsection (c) of this Code section, unless the General Assembly
 135 overrides such veto.

136 (B) In the event of the Governor's approval of the joint resolution or if the General
 137 Assembly overrides the Governor's veto, then such joint resolution:

138 (i) Passed pursuant to subparagraph (A) of paragraph (1) of this subsection shall be
 139 effective on the day after the date of the Governor's approval or the General Assembly
 140 overriding such veto, whichever is later, not to exceed the effective date provided in
 141 paragraph (1) of subsection (c); or

142 (ii) Passed pursuant to subparagraph (B) of paragraph (1) of this subsection, voiding
 143 such rule, shall be effective on the day after the date of the Governor's approval or the
 144 General Assembly overriding such veto.

145 (5) Nothing in this subsection shall preclude the General Assembly from enacting any
 146 other law that may affect the effective date or applicability of any rule.

147 ~~(e) The agency shall transmit the notice provided for in paragraph (1) of subsection (a) of~~
 148 ~~this Code section to the legislative counsel. The notice shall be transmitted at least 30 days~~
 149 ~~prior to the date of the agency's intended action. Within three days after receipt of the~~
 150 ~~notice, if possible, the legislative counsel shall furnish the presiding officers of each house~~
 151 ~~with a copy of the notice, and the presiding officers shall assign the notice to the~~
 152 ~~chairperson of the appropriate standing committee in each house for review and any~~
 153 ~~member thereof who makes a standing written request. In the event a presiding officer is~~
 154 ~~unavailable for the purpose of making the assignment within the time limitations, the~~
 155 ~~legislative counsel shall assign the notice to the chairperson of the appropriate standing~~
 156 ~~committee. The legislative counsel shall also transmit within the time limitations provided~~
 157 ~~in this subsection a notice of the assignment to the chairperson of the appropriate standing~~
 158 ~~committee. Each standing committee of the Senate and the House of Representatives is~~
 159 ~~granted all the rights provided for interested persons and governmental subdivisions in~~
 160 ~~paragraph (2) of subsection (a) of this Code section. A proceeding to contest any rule on~~
 161 ~~the ground of noncompliance with the procedural requirements of this Code section must~~
 162 ~~be commenced within two years from the effective date of the rule.~~

163 ~~(f)(1) In the event a standing committee to which a notice is assigned as provided in~~
 164 ~~subsection (e) of this Code section files an objection to a proposed rule prior to its~~
 165 ~~adoption and the agency adopts the proposed rule over the objection, the rule may be~~
 166 ~~considered by the branch of the General Assembly whose committee objected to its~~
 167 ~~adoption by the introduction of a resolution for the purpose of overriding the rule at any~~
 168 ~~time within the first 30 days of the next regular session of the General Assembly. It shall~~
 169 ~~be the duty of any agency which adopts a proposed rule over such objection so to notify~~
 170 ~~the presiding officers of the Senate and the House of Representatives, the chairpersons~~
 171 ~~of the Senate and House committees to which the rule was referred, and the legislative~~
 172 ~~counsel within ten days after the adoption of the rule. In the event the resolution is~~
 173 ~~adopted by such branch of the General Assembly, it shall be immediately transmitted to~~
 174 ~~the other branch of the General Assembly. It shall be the duty of the presiding officer of~~

175 ~~the other branch of the General Assembly to have such branch, within five days after the~~
 176 ~~receipt of the resolution, to consider the resolution for the purpose of overriding the rule.~~
 177 ~~In the event the resolution is adopted by two-thirds of the votes of each branch of the~~
 178 ~~General Assembly, the rule shall be void on the day after the adoption of the resolution~~
 179 ~~by the second branch of the General Assembly. In the event the resolution is ratified by~~
 180 ~~less than two-thirds of the votes of either branch, the resolution shall be submitted to the~~
 181 ~~Governor for his or her approval or veto. In the event of his or her veto, the rule shall~~
 182 ~~remain in effect. In the event of his or her approval, the rule shall be void on the day after~~
 183 ~~the date of his or her approval. Except for emergency rules which are provided for under~~
 184 ~~this subsection and except as provided for under subsections (h) and (i) of this Code~~
 185 ~~section, the provisions of this Code section are applicable to the exercise of any~~
 186 ~~rule-making authority conferred by any statute, but nothing in this Code section repeals~~
 187 ~~or diminishes additional requirements imposed by law or diminishes or repeals any~~
 188 ~~summary power granted by law to the state or any agency thereof.~~

