

House Bill 500

By: Representatives Geisinger of the 48<sup>th</sup>, Thomas of the 100<sup>th</sup>, Wilkinson of the 52<sup>nd</sup>, Millar of the 79<sup>th</sup>, Willard of the 49<sup>th</sup>, and others

A BILL TO BE ENTITLED  
AN ACT

1 To amend Title 12 of the Official Code of Georgia Annotated, relating to conservation and  
2 natural resources, so as to change certain provision relating to legislative findings and  
3 declarations relative to the Coastal Marshlands Protection Act of 1970; to change certain  
4 provisions relating to definitions relative to the Coastal Marshlands Protection Act of 1970;  
5 to change certain provisions relating to the Coastal Marshlands Protection Committee and  
6 its creation, members, powers, per diem and expenses, administrative hearings and review,  
7 and permits for minor alterations; to change certain provisions relating to permit required,  
8 application, notice, public hearing, issuance, denial, and dynamic dune fields; to change  
9 certain provisions relating to leasing of state owned marshlands or water bottoms; to change  
10 certain provisions relating to restriction on granting of permits, size restriction, and activities  
11 and structures considered contrary to public interest; to change certain provisions relating to  
12 inspection of marshlands; to change certain provisions relating to enforcement of the Coastal  
13 Marshlands Protection Act of 1970; to change certain provisions relating to applicability of  
14 the Coastal Marshlands Protection Act of 1970; to change certain provisions relating to  
15 liability for damages; to provide for inapplicability of Chapter 7 of said title to projects that  
16 are subject to the Coastal Marshlands Protection Act of 1970; to provide an effective date;  
17 to provide for applicability; to repeal conflicting laws; and for other purposes.

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

19 **SECTION 1.**

20 Title 12 of the Official Code of Georgia Annotated, relating to conservation and natural  
21 resources, is amended by revising Code Section 12-5-281, relating to legislative findings and  
22 declarations relative to the Coastal Marshlands Protection Act of 1970, as follows:

23 "12-5-281.

24 The General Assembly finds and declares that the coastal marshlands of Georgia comprise  
25 a vital natural resource system. It is recognized that ~~the estuarine area of Georgia is these~~  
26 marshlands are the habitat of many species of marine life and wildlife and, without the food

1 supplied by the marshlands, such marine life and wildlife cannot survive. The General  
 2 Assembly further finds that intensive marine research has revealed that the ~~estuarine~~  
 3 marshlands of coastal Georgia are among the richest providers of nutrients in the world.  
 4 Such marshlands provide a nursery for commercially and recreationally important species  
 5 of shellfish and other wildlife, provide a great buffer against flooding and erosion, and help  
 6 control and disseminate pollutants. Also, it is found that the coastal marshlands provide  
 7 a natural recreation resource which has become vitally linked to the economy of Georgia's  
 8 coastal zone and to that of the entire state. The General Assembly further finds that this  
 9 coastal marshlands resource system is costly, if not impossible, to reconstruct or  
 10 rehabilitate once adversely affected by man related activities and is important to conserve  
 11 for the present and future use and enjoyment of all citizens and visitors to this state. The  
 12 General Assembly further finds that the coastal marshlands are a vital area of ~~the~~ this state  
 13 and are essential to maintain the health, safety, and welfare of all the citizens of ~~the~~ this  
 14 state. Therefore, the General Assembly declares that the management of the coastal  
 15 marshlands has more than local significance, is of equal importance to all citizens of ~~the~~  
 16 this state, is of state-wide concern, and consequently is properly a matter for regulation  
 17 under the police power of the state. The General Assembly further finds and declares that  
 18 activities and structures in the coastal marshlands must be regulated to ensure that the  
 19 values and functions of the coastal marshlands are not impaired and to fulfill the  
 20 responsibilities of each generation as public trustees of the coastal marshlands for  
 21 succeeding generations."

## 22 SECTION 2.

23 Said title is further amended by revising Code Section 12-5-282, relating to definitions  
 24 relative to the Coastal Marshlands Protection Act of 1970, as follows:

25 "12-5-282.

