

Senate Bill 338

By: Senators Ligon, Jr. of the 3rd, Cowser of the 46th, McKoon of the 29th, Millar of the 40th, Gooch of the 51st and others

AS PASSED

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 legislative objections to and staying of proposed agency rules;
4 to provide for related matters; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

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

12 "50-13-4.

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

16 (1) File a notice of its intent to adopt a rule at least 60 days prior to the effective date of
17 the proposed adoption. ~~Give at least 30 days' notice of its intended action.~~ The notice
18 shall include ~~an~~:

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

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

26 (C) The date, time, and location of the public meeting at which the agency shall
27 consider the adoption of the rule ~~and shall include the time and place~~ in order that

28 interested persons may present their views thereon. ~~The notice shall also contain a~~
 29 ~~citation of the~~ Such meeting shall occur at least 30 days after the filing of the notice
 30 required by this paragraph and at least 30 days prior to the effective date of the
 31 proposed rule; and

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

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

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

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

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

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

56 (A) Establish differing compliance or reporting requirements or timetables for small
 57 businesses;

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

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

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

62 (4) Choose ~~In the formulation and adoption of any rule, an agency shall choose~~ an
 63 alternative that does not impose excessive regulatory costs on any regulated person or

64 entity which costs could be reduced by a less expensive alternative that fully
 65 accomplishes the stated objectives of the statutes which are the basis of the proposed rule.

66 (b)(1) If any agency finds that an imminent peril to the public health, safety, or welfare,
 67 including but not limited to, summary processes such as quarantines, contrabands,
 68 seizures, and the like authorized by law without notice, requires adoption of a rule upon
 69 fewer than 60 days' notice and states in writing its reasons for that finding, it may proceed
 70 without prior notice or hearing or upon any abbreviated notice and hearing that it finds
 71 practicable to adopt an emergency rule.

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

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

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

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

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

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

97 (e)(1) ~~Each~~ The agency shall transmit a copy of the notice provided for in paragraph (1)
 98 of subsection (a) of this Code section to the legislative counsel. ~~The notice shall be~~
 99 ~~transmitted~~ at least ~~30~~ 60 days prior to the effective date of the agency's ~~intended action~~
 100 proposed rule.

101 (2)(A) Within three days after receipt of the notice, if possible, the legislative counsel
 102 shall furnish the presiding officers of each ~~house~~ branch of the General Assembly with
 103 a copy of the notice, and the presiding officers shall assign the notice to the chairperson
 104 of the appropriate standing committee in each ~~house~~ branch for review and any member
 105 thereof who makes a standing written request. ~~If In the event~~ a presiding officer is
 106 unavailable for the purpose of making the assignment within the time limitations, the
 107 legislative counsel shall assign the notice to the chairperson of the appropriate standing
 108 committee.

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

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

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

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

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

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

137 ~~(iv) If such~~ resolution is adopted by ~~two-thirds~~ a majority of the votes of each branch
 138 of the General Assembly, the rule shall be void on the day after the adoption of the
 139 resolution by the second branch of the General Assembly. ~~In the event the resolution~~
 140 ~~is ratified by less than two-thirds of the votes of either branch, the resolution shall be~~
 141 ~~submitted to the Governor for his or her approval or veto. In the event of his or her~~
 142 ~~veto, the rule shall remain in effect. In the event of his or her approval, the rule shall~~
 143 ~~be void on the day after the date of his or her approval.~~

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

156 (B)(i) The General Assembly may, by the introduction of a resolution in either
 157 branch of the General Assembly ~~for the purpose of overriding, override~~ the rule at any
 158 time within the first ~~30~~ 40 legislative days of the next regular session of the General
 159 Assembly. ~~In the event the~~

160 (ii) If such a resolution is adopted by the branch of the General Assembly in which
 161 it was introduced, it shall be immediately transmitted to the other branch of the
 162 General Assembly. ~~It and it~~ shall be the duty of the presiding officer of the other
 163 branch of the General Assembly to have such branch, within five days after ~~the~~
 164 receipt of the resolution, to consider the resolution for the purpose of overriding the
 165 rule. ~~In the event~~

166 (iii) If the resolution is adopted by ~~two-thirds~~ a majority of the votes of each branch
 167 of the General Assembly, the rule shall be void on the day after the adoption of the
 168 resolution by the second branch of the General Assembly. ~~In the event the resolution~~
 169 ~~is ratified by less than two-thirds of the votes of either branch, the resolution shall be~~
 170 ~~submitted to the Governor for his or her approval or veto. In the event of his or her~~
 171 ~~veto, the rule shall remain in effect. In the event of his or her approval, the rule shall~~
 172 ~~be void on the day after the date of his or her approval.~~

173 ~~(iv) If after the thirtieth~~ Upon adjournment of the fortieth legislative day of the
 174 legislative session ~~of in~~ which the challenged rule was to be considered, if the General
 175 Assembly has not considered an override of the challenged rule pursuant to this
 176 subsection, the rule shall then immediately take effect.

177 (g)(1) Subsection (f) of this Code section shall not apply to the Environmental Protection
 178 Division of the Department of Natural Resources as to any rule for which, as part of the
 179 notice required by paragraph (1) of subsection (a) of this Code section, the director of the
 180 division certifies that such rule is required for compliance with federal statutes or
 181 regulations or to exercise certain powers delegated by the federal government to the state
 182 to implement federal statutes or regulations, but paragraph (2) of this subsection shall
 183 apply to the Environmental Protection Division of the Department of Natural Resources
 184 as to any rule so certified. As part of such certification, the director shall cite the specific
 185 section or sections of federal statutes or regulations which the proposed rule is intended
 186 to comply with or implement. General references to the name or title of a federal statute
 187 or regulation shall not suffice for the purposes of this paragraph. Any proposed rule or
 188 rules that are subject to this paragraph shall be noticed separately from any proposed rule
 189 or rules that are not subject to this paragraph.

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

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

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

209

SECTION 2.

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