

House Bill 420

By: Representatives Stuckey of the 67<sup>th</sup>, Porter of the 143<sup>rd</sup>, Amerson of the 7<sup>th</sup> and Millar of the 59<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 7 of Title 12 of the Official Code of Georgia Annotated, the "Erosion and  
2 Sedimentation Act of 1975," so as to change the required buffer for streams and trout streams; to  
3 provide an effective date; to repeal conflicting laws; and for other purposes.

4 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

5 **SECTION 1.**

6 Chapter 7 of Title 12 of the Official Code of Georgia Annotated, the "Erosion and Sedimentation  
7 Act of 1975," is amended by striking in its entirety paragraphs (15) and (16) of Code Section 12-7-6,  
8 relating to minimum requirements for rules, regulations, ordinances, or resolutions, and inserting  
9 in lieu thereof, respectively, the following:

10 "(15) Except as provided in paragraph (16) of this subsection, there is established a ~~25~~ 50 foot  
11 buffer along the banks of all state waters, as measured horizontally from the point where  
12 vegetation has been wrested by normal stream flow or wave action, except where the director  
13 determines to allow a variance that is at least as protective of natural resources and the  
14 environment, where otherwise allowed by the director pursuant to Code Section 12-2-8, or  
15 where a drainage structure or a roadway drainage structure must be constructed, provided that  
16 adequate erosion control measures are incorporated in the project plans and specifications and  
17 are implemented; provided, however, that buffers of at least ~~25~~ 50 feet established pursuant to  
18 Part 6 of Article 5 of Chapter 5 of this title shall remain in force unless a variance is granted by  
19 the director as provided in this paragraph. The following requirements shall apply to any such  
20 buffer:

21 (A) No land-disturbing activities shall be conducted within a buffer and a buffer shall remain  
22 in its natural, undisturbed, state of vegetation until all land-disturbing activities on the  
23 construction site are completed. Once the final stabilization of the site is achieved, a buffer  
24 may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to  
25 protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to  
26 keep shade on the stream bed; provided, however, that any person constructing a single-family  
27 residence, when such residence is constructed by or under contract with the owner for his or  
28 her own occupancy, may thin or trim vegetation in a buffer at any time as long as protective

1 vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is  
2 left in sufficient quantity to keep shade on the stream bed; and

3 (B) On or before December 31, 2000, the board shall adopt rules which contain specific  
4 criteria for the grant or denial by the director of requests for variances. After such date, no  
5 variance shall be granted by the director which is not consistent with the criteria contained in  
6 such rules; provided, however, that, should the board fail to adopt rules which contain specific  
7 criteria for the grant or denial of requests for variances by the director on or before December  
8 31, 2000, the authority of the director to issue such variances shall be suspended until the  
9 board adopts such rules; and

10 (16) There is established a ~~50~~ 100 foot buffer, as measured horizontally from the point where  
11 vegetation has been wrested by normal stream flow or wave action, along the banks of any state  
12 waters classified as 'trout streams' pursuant to Article 2 of Chapter 5 of this title except where  
13 a roadway drainage structure must be constructed; provided, however, that small springs and  
14 streams classified as trout streams which discharge an average annual flow of 25 gallons per  
15 minute or less shall have a ~~25~~ 50 foot buffer or they may be piped, at the discretion of the  
16 landowner, pursuant to the terms of a rule providing for a general variance promulgated by the  
17 board providing for notice to the division or local issuing authority of the location and extent of  
18 the piping and prescribed methodology for minimizing the impact of such piping and for  
19 measuring the volume of water discharged by the stream. Any such pipe must stop short of the  
20 downstream landowner's property; and the landowner must comply with the buffer requirement  
21 for any adjacent trout streams. The director may grant a variance from such buffer to allow  
22 land-disturbing activity, provided that adequate erosion control measures are incorporated in the  
23 project plans and specifications and are implemented. The following requirements shall apply  
24 to any such buffer:

25 (A) No land-disturbing activities shall be conducted within a buffer and a buffer shall remain  
26 in its natural, undisturbed, state of vegetation until all land-disturbing activities on the  
27 construction site are completed. Once the final stabilization of the site is achieved, a buffer  
28 may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to  
29 protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to  
30 keep shade on the stream bed; provided, however, that any person constructing a single-family  
31 residence, when such residence is constructed by or under contract with the owner for his or  
32 her own occupancy, may thin or trim vegetation in a buffer at any time as long as protective  
33 vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is  
34 left in sufficient quantity to keep shade on the stream bed; and

35 (B) On or before December 31, 2000, the board shall adopt rules which contain specific  
36 criteria for the grant or denial by the director of requests for variances. After such date, no  
37 variance shall be granted by the director which is not consistent with the criteria contained in  
38 such rules; provided, however, that, should the board fail to adopt rules which contain specific  
39 criteria for the grant or denial of requests for variances by the director on or before December

1 31, 2000, the authority of the director to issue such variances shall be suspended until the  
2 board adopts such rules."

3 **SECTION 2.**

4 Said chapter is further amended by striking in its entirety paragraph (4) of Code Section 12-7-17,  
5 relating to exemptions from the provisions of such chapter, and inserting in lieu thereof the  
6 following:

7 "(4) The construction of single-family residences, when such are constructed by or under  
8 contract with the owner for his or her own occupancy, or the construction of single-family  
9 residences not a part of a platted subdivision, a planned community, or an association of other  
10 residential lots consisting of more than two lots and not otherwise exempted under this  
11 paragraph; provided, however, that construction of any such residence shall conform to the  
12 minimum requirements as set forth in subsection (b) of Code Section 12-7-6. For single-family  
13 residence construction covered by the provisions of this paragraph, there shall be a buffer zone  
14 between the residence and any state waters classified as trout streams pursuant to Article 2 of  
15 Chapter 5 of this title. In any such buffer zone, no land-disturbing activity shall be constructed  
16 between the residence and the point where vegetation has been wrested by normal stream flow  
17 or wave action from the banks of the trout waters. For primary trout waters, the buffer zone shall  
18 be at least ~~50~~ 100 horizontal feet, and no variance to a smaller buffer shall be granted. For  
19 secondary trout waters, the buffer zone shall be at least ~~50~~ 100 horizontal feet, but the director  
20 may grant variances to no less than ~~25~~ 50 feet. Regardless of whether a trout stream is primary  
21 or secondary, for first order trout waters, which are streams into which no other streams flow  
22 except for springs, the buffer shall be at least ~~25~~ 50 horizontal feet, and no variance to a smaller  
23 buffer shall be granted. The minimum requirements of subsection (b) of Code Section 12-7-6  
24 and the buffer zones provided by this paragraph shall be enforced by the issuing authority;"

25 **SECTION 3.**

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

28 **SECTION 4.**

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