

House Bill 285 (COMMITTEE SUBSTITUTE) (AM)

By: Representatives Stokes of the 72nd, Westmoreland of the 86th, Rogers of the 20th, Drenner of the 57th, James of the 114th, and others

**A BILL TO BE ENTITLED
AN ACT**

1 To amend Code Section 2-6-27 of the Official Code of Georgia Annotated, relating to
2 additional duties and powers of the State Soil and Water Conservation Commission, so as
3 to provide for implementation of an education and training program; to amend Title 12 of the
4 Official Code of Georgia Annotated, relating to conservation and natural resources, so as to
5 change certain provisions relating to powers and duties of the Board of Natural Resources
6 and the director of the Environmental Protection Division of the Department of Natural
7 Resources as to control of water pollution and surface-water use generally; to change certain
8 provisions relating to permits for construction, modification, or operation of facilities which
9 discharge pollutants into waters and permits for discharge of dredged or fill material into
10 waters and wetlands; to extensively revise certain provisions relating to control of soil
11 erosion and sedimentation; to provide for the effect of such provisions on the practice of land
12 surveyors in performing certain tasks related to soil erosion and sedimentation control; to
13 repeal conflicting laws; and for other purposes.

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

15 **SECTION 1.**

16 Code Section 2-6-27 of the Official Code of Georgia Annotated, relating to additional duties
17 and powers of the State Soil and Water Conservation Commission, is amended by inserting
18 a new paragraph (7.1) to read as follows:

19 "(7.1) To formulate such rules and regulations in consultation with the Environmental
20 Protection Division of the Department of Natural Resources, to exercise such powers, and
21 to perform such duties as are necessary to implement the administration of the education
22 and training program established under Code Section 12-7-19;"

23 **SECTION 2.**

24 Title 12 of the Official Code of Georgia Annotated, relating to conservation and natural
25 resources, is amended in subsection (a) of Code Section 12-5-23, relating to powers and

1 duties of the Board of Natural Resources and the director of the Environmental Protection
2 Division of the Department of Natural Resources as to control of water pollution and
3 surface-water use generally, by striking "and" at the end of paragraph (3), striking the period
4 and inserting ";" and" in lieu thereof at the end of paragraph (4), and adding a new paragraph
5 (5) to read as follows:

6 "(5)(A) By December 31, 2003, the board shall promulgate rules and regulations which
7 establish a fee system designed to offset the costs of the state-wide implementation of
8 the National Pollution Discharge Elimination System general permit or permits for
9 storm-water runoff from construction activities as is now in effect or as may be
10 amended or reissued in the future pursuant to the state's authority to implement the
11 same through federal delegation under the Federal Water Pollution Control Act, as
12 amended, 33 U.S.C. Section 1251, et seq., and subsection (f) of Code Section 12-5-30.
13 (B) Fees established by the board under this paragraph shall be no less than that which
14 is required to properly administer Chapter 7 of this title, provided that such fees shall
15 not exceed \$80.00 per acre of land-disturbing activity as defined in Code Section
16 12-7-3."

17 SECTION 3.

18 Said title is further amended in subsection (c) of Code Section 12-5-23, relating to powers
19 and duties of the Board of Natural Resources and the director of the Environmental
20 Protection Division of the Department of Natural Resources as to control of water pollution
21 and surface-water use generally, by striking paragraph (15) and inserting in lieu thereof the
22 following:

23 "(15) Perform any and all acts and exercise all incidental powers necessary to carry out
24 the purposes and requirements of this article and of the Federal Water Pollution Control
25 Act, as amended, 33 U.S.C. Section 1251, et seq., relating to this state's participation in
26 the National Pollutant Discharge Elimination System established under that act and shall
27 administer the fee program established by the board pursuant to paragraph (5) of
28 subsection (a) of this Code section;"

29 SECTION 4.

30 Said title is further amended in Code Section 12-5-30, relating to permits for construction,
31 modification, or operation of facilities which discharge pollutants into waters and permits for
32 discharge of dredged or fill material into waters and wetlands, by adding a new subsection
33 (g) to read as follows:

34 "(g) It is declared to be the public policy of this state, in furtherance of its responsibility
35 to protect the public health, safety, and well-being of its citizens and to protect and enhance

1 the quality of its environment, to prevent or mitigate where possible discharges of sediment
2 into the waters of the state. The General Assembly declares its intent to partially fund the
3 execution of the public policy set forth in this subsection and Chapter 7 of this title by and
4 through the division with permit fees for the National Pollution Discharge Elimination
5 System general permit or permits for storm-water runoff from construction activities as is
6 now in effect or as may be amended or reissued in the future pursuant to the state's
7 authority to implement the same through federal delegation under the Federal Water
8 Pollution Control Act, as amended, 33 U.S.C. Section 1251, et seq., and subsection (f) of
9 this Code section. Such fees shall be administered by the division pursuant to rules and
10 regulations established by the board pursuant to paragraph (5) of subsection (a) of Code
11 Section 12-5-23. The General Assembly further declares its intent that the amount of funds
12 provided by such permit fees will not be utilized for any purposes other than the
13 administration of Chapter 7 of this title by the division or a local issuing authority and the
14 administration of the state general permit defined in Code Section 12-7-3 by the division,
15 which purposes shall specifically include without limitation the study and report required
16 by Code Section 12-7-21; provided, however, that nothing in this subsection shall be
17 construed so as to allow the department to retain any funds required by the Constitution of
18 Georgia to be paid into the state treasury; provided, further, that the department shall
19 comply with all provisions of Part 1 of Article 4 of Chapter 12 of Title 45, the 'Budget Act,'
20 except Code Section 45-12-92, prior to expending any funds derived from such permit
21 fees."

22 **SECTION 5.**

23 Said title is further amended by striking Chapter 7, relating to control of soil erosion and
24 sedimentation, and inserting in lieu thereof the following:

25 "CHAPTER 7

26 12-7-1.

27 This chapter shall be known and may be cited as the 'Erosion and Sedimentation Act of
28 1975.'

29 12-7-2.

30 It is found that soil erosion and sediment deposition onto lands and into waters within the
31 watersheds of this state are occurring as a result of widespread failure to apply proper soil
32 erosion and sedimentation control practices in land clearing, soil movement, and
33 construction activities and that such erosion and sediment deposition result in pollution of

1 state waters and damage to domestic, agricultural, recreational, fish and wildlife, and other
2 resource uses. It is therefore declared to be the policy of this state and the intent of this
3 chapter to strengthen and extend the present erosion and sediment control activities and
4 programs of this state and to provide for the establishment and implementation of a
5 state-wide comprehensive soil erosion and sediment control program to conserve and
6 protect the land, water, air, and other resources of this state.

7 12-7-3.