26 As used in this part, the term:

- 27 (1) 'Applicant' means any person who files an application under this part.  
 28 (2) 'Board' means the Board of Natural Resources.  
 29 (3) 'Coastal marshlands' or 'marshlands' means ~~any marshland~~ all tidally influenced  
 30 waters, marshes, and marshlands lying within a tide-elevation range from 5.6 feet above  
 31 mean tide level and below; such may be indicated by, among other things, the presence  
 32 of marshlands vegetation. This area includes any intertidal area, mud flat, tidal water  
 33 bottom, or salt marsh in the State of Georgia ~~within the estuarine area of the state,~~  
 34 whether or not the tidewaters reach the littoral areas through natural or artificial  
 35 watercourses. ~~'Vegetated marshlands' shall include those areas upon which grow one, but~~  
 36 ~~not necessarily all, of the following: salt marsh grass (Spartina alterniflora), black~~

1 needlerush (*Juncus roemerianus*), saltmeadow cordgrass (*Spartina patens*), big cordgrass  
 2 (*Spartina cynosuroides*), saltgrass (*Distichlis spicata*), coast dropseed (*Sporobolus*  
 3 *virginicus*), bigelow glasswort (*Salicornia bigelovii*), woody glasswort (*Salicornia*  
 4 *virginica*), saltwort (*Batis maritima*), sea lavender (*Limonium nashii*), sea oxeye  
 5 (*Borrchia frutescens*), silverling (*Baccharis halimifolia*), false willow (*Baccharis*  
 6 *angustifolia*), and high-tide bush (*Iva frutescens*): The occurrence and extent of salt  
 7 marsh peat at the undisturbed surface shall be deemed to be conclusive evidence of the  
 8 extent of a salt marsh marshland or a part thereof.

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

10 (4.1) 'Coastal marshlands area' or 'marshlands area' means coastal marshlands and a  
 11 buffer extending from the edge of such marshlands landward for a distance of 50 feet but  
 12 excluding from such buffer any area subject to Part 2 of this article, the 'Shore Protection  
 13 Act.'

14 (5) 'Committee' means the Coastal Marshlands Protection Committee created by this  
 15 part.

16 (6) 'Eligible person' means any person who is the owner of high land adjoining the state  
 17 owned ~~marshland~~ marshlands or water bottoms, or combination thereof, sought to be  
 18 leased by said person such that at least 100 percent of the landward boundary of the state  
 19 owned ~~marshland~~ marshlands or water ~~bottom~~ bottoms, or combination thereof, sought  
 20 to be leased is bordered by said adjoining high land.

21 ~~(7) 'Estuarine area' means all tidally influenced waters, marshes, and marshlands lying~~  
 22 ~~within a tide-elevation range from 5.6 feet above mean tide level and below~~ Reserved.

23 (8) 'Live-aboard' means a floating vessel or other water craft which is moored to a dock,  
 24 tree, or piling or anchored in the estuarine waters of the state and is utilized as a human  
 25 or animal abode. Live-aboards include but are not limited to monohulls, multihulls,  
 26 houseboats, floating homes, and other floating structures which are used for human or  
 27 animal habitation.

28 (8.1) 'Marshlands vegetation' means salt marsh grass (*Spartina alterniflora*), black  
 29 needlerush (*Juncus roemerianus*), saltmeadow cordgrass (*Spartina patens*), big cordgrass  
 30 (*Spartina cynosuroides*), saltgrass (*Distichlis spicata*), coast dropseed (*Sporobolus*  
 31 *virginicus*), bigelow glasswort (*Salicornia bigelovii*), woody glasswort (*Salicornia*  
 32 *virginica*), saltwort (*Batis maritima*), sea lavender (*Limonium nashii*), sea oxeye  
 33 (*Borrchia frutescens*), silverling (*Baccharis halimifolia*), false willow (*Baccharis*  
 34 *angustifolia*), or high-tide bush (*Iva frutescens*).

35 (9) 'Minor alteration' means any change in the marshlands or marshlands area which,  
 36 taken singularly or in combination with other changes, involve less than 0.10 acres acre.  
 37 Minor alteration also includes renewal of permits previously issued by the committee.

1 (10) 'Person' means any individual, partnership, corporation, municipal corporation,  
 2 county, association, or public or private authority; and shall include the State of Georgia,  
 3 its political subdivisions, and all its departments, boards, bureaus, commissions, or other  
 4 agencies, unless specifically exempted by this part.

5 (11) 'Political subdivision' means the governing authority of a county or a municipality  
 6 in which the marshlands to be affected or any part thereof are located.

7 (12) 'Private dock' means a structure built onto or over the marsh and submerged lands  
 8 which is used for recreational fishing and other recreational activities, is not available to  
 9 the public, does not have enclosures, and does not create a navigation hazard; provided,  
 10 however, that a private dock may be covered and screened with wainscotting not higher  
 11 than three feet and may be equipped with a hoist."

