Senate Bill 190

By: Senators Tolleson of the 20th, Bulloch of the 11th, Johnson of the 1st and Pearson of the 51st

AS PASSED

A BILL TO BE ENTITLED

AN ACT

To amend Title 12 of the Official Code of Georgia Annotated, relating to conservation and natural resources, so as to change certain provisions relating to the Environmental Protection Division, the Environmental Advisory Council, duties of the council, its members, and the director of the division, procedure for aggrieved persons, and inspections; to provide that the filing of a petition in certain instances shall result in a limited stay of an order or action of the director; to provide time limits for administrative judicial decision making; to provide for exceptions; to change certain provisions relating to hearing and judicial review relative to air quality; to amend Code Section 50-13-19 of the Official Code of Georgia Annotated, relating to judicial review of contested cases, so as to provide that the filing of a petition in certain instances shall not result in a stay of a decision except under certain conditions; to provide for exceptions; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Title 12 of the Official Code of Georgia Annotated, related to conservation and natural resources, is amended in Code Section 12-2-2, relating to the Environmental Protection Division, the Environmental Advisory Council, duties of the council, its members, and the director of the division, procedure for aggrieved persons, and inspections, by striking paragraph (2) of subsection (c) and inserting in lieu thereof the following:

"(2)(A) Any person who is aggrieved or adversely affected by any order or action of the director shall, upon petition to the director within 30 days after the issuance of such order or the taking of such action, have a right to a hearing before an administrative law judge ~~appointed by~~ of the Office of State Administrative Hearings assigned under Code Section 50-13-40 and acting in place of the Board of Natural Resources. The hearing before the administrative law judge shall be conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' and the rules and regulations adopted by the board pursuant thereto. Any administrative law judge so ~~appointed by~~

~~the board~~ assigned shall fully meet and qualify as to all applicable conflict of interest requirements provided for in Section 304(h)(2)(D) of the Federal Water Pollution Control Act of 1972, as amended, and the rules, regulations, and guidelines promulgated thereunder.

(B) In any case involving the grant of a permit, permit amendment, or variance by the director, the filing of such a petition by a person to whom such order or action is not directed shall stay such order or action until such time as the hearing has been held and for ten days after the administrative law judge renders his or her decision on the matter. The petition shall be transmitted to the administrative law judge not more than seven days after the date of filing. The provisions of subsection (c) of Code Section 50-13-41 notwithstanding, the hearing shall be held and the decision of the administrative law judge shall be rendered not later than 90 days after the date of the filing of the petition by such a person unless such period is extended for a time certain by order of the administrative law judge upon consent of all parties; in addition, the administrative law judge may extend the 90 day period for good cause shown for a period not to exceed an additional 60 days.

(C) The provisions of subparagraph (B) of this paragraph notwithstanding, in any case involving the grant of a permit, permit amendment, or variance by the director regarding water withdrawal for farm uses under Code Section 12-5-31 or Code Section 12-5-105, the filing of a petition under subparagraph (A) of this paragraph by any person to whom such order or action is not directed shall not stay such order or action.

(D) The decision of the administrative law judge shall constitute the final decision of the board and any party to the hearing, including the director, shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50.″

SECTION 2.

Said title is further amended in Code Section 12-9-15, relating to hearing and judicial review relative to air quality, by designating the provisions of subsection (a) as paragraph (1) of said subsection and adding a new paragraph to read as follows:

″(2) The provisions of subparagraph (c)(2)(B) of Code Section 12-2-2 shall apply to proceedings under this Code section.″

SECTION 3.

Code Section 50-13-19 of the Official Code of Georgia Annotated, relating to judicial review of contested cases, is amended by striking subsection (d) and inserting in lieu thereof the following:

"(d)(1) The filing of the petition for judicial review in superior court does not itself stay enforcement of the agency decision. Except as otherwise provided in this subsection, the agency may grant, or the reviewing court may order, a stay upon appropriate terms for good cause shown.

(2) In cases involving the grant of a permit, permit amendment, or variance by the director of the Environmental Protection Division of the Department of Natural Resources in which the petition for judicial review in superior court was filed by any person to whom such contested order or action is not directed, a stay shall not be granted unless by order of the superior court upon motion for a temporary restraining order or interlocutory injunction in accordance with Code Section 9-11-65.

(3) The provisions of paragraphs (1) and (2) of this subsection notwithstanding, in any case involving the grant of a permit, permit amendment, or variance by the director of the Environmental Protection Division of the Department of Natural Resources regarding water withdrawal for farm uses under Code Section 12-5-31 or Code Section 12-5-105, no stay shall be authorized if the petition for judicial review in superior court was filed by any person to whom such order or action is not directed.

(4) In contested cases involving a license to practice medicine or a license to practice dentistry in this state, a reviewing court may order a stay or an agency may grant a stay only if the court or agency makes a finding that the public health, safety, and welfare will not be harmed by the issuance of the stay."

SECTION 4.

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