8 As used in this chapter, the term:

- 9 (1) 'Board' means the Board of Natural Resources.
- 10 (2) 'Buffer' means the area of land immediately adjacent to the banks of state waters in
11 its natural state of vegetation, which facilitates the protection of water quality and aquatic
12 habitat.
- 13 (3) 'Commission' means the State Soil and Water Conservation Commission.
- 14 (4) 'Director' means the director of the Environmental Protection Division of the
15 Department of Natural Resources.
- 16 (5) 'District' means any one of the soil and water conservation districts of this state.
- 17 (6) 'Division' means the Environmental Protection Division of the Department of Natural
18 Resources.
- 19 (7) 'Drainage structure' means a device composed of a virtually nonerodible material
20 such as concrete, steel, plastic, or other such material that conveys water from one place
21 to another by intercepting the flow and carrying it to a release point for storm-water
22 management, drainage control, or flood control purposes.
- 23 (8) 'Erosion and sediment control plan' or 'plan' means a plan for the control of soil
24 erosion and sediment resulting from a land-disturbing activity.
- 25 (9) ~~'Issuing authority' means the governing authority of any county or municipality which
26 is certified pursuant to subsection (a) of Code Section 12-7-8 and the division in those
27 instances where an application for a permit is submitted to the division.~~
- 28 (10) 'Land-disturbing activity' means any activity which may result in soil erosion from
29 water or wind and the movement of sediments into state water or onto lands within the
30 state, including, but not limited to, clearing, dredging, grading, excavating, transporting,
31 and filling of land but not including agricultural practices as described in paragraph (5)
32 of Code Section 12-7-17.
- 33 (9.1) 'Larger common plan of development or sale' means a contiguous area where
34 multiple separate and distinct construction activities are occurring under one plan of
35 development or sale. For purposes of this paragraph, 'plan' means an announcement;
36 piece of documentation such as a sign, public notice or hearing, sales pitch,

1 advertisement, drawing, permit application, zoning request, or computer design; or
2 physical demarcation such as boundary signs, lot stakes, or surveyor markings, indicating
3 that construction activities may occur on a specific plot.

4 (10) 'Local issuing authority' means the governing authority of any county or
5 municipality which is certified pursuant to subsection (a) of Code Section 12-7-8.

6 (10.1) 'Operator' means the party or parties that have:

7 (A) Operational control of construction project plans and specifications, including the
8 ability to make modifications to those plans and specifications; or

9 (B) Day-to-day operational control of those activities that are necessary to ensure
10 compliance with a storm-water pollution prevention plan for the site or other permit
11 conditions, such as a person authorized to direct workers at a site to carry out activities
12 required by the storm-water pollution prevention plan or to comply with other permit
13 conditions.

14 (11) 'Person' means any individual, partnership, firm, association, joint venture, public
15 or private corporation, trust, estate, commission, board, public or private institution,
16 utility, cooperative, state agency, municipality or other political subdivision of this state,
17 any interstate body, or any other legal entity.

18 (12) 'Qualified personnel' means any person who meets or exceeds the education and
19 training requirements of Code Section 12-7-19.

20 (13) 'Roadway drainage structure' means a device, such as a bridge, culvert, or ditch,
21 composed of a virtually nonerodible material such as concrete, steel, plastic, or other such
22 material that conveys water under a roadway by intercepting the flow on one side of a
23 traveled way consisting of one or more defined lanes, with or without shoulder areas, and
24 carrying water to a release point on the other side.

25 (14) 'Soil and water conservation district approved plan' means an erosion and
26 sediment control plan approved in writing by a soil and water conservation district.

27 (15) 'State general permit' means the National Pollution Discharge Elimination System
28 general permit or permits for storm-water runoff from construction activities as is now
29 in effect or as may be amended or reissued in the future pursuant to the state's authority
30 to implement the same through federal delegation under the Federal Water Pollution
31 Control Act, as amended, 33 U.S.C. Section 1251, et seq., and subsection (f) of Code
32 Section 12-5-30.

33 (16) 'State waters' includes any and all rivers, streams, creeks, branches, lakes,
34 reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface or
35 subsurface water, natural or artificial, lying within or forming a part of the boundaries of
36 the state, which are not entirely confined and retained completely upon the property of
37 a single individual, partnership, or corporation.

1 12-7-4.

2 (a) The governing authority of each county and each municipality shall adopt a
3 comprehensive ordinance establishing the procedures governing land-disturbing activities
4 which are conducted within their respective boundaries. Such ordinances shall be
5 consistent with the standards provided by this chapter. Local governing authorities shall
6 have the authority, by such ordinance, to delegate in whole or in part the responsibilities
7 of the governing authorities, as set forth in this chapter, to any constitutional or statutory
8 local planning and zoning commission. Where the local governing authority deems it
9 appropriate, it may integrate such provisions with other local ordinances relating to land
10 development including but not limited to tree protection, flood plain protection, stream
11 buffers, or postdevelopment storm-water management.

12 (b) Nothing in this chapter shall be construed as to limit or exclude any design
13 professional, including but not limited to any professional engineer or registered land
14 surveyor, or Natural Resource Conservation Service employee, within any county,
15 municipality, or consolidated government in this state from performing such professional
16 services as may be incidental to the practice of his or her profession, including any and
17 all soil erosion and sedimentation control plans, storm-water management reports
18 including hydrological studies, and site plans, when such professional has demonstrated
19 competence through such qualifications, education, experience, and licensing as required
20 for practice in this state by applicable provisions of Title 43 related to such profession;
21 provided, however, that any such person shall be subject to the requirements of Code
22 Section 12-7-19.

23 12-7-5.

24 The board, by appropriate rules and regulations, shall adopt the procedures governing
25 land-disturbing activities which are conducted in those counties and municipalities which
26 do not have in effect an ordinance conforming to this chapter. Such rules and regulations
27 shall be developed by the division in consultation with the commission and shall contain
28 provisions which meet those minimum requirements set forth in Code Section 12-7-6.

29 12-7-6.

30 (a)(1) Best management practices as set forth in subsection (b) of this Code section shall
31 be required for all land-disturbing activities. Proper design, installation, and maintenance
32 of best management practices shall constitute a complete defense to any action by the
33 director or to any other allegation of noncompliance with paragraph (2) of this subsection
34 or any substantially similar terms contained in a permit for the discharge of storm water
35 issued pursuant to subsection (f) of Code Section 12-5-30. As used in this subsection, the

1 terms 'proper design' and 'properly designed' mean designed to control soil erosion and
2 sedimentation for all rainfall events up to and including a 25 year rainfall event in
3 accordance with the hydraulic design specifications contained in the 'Manual for Erosion
4 and Sediment Control in Georgia' specified in subsection (b) of this Code section.

5 (2) A discharge of storm-water runoff from disturbed areas where best management
6 practices have not been properly designed, installed, and maintained shall constitute a
7 separate violation of any land-disturbing permit issued by a local issuing authority or by
8 the division or of any state general permit for construction activities issued by the
9 division pursuant to subsection (f) of Code Section 12-5-30 for each day on which such
10 discharge results in the turbidity of receiving waters being increased by more than 25
11 nephelometric turbidity units for waters supporting warm water fisheries or by more than
12 ten nephelometric turbidity units for waters classified as trout waters. The turbidity of the
13 receiving waters shall be measured in accordance with guidelines to be issued by the
14 director. This paragraph shall not apply to any land disturbance associated with the
15 construction of single-family homes which are not part of a larger common plan of
16 development or sale unless the planned disturbance for such construction is equal to or
17 greater than five acres.

18 (3) Failure properly to design, install, or maintain best management practices shall
19 constitute a violation of any land-disturbing permit issued by a local issuing authority or
20 by the division or of any state general permit for construction activities issued by the
21 division pursuant to subsection (f) of Code Section 12-5-30 for each day on which such
22 failure occurs.

23 (4) The director may require, in accordance with regulations adopted by the board,
24 reasonable and prudent monitoring of the turbidity level of receiving waters into which
25 discharges from land-disturbing activities occur.