### 12 SECTION 3.

13 Said title is further amended by revising subsection (d) of Code Section 12-5-283, relating  
 14 to the Coastal Marshlands Protection Committee and its creation, members, powers, per diem  
 15 and expenses, administrative hearings and review, and permits for minor alterations, as  
 16 follows:

17 "(d) Any permit for minor alteration of the marshlands area may be issued by the  
 18 commissioner based on the recommendations of staff, past committee actions, and the  
 19 results of public comments. The commissioner may refer the application to the committee  
 20 to decide on permits for minor alterations that, in his judgment, should receive broader  
 21 consideration. A committee member may choose to have the full committee decide on  
 22 permit applications for minor alterations that the member feels should receive broader  
 23 consideration."

### 24 SECTION 4.

25 Said title is further amended by revising Code Section 12-5-286, relating to permit required,  
 26 application, notice, public hearing, issuance, denial, and dynamic dune fields, as follows:

27 "12-5-286.

28 (a) No person shall remove, fill, dredge, drain, or otherwise alter any marshlands areas or  
 29 construct or locate any structure on or over any marshlands areas in this state ~~within the~~  
 30 ~~estuarine area thereof~~ without first obtaining a permit from the committee or, in the case  
 31 of minor alteration of marshlands areas, the commissioner. A permit may authorize the  
 32 construction or maintenance of the project proposed in an application. After construction  
 33 pursuant to a permit, a project may be maintained without a permit so long as it does not  
 34 further alter the natural topography or vegetation at the project site. Any project lawfully

1 constructed prior to the effective date of this subsection may be maintained without a  
2 permit so long as it does not further alter the marshlands area.

3 (b) Each application for such permit shall be properly executed and filed with the  
4 department on forms prescribed by the department and shall include:

5 (1) The name and address of the applicant;

6 (2) A plan or drawing showing the applicant's proposal and the manner or method by  
7 which such proposal shall be accomplished. Such plan shall identify the coastal  
8 marshlands area affected;

9 (3) A plat of the area in which the proposed work will take place;

10 (4) A copy of the deed or other instrument under which the applicant claims title to the  
11 property or, if the applicant is not the owner, ~~then~~ a copy of the deed or other instrument  
12 under which the owner claims title together with written permission from the owner to  
13 carry out the project on his or her land. In lieu of a deed or other instrument referred to  
14 in this paragraph, the committee may accept some other reasonable evidence of  
15 ownership of the property in question or other lawful authority to make use of the  
16 property. The committee will not adjudicate title disputes concerning the property which  
17 is the subject of the application; provided, however, that the committee may decline to  
18 process an application when submitted documents show conflicting deeds;

19 (5) A list of all adjoining landowners together with such owners' addresses, provided  
20 that if the names or addresses of adjoining landowners cannot be determined, the  
21 applicant shall file in lieu thereof a sworn affidavit that a diligent search, including,  
22 without limitation, a search of the records of the county tax assessor's office, has been  
23 made but that the applicant was not able to ascertain the names or addresses, as the case  
24 may be, of adjoining landowners;

25 (6) A letter from the local governing authority of the political subdivision in which the  
26 property is located, stating that the applicant's proposal is not violative of any zoning  
27 law;

28 (7) A nonrefundable application fee to be set by the board in an amount necessary to  
29 defray the administrative cost of issuing such permit. Renewal fees shall be equal to  
30 application fees, which shall not exceed \$1,000.00 for any one proposal and shall be paid  
31 to the department;

32 (8) A description from the applicant of alternative sites and why they are not feasible and  
33 a discussion of why the permit should be granted;

34 (9) A statement from the applicant that he or she has made inquiry to the appropriate  
35 authorities that the proposed project is not over a landfill or hazardous waste site and that  
36 the site is otherwise suitable for the proposed project;

1 (10) A copy of the water quality certification issued by the department if required for the  
2 proposed project;

3 (11) Certification by the applicant of adherence to soil and erosion control  
4 responsibilities if required for the proposed project; and

5 (12) Such additional information as is required by the committee to properly evaluate the  
6 application.

7 (c) A copy of each application for a permit shall be delivered to each member of the  
8 committee at least seven days prior to any meeting of the committee.

