

House Bill 1490 (COMMITTEE SUBSTITUTE)

By: Representatives Burns of the 157th, Lane of the 158th, and Jenkins of the 8th

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 12-3-10 of the Official Code of Georgia Annotated, relating to
2 directing persons to leave parks, historic sites, or recreational areas upon their refusal to
3 observe rules and regulations and prohibited acts generally, so as to change certain provisions
4 relating to prohibitions against having or using certain boats on state park lakes; to amend
5 Code Section 16-9-70 of the Official Code of Georgia Annotated, relating to criminal use of
6 an article with an altered identification mark, so as to include vessels within the applicability
7 of said Code section; to amend Article 1 of Chapter 7 of Title 52 of the Official Code of
8 Georgia Annotated, relating to general provisions relative to the registration, operation, and
9 sale of watercraft, so as to change certain provisions relating to definitions; to change certain
10 provisions relating to exemptions from vessel numbering requirements; to provide for certain
11 requirements and prohibitions relative to hull identification numbers; to provide for seizure
12 of certain vessels for which hull identification numbers are lacking or have been altered; to
13 provide for forfeiture proceedings; to provide penalties for violations; to provide exemptions
14 from hull identification numbering requirements; to change certain provisions relating to
15 boating safety zones, restrictions on use of motors and operation of houseboats on certain
16 lakes, and exceptions; to provide for an effective date; to repeal conflicting laws; and for
17 other purposes.

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

19 style="text-align:center">**SECTION 1.**

20 Code Section 12-3-10 of the Official Code of Georgia Annotated, relating to directing
21 persons to leave parks, historic sites, or recreational areas upon their refusal to observe rules
22 and regulations and prohibited acts generally, is amended by striking subsections (e) through
23 (h) and inserting in lieu thereof the following:

24 "(e) It shall be unlawful for any person to have or use a privately owned boat on any of the
25 following state park lakes:

26 (1) A. H. Stephens Federal Lake and Lake Liberty; or

- 1 ~~(2) Black Rock Mountain Lake;~~
 2 ~~(3) Vogel-Lake Trahlyta;~~
 3 ~~(4) Franklin D. Roosevelt-Lake Delano;~~
 4 ~~(5)~~(2) John D. Tanner Lake (the 24 acre lake), provided that this prohibition shall apply
 5 only from May 1 through Labor Day of each year;
 6 ~~(6) Unicoi Lake; and~~
 7 ~~(7) Willaway Inlet of Fort Yargo Lake (25 acres).~~
- 8 ~~(f) It shall be unlawful to use a boat, other than one on official business, with any type of~~
 9 ~~motor on the following state park lakes:~~
- 10 ~~(1) Unicoi Lake;~~
 11 ~~(2) Willaway Inlet of Fort Yargo Lake (25 acres); and~~
 12 ~~(3) Fort Mountain Lake~~ Reserved.
- 13 (g) It shall be unlawful for any person to have or use a boat, other than one on official
 14 business, with other than an paddles or a portable bow or stern mounted electric trolling
 15 motor on any of the following state park lakes:
- 16 (1) Black Rock Mountain Lake;
 17 (2) James H. 'Sloppy' Floyd Lake;
 18 (3) A. H. Stephens-Lake Buncombe;
 19 (4) Franklin D. Roosevelt-Lake Franklin or Lake Delano;
 20 (5) John D. Tanner Lake (the 12 acre lake);
 21 (5.1) John D. Tanner Lake (the 24 acre lake), provided that this prohibition shall apply
 22 only from the day after Labor Day each year through April 30 of the following year;
 23 (6) Sweetwater Creek Lake; ~~and~~
 24 (7) Hard Labor Creek Lake (the 37 acre lake);
 25 (8) Fort Mountain Lake;
 26 (9) Vogel Lake; or
 27 (10) Unicoi Lake.
- 28 (h) It shall be unlawful for any person to use a boat, other than one on official business,
 29 with a motor which is neither an electric trolling motor nor ten horsepower or less on the
 30 following state park lakes:
- 31 (1) Fort Yargo Lake;
 32 (2) Hamburg Lake;
 33 (3) Hard Labor Creek Lake (the 275 acre lake);
 34 (4) High Falls Lake;
 35 (5) Indian Springs Lake;
 36 (6) Kolomoki Mounds Lake;
 37 (7) Stephen C. Foster Lake;