26 (b) The rules and regulations, ordinances, or resolutions adopted pursuant to this chapter
27 for the purpose of governing land-disturbing activities shall require, as a minimum,
28 protections at least as stringent as the state general permit; and best management practices,
29 including sound conservation and engineering practices to prevent and minimize erosion
30 and resultant sedimentation, which are consistent with, and no less stringent than, those
31 practices contained in the 'Manual for Erosion and Sediment Control In Georgia' published
32 by the State Soil and Water Conservation Commission as of January 1 of the year in which
33 the land-disturbing activity was permitted, as well as the following:

34 (1) Stripping of vegetation, regrading, and other development activities shall be
35 conducted in such a manner so as to minimize erosion;
36 (2) Cut and fill operations must be kept to a minimum;

- (3) Development plans must conform to topography and soil type, so as to create the lowest practicable erosion potential;
 - (4) Whenever feasible, natural vegetation shall be retained, protected, and supplemented;
 - (5) The disturbed area and the duration of exposure to erosive elements shall be kept to a practicable minimum;
 - (6) Disturbed soil shall be stabilized as quickly as practicable;
 - (7) Temporary vegetation or mulching shall be employed to protect exposed critical areas during development;
 - (8) Permanent vegetation and structural erosion control measures must be installed as soon as practicable;
 - (9) To the extent necessary, sediment in run-off water must be trapped by the use of debris basins, sediment basins, silt traps, or similar measures until the disturbed area is stabilized. As used in this paragraph, a disturbed area is stabilized when it is brought to a condition of continuous compliance with the requirements of this chapter;
 - (10) Adequate provisions must be provided to minimize damage from surface water to the cut face of excavations or the sloping surfaces of fills;
 - (11) Cuts and fills may not endanger adjoining property;
 - (12) Fills may not encroach upon natural watercourses or constructed channels in a manner so as to adversely affect other property owners;
 - (13) Grading equipment must cross flowing streams by the means of bridges or culverts, except when such methods are not feasible, provided, in any case, that such crossings must be kept to a minimum;
 - (14) Land-disturbing activity plans for erosion and sedimentation control shall include provisions for treatment or control of any source of sediments and adequate sedimentation control facilities to retain sediments on site or preclude sedimentation of adjacent waters beyond the levels specified in subsection (a) of this Code section;
 - (15) Except as provided in paragraph (16) of this subsection, there is established a 25 foot buffer along the banks of all state waters, as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, except where the director determines to allow a variance that is at least as protective of natural resources and the environment, where otherwise allowed by the director pursuant to Code Section 12-2-8, or where a drainage structure or a roadway drainage structure must be constructed, provided that adequate erosion control measures are incorporated in the project plans and specifications and are implemented; provided, however, that buffers of at least 25 feet established pursuant to Part 6 of Article 5 of Chapter 5 of this title shall remain in force unless a variance is granted by the director as provided in this paragraph.
- The following requirements shall apply to any such buffer:

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

12 (B) On or before December 31, 2000, the board shall adopt rules which contain
13 specific criteria for the grant or denial by the director of requests for variances. After
14 such date, no variance shall be granted by the director which is not consistent with the
15 criteria contained in such rules; provided, however, that, should the board fail to adopt
16 rules which contain specific criteria for the grant or denial of requests for variances by
17 the director on or before December 31, 2000, the authority of the director to issue such
18 variances shall be suspended until the board adopts such rules; and

19 (C) The buffer shall not apply to the following land-disturbing activities, provided that
20 they occur at an angle, as measured from the point of crossing, within 25 degrees of
21 perpendicular to the stream; cause a width of disturbance of not more than 50 feet
22 within the buffer; and adequate erosion control measures are incorporated into the
23 project plans and specifications and are implemented:

- 24 (i) Stream crossings for water lines; or
25 (ii) Stream crossings for sewer lines; and

26 (16) There is established a 50 foot buffer, as measured horizontally from the point where
27 vegetation has been wrested by normal stream flow or wave action, along the banks of
28 any state waters classified as 'trout streams' pursuant to Article 2 of Chapter 5 of this title
29 except where a roadway drainage structure must be constructed; provided, however, that
30 small springs and streams classified as trout streams which discharge an average annual
31 flow of 25 gallons per minute or less shall have a 25 foot buffer or they may be piped, at
32 the discretion of the landowner, pursuant to the terms of a rule providing for a general
33 variance promulgated by the board providing for notice to the division or local issuing
34 authority of the location and extent of the piping and prescribed methodology for
35 minimizing the impact of such piping and for measuring the volume of water discharged
36 by the stream. Any such pipe must stop short of the downstream landowner's property,
37 and the landowner must comply with the buffer requirement for any adjacent trout

streams. The director may grant a variance from such buffer to allow land-disturbing activity, provided that adequate erosion control measures are incorporated in the project plans and specifications and are implemented. The following requirements shall apply to any such buffer:

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

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

(C) The buffer shall not apply to the following land-disturbing activities, provided that they occur at an angle, as measured from the point of crossing, within 25 degrees of perpendicular to the stream; cause a width of disturbance of not more than 50 feet within the buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented:

(i) Stream crossings for water lines; or

(ii) Stream crossings for sewer lines.

(c) Nothing contained in this chapter shall prevent ~~an~~ any local issuing authority from adopting rules and regulations, ordinances, or resolutions which contain stream buffer requirements that exceed the minimum requirements in subsections (a) and subsection (b) of this Code section.

(d) The fact that land-disturbing activity for which a permit has been issued results in injury to the property of another shall neither constitute proof of nor create a presumption of a violation of the standards provided for in this Code section or the terms of the permit.

1 12-7-7.

2 (a) No land-disturbing activities shall be conducted in this state, except those
3 land-disturbing activities provided for in Code Section 12-7-17, without the property owner
4 ~~where the land-disturbing activity will occur~~ operator first securing the ~~a~~ an permit from a local
5 issuing authority or providing notice of intent to the division as required by this Code
6 section.

7 (b) In those counties and municipalities which are certified as local issuing authorities
8 pursuant to subsection (a) of Code Section 12-7-8:

9 (1) The application for such permit shall be made to and the permit shall be issued by the
10 governing authority of the county wherein such land-disturbing activities are to occur, in
11 the event that such activities will occur outside the corporate limits of a municipality; and

12 (2) In those instances where such activities will occur within the corporate limits of any
13 municipality, the application for such permit shall be made to and the permit shall be
14 issued by the governing authority of the municipality in which such land-disturbing
15 activities are to occur; and

16 (3) The local issuing authority shall conduct inspections and enforce the permits it issues.

17 (c) In those counties and municipalities which are not certified pursuant to subsection (a)
18 of Code Section 12-7-8, ~~the application for such permit shall be made to and the permit shall~~
19 ~~be issued by the division~~ the terms of the state general permit shall apply, those terms shall
20 be enforced by the division, and no individual land-disturbing activity permit under this
21 Code section will be required; provided, however, that notice of intent shall be submitted
22 to the division prior to commencement of any land-disturbing activities under the state
23 general permit in any of such uncertified counties or municipalities.

24 (d)(1) Fees assessed pursuant to paragraph (5) of subsection (a) of Code Section 12-5-23
25 shall be calculated and paid by the primary permittee as defined in the state general permit
26 for each acre of land-disturbing activity included in the planned development or each
27 phase of development.

28 (2) In a jurisdiction that is certified pursuant to subsection (a) of Code Section 12-7-8,
29 half of any such fees levied shall be submitted by the applicant to the local issuing
30 authority and half of such fees shall be submitted to the division; except that any and all
31 fees due from an entity which is required to give notice pursuant to paragraph (9) or (10)
32 of Code Section 12-7-17 shall be submitted in full to the division, regardless of the
33 existence of a local issuing authority in the jurisdiction. In a jurisdiction where there is no
34 local issuing authority, the full fee shall be submitted to the division.