9 (d) The department, after receipt of an application, shall notify in writing all adjoining  
10 landowners that the application has been received. Such notice shall indicate the use the  
11 applicant proposes to make of the property. Should the applicant indicate that any  
12 adjoining landowner is unknown or that the address of such landowner is unknown, then  
13 the department shall, after receipt of a completed application, cause a notice of the  
14 proposed activity and a brief description of the affected land to be published in the legal  
15 organ of or a newspaper of general circulation in the county or counties in which such land  
16 lies. Cost of such publication shall be paid by the applicant. Should the property to be  
17 affected by the applicant be bordered on any side or on more than one side by other  
18 property of the applicant, the applicant shall supply the names and addresses of the nearest  
19 landowners whose land borders on his land. If the names or addresses, or both, of the  
20 nearest landowners cannot be ascertained, the applicant shall supply a sworn statement of  
21 diligent search as provided in this Code section. The landowners named by the applicant  
22 shall be notified either directly or by advertisement as provided in this Code section. The  
23 department may also make inquiry to adjoining landowners to ascertain whether or not  
24 there is objection to issuance of a permit.

25 (e) The committee shall provide notice of applications by either public notice distributed  
26 jointly with the United States Army Corps of Engineers or public notice distributed by the  
27 committee. In no instance shall a public notice be issued for less than seven days prior to  
28 the meeting at which the committee reviews the subject of the public notice. Public notices  
29 shall be distributed to all persons who have requested to be placed on the mailing list. Such  
30 request shall be made in writing and shall be renewed in December of each year. Failure  
31 to renew the request shall result in the removal of such name from the mailing list.

32 (f) Whenever there appears to be sufficient public interest, the committee may call a public  
33 hearing.

34 (g) In passing upon the application for permit, the committee shall consider the public  
35 interest, which, for purposes of this part, shall be deemed to be the following  
36 considerations:

- 1 (1) Whether or not unreasonably harmful obstruction to or alteration of the natural flow  
 2 of navigational water within the affected area will arise as a result of the proposal;
- 3 (2) Whether or not unreasonably harmful or increased erosion, shoaling of channels, or  
 4 stagnant areas of water will be created; and
- 5 (3) Whether or not the granting of a permit and the completion of the applicant's  
 6 proposal will unreasonably interfere with the conservation of fish, shrimp, oysters, crabs,  
 7 clams, or other marine life, wildlife, or other resources, including but not limited to water  
 8 and oxygen supply.
- 9 (h) It is the responsibility of the applicant to demonstrate to the committee that the  
 10 proposed alteration is not contrary to the public interest and that no feasible alternative sites  
 11 exist. If the committee finds that the application is not contrary to the public interest and  
 12 no feasible alternative sites exist, as specified in this subsection, it shall issue to the  
 13 applicant a permit. Such permit may be conditioned upon the applicant's amending the  
 14 proposal to take whatever measures are necessary to protect the public interest.
- 15 (i) The committee shall act upon an application for a permit within 90 days after the  
 16 application is complete; provided, however, that this provision may be waived upon the  
 17 written request of the applicant. An application ~~must~~ shall be complete sufficiently in  
 18 advance of the committee meeting at which the project will be considered to allow for  
 19 public notice and evaluation by the department. An application is complete when it  
 20 contains substantially all of the written information, documents, forms, fees, and materials  
 21 required by this part.
- 22 (j) In the event a majority of the members of the committee determine that a permit should  
 23 be denied, the application for permit shall be denied. Any applicant who is aggrieved or  
 24 adversely affected thereby shall have the right to appeal as provided in Code Section  
 25 12-5-283.
- 26 (k) Should a majority of the members of the committee agree that a permit should be  
 27 conditional, the permit shall be issued on such conditions as a majority of the committee  
 28 directs. Any applicant who is aggrieved or adversely affected thereby shall have the right  
 29 to appeal as provided in Code Section 12-5-283.
- 30 (l) Every permit shall require that the proposed project be completed within five years after  
 31 the date of the issuance of the permit and such permit shall expire five years after the date  
 32 of issuance. Such time may be extended an additional five years upon showing that all due  
 33 efforts and diligence toward the completion of the work have been made. Any permit may  
 34 be revoked by the committee for noncompliance with or for violation of its terms after  
 35 written notice of intention to do so has been furnished to the holder thereof.
- 36 (m) A permit to alter the marshlands area that has been granted by the committee ~~becomes~~  
 37 shall become final immediately upon issuance, but ~~no~~ construction or alteration ~~may~~ shall

1 not commence until the expiration of 30 days following the date of the committee meeting  
 2 at which the application is approved; provided, however, that if a timely appeal is filed, ~~no~~  
 3 construction or alteration ~~may~~ shall not commence until all administrative and judicial  
 4 proceedings are terminated.

