

House Bill 405

By: Representatives Jackson of the 148<sup>th</sup>, Bordeaux of the 151<sup>st</sup>, Stephens of the 150<sup>th</sup>,  
Tillman of the 173<sup>rd</sup>, James of the 140<sup>th</sup> and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Part 4 of Article 4 of Chapter 5 of Title 12 of the Official Code of Georgia  
2 Annotated, the "Coastal Marshlands Protection Act of 1970," so as to define a certain term;  
3 to provide that coastal marshlands shall include coastal hammocks for purposes of such Act;  
4 to provide certain requirements for permit applications for altering a marshland; to provide  
5 criteria to be considered in considering such application; to provide for the minimization of  
6 marshlands disturbances; to provide for related matters; to repeal conflicting laws; and for  
7 other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Part 4 of Article 4 of Chapter 5 of Title 12 of the Official Code of Georgia Annotated, the  
11 "Coastal Marshlands Protection Act of 1970," is amended by striking in its entirety Code  
12 Section 12-5-282, relating to definitions, and inserting in lieu thereof the following:

13 "12-5-282.

14 As used in this part, the term:

15 (1) 'Applicant' means any person who files an application under this part.

16 (2) 'Board' means the Board of Natural Resources.

17 (3) 'Coastal hammock' means any hammock adjacent to or surrounded by saltwater.

18 ~~(3)~~(4) 'Coastal marshlands' or 'marshlands' means any marshland intertidal area, mud flat,  
19 tidal water bottom, ~~or salt marsh,~~ or coastal hammock in the State of Georgia within the  
20 estuarine area of the state, whether or not the tidewaters reach the littoral areas through  
21 natural or artificial watercourses. 'Vegetated marshlands' shall include those areas upon  
22 which grow one, but not necessarily all, of the following: salt marsh grass (*Spartina*  
23 *alterniflora*), black needlerush (*Juncus roemerianus*), saltmeadow cordgrass (*Spartina*  
24 *patens*), big cordgrass (*Spartina cynosuroides*), saltgrass (*Distichlis spicata*), coast  
25 dropseed (*Sporobolus virginicus*), bigelow glasswort (*Salicornia bigelovii*), woody  
26 glasswort (*Salicornia virginica*), saltwort (*Batis maritima*), sea lavender (*Limonium*

1 nashii), sea oxeye (*Borrchia frutescens*), silverling (*Baccharis halimifolia*), false willow  
 2 (*Baccharis angustifolia*), and high-tide bush (*Iva frutescens*). The occurrence and extent  
 3 of salt marsh peat at the undisturbed surface shall be deemed to be conclusive evidence  
 4 of the extent of a salt marsh or a part thereof.

5 ~~(4)~~(5) 'Commissioner' means the commissioner of natural resources.

6 ~~(5)~~(6) 'Committee' means the Coastal Marshlands Protection Committee created by this  
 7 part.

8 ~~(6)~~(7) 'Eligible person' means any person who is the owner of high land adjoining the  
 9 state owned marshland or water bottoms, or combination thereof, sought to be leased by  
 10 said person such that at least 100 percent of the landward boundary of the state owned  
 11 marshland or water bottom, or combination thereof, sought to be leased is bordered by  
 12 said adjoining high land.

13 ~~(7)~~(8) 'Estuarine area' means all tidally influenced waters, marshes, and marshlands lying  
 14 within a tide-elevation range from 5.6 feet above mean tide level and below.

15 (9) 'Hammock' means an upland island that is surrounded by marsh or water at mean  
 16 high tide and that does not have a fresh water table above the Floridan aquifer.

17 ~~(8)~~(10) 'Live-aboard' means a floating vessel or other water craft which is moored to a  
 18 dock, tree, or piling or anchored in the estuarine waters of the state and is utilized as a  
 19 human or animal abode. Live-aboards include but are not limited to monohulls,  
 20 multihulls, houseboats, floating homes, and other floating structures which are used for  
 21 human or animal habitation.

22 ~~(9)~~(11) 'Minor alteration' means any change in the marshlands which, taken singularly  
 23 or in combination with other changes, involve less than 0.10 acres. Minor alteration also  
 24 includes renewal of permits previously issued by the committee.

25 ~~(10)~~(12) 'Person' means any individual, partnership, corporation, municipal corporation,  
 26 county, association, or public or private authority, and shall include the State of Georgia,  
 27 its political subdivisions, and all its departments, boards, bureaus, commissions, or other  
 28 agencies, unless specifically exempted by this part.

29 ~~(11)~~(13) 'Political subdivision' means the governing authority of a county or a  
 30 municipality in which the marshlands to be affected or any part thereof are located.

31 ~~(12)~~(14) 'Private dock' means a structure built onto or over the marsh and submerged  
 32 lands which is used for recreational fishing and other recreational activities, is not  
 33 available to the public, does not have enclosures, and does not create a navigation hazard;  
 34 provided, however, that a private dock may be covered and screened with wainscotting  
 35 not higher than three feet and may be equipped with a hoist."