35 ~~(d)(e)~~ Except as provided in this subsection, no permit shall be issued pursuant to
36 subsection (b) ~~or (c)~~ of this Code section unless the erosion and sediment control plan has
37 been approved by the appropriate district as is required by Code Section 12-7-10. When the

1 governing authority of a county or municipality lying within the boundaries of the district
2 demonstrates capabilities to review and approve an erosion and sediment control plan and
3 requests an agreement with the district to conduct such review and approval, the district,
4 with the concurrence of the commission, shall enter into an agreement which allows the
5 governing authority to conduct review and approval without referring the application and
6 plan to the district, if such governing authority meets the conditions specified by the district
7 as set forth in the agreement. A district may not enter into an agreement authorized in this
8 Code section with the governing authority of any county or municipality which is not
9 certified pursuant to subsection (a) of Code Section 12-7-8.

10 ~~(e)~~(f)(1) If a permit applicant has had two or more violations of previous permits or this
11 Code section within three years prior to the date of filing of the application under
12 consideration, the local issuing authority may deny the permit application.

13 (2) The local issuing authority may require the permit applicant to post a bond in the form
14 of government security, cash, irrevocable letter of credit, or any combination thereof up
15 to, but not exceeding, \$3,000.00 per acre of the proposed land-disturbing activity, prior
16 to issuing the permit. If the applicant does not comply with this Code section or with the
17 conditions of the permit after issuance, the local issuing authority may call the bond or any
18 part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the
19 site of the land-disturbing activity and bring it into compliance. This subsection shall not
20 apply unless there is in effect an ordinance or statute specifically providing for hearing and
21 judicial review of any determination or order of the local issuing authority with respect to
22 alleged permit violations.

23 ~~(f) No permit may be issued pursuant to subsection (b) or (c) of this Code section unless~~
24 ~~the applicant provides a statement by the tax collector or tax commissioner of the county~~
25 ~~in which the property for which the permit is requested lies and by the official responsible~~
26 ~~for the collection of municipal taxes in the municipality within which such property lies, if~~
27 ~~applicable, certifying that all ad valorem taxes levied against the property and due and~~
28 ~~owing have been paid.~~

29 12-7-7.1.

30 (a) As used in this Code section, the term 'contractor' means the individual, firm,
31 corporation, or combination thereof or governmental organization contracting with the
32 Department of Transportation or State Road and Tollway Authority for the performance of
33 prescribed work.

34 (b)(1) In addition to the requirements of Code Section 12-7-6, the Department of
35 Transportation or the State Road and Tollway Authority after July 1, ~~2000~~ 2003, shall not
36 contract for land-disturbing activity on any construction or maintenance project that will

1 disturb ~~five~~ one or more contiguous acres of land until an erosion and sediment control
2 plan for such project has been prepared and accepted pursuant to this Code section.

3 (2) Through its own forces or by means of the acquisition of professional service pursuant
4 to the provisions of Chapter 22 of Title 50, the Department of Transportation or the State
5 Road and Tollway Authority shall be responsible for the preparation of an erosion and
6 sediment control plan for any construction or maintenance project as required by
7 paragraph (1) of this subsection. Any consultant providing such professional service shall
8 be prequalified by the Department of Transportation as a responsible bidder for the design
9 of erosion and sediment control plans. The division shall assist the Department of
10 Transportation in developing the prequalification approval process for purposes of this
11 subsection.

12 (c) Upon completion of a proposed plan, the same shall be submitted to the division for
13 review and comment as required by the state general permit.

14 (d)(1) All bidders for any construction or maintenance project subject to this Code section
15 shall review and submit with their bid proposal a cost estimate as a separate bid for the
16 implementation of the plan, it being understood that the contractor may utilize either its
17 own personnel and resources, qualified subcontractors, or both for implementation of the
18 plan. All contractors and subcontractors for such project shall be prequalified by the
19 Department of Transportation as a responsible bidder for the installation of erosion and
20 sediment control devices in accordance with a plan. The division shall assist the
21 Department of Transportation in developing the prequalification approval process for
22 purposes of this subsection.

23 (2) The contractor for a construction or maintenance project subject to this Code section
24 shall be responsible for implementing the plan on the awarded project. Payment to any
25 contractor under any contract for implementing any part or all of any plan shall not be on
26 a lump sum basis; rather, such payment shall be based upon unit prices for specific
27 quantities of work performed pursuant to the approved erosion and sediment control plan
28 plus any additional quantities of completed work necessitated by project conditions
29 affecting erosion and sediment control, including without limitation soil types and weather
30 conditions. Charges for all maintenance and cleaning of erosion and sediment control
31 devices shall likewise be paid on a unit price basis.

32 (e)(1) Through the services of independent consultants, contractors, or subcontractors, or
33 by its own forces, the Department of Transportation shall monitor the water quality and
34 inspect the installation and maintenance of the best management practices in accordance
35 with the plan. All such consultants, contractors, or subcontractors shall be prequalified by
36 the Department of Transportation as a responsible bidder for the inspection of such best
37 management practices and shall have the necessary expertise to determine that such

1 practices are being installed and maintained in accordance with the plan. The division
2 shall assist the Department of Transportation in developing the prequalification approval
3 process for purposes of this subsection.

4 (2) Proper design, installation, and maintenance of best management practices shall
5 constitute a complete defense to any action by the director or to any other allegation of
6 noncompliance with paragraph (2) of subsection (a) of Code Section 12-7-6.

7 (3) If deficiencies in the plan or installation or maintenance of best management practices
8 are discovered during the inspection, the Department of Transportation or the State Road
9 and Tollway Authority shall determine the appropriate corrective action. Further, the
10 Department of Transportation or State Road and Tollway Authority may require the
11 consultant to amend the plan or the contractor to change its procedures by change order
12 or supplemental agreement in order to institute such changes as may be necessary to
13 correct any errors or deficiencies in the plan, the implementation of the plan, or the
14 maintenance of the best management practices.

15 (4) The division, the Department of Transportation, or the State Road and Tollway
16 Authority shall control or coordinate the work of its employees inspecting any project so
17 as to prevent any delay of, interference with, or hindrance to any contractor performing
18 land-disturbing activity on any project subject to the provisions of this Code section.

19 (f)(1) There shall be an Erosion and Sediment Control Overview Council which shall
20 provide guidance on the best management practices for implementing any erosion and
21 sediment control plan for purposes of this Code section. The council shall be composed
22 of nine members, including one member who shall be appointed by the Speaker of the
23 House of Representatives and serve at the pleasure thereof; one member who shall be
24 appointed by the Lieutenant Governor and serve at the pleasure thereof; and seven
25 members who shall be appointed by the Governor and serve at the pleasure thereof,
26 including one employee each from the Department of Transportation, the Environmental
27 Protection Division of the Department of Natural Resources, and the Georgia Regional
28 Transportation Authority, a professional engineer licensed to practice in this state from a
29 private engineering consulting firm practicing environmental engineering, two
30 representatives of the highway contracting industry certified by the Department of
31 Transportation, and a chairperson. The council shall meet at the call of the chairperson.
32 Each councilmember shall receive a daily allowance in the amount specified in subsection
33 (b) of Code Section 45-7-21; provided, however, that any full-time state employee serving
34 on the council shall draw no compensation but shall receive necessary expenses. The
35 commissioner is authorized to pay such compensation and expenses from department
36 funds.