5 (n) Issuance of a permit under this part and construction of the permitted project shall not  
 6 remove the designated property from the jurisdiction of this part. All changes in permitted  
 7 uses which increase impacts to any land subject to the provisions of this part ~~must~~ shall be  
 8 assessed by the committee to determine if the proposed change is consistent with this part  
 9 and the permit. Each permitted alteration of the marshlands area shall be reviewed by the  
 10 department on a five-year basis, or when noncompliance with the purpose for which the  
 11 permit was issued is evident, to determine if the use of the ~~marshland~~ marshlands area is  
 12 consistent with the intent of this part. If the permit holder is found not to be in compliance  
 13 with this part, the committee shall take action as authorized under Code Section 12-5-291.

14 (o) All plans, documents, and materials contained in any application for any permit  
 15 required by this part shall be made a part of the permit, if granted, and conformance to such  
 16 plans, documents, and materials shall be a condition of the permit. No change or deviation  
 17 from any such plans, documents, or materials shall be permitted without the prior  
 18 notification and approval of the committee.

19 (p) The permittee shall notify the department of completion of a project within 30 days of  
 20 completion.

21 (q) If, prior to completion of review of an application under this part, the committee  
 22 receives notice of the denial of a permit or authorization necessary for the project, review  
 23 of the project shall be suspended and, if the denial becomes final, the application shall  
 24 stand denied.

25 (r) If ~~an area~~ a site has both marshlands areas as defined in Code Section 12-5-282 and  
 26 dynamic dune fields as defined in Code Section 12-5-232, it shall be subject to the  
 27 jurisdiction of both such parts. In the event of a conflict between this part and Part 2 of this  
 28 article, the commissioner shall determine which part shall apply so as to best protect the  
 29 public interest."

### 30 SECTION 5.

31 Said title is further amended by revising Code Section 12-5-287, relating to leasing of state  
 32 owned marshland or water bottoms, as follows:

33 "12-5-287.

34 (a) The committee, acting for and on behalf of and in the name of the state, is further  
 35 authorized and empowered to grant and convey to any eligible person a lease of state  
 36 owned ~~marshland~~ marshlands or water bottoms, or a combination thereof, upon such terms

1 and conditions as the committee deems advisable for the purpose of constructing,  
2 operating, and maintaining thereupon a marina or marinas or dock providing more than 500  
3 linear feet of dock space, including the installing, maintaining, repairing, removing, and  
4 replacing of buildings, structures, piers, docks, floating docks, marine railways, dolphins,  
5 pilings, appurtenances thereto, and all facilities and improvements that shall be reasonably  
6 used for or in connection therewith, subject always to the initial and continuing compliance  
7 by the lessee with all applicable laws pertaining to the use of the leased property and  
8 subject always to the use and enjoyment of the public of any navigable waters upon or over  
9 the leased property. The applicant for any such lease shall inform the committee of the  
10 total linear footage of dock space proposed, but the final decision as to the total dock space  
11 available to moor boats shall be in the sound discretion of the committee.

12 (b) Upon application by any interested person for a lease pursuant to this Code section, the  
13 committee shall determine whether or not the applicant is an eligible person. The  
14 committee must also determine whether or not the applicant has sufficient lands properly  
15 to service the area to be leased. If the committee determines that the applicant is an eligible  
16 person and that sufficient lands exist to service the marina or dock, then the committee is  
17 authorized to grant and convey to the applicant a lease of the state owned ~~marshland~~  
18 marshlands or water bottoms, or a combination thereof, described in the application  
19 without the necessity of public bid.

20 (c) The application for the lease shall be in writing and shall contain a request for a lease  
21 of the state owned property described therein. Such application shall include all of the  
22 information required for a permit under this part. The entire application ~~must~~ shall be in  
23 a form acceptable to the committee.

24 (d) Each lease granted under this Code section shall be upon such provisions,  
25 requirements, and conditions as the committee shall make and shall, except as provided in  
26 subsections (g) and (h) of this Code section, provide for a primary term of not more than  
27 ten years. Each lease, except as provided in subsections (g) and (h) of this Code section,  
28 shall require the payment of an annual rental fee set by the committee which shall be not  
29 less than the fair market rental value of the state owned ~~marshland~~ marshlands or water  
30 bottoms leased thereby and may provide for two renewal terms, each of which shall not be  
31 for a term of more than equal duration to the primary term. Rental fees shall be paid in one  
32 installment to the department not later than July 15 of each year. A penalty of 10 percent  
33 of the annual rental shall be assessed for late payment. Failure to pay rental by August 1  
34 of the year due shall result in the cancellation of the lease.