189 (2) ~~In the event each standing committee to which a notice is assigned as provided in~~
 190 ~~subsection (e) of this Code section files an objection to a proposed rule prior to its~~
 191 ~~adoption by a two-thirds' vote of the members of the committee who were voting~~
 192 ~~members on the tenth day of the current session, after having given public notice of the~~
 193 ~~time, place, and purpose of such vote at least 48 hours in advance, as well as the~~
 194 ~~opportunity for members of the public including the promulgating agency, to have a~~
 195 ~~reasonable time to comment on the proposed committee action at the hearing, the~~
 196 ~~effectiveness of such rule shall be stayed until the next legislative session at which time~~
 197 ~~the rule may be considered by the General Assembly by the introduction of a resolution~~
 198 ~~in either branch of the General Assembly for the purpose of overriding the rule at any~~
 199 ~~time within the first 30 days of the next regular session of the General Assembly. In the~~
 200 ~~event the resolution is adopted by the branch of the General Assembly in which it was~~
 201 ~~introduced, it shall be immediately transmitted to the other branch of the General~~
 202 ~~Assembly. It shall be the duty of the presiding officer of the other branch of the General~~
 203 ~~Assembly to have such branch, within five days after the receipt of the resolution, to~~
 204 ~~consider the resolution for the purpose of overriding the rule. In the event the resolution~~
 205 ~~is adopted by two-thirds of the votes of each branch of the General Assembly, the rule~~
 206 ~~shall be void on the day after the adoption of the resolution by the second branch of the~~
 207 ~~General Assembly. In the event the resolution is ratified by less than two-thirds of the~~
 208 ~~votes of either branch, the resolution shall be submitted to the Governor for his or her~~
 209 ~~approval or veto. In the event of his or her veto, the rule shall remain in effect. In the~~
 210 ~~event of his or her approval, the rule shall be void on the day after the date of his or her~~
 211 ~~approval. If after the thirtieth legislative day of the legislative session of which the~~

212 ~~challenged rule was to be considered the General Assembly has not considered an~~
 213 ~~override of the challenged rule pursuant to this subsection, the rule shall then immediately~~
 214 ~~take effect. If any agency finds that an imminent peril to the public health, safety, or~~
 215 ~~welfare, including but not limited to, summary processes such as quarantines,~~
 216 ~~contrabands, seizures, and the like authorized by law without notice, requires adoption~~
 217 ~~of a rule without compliance with subsection (a) of this Code section, such agency may~~
 218 ~~submit such rule to the Governor without compliance with subsection (a) and a written~~
 219 ~~statement explaining the imminent peril to the public health, safety, or welfare that~~
 220 ~~compliance with subsection (a) would cause.~~

221 (3) Any such rules that meet the requirements of paragraph (2) of this subsection shall
 222 be deemed adopted upon submission of such rules to the Governor. Such agency shall
 223 also file such rules in the office of the Secretary of State for purposes of Code Section
 224 50-13-6 and submit such rules to the legislative counsel for distribution in accordance
 225 with rules established by the General Assembly, provided that, if any such rules are
 226 relative to a public health emergency, the legislative counsel shall distribute such rules
 227 to the House of Representatives and Senate Committees on Judiciary. The submissions
 228 and filings under this paragraph shall include the written statement provided for in
 229 paragraph (2) of this subsection explaining such imminent peril to the public health,
 230 safety, or welfare.

231 (4) Emergency rules shall be effective upon approval by signature of the Governor in an
 232 electronic or other writing and then thereafter shall be effective for a period of not longer
 233 than 120 days; provided, however, that:

234 (A) Such rule shall be subject to subsection (d) of this Code section;

235 (B) The adoption of an identical rule under subsections (a) through (d) of this Code
 236 section is not precluded; and

237 (C) An emergency rule adopted pursuant to discharge of responsibility under an
 238 executive order declaring a state of emergency or disaster as a result of a public health
 239 emergency, as defined in Code Section 38-3-3, shall be effective for the duration of the
 240 emergency or disaster and not more than 120 days thereafter.

