

Senate Bill 460

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

AS PASSED SENATE

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 repeal conflicting laws; and for
5 other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

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

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

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

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

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

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

24 provided, however, that buffers of at least 25 feet established pursuant to Part 6 of
25 Article 5 of Chapter 5 of this title shall remain in force unless a variance is granted by

1 the director as provided in this paragraph. ~~The following requirements shall apply to~~
 2 ~~any such buffer:~~

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

15 (C) Springs and streams which discharge an average annual flow of 25 gallons per
 16 minute or less may be piped, at the discretion of the landowner, pursuant to the terms
 17 of a rule providing for a general variance promulgated by the board providing for notice
 18 to the division or local issuing authority of the location and extent of the piping and
 19 prescribed methodology for minimizing the impact of such piping and for measuring
 20 the volume of water discharged by the stream and the improvement to water quality
 21 downstream from the pipe. Any such pipe must stop short of the downstream
 22 landowner's property, and the landowner must comply with the buffer requirement for
 23 any adjacent streams. On or before December 31, 2004, the board shall adopt a rule or
 24 regulation for such general variance for projects where the landowner shows that the
 25 completed project will result in improved water quality for the affected stream.

26 ~~(B)~~(D) On or before December 31, ~~2000~~ 2004, the board shall adopt rules which
 27 contain specific criteria for the grant or denial by the director of requests for variances.
 28 After such date, no variance shall be granted by the director which is not consistent
 29 with the criteria contained in such rules; ~~provided, however, that, should the board fail~~
 30 ~~to adopt rules which contain specific criteria for the grant or denial of requests for~~
 31 ~~variances by the director on or before December 31, 2000, the authority of the director~~
 32 ~~to issue such variances shall be suspended until the board adopts such rules; and, Such~~
 33 ~~rules shall provide, at a minimum, that the director shall consider granting a variance~~
 34 ~~in the following circumstances:~~

35 (i) Where a proposed land disturbing activity within the buffer would require the
 36 landowner to acquire a permit from the United States Army Corps of Engineers under
 37 Section 404 of the federal Water Pollution Control Act Amendment of 1972, 33

1 U.S.C. Section 1344, and the Corps of Engineers has approved a mitigation plan to
 2 be implemented as a condition of such a permit;

3 (ii) Where the landowner provides a plan satisfactory to the director that shows that,
 4 even with the proposed land disturbing activity within the buffer, the completed
 5 project will result in improved water quality downstream of the project;

6 (iii) Where a project with a proposed land disturbing activity within the buffer is
 7 located in or upstream and within ten linear miles of a stream segment listed as
 8 impaired under Section 303(d) of the federal Water Pollution Control Act
 9 Amendment of 1972, 33 U.S.C. Section 1313(d) and the landowner provides a plan
 10 satisfactory to the director that shows that the completed project will result in
 11 improved water quality in such listed stream segment and that the project has no
 12 adverse impact relative to the pollutants of concern in such stream segment; and

13 (iv) All projects covered under divisions (i), (ii), and (iii) of this subparagraph shall
 14 meet all criteria set forth in rules for specific variance criteria adopted by the board
 15 by December 31, 2004.

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

- 21 (i) Stream crossings for water lines; or
 22 (ii) Stream crossings for sewer lines; and"

23 SECTION 2.

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