35 (e) Each lease granted under this Code section shall protect the interest of owners of  
36 ~~marshland~~ marshlands and high land adjoining the high land of the lessee upon which the  
37 lessee's eligibility for lease was based to a right of access to the state owned ~~marshland~~

1 marshlands or water bottoms adjoining the state owned ~~marshland~~ marshlands or water  
2 bottoms leased to the applicant; provided, however, said owners of adjoining high land may  
3 assign their rights in writing in favor of the applicant and such written assignment may be  
4 used to determine the percentage of landward boundary required for eligibility to lease the  
5 state owned ~~marshland~~ marshlands and water bottoms described in the application.

6 (f) If the eligible person desires the ability to transfer or convey ownership interests in the  
7 leasehold to individuals purchasing or leasing on a long-term basis the slips of the marina  
8 or marinas, each lease granted under this Code section shall require the formation of a  
9 condominium pursuant to Code Section 44-3-72.

10 (g) Upon application of any eligible person who either is the owner of a marina in  
11 existence on March 1, 1989, or holds a permit subsequently granted by the committee  
12 under this part on an application for a permit filed with the committee prior to March 1,  
13 1989, the committee shall grant to that eligible person a lease of the state owned ~~marshland~~  
14 marshlands or water bottoms upon which such marina is actually located for a term of 20  
15 years beginning March 1, 1989, with a nominal rental of \$1.00 per year; provided,  
16 however, that any extensions of the dock space or expansion of the area of state owned  
17 ~~marshland~~ marshlands or water bottoms actually used in conjunction with the marina shall  
18 be subject to the provisions of subsection (d) of this Code section; and provided, further,  
19 that any such application made on or after January 1, 1999, shall be subject to the  
20 provisions of subsection (d) of this Code section.

21 (h) Upon application of any eligible person who is either a nonprofit corporation, a  
22 nonprofit organization, or a public entity, the committee may grant a lease of state owned  
23 ~~marshland~~ marshlands or water bottoms for the construction and operation of a marina as  
24 a community or public dock. Each lease granted under this subsection shall be for a term  
25 of ten years from the date of its execution with a nominal rental of \$1.00 for the entire  
26 term.

27 (i) The department shall make an annual report of its activities each calendar year to the  
28 General Assembly. The report shall include a summary of all applications received and  
29 leases granted, including length of terms, rentals, and locations. Copies of the annual  
30 report shall be provided to the director of the State Properties Commission, the chairperson  
31 of the House Committee on Natural Resources and Environment ~~Committee~~, the  
32 chairperson of the House Committee on State Institutions and Property, the chairperson of  
33 the Senate Natural Resources and the Environment Committee, and the chairperson of the  
34 Senate ~~Committee on~~ State and Local Governmental Operations Committee. The  
35 department shall not be required to distribute copies of the annual report to the members  
36 of the General Assembly but shall notify the members of the availability of the annual  
37 report in the manner which it deems to be most effective and efficient.

1 (j) The committee may place such terms, limitations, restrictions, and conditions in such  
 2 leases as are deemed necessary to ensure that the utilization of the property is in the public  
 3 interest. Leased areas shall be deemed to be areas where resources are managed by the  
 4 state and lessee for the protection of wildlife and other natural resources.

5 (k) The committee may designate staff of the department to act on its behalf to evaluate,  
 6 enforce, and execute leases issued under this part.

7 (l) A lease granted under this part shall be issued only to applicants who agree not to  
 8 discriminate against any person on the basis of race, gender, color, national origin, religion,  
 9 or disability. Discrimination by lessee may be punished by termination of the lease, by  
 10 injunction, or by any other legal remedy available to the committee."

### 11 SECTION 6.

12 Said title is further amended by revising Code Section 12-5-288, relating to restriction on  
 13 granting of permits, size restriction, and activities and structures considered contrary to  
 14 public interest, as follows:

15 "12-5-288.

16 (a) If the project is not water related or dependent on waterfront access or can be satisfied  
 17 by the use of an alternative nonmarshland site or by use of existing public facilities, a  
 18 permit usually should not be granted pursuant to Code Section 12-5-286.

