

The House Committee on Transportation offers the following substitute to HB 131:

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 provide that certain withdrawals of water from the Tennessee  
3 River basin shall not be interbasin transfers; to provide for fines for violations of  
4 land-disturbing activities requirements; to provide for mediation of erosion and sediment  
5 control disputes by the Erosion and Sediment Control Overview Council; to exempt  
6 design-build and public-private partnership projects from the requirements regarding the  
7 preparation of an erosion and sediment control plan; to provide for related matters; to provide  
8 for a contingent effective date; to provide for automatic repeal; to repeal conflicting laws;  
9 and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 12 of the Official Code of Georgia Annotated, relating to conservation and natural  
13 resources, is amended by adding a new Code section to read as follows:

14 "12-5-10.

15 The withdrawal of surface water from any point within that portion of the Tennessee River  
16 basin lying in the Chickamauga Valley and Lookout Mountain physiographic districts in  
17 this state followed by the use of some or all of that water in a different basin shall be  
18 exempt from restrictions on interbasin transfers of water; provided, however, any other new  
19 interbasin transfer permit applications in this state shall be reviewed by the director of the  
20 Environmental Protection Division who shall consider all effects on the donor and  
21 receiving basins as outlined in the Comprehensive State-wide Water Management Plan."

22 **SECTION 2.**

23 Said title is further amended by adding a new subsection to Code Section 12-5-52, relating  
24 to civil penalties for water pollution, to read as follows:

25 "(c) Any person violating this article where such violation consists of erosion and  
 26 sedimentation in violation of a National Pollutant Discharge Elimination System permit  
 27 issued pursuant to 40 C.F.R. Part 123 and such violation is alleged to have been committed  
 28 by a state agency, department, or authority, or any person fulfilling the requirements of a  
 29 contract with a state agency, department, or authority, shall not be liable for the civil  
 30 penalty provided for by subsection (a) of this Code section but shall be liable for a civil  
 31 penalty not to exceed \$5,000.00 per day for each day during which such violation  
 32 continues. Except as otherwise required by federal law, such penalty shall not be enforced  
 33 against such state agencies, departments, or authorities, or against such persons, until the  
 34 alleged violator has been given not less than 24 hours' written notice of such alleged  
 35 violation; and for not less than 30 days after receipt of such written notice, the alleged  
 36 violator shall be allowed to cure such alleged violation without fine or penalty."

37

### SECTION 3.

38 Said title is further amended by revising subsection (f) and adding a new subsection to Code  
 39 Section 12-7-7.1, relating to the preparation and implementation of an erosion and sediment  
 40 control plan, as follows:

41 "(f)(1) There shall be an Erosion and Sediment Control Overview Council which shall  
 42 provide guidance on the best management practices for implementing any erosion and  
 43 sediment control plan for purposes of this Code section. The council shall be composed  
 44 of ~~nine~~ seven members, including one member who shall be appointed by the Speaker of  
 45 the House of Representatives and serve at the pleasure thereof; one member who shall be  
 46 appointed by the Lieutenant Governor and serve at the pleasure thereof; and ~~seven~~ five  
 47 members who shall be appointed by the Governor and serve at the pleasure thereof,  
 48 including one employee each from the Department of Transportation; and the  
 49 Environmental Protection Division of the Department of Natural Resources, ~~and the~~  
 50 ~~Georgia Regional Transportation Authority~~, a professional engineer licensed to practice  
 51 in this state from a private engineering consulting firm practicing environmental  
 52 engineering, ~~two representatives~~ one representative of the highway contracting industry  
 53 certified by the Department of Transportation, and a chairperson. The council shall meet  
 54 at the call of the chairperson. Each councilmember shall receive a daily allowance in the  
 55 amount specified in subsection (b) of Code Section 45-7-21; provided, however, that any  
 56 full-time state employee serving on the council shall draw no compensation but shall  
 57 receive necessary expenses. The commissioner is authorized to pay such compensation  
 58 and expenses from department funds.

59 (2) The council may develop recommendations governing the preparation of plans and  
 60 the installation and maintenance of best management practices. If a dispute concerning

61 the requirements of this Code section should arise, the Erosion and Sediment Control  
62 Overview Council shall mediate the dispute.

63 (3) The council may also mediate any disputes, including without limitation the issuance  
64 of orders or levying of fines by the division, relating to erosion and sediment control  
65 compliance enforcement actions taken by the division against the Department of  
66 Transportation, the State Road and Tollway Authority, or persons fulfilling the  
67 requirements of a contract with the Department of Transportation or State Road and  
68 Tollway Authority. Mediation may be requested by any of the aforementioned parties  
69 by submitting a written request to the chairperson of the council. The decision of the  
70 council shall be binding upon the parties unless an appeal is taken pursuant to the  
71 procedures of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' The  
72 decision of the council shall be a contested case for purposes of such chapter."

73 "(h) Nothing in this Code section shall apply to projects developed under the provisions  
74 of Code Section 32-2-80 or 32-2-81."

75 **SECTION 4.**

76 This Act shall become effective on July 1, 2011; provided, however, that if deemed  
77 necessary by the Attorney General, the director of the Environmental Protection Division of  
78 the Department of Natural Resources shall initiate a program revision pursuant to the  
79 procedures of 40 C.F.R. Section 123.62, submitting the provisions of Section 2 of this Act  
80 to the federal Environmental Protection Agency as a revision of the state program under the  
81 National Pollutant Discharge Elimination System permit program. If such program revision  
82 is not approved pursuant to 40 C.F.R. Section 123.62(3), then Section 2 of this Act shall  
83 stand repealed on the date of such disapproval.

84 **SECTION 5.**

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