1 (2) The council may develop recommendations governing the preparation of plans and
2 the installation and maintenance of best management practices. If a dispute concerning the
3 requirements of this Code section should arise, the Erosion and Sediment Control
4 Overview Council shall mediate the dispute.

5 (g) Nothing in this Code section shall be construed to affect the division's authority under
6 Article 2 of Chapter 5 of this title, the 'Georgia Water Quality Control Act.'

7 12-7-8.

8 (a)(1) If a county or municipality has enacted ordinances which meet or exceed the
9 standards, requirements, and provisions of this chapter and the state general permit, except
10 that the standards, requirements, and provisions of the ordinances for monitoring,
11 reporting, inspections, design standards, turbidity standards, and education and training
12 shall not exceed the state general permit requirements, and which are enforceable by such
13 county or municipality, and if a county or municipality documents that it employs
14 qualified personnel to implement enacted ordinances, the director may certify such county
15 or municipality as an a local issuing authority for the purposes of this chapter.

16 (2) A local issuing authority shall regulate both primary and secondary permittees as such
17 terms are defined in the state general permit. Primary permittees shall be responsible for
18 installation and maintenance of best management practices where the primary permittee
19 is conducting land-disturbing activities. Secondary permittees shall be responsible for
20 installation and maintenance of best management practices where the secondary permittee
21 is conducting land-disturbing activities. A local issuing authority must review, revise, or
22 amend its ordinances within 12 months of any amendment to this chapter.

23 (b) The districts or the commission or both shall periodically review the actions of counties
24 and municipalities which have been certified as local issuing authorities pursuant to
25 subsection (a) of this Code section. The districts or the commission or both may provide
26 technical assistance to any county or municipality for the purpose of improving the
27 effectiveness of the county's or municipality's erosion and sedimentation control program.
28 The districts or the commission shall notify the division and request investigation by the
29 division if any deficient or ineffective local program is found.

30 (c) The board, on or before December 31, 2003, shall promulgate rules and regulations
31 setting forth the requirements and standards for certification and the procedures for
32 decertification of a local issuing authority. The division may periodically review the actions
33 of counties and municipalities which have been certified as local issuing authorities pursuant
34 to subsection (a) of this Code section. Such review may include, but shall not be limited to,
35 review of the administration and enforcement of a governing authority's ordinances and
36 review of conformance with an agreement, if any, between the district and the governing

1 authority. If such review indicates that the governing authority of any county or
2 municipality certified pursuant to subsection (a) of this Code section has not administered
3 or enforced its ordinances or has not conducted the program in accordance with any
4 agreement entered into pursuant to subsection ~~(d)~~ (e) of Code Section 12-7-7, the division
5 shall notify the governing authority of the county or municipality in writing. The governing
6 authority of any county or municipality so notified shall have 30 days within which to take
7 the necessary corrective action to retain certification as ~~an~~ a local issuing authority. If the
8 county or municipality does not take necessary corrective action within 30 days after
9 notification by the division, the division may revoke the certification of the county or
10 municipality as ~~an~~ a local issuing authority.

11 (d) The director may determine that the public interest requires initiation of an enforcement
12 action by the division. Where such a determination is made and the local issuing authority
13 has failed to secure compliance, the director may implement the board's rules and seek
14 compliance under provisions of Code Sections 12-7-12 through 12-7-15. For purposes of
15 this subsection, enforcement actions taken by the division pursuant to Code Sections
16 12-7-12 through 12-7-15 shall not require prior revocation of certification of the county or
17 municipality as ~~an~~ a local issuing authority.

18 12-7-9.

19 (a) Applications for permits shall be submitted in accordance with this chapter and the rules
20 and regulations, ordinances, and resolutions adopted pursuant ~~here to~~ to this chapter. Such
21 applications shall be accompanied by the applicant's erosion and sediment control plans and
22 by such supportive data as will affirmatively demonstrate that the land-disturbing activity
23 proposed will be carried out in such a manner that the minimum requirements set forth in
24 Code Section 12-7-6 shall be met. All applications shall contain a certification stating that
25 the plan preparer or the designee thereof visited the site prior to creation of the plan or that
26 such a visit was not required in accordance with rules and regulations established by the
27 board.

28 (b) No permit shall be issued to any applicant unless the local issuing authority
29 affirmatively determines that the plan embracing such activities meets the requirements of
30 Code Section 12-7-6. All applicable fees shall be paid prior to issuance of the land
31 disturbance permit by the local issuing authority.

32 (c) Permits shall be issued or denied as soon as practicable after the application therefor has
33 been filed with the local issuing authority, but in any event not later than 45 days thereafter.

34 12-7-10.

1 Except as otherwise provided by Code Section 12-7-7, immediately upon receipt of an
2 application for a permit the application and plan for sediment and erosion control shall be
3 referred to the appropriate district wherein such land-disturbing activities are proposed to
4 take place, for its review and approval or disapproval concerning the adequacy of the
5 erosion and sediment control plan proposed by the applicant. A district shall approve or
6 disapprove a plan within 35 days of receipt. Failure of a district to act within 35 days shall
7 be considered an approval of the pending plan.

8 12-7-11.

9 (a) Within the time specified by Code Section 12-7-9, the local issuing authority shall issue
10 or deny the permit. The local issuing authority, upon denial of a permit, shall state its
11 reasons for the denial, setting forth specifically wherein such application is found to be
12 deficient. Any land-disturbing activity permitted under this chapter shall be carried out in
13 accordance with this chapter and the ordinance, resolution, or rules and regulations adopted
14 and promulgated pursuant hereto to this chapter. The local issuing authority shall specify
15 on the permit the conditions under which the activity may be undertaken.

16 (b) The permit may be suspended, revoked, or modified by the local issuing authority, as
17 to all or any portion of the land affected by the plan, upon a finding that the holder or his
18 or her successor in title is not in compliance with the approved erosion and sediment control
19 plan or that the holder or his or her successor in title is in violation of this chapter or any
20 ordinance, resolution, rule, or regulation adopted or promulgated pursuant to this chapter.
21 A holder of a permit shall notify any successor in title to him or her as to all or any portion
22 of the land affected by the approved plan of the conditions contained in the permit.

23 12-7-12.

24 (a) Whenever Except as provided in subsection (d) of this Code section, whenever the
25 director has reason to believe that a violation of any provision of this chapter, any rule or
26 regulation of the board, or any order of the director has occurred in a county or municipality
27 which is not certified pursuant to subsection (a) of Code Section 12-7-8, the director may
28 issue an order directed to such violator or violators. The order shall specify the provisions
29 of this chapter or the rules or regulations or order alleged to have been violated and may
30 require that land-disturbing activity be stopped until necessary corrective action and
31 mitigation have been taken or may require that necessary corrective action and mitigation
32 be taken within a reasonable time to be prescribed in the order. Any order issued by the
33 director under this Code section shall be signed by the director. Any such order shall
34 become final unless the person or persons named therein request, in writing, a hearing
35 pursuant to Code Section 12-7-16.

1 (b) Whenever an Except as provided in subsection (d) of this Code section, whenever a
2 local issuing authority has reason to believe that a violation of any provision of a local
3 ordinance or resolution has occurred within the jurisdiction of the local issuing authority,
4 the local issuing authority may require that land-disturbing activity be stopped until
5 necessary corrective action and mitigation have been taken or may require that necessary
6 corrective action and mitigation be taken within a reasonable time.