19 (b) The amount of the marshlands area to be altered must be minimum in size. The  
 20 following activities and structures are normally considered to be contrary to the public  
 21 interest when located in the coastal marshlands area but the final decision as to whether any  
 22 activity or structure is considered to be in the public interest shall be in the sound discretion  
 23 of the committee:

24 (1) ~~Filling of marshlands~~ Any removal, filling, dredging, or draining or other alteration  
 25 for residential, commercial, and industrial uses;

26 (2) ~~Filling of marshlands~~ Any removal, filling, dredging, or draining or other alteration  
 27 for private parking lots and private roadways;

28 (3) Construction of dump sites and depositing of any waste materials or dredge spoil;

29 (4) Dredging of canals or ditches for the purpose of draining coastal marshlands areas;

30 (5) Mining;

31 (6) Construction of lagoons or impoundments for waste treatment, cooling, agriculture,  
 32 or aquaculture which would occupy or damage coastal marshlands or life forms therein;

33 (7) Construction of structures which constitute an obstruction of view to adjoining  
 34 riparian landowners, including signs and enclosures; and

35 (8) Occupying a live-aboard for more than 30 days during any calendar year; provided,  
 36 however, that the commissioner may grant extensions of time beyond 30 days to persons

1 making a request in writing stating the reasons for such extension. Owners of docks  
 2 where live-aboards are moored as well as owners and occupants of live-aboards ~~are~~ shall  
 3 be responsible under this part."

#### 4 SECTION 7.

5 Said title is further amended by revising Code Section 12-5-289, relating to inspection of  
 6 marshlands, as follows:

7 "12-5-289.

8 The department, through its officers, staff, and conservation rangers, shall, in addition to  
 9 its other duties prescribed by law, make reasonable inspections of the marshlands area to  
 10 ascertain whether the requirements of this part and the rules, regulations, and permits  
 11 promulgated or issued under this part are being faithfully complied with."

#### 12 SECTION 8.

13 Said title is further amended by revising Code Section 12-5-291, relating to enforcement of  
 14 the Coastal Marshlands Protection Act of 1970, as follows:

15 "12-5-291.

16 (a) In order to enforce this part or any orders issued under this part or any rules and  
 17 regulations promulgated under this part, any one or any combination of any or all of the  
 18 following methods may be employed:

19 (1) Whenever any person not exempted from this part by Code Section 12-5-295 is  
 20 altering the marshlands area without a permit, altering the marshlands area in violation  
 21 of the terms and conditions of a permit, or violating this part in any other manner, the  
 22 committee may, prior to any hearing, issue a cease and desist order or other appropriate  
 23 order to such person; provided, however, that the issuance of such order shall not affect  
 24 the availability of relief under paragraph (4) of this subsection. Any such order ~~becomes~~  
 25 shall become final unless the person named therein requests in writing a hearing before  
 26 a hearing officer appointed by the board no later than ten days after the issuance of such  
 27 order. Review of such order shall be available as provided in subsection (b) of Code  
 28 Section 12-5-283;

29 (2) Whenever, after a hearing is held in accordance with Code Section 12-5-283 and  
 30 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' at the request of the  
 31 committee, for the imposition of civil penalties, the administrative law judge determines  
 32 that any person has failed, neglected, or refused to comply with any provision of this part  
 33 or any order of the committee or administrative law judge, the administrative law judge  
 34 may issue an order imposing a civil penalty not to exceed \$10,000.00 for such violation  
 35 and an additional civil penalty not to exceed \$10,000.00 for each day during which such

1 violation continues. All penalties and interest recovered as provided in this Code section,  
 2 together with the cost thereof, shall be paid into the state treasury to the credit of the  
 3 general fund;

4 (3) The committee may file in the superior court in the county in which the person under  
 5 order resides or in the county in which the violation occurred or, if the person is a  
 6 corporation, in the county in which the corporation maintains its principal place of  
 7 business a certified copy of the final order of the committee or administrative law judge,  
 8 unappealed from, or of a final order of the administrative law judge affirmed upon  
 9 appeal; whereupon the court shall render judgment in accordance therewith and notify the  
 10 parties. Such judgment shall have the same effect, and all proceedings in relation thereof  
 11 shall thereafter be the same, as though such judgment has been rendered in an action duly  
 12 heard and determined by the court;

13 (4) Whenever the committee, either before or after a hearing, determines that any person  
 14 is or has been violating any of the provisions of this part or any orders issued under this  
 15 part or any rules and regulations promulgated under this part, the committee may file a  
 16 petition for injunction in the proper superior court of this state against such person for the  
 17 purpose of enjoining such actions or, if appropriate, may make application for a writ of  
 18 mandamus in the proper superior court of this state against such person for the purpose  
 19 of compelling the proper performance of his official duty. It shall not be necessary for  
 20 the committee to allege or prove that it has no adequate remedy at law; and

21 (5) The superior court, upon finding that any person is or has been violating any of the  
 22 provisions of this part or any orders issued under this part or any rules and regulations  
 23 promulgated under this part, may order the person to restore, as nearly as possible, all  
 24 ~~marshland~~ marshlands areas to the condition existing prior to the alteration of ~~the~~  
 25 ~~marshland~~ such marshlands areas.