1 (8) Laura S. Walker Lake (between 7:00 A.M. eastern standard time or eastern daylight
2 time, whichever is applicable, and 11:00 A.M. eastern standard time or eastern daylight
3 time, whichever is applicable, and between 6:00 P.M. eastern standard time or 7:00 P.M.
4 eastern daylight time, whichever is applicable, and sunset);

5 (9) Little Ocmulgee Lake (between 7:00 A.M. eastern standard time or eastern daylight
6 time, whichever is applicable, and 11:00 A.M. eastern standard time or eastern daylight
7 time, whichever is applicable, and between 6:00 P.M. eastern standard time or 7:00 P.M.
8 eastern daylight time, whichever is applicable, and sunset); and

9 (10) Magnolia Springs Lake (between 7:00 A.M. eastern standard time or eastern
10 daylight time, whichever is applicable, and 11:00 A.M. eastern standard time or eastern
11 daylight time, whichever is applicable, and between 6:00 P.M. eastern standard time or
12 7:00 P.M. eastern daylight time, whichever is applicable, and sunset)."

13 SECTION 2.

14 Code Section 16-9-70 of the Official Code of Georgia Annotated, relating to criminal use of
15 an article with an altered identification mark, is amended by striking subsection (a) and
16 inserting in lieu thereof the following:

17 "(a) A person commits the offense of criminal use of an article with an altered
18 identification mark when he or she buys, sells, receives, disposes of, conceals, or has in his
19 or her possession a radio, piano, phonograph, sewing machine, washing machine,
20 typewriter, adding machine, comptometer, bicycle, firearm, safe, vacuum cleaner,
21 dictaphone, watch, watch movement, watch case, or any other mechanical or electrical
22 device, appliance, contrivance, material, vessel as defined in Code Section 52-7-3, or other
23 piece of apparatus or equipment, other than a motor vehicle as defined in Code Section
24 40-1-1, from which he or she knows the manufacturer's name plate, serial number, or any
25 other distinguishing number or identification mark has been removed for the purpose of
26 concealing or destroying the identity of such article."

27 SECTION 3.

28 Chapter 7 of Title 52 of the Official Code of Georgia Annotated, relating to the registration,
29 operation, and sale of watercraft, is amended by striking Code Section 52-7-3, relating to
30 definitions, and inserting in lieu thereof the following:

31 "52-7-3.

32 As used in this article, the term:

33 (1) 'Blind point' means that portion of any of the waters of this state in which there is a
34 natural or man-made obstruction which prevents the operator of a vessel from seeing

1 vessels approaching from the opposite side of the obstruction, thus creating a safety
2 hazard which could result in a boating accident.

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

4 (3) 'Boat livery' means a business which holds any vessel for renting, leasing, or
5 chartering.

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

7 (5) 'Dealer' means any person engaged in the business of manufacturing vessels or
8 selling new or used vessels at an established place of business.

9 (6) 'Department' means the Department of Natural Resources.

10 (7) 'Discharged' means, and shall include, spilled, leaked, pumped, poured, emitted, or
11 dumped.

12 (7.1) 'Hazardous area' means any area which the commissioner has designated as such
13 because of conditions which create a threat to the safety and welfare of boaters who may
14 operate in such area.

15 (8) 'Holding tank' means any container which is designed to receive and hold sewage and
16 other wastes discharged from a marine toilet and which is constructed and installed in
17 such a manner that it can only be emptied by pumping out the contents of such holding
18 tank.