7 (c) The following procedures shall apply to the issuances of stop work orders:

- 8 (1) For the first and second violations of the provisions of this chapter, the director or the
9 local issuing authority shall issue a written warning to the violator. The violator shall have
10 five days to correct the violation. If the violation is not corrected within five days, the
11 director or local issuing authority shall issue a stop work order requiring that
12 land-disturbing activities be stopped until necessary corrective action or mitigation has
13 occurred; provided, however, that, if the violation presents an imminent threat to public
14 health or waters of the state, the director or local issuing authority shall issue an immediate
15 stop work order in lieu of a warning;
- 16 (2) For a third and each subsequent violation, the director or local issuing authority shall
17 issue an immediate stop work order; and
- 18 (3) All stop work orders shall be effective immediately upon issuance and shall be in
19 effect until the necessary corrective action or mitigation has occurred.

20 (d) When a violation of this chapter in the form of taking action without a permit, failure
21 to maintain a stream buffer, or significant amounts of sediment, as determined by the local
22 issuing authority or by the director or his or her designee, have been or are being discharged
23 into state waters and where best management practices have not been properly designed,
24 installed, and maintained, a stop work order shall be issued by the local issuing authority
25 or by the director or his or her designee. All such stop work orders shall be effective
26 immediately upon issuance and shall be in effect until the necessary corrective action or
27 mitigation has occurred. Such stop work orders shall apply to all land-disturbing activity
28 on the site with the exception of the installation and maintenance of temporary or permanent
29 erosion and sediment controls.

30 12-7-13.

31 Whenever, in the judgment of the director, any person has engaged in or is about to engage
32 in any act or practice which constitutes or would constitute a violation of this chapter, the
33 rules and regulations adopted pursuant hereto to this chapter, or any order or permit
34 conditions in a county or municipality which is not certified pursuant to subsection (a) of
35 Code Section 12-7-8, he or she may make application to the superior court of the county
36 where such person resides or, if such person is a nonresident of the state, to the superior

1 court of the county in which the violative act or practice has been or is about to be engaged
2 in for an order enjoining such act or practice or for an order requiring compliance with this
3 chapter, the rules and regulations adopted pursuant ~~hereto to this chapter~~, or the order or
4 permit condition. Upon a showing by the director that such person has engaged in or is
5 about to engage in any such violative act or practice, a permanent or temporary injunction,
6 restraining order, or other order shall be granted without the necessity of showing the lack
7 of an adequate remedy at law.

8 12-7-14.

9 (a) Notwithstanding any other provision of this chapter to the contrary, upon receipt of
10 evidence that certain land-disturbing activities occurring in a municipality or county which
11 is not certified pursuant to subsection (a) of Code Section 12-7-8 are presenting an imminent
12 and substantial danger to the environment or to the health of humans, the director may bring
13 an action as provided in Code Section 12-7-13 to restrain immediately any person causing
14 or contributing to the danger caused by such land-disturbing activities or to take such other
15 action as may be necessary.

16 (b) If it is not practicable to assure prompt protection of the environment or the health of
17 humans solely by commencement of such a civil action, the director may issue such
18 emergency orders as may be necessary to protect the environment or the health of humans
19 who are or may be affected by such land-disturbing activities. Notwithstanding any other
20 provision of this chapter, such order shall be immediately effective for a period of not more
21 than 48 hours, unless the director brings an action under subsection (a) of this Code section
22 before the expiration of such period. Whenever the director brings such an action within
23 such period, such order shall be effective for such period of time as may be authorized by
24 the court pending litigation or thereafter.

25 12-7-15.

26 (a)(1) ~~Except as provided in paragraph (2) of this subsection, any Any person who~~
27 violates any provision of this chapter, the rules and regulations adopted pursuant ~~hereto~~
28 ~~to this chapter~~, or any permit condition or limitation established pursuant to this chapter
29 or who negligently or intentionally fails or refuses to comply with any final or emergency
30 order of the director issued as provided in this chapter shall be liable for a civil penalty not
31 to exceed \$2,500.00 per day. For the purpose of enforcing the provisions of this chapter,
32 notwithstanding any provision in any city charter to the contrary, municipal courts shall
33 be authorized to impose a penalty not to exceed \$2,500.00 for each violation.
34 Notwithstanding any limitation of law as to penalties which can be assessed for violations
35 of county ordinances, any magistrate court or any other court of competent jurisdiction

1 trying cases brought as violations of this chapter under county ordinances approved under
2 this chapter shall be authorized to impose penalties for such violations not to exceed
3 \$2,500.00 for each violation. Each day during which the violation or failure or refusal to
4 comply continues shall be a separate violation.

5 ~~(2) The following penalties shall apply to land-disturbing activities performed in violation~~
6 ~~of any provision of this chapter, any rules and regulations adopted pursuant hereto, or any~~
7 ~~permit condition or limitation established pursuant to this chapter:~~

8 ~~(A) The director or the issuing authority shall assess and collect a minimum penalty of~~
9 ~~\$250.00 per day for each violation involving the construction of a single-family dwelling~~
10 ~~by or under contract with the owner for his or her own occupancy; and~~

11 ~~(B) The director or the issuing authority shall assess and collect a minimum penalty of~~
12 ~~\$1,000.00 per day for each violation involving land-disturbing activities other than as~~
13 ~~provided in subparagraph (A) of this paragraph.~~

14 ~~(b) Whenever the director has reason to believe that any person has violated any provision~~
15 ~~of this chapter, any rule or regulation adopted pursuant hereto, or any permit condition or~~
16 ~~has negligently or intentionally failed or refused to comply with any final order or~~
17 ~~emergency order of the director, he may, upon written request, cause a hearing to be~~
18 ~~conducted before a hearing officer appointed by the board. Upon finding that such person~~
19 ~~has violated any provision of this chapter, any rule or regulation adopted pursuant hereto,~~
20 ~~or any permit condition or has negligently or intentionally failed or refused to comply with~~
21 ~~any final order or emergency order of the director, the hearing officer shall issue his~~
22 ~~decision imposing civil penalties as provided in this Code section. Such hearing and any~~
23 ~~administrative or judicial review thereof shall be conducted in accordance with Code~~
24 ~~Section 12-7-16.~~

25 ~~(c) In rendering a decision under this Code section imposing civil penalties, the hearing~~
26 ~~officer shall consider all factors which are relevant, including, but not limited to, the~~
27 ~~following:~~

28 ~~(1) The amount of civil penalty necessary to ensure immediate and continued compliance~~
29 ~~and the extent to which the violator may have profited by failing or delaying to comply;~~

30 ~~(2) The character and degree of impact of the violation or failure on the natural resources~~
31 ~~of the state, especially on any rare or unique natural phenomena;~~

32 ~~(3) The conduct of the person incurring the civil penalty in promptly taking all feasible~~
33 ~~steps and procedures necessary or appropriate to comply or to correct the violation or~~
34 ~~failure;~~

35 ~~(4) Any prior violations or failures to comply by such person with statutes, rules,~~
36 ~~regulations, orders, or permits administered, adopted, or issued by the director;~~

1 (5) The character and degree of injury to or interference with public health or safety
2 which is caused or threatened to be caused by such violation or failure; and
3 (6) The character and degree of injury to or interference with reasonable use of property
4 which is caused or threatened to be caused by such violation or failure.

