

The Senate Committee on Judiciary offered the following substitute to HB 790:

A BILL TO BE ENTITLED
AN ACT

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

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

10 Chapter 13 of Title 50 of the Official Code of Georgia Annotated, relating to administrative
11 procedure, is amended by revising paragraph (1) of Code Section 50-13-2, relating to
12 definitions, as follows:
13

14 "(1) 'Agency' means each state board, bureau, commission, department, activity, or officer
15 authorized by law expressly to make rules and regulations or to determine contested cases,
16 except the General Assembly; the judiciary; the Governor; the State Board of Pardons and
17 Paroles; the State Financing and Investment Commission; the State Properties
18 Commission; the Board of Bar Examiners; the Board of Corrections and its penal
19 institutions; the State Board of Workers' Compensation; all public authorities except as
20 otherwise expressly provided by law; the State Personnel Board; the Department of
21 Administrative Services or commissioner of administrative services; the Board of Regents
22 of the University System of Georgia; the Technical College System of Georgia; the
23 Nonpublic Postsecondary Education Commission; the Department of Labor when
24 conducting hearings related to unemployment benefits or overpayments of unemployment
25 benefits; the Department of Revenue when conducting hearings relating to alcoholic
26 beverages, tobacco, or bona fide coin operated amusement machines or any violations

27 relating thereto; the Georgia Tobacco Community Development Board; the Georgia Higher
 28 Education Savings Plan; the Georgia ABLE Program Corporation; any school, college,
 29 hospital, or other such educational, eleemosynary, or charitable institution; or any agency
 30 when its action is concerned with the military or naval affairs of this state. ~~The~~ Such term
 31 'agency' shall include the State Board of Education and Department of Education, subject
 32 to the following qualifications:

33 (A) Subject to the limitations of subparagraph (B) of this paragraph, all otherwise valid
 34 rules adopted by the State Board of Education and Department of Education prior to
 35 January 1, 1990, are ratified and validated and shall be effective until January 1, 1991,
 36 whether or not such rules were adopted in compliance with the requirements of this
 37 chapter; and

38 (B) Effective January 1, 1991, any rule of the State Board of Education or Department
 39 of Education which has not been proposed, submitted, and adopted in accordance with
 40 the requirements of this chapter shall be void and of no effect."

41 SECTION 2.

42 Said chapter is further amended by revising Code Section 50-13-20.1, relating to judicial
 43 review of final decision in contested case issued by an administrative law judge, as follows:

44 "50-13-20.1.

45 A petition for judicial review of a final decision in a contested case issued by an
 46 administrative law judge pursuant to subsection ~~(e)~~ (c) of Code Section 50-13-41 shall be
 47 subject to judicial review in the same manner as provided in Code Section 50-13-19 except
 48 that the procedure and standard of judicial review specifically provided for an agency shall
 49 be applied and shall not be affected, altered, or changed by Article 2 of this chapter."

50 SECTION 3.

51 Said chapter is further amended by revising Code Section 50-13-41, relating to hearing
 52 procedures, powers of administrative law judge, issuance of decision, and review, as follows:

53 "50-13-41.

54 (a)(1) Whenever a state agency authorized by law to determine contested cases initiates
 55 or receives a request for a hearing in a contested case which is not presided over by the
 56 agency head or board or body which is the ultimate decision maker, the hearing shall be
 57 conducted by the Office of State Administrative Hearings, and such hearings shall be
 58 conducted in accordance with the provisions of this chapter and the rules and regulations
 59 promulgated under this article. Whenever an agency under this paragraph receives a
 60 request for a hearing in a contested case, such agency shall forward such request for a
 61 hearing to the Office of State Administrative Hearings within a reasonable period of time

62 not to exceed 30 days after receipt of such request, and if the agency fails to do so, the
 63 party requesting the hearing may petition the Office of State Administrative Hearings for
 64 an order permitting such party to file a request for a hearing directly with the Office of
 65 State Administrative Hearings.

66 (2) An administrative law judge shall have the power to do all things specified in
 67 paragraph (6) of subsection (a) of Code Section 50-13-13. An administrative law judge
 68 shall have the power to impose civil penalties pursuant to paragraph (3) of this subsection
 69 for failing to obey any lawful process or order of the administrative law judge or any rule
 70 or regulation promulgated under this article, for any indecorous or improper conduct
 71 committed in the presence of the administrative law judge, or for submitting pleadings
 72 or papers for an improper purpose or containing frivolous arguments or arguments that
 73 have no evidentiary support. The superior court of the county in which the violation is
 74 committed shall, on application of the administrative law judge or any party, enforce by
 75 proper proceedings any lawful process or order for civil penalties of the administrative
 76 law judge.

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

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

95 (c) Within 30 days after the close of the record, an administrative law judge shall issue a
 96 decision to all parties in the case except when it is determined that the complexity of the
 97 issues and the length of the record require an extension of this period and an order is issued
 98 by an administrative law judge so providing. Every decision of an administrative law judge

99 shall contain findings of fact, conclusions of law, and a ~~recommended~~ disposition of the
 100 case. Except as provided in subsection (d) of this Code section, every decision of an
 101 administrative law judge shall be a final decision as set forth in subsection (b) of Code
 102 Section 50-13-17. Code Section 50-13-20.1 shall govern judicial review of every final
 103 decision of an administrative law judge, except that any aggrieved party, including the
 104 agency, may seek judicial review.

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

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

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

126 ~~(2)~~(4) A reviewing agency may prior to the expiration of the review period provided for
 127 in paragraph ~~(1)~~ (3) of this subsection extend such review period by order of the
 128 reviewing agency in any case wherein unusual and compelling circumstances render it
 129 impracticable for the reviewing agency to complete its review within such period. Any
 130 such order shall recite with particularity the circumstances which render it impracticable
 131 for the reviewing agency to complete its review within such review period. Any such
 132 extension by the reviewing agency shall ~~be for a period of time~~ not to exceed 30 days.
 133 Prior to the expiration of the extended review period, the review period may be further
 134 extended by further order of the reviewing agency for one additional period not to exceed
 135 30 days if unusual and compelling circumstances render it impracticable to complete the

136 review within the extended review period. Such further order further extending the
 137 review period shall likewise recite with particularity the circumstances which render it
 138 impracticable for the reviewing agency to complete its review within the review period
 139 as previously extended. If a reviewing agency fails to reject or modify the decision of the
 140 administrative law judge within the extended review period, then the decision of the
 141 administrative law judge shall stand affirmed by the reviewing agency by operation of
 142 law.

143 ~~(3)~~(5) An agency may provide by rule that proposed decisions in all or in specified
 144 classes of cases before the Office of State Administrative Hearings will become final
 145 without further agency action and without expiration of the 30 day review period
 146 otherwise provided for in this subsection."

147 **SECTION 4.**

148 Said chapter is further amended by revising subsection (b) of Code Section 50-13-42, relating
 149 to applicability of article, as follows:

150 "(b) This article shall apply to hearings conducted pursuant to Code Sections 45-20-8 and
 151 45-20-9. The State Personnel Board may provide by rule that proposed decisions in all or
 152 in specified classes of cases before the Office of State Administrative Hearings will
 153 become final without further action by the board and without expiration of the 30 day
 154 review period otherwise provided for in subsection ~~(e)~~ (d) of Code Section 50-13-41."

155 **SECTION 5.**

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

158 **SECTION 6.**

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