19 (8.1) 'Homemade vessel' means any vessel that is built by an individual for personal use
20 from raw materials that does not require the assignment of a federal hull identification
21 number by a manufacturer pursuant to federal law. A person furnishing raw materials
22 under a contract may be considered the builder of a homemade vessel. Antique boats,
23 boats reconstructed from existing boat hulls, and rebuilt or reconstructed vessels are not
24 considered homemade vessels.

25 (8.2) 'Hull identification number' or 'HIN' means a number assigned to vessels by the
26 manufacturer of the vessel or by the issuing authority of a state as required by the United
27 States Coast Guard in accordance with federal law.

28 (9) 'Idle speed' means a slow speed maintained by the operator of a mechanically
29 propelled vessel reached by engaging the engine of the vessel into said speed by reducing
30 the throttle to a minimum.

31 (9.1) 'Issuing authority' means, as to this state, the Department of Natural Resources;
32 and, as to other states, the state if it has a numbering system approved by the United
33 States Coast Guard or the United States Coast Guard if the state that does not have an
34 approved numbering system.

35 (10) 'Marine toilet' includes any equipment for installation on board a vessel which is
36 designed to receive, retain, treat, or discharge sewage and any process to treat such

1 sewage. A marine toilet must be equipped with a holding tank which can be emptied
2 only by pumping out.

3 (11) 'Mechanically propelled vessel' means, for the purpose of determining fire
4 extinguisher requirements, those vessels propelled by machinery using a volatile liquid
5 for fuel.

6 (12) 'Nonmotorized vessel' means any vessel other than a sailboat which has no motor
7 attached in a manner to make it readily available for operation.

8 (13) 'No wake' means that the wake or wash created by the movement of the vessel
9 through the water is minimal.

10 (14) 'Operate' means to navigate or otherwise use a vessel which is not at anchor or
11 moored, including vessels which are being paddled, are drifting, or are being powered by
12 machinery.

13 (15) 'Operator' means the person who operates or has charge of the navigation or use of
14 a vessel.

15 (16) 'Owner' means a person, other than a lienholder, having the property in or title to a
16 vessel. The term includes a person entitled to the use or possession of a vessel subject to
17 an interest in another person reserved or created by agreement and securing payment or
18 performance of an obligation but the term excludes a lessee under a lease not intended
19 as security.

20 (17) 'Person' means an individual, partnership, firm, corporation, association, or other
21 legal entity.

22 (18) 'Personal flotation device' means any lifesaving device classified and approved as
23 Type I, Type II, Type III, Type IV, or Type V (Hybrid) by the United States Coast Guard.

24 (19) 'Portable marine toilet' means any device which is movable or portable and is not
25 permanently installed on a vessel and which is designed to receive and temporarily retain
26 sewage.

27 (20) 'Power boat' means any boat, vessel, or water-going craft which is propelled by
28 mechanical rather than manual means whether or not such propulsion device forms an
29 integral part of the structure thereof.

30 (21) 'Protected fresh waters' means the waters of Lake Allatoona, Lake Blackshear,
31 Clarks Hill Lake, Hartwell Lake, Lake Sidney Lanier, Lake Oconee, Lake Seminole,
32 Lake Sinclair, Russell Lake, Walter F. George Reservoir, and West Point Lake.

33 (22) 'Reportable boating accident' means an accident, collision, or other casualty
34 involving a vessel subject to this article which results in loss of life, injury sufficient to
35 cause incapacitation for at least 24 hours, or actual physical damage to property,
36 including vessels, in excess of \$2,000.00.

1 (22.1) 'Sailboard' means any sailboat whose unsupported mast is connected by a swivel
2 or a flexible universal joint to a hull similar to the hull of a surfboard.

3 (23) 'Sewage' means human body wastes and the waste from toilets and other receptacles
4 intended to receive or retain body wastes.