26 (b) Owners of property with knowledge of unauthorized activities occurring thereon ~~are~~  
 27 shall be responsible under this part."

## 28 SECTION 9.

29 Said title is further amended by revising Code Section 12-5-295, relating to applicability of  
 30 the Coastal Marshlands Protection Act of 1970, as follows:

31 "12-5-295.

32 This part shall not apply to the following:

33 (1) Activities of the Department of Transportation incident to constructing, repairing, and  
 34 maintaining a public road system in Georgia;

1 (2) Activities of the Department of Transportation and political subdivisions in  
 2 maintaining existing drainage systems and ditches as long as such activities do not impact  
 3 additional marshlands area;

4 (3) Agencies of the United States charged by law with the responsibility of keeping the  
 5 rivers and harbors of this state open for navigation, and agencies of this state charged by  
 6 existing law with the responsibility of keeping the rivers and harbors of this state open  
 7 for navigation, including areas for utilization for spoilage designated by such agencies;

8 (4) Activities of public utility companies regulated by the Public Service Commission  
 9 incident to constructing, erecting, repairing, and maintaining utility lines for the  
 10 transmission of gas, electricity, or telephone messages;

11 (5) Activities of companies regulated by the Public Service Commission incident to  
 12 constructing, erecting, repairing, and maintaining railroad lines and bridges;

13 (6) Activities of political subdivisions incident to constructing, repairing, and  
 14 maintaining pipelines that have been approved by the department or appropriate authority  
 15 for the transport of drinking water and sewage;

16 (7) The building of a private dock exclusively for the noncommercial use of the owner  
 17 or his or her invitees and constructed on pilings, the walkways of which are above the  
 18 marsh grass not obstructing tidal flow, by:

19 (A) The owner of a lot on which a detached single-family residence is located on high  
 20 land adjoining such dock; or

21 (B) The owner of a lot having at least 50 front feet of land abutting the marshlands  
 22 which contains high land suitable for the construction of a detached single-family  
 23 residence and where the construction of such a residence is not prohibited; or

24 (8) The reclamation of manmade boat slips as a part of any publicly funded construction  
 25 project and ancillary development projects including, without limitation, hotels,  
 26 restaurants, retail facilities, and recreational facilities, whether public or private, within  
 27 any industrial areas continued in existence pursuant to Article XI, Section I, Paragraph  
 28 IV, subparagraph (d) of the Constitution which are wholly contained on an island."

### 29 **SECTION 10.**

30 Said title is further amended by revising Code Section 12-5-297, relating to liability for  
 31 damages, as follows:

32 "12-5-297.

33 Any person who causes or permits any removal, filling, dredging, or draining or other  
 34 alteration of the marshlands area in this state ~~within the estuarine area thereof~~ without first  
 35 obtaining a permit from the committee shall be liable in damages to the state and any  
 36 political subdivision thereof for any and all actual or projected costs, expenses, and injuries

1 occasioned by such alteration of the marshlands area. The amount of damages assessed  
2 pursuant to this Code section shall include, but shall not be limited to, any actual or  
3 projected costs and expenses incurred by the state or any political subdivision thereof in  
4 restoring as nearly as possible the natural movement of the waters in the marshlands and  
5 replacing the vegetation and aquatic life destroyed by any alteration of marshlands area.  
6 Damages to the state shall be recoverable in a civil action instituted by the department and  
7 shall be paid to the department to cover the cost of restoration. Damages to a political  
8 subdivision shall be recoverable in a civil action instituted by said subdivision."

9 **SECTION 11.**

10 Said title is further amended in Code Section 12-7-17, relating to inapplicability of Chapter  
11 7 of said title, by deleting "and" at the end of paragraph (10), replacing the period at the end  
12 of paragraph (11) with "; and", and adding a new paragraph (12) to read as follows:

13 "(12) Projects that are subject to Part 4 of Article 4 of Chapter 5 of this title, the 'Coastal  
14 Marshlands Protection Act of 1970.'"

15 **SECTION 12.**

16 This Act shall become effective upon its approval by the Governor or upon its becoming law  
17 without such approval and shall apply to all applications for new permits or modifications  
18 of existing permits filed on or after such effective date.

19 **SECTION 13.**

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