5 (d) This Code section shall apply only to violations, failures, or refusals to comply which
6 occur in a municipality or county which is not certified pursuant to subsection (a) of Code
7 Section 12-7-8.

8 12-7-16.

9 All hearings on and review of contested matters, orders, or permits issued by or filed against
10 the director and all hearings on and review of any other enforcement actions or orders
11 initiated by the director under this chapter shall be provided and conducted in accordance
12 with subsection (c) of Code Section 12-2-2. The hearing and review procedure provided in
13 this Code section is to the exclusion of all other means of hearings or review.

14 12-7-17.

15 (a) This chapter shall not apply to the following activities:

16 (1) Surface mining, as the same is defined in Code Section 12-4-72;

17 (2) Granite quarrying and land clearing for such quarrying;

18 (3) Such minor land-disturbing activities as home gardens and individual home
19 landscaping, repairs, maintenance work, fences, and other related activities which result
20 in minor soil erosion;

21 (4) The construction of single-family residences, when such are constructed by or under
22 contract with the owner for his or her own occupancy, or the construction of single-family
23 residences construction disturbs less than one acre and is not a part of a platted
24 subdivision, a planned community, or an association of other residential lots consisting of
25 more than two lots larger common plan of development or sale with a planned disturbance
26 of equal to or greater than one acre and not otherwise exempted under this paragraph;
27 provided, however, that construction of any such residence shall conform to the minimum
28 requirements as set forth in subsection (b) of Code Section 12-7-6 and this paragraph. For

29 single-family residence construction covered by the provisions of this paragraph, there
30 shall be a buffer zone between the residence and any state waters classified as trout
31 streams pursuant to Article 2 of Chapter 5 of this title. In any such buffer zone, no
32 land-disturbing activity shall be constructed between the residence and the point where
33 vegetation has been wrested by normal stream flow or wave action from the banks of the
34 trout waters. For primary trout waters, the buffer zone shall be at least 50 horizontal feet,
35 and no variance to a smaller buffer shall be granted. For secondary trout waters, the buffer

1 zone shall be at least 50 horizontal feet, but the director may grant variances to no less
2 than 25 feet. Regardless of whether a trout stream is primary or secondary, for first order
3 trout waters, which are streams into which no other streams flow except for springs, the
4 buffer shall be at least 25 horizontal feet, and no variance to a smaller buffer shall be
5 granted. The minimum requirements of subsection (b) of Code Section 12-7-6 and the
6 buffer zones provided by this paragraph shall be enforced by the issuing authority;

7 (5) Agricultural operations as defined in Code Section 1-3-3 to include those practices
8 involving the establishment, cultivation, or harvesting of products of the field or orchard;
9 the preparation and planting of pasture land; farm ponds; dairy operations; livestock and
10 poultry management practices; and the construction of farm buildings;

11 (6) Forestry land management practices, including harvesting; provided, however, that
12 when such exempt forestry practices cause or result in land-disturbing or other activities
13 otherwise prohibited in a buffer, as established in paragraphs (15) and (16) of subsection
14 (b) of Code Section 12-7-6, no other land-disturbing activities, except for normal forest
15 management practices, shall be allowed on the entire property upon which the forestry
16 practices were conducted for a period of three years after the completion of such forestry
17 practices;

18 (7) Any project carried out under the technical supervision of the ~~Soil and Water Natural~~
19 Resources Conservation Service of the United States Department of Agriculture;

20 (8) Any project involving ~~one and one-tenth acres or less than one acre of disturbed area;~~
21 provided, however, that this exemption shall not apply to any land-disturbing activity
22 within ~~a larger common plan of development or sale with a planned disturbance of equal~~
23 ~~to or greater than one acre or within~~ 200 feet of the bank of any state waters, and for
24 purposes of this paragraph, 'state waters' excludes channels and drainageways which have
25 water in them only during and immediately after rainfall events and intermittent streams
26 which do not have water in them year round; provided, however, that any person
27 responsible for a project which involves ~~one and one-tenth acres or less than one acre,~~
28 which involves land-disturbing activity, and which is within 200 feet of any such excluded
29 channel or drainageway must prevent sediment from moving beyond the boundaries of the
30 property on which such project is located and provided, further, that nothing contained in
31 this chapter shall prevent a city or county which is ~~an~~ a local issuing authority from
32 regulating any such project which is not specifically exempted by paragraph (1), (2), (3),
33 (4), (5), (6), (7), (9), or (10) of this ~~subsection~~ Code section;

34 (9) Construction or maintenance projects, or both, undertaken or financed in whole or in
35 part, or both, by the Department of Transportation, the Georgia Highway Authority, or the
36 State Road and Tollway Authority; or any road construction or maintenance project, or
37 both, undertaken by any county or municipality; provided, however, that such projects

1 shall conform to the minimum requirements set forth in Code Section 12-7-6; provided,
2 further, that construction or maintenance projects of the Department of Transportation or
3 the State Road and Tollway Authority which disturb five one or more contiguous acres of
4 land shall be subject to the provisions of Code Section 12-7-7.1; except where the
5 Department of Transportation, the Georgia Highway Authority, or the State Road and
6 Tollway Authority is a secondary permittee for a project located within a larger common
7 plan of development or sale under the state general permit, in which case a copy of a
8 notice of intent under the state general permit shall be submitted to the local issuing
9 authority, the local issuing authority shall enforce compliance with the minimum
10 requirements set forth in Code Section 12-7-6 as if a permit had been issued, and
11 violations shall be subject to the same penalties as violations by permit holders;

12 (10) Any land-disturbing activities conducted by any electric membership corporation or
13 municipal electrical system or any public utility under the regulatory jurisdiction of the
14 Public Service Commission, provided that any such land-disturbing activity shall conform
15 to the minimum requirements set forth in Code Section 12-7-6; any utility under the
16 regulatory jurisdiction of the Federal Energy Regulatory Commission, any cable television
17 system as defined in Code Section 36-18-1, or any agency or instrumentality of the United
18 States engaged in the generation, transmission, or distribution of power; except where an
19 electric membership corporation or municipal electrical system or any public utility under
20 the regulatory jurisdiction of the Public Service Commission, any utility under the
21 regulatory jurisdiction of the Federal Energy Regulatory Commission, any cable television
22 system as defined in Code Section 36-18-1, or any agency or instrumentality of the United
23 States engaged in the generation, transmission, or distribution of power is a secondary
24 permittee for a project located within a larger common plan of development or sale under
25 the state general permit, in which case the local issuing authority shall enforce compliance
26 with the minimum requirements set forth in Code Section 12-7-6 as if a permit had been
27 issued, and violations shall be subject to the same penalties as violations by permit
28 holders; and

29 (11) Public water system reservoirs Any public water system reservoir, except in any
30 case where an existing impoundment built for hydroelectric power generation when at full
31 level is within a distance of five miles downstream from the dam of such public water
32 system reservoir.

33 (b) Where subsection (a) of this Code section requires compliance with the minimum
34 requirements set forth in Code Section 12-7-6, issuing authorities shall enforce compliance
35 with the minimum requirements as if a permit had been issued and violations shall be
36 subject to the same penalties as violations by permit holders.

1 12-7-18.

2 No provision of this chapter shall authorize any person to violate Article 2 of Chapter 5 of
3 this title, the 'Georgia Water Quality Control Act,' or the rules and regulations promulgated
4 and approved ~~thereunder~~ under said article or to pollute any waters of this state as defined
5 ~~thereby in said article.~~

6 12-7-19.