**SECTION 2.**

Said part is further amended by striking in their entirety subsections (b) and (g) of Code Section 12-5-286, relating to the requirement for a permit, application, notice, a public hearing, and related matters, and inserting in lieu thereof, respectively, the following:

"(b) Each application for such permit shall be properly executed and filed with the department on forms prescribed by the department and shall include:

(1) The name and address of the applicant;

(2) A brief description of the proposed project, including the purpose of the project;

(3) A statement as to whether the project is water related or dependent on waterfront access or can be satisfied by the use of an alternative nonmarshland site or by use of existing public facilities;

(4) A statement setting forth the steps that will be taken to minimize the adverse impacts to the marshlands;

(5) A statement setting forth whether the proposed project is consistent with the public interest, including those factors listed in subsection (g) of this Code section;

~~(2)~~(6) A plan or drawing showing the applicant's proposal and the manner or method by which such proposal shall be accomplished. Such plan shall identify the coastal marshlands affected;

~~(3)~~(7) A plat of the area in which the proposed work will take place;

~~(4)~~(8) A copy of the deed or other instrument under which the applicant claims title to the property or, if the applicant is not the owner, then a copy of the deed or other instrument under which the owner claims title together with written permission from the owner to carry out the project on his the land. In lieu of a deed or other instrument referred to in this paragraph, the committee may accept some other reasonable evidence of ownership of the property in question or other lawful authority to make use of the property. The committee will not adjudicate title disputes concerning the property which is the subject of the application; provided, however, that the committee may decline to process an application when submitted documents show conflicting deeds;

~~(5)~~(9) A list of all adjoining landowners together with such owners' addresses, provided that if the names or addresses of adjoining landowners cannot be determined, the applicant shall file in lieu thereof a sworn affidavit that a diligent search, including, without limitation, a search of the records of the county tax assessor's office, has been made but that the applicant was not able to ascertain the names or addresses, as the case may be, of adjoining landowners;

1 ~~(6)~~(10) A letter from the local governing authority of the political subdivision in which  
 2 the property is located, stating that the applicant's proposal is not violative of any zoning  
 3 law;

4 ~~(7)~~(11) A nonrefundable application fee to be set by the board in an amount necessary  
 5 to defray the administrative cost of issuing such permit. Renewal fees shall be equal to  
 6 application fees, which shall not exceed \$1,000.00 for any one proposal and shall be paid  
 7 to the department;

8 ~~(8)~~(12) A description from the applicant of alternative sites and why they are not feasible  
 9 and a discussion of why the permit should be granted;

10 ~~(9)~~(13) A statement from the applicant that he or she has made inquiry to the appropriate  
 11 authorities that the proposed project is not over a landfill or hazardous waste site and that  
 12 the site is otherwise suitable for the proposed project;

13 ~~(10)~~(14) A copy of the water quality certification issued by the department if required  
 14 for the proposed project;

15 ~~(11)~~(15) Certification by the applicant of adherence to soil and erosion control  
 16 responsibilities if required for the proposed project; and

17 ~~(12)~~(16) Such additional information as is required by the committee to properly  
 18 evaluate the application."

19 "(g) In passing upon the application for permit, the committee shall consider the public  
 20 interest, which, for purposes of this part, shall be deemed to be the following  
 21 considerations:

22 (1) Whether or not unreasonably harmful obstruction to or alteration of the natural flow  
 23 of navigational water within the affected area will arise as a result of the proposal;

24 (2) Whether or not unreasonably harmful or increased erosion, shoaling of channels, or  
 25 stagnant areas of water will be created; and

26 (3) Whether or not the granting of a permit and the completion of the applicant's  
 27 proposal will unreasonably interfere with the conservation and protection of fish, shrimp,  
 28 oysters, crabs, clams, or other marine life, wildlife, or other resources, including but not  
 29 limited to water and oxygen supply and quality."

### 30 SECTION 3.

31 Said part is further amended by striking in its entirety Code Section 12-5-288, relating to  
 32 restrictions on the granting of permits, size restrictions, and activities and structures  
 33 considered contrary to public interest, and inserting in lieu thereof the following:

34 "12-5-288.

35 (a) If the project is not water related or dependent on waterfront access or can be satisfied  
 36 by the use of an alternative nonmarshland site or by use of existing public facilities, a

1 permit usually should not be granted pursuant to Code Section 12-5-286. There is a  
2 rebuttable presumption that alternatives are available for activities that are not water  
3 dependent and do not involve marshland sites.

4 (b) The amount of marshlands to be altered must be minimum in size. Appropriate and  
5 practicable steps to minimize the adverse impacts will be required through project  
6 modifications and permit conditions. The following activities and structures are normally  
7 considered to be contrary to the public interest when located in coastal marshlands but the  
8 final decision as to whether any activity or structure is considered to be in the public  
9 interest shall be in the sound discretion of the committee:

10 (1) Filling of marshlands for residential, commercial, and industrial uses;

11 (2) Filling of marshlands for private parking lots and private roadways;

12 (3) Construction of dump sites and depositing of any waste materials or dredge spoil;

13 (4) Dredging of canals or ditches for the purpose of draining coastal marshlands;

14 (5) Mining;

15 (6) Construction of lagoons or impoundments for waste treatment, cooling, agriculture,  
16 or aquaculture which would occupy or damage coastal marshlands or life forms therein;

17 (7) Construction of structures which constitute an obstruction of view to adjoining  
18 riparian landowners, including signs and enclosures; and

19 (8) Occupying a live-aboard for more than 30 days during any calendar year; provided,  
20 however, that the commissioner may grant extensions of time beyond 30 days to persons  
21 making a request in writing stating the reasons for such extension. Owners of docks  
22 where live-aboards are moored as well as owners and occupants of live-aboards are  
23 responsible under this part."

## 24 SECTION 5.

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