241 (g)(1) Subsections (a) through ~~Subsection~~ (f) of this Code section shall not apply to the
 242 Environmental Protection Division of the Department of Natural Resources as to any rule
 243 for which, as part of the notice required by subsection (a) of this Code section, the
 244 director of the division certifies that such rule is required for compliance with federal
 245 statutes or regulations or to exercise certain powers delegated by the federal government
 246 to the state to implement federal statutes or regulations, but paragraph (2) of this
 247 subsection shall apply to the Environmental Protection Division of the Department of
 248 Natural Resources as to any rule so certified. As part of such certification, the director

249 shall cite the specific section or sections of federal statutes or regulations which the
 250 proposed rule is intended to comply with or implement. General references to the name
 251 or title of a federal statute or regulation shall not suffice for the purposes of this
 252 paragraph. Any proposed rule or rules that are subject to this paragraph shall be noticed
 253 separately from any proposed rule or rules that are not subject to this paragraph.

254 (2) In the event the chairperson of any standing committee to which a proposed rule
 255 certified by the director of the division pursuant to paragraph (1) of this subsection is
 256 assigned notifies the director that the committee objects to the adoption of the rule or has
 257 questions concerning the purpose, nature, or necessity of such rule, it shall be the duty of
 258 the director to consult with the committee prior to the adoption of the rule.

259 (h) The provisions of subsections ~~(e)~~ (a) and (f) of this Code section shall apply to any rule
 260 of the Department of Public Health that is promulgated pursuant to Code Section 31-2A-11
 261 or 31-45-10, except that, in facilitation of subsection (c) of this Code section, the presiding
 262 officer of the Senate or legislative counsel is directed to assign ~~the notice of such a~~ or
 263 distribute the rule to the chairperson of the Senate Science and Technology Committee and
 264 the presiding officer of the House of Representatives or legislative counsel is directed to
 265 assign ~~the notice of such a~~ or distribute the rule to the chairperson of the House Committee
 266 on Industry and Labor. As used in this subsection, the term 'rule' shall have the same
 267 meaning as provided in paragraph (6) of Code Section 50-13-2 and shall include
 268 interpretive rules and general statements of policy, notwithstanding any provision of
 269 subsection (a) of this Code section to the contrary.

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

275 **SECTION 2.**

276 Said article is further amended by revising Code Section 50-13-6, relating to rules not
 277 effective until 20 days after filed with Secretary of State, maintenance of record of the rules,
 278 exceptions, and rules governing manner and form of filing, as follows:

279 "50-13-6.

280 (a) ~~Each rule adopted after July 1, 1965, shall not become effective until the expiration of~~
 281 ~~20 days after the rule is filed in the office of the Secretary of State. Each rule so filed shall~~
 282 ~~contain a citation of the authority pursuant to which it was adopted and, if an amendment,~~
 283 ~~shall clearly identify the original rule.~~

284 ~~(b)~~ The Secretary of State shall endorse on each rule ~~thus~~ filed pursuant to Code Section
 285 50-13-4 the time and date of filing and shall maintain a record of the rules for public
 286 inspection.

287 ~~(c)~~ ~~The 20 day filing period is subject to the following exceptions:~~

288 ~~(1) Where a statute or the terms of the rule require a date which is later than the 20 day~~
 289 ~~period, then the later date is the effective date; and~~

290 ~~(2) Any emergency rule adopted pursuant to subsection (b) of Code Section 50-13-4 may~~
 291 ~~become effective immediately upon adoption or within a period of less than 20 days. The~~
 292 ~~emergency rule, with a copy of the finding as required by subsection (b) of Code Section~~
 293 ~~50-13-4, shall be filed with the office of the Secretary of State within four working days~~
 294 ~~after its adoption.~~

295 ~~(d)~~(b) The Secretary of State shall prescribe rules governing the manner and form in which
 296 ~~regulations~~ rules shall be prepared for filing in the office of the Secretary of State. The
 297 ~~Secretary may refuse to accept for filing any rule that does not conform to such~~
 298 ~~requirements."~~

299 **SECTION 3.**

300 This Act shall be applicable to any rule promulgated by any agency of the executive branch
 301 on or after July 1, 2018.

302 **SECTION 4.**

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