7 (a) After December 31, 2006, all persons involved in land development design, review,
8 permitting, construction, monitoring, or inspection or any land-disturbing activity shall meet
9 the education and training certification requirements, dependent on their level of
10 involvement with the process, as developed by the commission in consultation with the
11 division and the Stakeholder Advisory Board created pursuant to Code Section 12-7-20.

12 (b) No less than the following training programs shall be established:

13 (1) A fundamentals seminar (Level 1) will be established which provides sufficient
14 training to all participants as to the applicable laws, requirements, processes, and latest
15 means and methods recognized by the state to effectively control erosion and
16 sedimentation;

17 (2) An advanced fundamentals seminar (Level 1) will be established which provides
18 additional details of installation and maintenance of best management practices for both
19 regulatory and nonregulatory inspectors and others;

20 (3) An introduction to design seminar (Level 2) will be established which provides
21 required training to design and review a successful erosion, sedimentation, and pollution
22 control plan;

23 (4) An awareness seminar (Level 1) will be established which provides information
24 regarding the erosion and sediment control practices and processes in the state and which
25 will include an overview of the systems, laws, and roles of the participants; and

26 (5) A trainer and instructor seminar will be established for both Level 1 and Level 2
27 trainers and instructors which will provide the minimum training as to applicable laws and
28 best management practices and design of erosion, sedimentation, and pollution control
29 plans in the state.

30 (c) Trainer and instructor qualifications will be established with the following minimum
31 requirements:

32 (1) Level 1 trainers and instructors shall meet at least the following minimum
33 requirements and any other requirements as set by the commission:

34 (A) Education: four-year college degree or five years' experience in the field of erosion
35 and sediment control;

1 (B) Experience: five-years' experience in the field of erosion and sediment control.
2 Where years of experience is used in lieu of the education requirement of subparagraph
3 (A) of this paragraph, a total of ten years' field experience is required;
4 (C) Approval by the commission and the Stakeholder Advisory Board; and
5 (D) Successful completion of the Level 1 trainer and instructor seminar found in
6 paragraph (5) of subsection (b) of this Code section; and

7 (2) Level 2 trainers and instructors shall meet at least the minimum requirements of a
8 Level 1 trainer or instructor, any other requirements as set by the commission, and
9 successful completion of the Level 2 trainer and instructor seminar created under
10 paragraph (5) of subsection (b) of this Code section.

11 (d) In addition to the requirements of subsection (c) of this Code section, the commission
12 shall establish and any person desirous of holding certification must obtain a passing grade
13 as established by the Stakeholder Advisory Board on a final exam covering the material
14 taught in each mandatory seminar. Final exams may, at the discretion of the commission,
15 serve in lieu of attendance at the seminar.

16 (e)(1) A certification provided by achieving the requirements established by the
17 commission shall expire no later than three years after its issuance.

18 (2) A certified individual shall be required to attend and participate in at least four hours
19 of approved continuing education courses, as established by the commission, every three
20 years.

21 (3) A certification may be extended or renewed by meeting requirements established by
22 the commission.

23 (4) Revocation procedures may be established by the commission in consultation with the
24 division and the Stakeholder Advisory Board.

25 12-7-20.

26 (a) There shall be a Stakeholder Advisory Board to consist of not more than 13 members.
27 (b) Members shall be appointed by the Governor, shall serve at the pleasure thereof, and
28 shall represent the following interests:

29 (1) The division;
30 (2) The commission;
31 (3) Soil and water conservation districts;
32 (4) The Department of Transportation;
33 (5) Municipal governments;
34 (6) County governments;
35 (7) Public utilities;
36 (8) The engineering and design community;

1 (9) The construction community;

2 (10) The development community;

3 (11) The environmental community;

4 (12) The Erosion and Sediment Control Overview Council; and

5 (13) Educators.

6 (c) The Stakeholder Advisory Board shall elect one of its members as chairperson. The
7 chairperson shall call all meetings of the Stakeholder Advisory Board.

8 (d) The Stakeholder Advisory Board shall be responsible for working together with the
9 division and the commission to establish, evaluate, and maintain the education and training
10 program established pursuant to Code Section 12-7-19, including but not limited to
11 reviewing course curricula, educational materials, and exam and testing procedures;
12 evaluating trainer and instructor qualifications; and reviewing audit results performed by
13 the commission.

14 (e) The Stakeholder Advisory Board may conduct such meetings at such places and at such
15 times as it may deem necessary or convenient to enable it to exercise fully and effectively
16 its powers, perform its duties, and accomplish the objectives and purposes of this Code
17 section. Meetings shall be held on the written notice of the chairperson. The notice of a
18 meeting shall set forth the date, time, and place of the meeting. Minutes shall be kept of all
19 meetings.

20 (f) A majority of the members shall constitute a quorum of the Stakeholder Advisory
21 Board. The powers and duties of the Stakeholder Advisory Board shall be transacted,
22 exercised, and performed only pursuant to an affirmative vote of a majority of those
23 members present at a meeting at which a quorum is present.

24 (g) Members of the Stakeholder Advisory Board shall not be entitled to any compensation
25 for the rendering of their services to the Stakeholder Advisory Board.

26 12-7-21.

27 (a) In furtherance of its efforts to improve the quality of the natural resources of the state,
28 the board shall appoint a panel of not more than 16 members to study the controls
29 implemented pursuant to this chapter; the turbidity standards in place in the state; and any
30 standards or indicators other than turbidity that may be more appropriate to assess the
31 effectiveness and cost efficiencies of the controls. Members shall serve for terms ending
32 three years after the date this Code section becomes effective. Such panel shall be
33 appointed and such study shall commence in the calendar year this Code section becomes
34 effective. Such study shall take into account the physiographic differences of various
35 regions of the state. The panel shall complete its study and shall issue a report regarding
36 such standards, indicators, and controls to the General Assembly not later than three years

1 after the effective date of this Code section. Any changes recommended as a result of such
2 study shall be at least as protective of water quality as those standards and practices set forth
3 in this chapter as of the effective date of this Code section.

4 (b) The study panel shall elect one of such panel members as chairperson. The chairperson
5 shall call all meetings of the panel.

6 (c) The panel may conduct such meetings at such places and at such times as it may deem
7 necessary or convenient to enable it to exercise fully and effectively its powers, perform its
8 duties, and accomplish the objectives and purposes of this Code section. Meetings shall
9 be held on the written notice of the chairperson. The notice of a meeting shall set forth the
10 date, time, and place of the meeting. Minutes shall be kept of all meetings.

11 (d) A majority of the members shall constitute a quorum of the panel. The powers and
12 duties of the panel shall be transacted, exercised, and performed only pursuant to an
13 affirmative vote of a majority of those members present at a meeting at which a quorum is
14 present.

15 (e) Members of the panel shall not be entitled to any compensation for the rendering of their
16 services to the panel.

17 (f) The funds necessary for the study and report authorized under this Code section shall
18 come from funds appropriated to or otherwise available to the department.

19 (g) This Code section shall stand repealed three years after the date it becomes effective.

20 12-7-22.

21 In order to achieve efficiencies and economies for both the division and the regulated
22 community by the use of electronic filing for certain application and reporting requirements
23 of this chapter and National Pollution Discharge Elimination System permits, the division
24 and the Pollution Prevention Assistance Division of the department shall jointly work
25 toward implementing such an electronic filing and reporting system as soon as practicable
26 and allowable under federal regulations."

27 **SECTION 6.**

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