5 (24) 'Undocumented vessel' means a vessel which is not required to have and does not
6 have a valid marine document issued by the United States Coast Guard or federal agency
7 successor thereto.

8 (25) 'Vessel' means every description of watercraft, other than a seaplane on the water
9 or a sailboard, used or capable of being used as a means of transportation on water and
10 specifically includes, but is not limited to, inflatable rafts and homemade vessels;
11 provided, however, Code Section 52-7-18, relating to rules of the road for boat traffic,
12 shall be applicable to sailboards.

13 (26) 'Waters of this state' means any waters within the territorial limits of this state and
14 the marginal sea adjacent to this state and the high seas when navigated as a part of a
15 journey or ride to or from the shore of this state. This definition shall not include
16 privately owned ponds or lakes not open to the public."

17 SECTION 4.

18 Said article is further amended by striking Code Section 52-7-6, relating to exemptions from
19 vessel numbering requirements, and inserting in lieu thereof the following:

20 "52-7-6.

21 A vessel shall not be required to be numbered under ~~this article~~ Code Sections 52-7-4 and
22 52-7-5 if it is:

23 (1) Not motor propelled; provided, however, that sailboats 12 feet or more in length shall
24 require registration;

25 (2) Covered by a certificate of number in full force and effect which has been issued to
26 it pursuant to federal law or a federally approved numbering system of another state,
27 provided that such vessel shall not be used on the waters of this state for a period in
28 excess of 60 consecutive days;

29 (3) From a country other than the United States, provided that such vessel shall not be
30 used on the waters of this state for a period in excess of 60 consecutive days;

31 (4) A vessel whose owner is the United States, a state, or a subdivision thereof, which
32 vessel is used exclusively in the nonrecreation public service and which is clearly
33 identifiable as such;

34 (5) A vessel's lifeboat if the boat is used solely for lifesaving purposes; this exemption
35 does not include dinghies, tenders, speedboats, or other types of craft carried aboard
36 vessels and used for other than lifesaving purposes;

1 (6) A vessel that is used exclusively for racing;

2 (7) A vessel belonging to a class of boats which has been exempted from numbering by
3 the department after the department has found that:

4 (A) The numbering of vessels of such class will not materially aid in their
5 identification;

6 (B) An agency of the federal government has a numbering system applicable to the
7 class of vessel to which the vessel in question belongs; and

8 (C) The vessel would also be exempt from numbering if it were subject to the federal
9 law;

10 (8) Operating temporarily by virtue of evidence that a recent application for a certificate
11 of number has been submitted; or

12 (9) Used exclusively on privately owned ponds or lakes, except for those licensed by the
13 Federal Energy Regulatory Commission."

14 **SECTION 5.**

15 Said article is further amended by adding new Code sections to read as follows:

16 "52-7-7.1.

17 (a) No person shall operate on the waters of this state a vessel manufactured after
18 November 1, 1972, unless the vessel displays an assigned hull identification number as
19 required by the United States Coast Guard or by the issuing authority, except any of those
20 vessels exempted by Code Section 52-7-7.6. The hull identification number shall be
21 carved, burned, stamped, embossed, or otherwise permanently affixed to the outboard side
22 of the transom or the starboard side within two feet of the transom above the waterline in
23 accordance with federal law or as directed by the issuing authority.

24 (b) No person shall operate on the waters of this state a vessel that was manufactured
25 before November 1, 1972, for which an issuing authority has issued a hull identification
26 number unless the hull identification number is clearly displayed on the hull of the vessel
27 as described in subsection (a) of this Code section.

28 (c) No person shall destroy, remove, alter, cover, or deface the hull identification number,
29 or any plate or decal bearing such number, of any vessel, except to make necessary repairs
30 that require the removal of the HIN. Immediately upon completion of any repairs requiring
31 the destruction, removal, alteration, covering, or defacing of a vessel's HIN, the person
32 shall reaffix the hull identification number to the vessel in accordance with federal law or
33 shall apply for a replacement hull identification number from the department.

