

Senate Bill 460

By: Senators Cagle of the 49th, Gillis of the 20th, Hudgens of the 47th and Brush of the 24th

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 12-7-6 of the Official Code of Georgia Annotated, relating to best
2 management practices for control of soil erosion and sedimentation and minimum
3 requirements for rules, regulations, ordinances, or resolutions, so as to change certain
4 provisions relating to 25 foot buffers along state waters; to authorize land-disturbing activity
5 within such buffers if certain compensatory mitigation requirements are satisfied; to repeal
6 conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Code Section 12-7-6 of the Official Code of Georgia Annotated, relating to best management
10 practices for control of soil erosion and sedimentation and minimum requirements for rules,
11 regulations, ordinances, or resolutions, is amended by striking paragraph (15) of subsection
12 (b) and inserting in lieu thereof the following:

13 ~~"(15)(A) Except as provided in paragraph (16) of this subsection, there~~ There is
14 established a 25 foot buffer along the banks of all state waters, as measured horizontally
15 from the point where vegetation has been wrested by normal stream flow or wave
16 action, except ~~where:~~

17 (i) As provided by paragraph (16) of this subsection;

18 (ii) Where the director determines to allow a variance that is at least as protective of
19 natural resources and the environment, ~~where:~~

20 (iii) Where otherwise allowed by the director pursuant to Code Section 12-2-8, ~~or~~
21 ~~where; or~~

22 (iv) Where a drainage structure or a roadway drainage structure must be constructed,
23 provided that adequate erosion control measures are incorporated in the project plans
24 and specifications and are implemented;

1 provided, however, that buffers of at least 25 feet established pursuant to Part 6 of
 2 Article 5 of Chapter 5 of this title shall remain in force unless a variance is granted by
 3 the director as provided in this paragraph.

4 (B) The following requirements shall apply to any such buffer:

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

17 (ii) Land-disturbing activity may occur within a buffer if the person planning to
 18 conduct such activity satisfies compensatory mitigation requirements for such
 19 activity. For purposes of this division, 'compensatory mitigation' means the drainage
 20 area of the state waters is less than 100 acres at the downstream end of the proposed
 21 land-disturbing activity within the buffer and:

22 (I) The United States Army Corps of Engineers asserts jurisdiction over the waters
 23 as waters of the United States, and the person has secured a permit from the Corps
 24 of Engineers under Section 404 of the Federal Pollution Control Act Amendment
 25 of 1972, 33 U.S.C. Section 1344, for the proposed land-disturbing activity within
 26 the buffer;

27 (II) The United States Army Corps of Engineers does not assert jurisdiction over the
 28 waters as waters of the United States, and the person complies with an approved
 29 program of compensatory mitigation for the buffer encroachment that was
 30 developed in accordance with the most current version of the Standard Operating
 31 Procedure, Compensatory Mitigation for Wetlands, Open Water, and Streams used
 32 by the United States Army Corps of Engineers, Savannah District, or in accordance
 33 with other procedures for compensatory mitigation established by the division; or

34 (III) The person seeking to conduct land-disturbing activity within the buffer has
 35 paid to the division a fee per linear foot of buffer to be disturbed, as measured along
 36 the center of the stream, as follows: \$30.00 per linear foot if the drainage area of
 37 the state waters is not more than 20 acres at the downstream end of the proposed

1 land-disturbing activity within the buffer; \$40.00 per linear foot if the drainage area
 2 of the state waters is more than 20 acres but not more than 50 acres at the
 3 downstream end of the proposed land-disturbing activity within the buffer; or
 4 \$50.00 per linear foot if the drainage area of the state waters is more than 50 acres
 5 but less than 100 acres at the downstream end of the proposed land-disturbing
 6 activity within the buffer. Such fees shall be deposited in the state treasury to the
 7 credit of the general fund; provided, however, that it is the intent of the General
 8 Assembly that, subject to appropriation, such funds be made available to the
 9 department for use in acquiring conservation easements or to purchase land in fee
 10 simple for the purpose of restoring, enhancing, or preserving natural buffers along
 11 state waters as determined appropriate by the commissioner of natural resources.

12 ~~(B)~~(C) 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)~~(D) The buffer shall not apply to the following land-disturbing activities, provided
 20 that they occur at an angle, as measured from the point of crossing, within 25 degrees
 21 of 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 SECTION 2.

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