34 (d) No person shall assign the same hull identification number to more than one vessel.

1 52-7-7.2.

2 Each vessel manufactured or built after the effective date of this Code section for sale in
3 this state shall have a hull identification number displayed prior to sale or delivery for sale
4 in accordance with federal law and this article. The hull identification number shall not be
5 altered or replaced by the manufacturer or manufacturer's representative for the purpose
6 of upgrading the model year of a vessel after being offered for sale or delivered to any
7 dealer.

8 52-7-7.3.

9 (a) If the hull identification number on a vessel required by Code Section 52-7-7.1 or
10 52-7-7.2 to have a hull identification number does not exist or has been altered, removed,
11 destroyed, covered, or defaced or the real identity of the vessel cannot be determined, the
12 vessel, and any items used while towing said vessel, may be seized as contraband property
13 by a law enforcement agency or the department and shall be subject to forfeiture. Such
14 vessel shall not be sold or operated on the waters of the state unless the department:

15 (1) Receives a request from a law enforcement agency providing adequate
16 documentation for a replacement hull identification number; or

17 (2) Is directed by written order of a court of competent jurisdiction to issue to the vessel
18 a replacement hull identification number.

19 Thereafter, the replacement HIN shall be used for identification purposes. No vessel shall
20 be forfeited if the owner was unaware the vessel's HIN had been altered, removed,
21 destroyed, covered, or defaced.

22 (b) The failure to have the hull identification number clearly displayed in compliance with
23 this article shall be probable cause for any law enforcement officer to make further
24 inspection of the vessel in question to ascertain the true identity thereof.

25 52-7-7.4.

26 (a) Property subject to forfeiture under Code Section 52-7-7.3 and in the possession of any
27 state or local law enforcement agency shall not be subject to replevin but shall be deemed
28 to be in the custody of the superior court of the county wherein the property is located
29 subject only to the orders and decrees of the court having jurisdiction over the forfeiture
30 proceedings.

31 (b) The law enforcement agency having possession of any property subject to forfeiture
32 under Code Section 52-7-7.3 shall report such fact within ten days of taking possession to
33 the district attorney of the judicial circuit having jurisdiction in the county where the
34 property is located. Within 30 days from the date he or she receives such notice, the
35 district attorney of the judicial circuit shall file in the superior court of the county in which

1 the property is located an action for condemnation of the property. The proceedings shall
2 be brought in the name of the state, and the action shall be verified by a duly authorized
3 agent of the state in the manner required by law. The action shall describe the property,
4 state its location, state its present custodian, state the name of the owner, if known, state
5 the duly authorized agent of the state, allege the essential elements which are claimed to
6 exist, and shall conclude with a prayer of due process to enforce the forfeiture. Upon the
7 filing of such an action, the court shall promptly cause process to issue to the present
8 custodian in possession of the property described in the action, commanding him or her to
9 seize the property described in the action and to hold that property for further order of the
10 court. A copy of the action shall be served on the owner, if known. If the owner is known,
11 a copy of the action shall also be served upon any person having a duly recorded security
12 interest in or lien upon that property. If the owner is unknown or resides out of the state
13 or departs the state or cannot after due diligence be found within the state or conceals
14 himself or herself so as to avoid service, notice of the proceedings shall be published once
15 a week for two weeks in the newspaper in which the sheriff's advertisements are published.
16 Such publication shall be deemed notice to any and all persons having an interest in or right
17 affected by such proceeding and from any sale of the property resulting therefrom but shall
18 not constitute notice to any person having a duly recorded security interest in or lien upon
19 such property and required to be served under this Code section unless that person is
20 unknown or resides out of the state or departs the state or cannot after due diligence be
21 found within the state or conceals himself or herself to avoid service. At the expiration of
22 30 days after such filing, if no claimant has appeared to defend the action, the court shall
23 order the disposition of the seized property as provided for in this Code section. If the
24 owner of the vessel appears and defends the action and can show that he or she was
25 unaware of the fact that the hull identification number had been removed, altered, defaced,
26 falsified, or destroyed, the court shall order the property returned to the owner upon the
27 owner's paying proper expenses relating to proceedings for forfeiture, including the
28 expenses of the maintenance of custody, advertising, and court costs and upon the vessel
29 being assigned a new hull identification number as provided in this article.

30 (c) Except as otherwise provided in this article, when property is forfeited under this
31 article, the court may:

32 (1) Order that the vessel be retained by the law enforcement agency or the county in
33 which the vessel is located; or

34 (2) Order that the vessel be disposed of by sale, the proceeds of which shall be used to
35 pay the proper expenses relating to the proceedings for forfeiture, including the expenses
36 of maintenance of custody, advertising, and court costs, with the remaining funds to be
37 paid into the general fund of the county.

1 (d) Prior to the vessel being sold or returned to the owner or otherwise disposed of, the
2 department shall assign it a new hull identification number in accordance with federal law.

3 52-7-7.5.

4 (a) It shall be unlawful for any person to knowingly possess, manufacture, sell or
5 exchange, offer to sell or exchange, aid in the sale or exchange, supply in blank, authorize,
6 direct, or give away any counterfeit HIN, any counterfeit manufacturer's vessel HIN plate
7 or decal, or any manufacturer's vessel HIN plate decal which is assigned to a vessel to be
8 used for the purpose of identification of a vessel other than the one to which it is assigned;
9 or to conspire to do any of the foregoing. However, nothing in this subsection shall be
10 applicable to any approved hull identification number plate or decal issued as a
11 replacement by the manufacturer or an issuing authority.

12 (b) It shall be unlawful for any person to knowingly buy, sell, offer for sale, receive,
13 dispose of, conceal, or have in his or her possession any vessel, outboard motor, or part
14 thereof on which the HIN or any manufacturer's identification label of any kind has been
15 altered, removed, destroyed, covered, or defaced or to knowingly maintain such vessel,
16 outboard motor, or part thereof in any manner which conceals or misrepresents the true
17 identity of the vessel, the outboard motor, or any part thereof.

18 52-7-7.6.

19 A vessel shall not be required to have a hull identification number under Code Section 52-
20 7-7.1 or 52-7-7.2 if it is:

21 (1) An innertube; or

22 (2) A vessel used exclusively for racing."

23 **SECTION 6.**

24 Said chapter is further amended in Code Section 52-7-13, relating to boating safety zones,
25 restrictions on use of motors and operation of houseboats on certain lakes, and exceptions,
26 by redesignating subsection (h) as subsection (i) and by adding a new subsection (h) to read
27 as follows:

28 "(h) The operation of any of the following vessels on Lake Burton, Seed Lake, Lake
29 Rabun, Lake Tugalo, Tallulah Falls Lake, and Lake Yonah shall be prohibited:

30 (1) Any motorized vessel greater than 30 feet six inches in length; except for law
31 enforcement, scientific research, or dam operation and maintenance craft; or

32 (2) Any vessel equipped with any type of bypass mechanism that reduces or eliminates
33 the effectiveness of the muffler or baffler system required by Code Section 52-7-10."

SECTION 7.

Said article is further amended by striking Code Section 52-7-26, relating to penalties, and inserting in lieu thereof the following:

"52-7-26.

(a) Except as otherwise provided in this article, any person who violates this article or any rule or regulation promulgated hereunder shall be guilty of a misdemeanor.

(b) Any person who violates any provision of Code Section 52-7-7.1, 52-7-7.2, or 52-7-7.5 shall be guilty of a felony and, upon conviction thereof, shall be punished by imprisonment for not less than one year nor more than ten years, by a fine of not more than \$50,000.00, or by both such fine and imprisonment."

SECTION 8.

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

SECTION 9.

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