

The Senate Natural Resources and the Environment Committee offered the following substitute to SB 269:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 2 of Chapter 5 of Title 12 of the Official Code of Georgia Annotated,
2 relating to control of water pollution and surface-water use, so as to change certain
3 provisions relating to cooperative efforts for abatement of pollution, order by director,
4 request for hearing, and allowance of reasonable time for abatement; to provide for consent
5 orders; to provide for performance bonds in certain cases; to repeal conflicting laws; and for
6 other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

8 Article 2 of Chapter 5 of Title 12 of the Official Code of Georgia Annotated, relating to
9 control of water pollution and surface-water use, is amended by revising Code Section
10 12-5-42, relating to cooperative efforts for abatement of pollution, order by director, request
11 for hearing, and allowance of reasonable time for abatement, as follows:
12

13 "12-5-42.

14 (a)(1) Whenever the division determines that any person is discharging sewage,
15 industrial waste, or other wastes into any waters of the state in a degree which prevents
16 the water from meeting the established standards of water purity, the division shall act
17 to secure the person's cooperation in the reduction or elimination of the detrimental
18 effects of the discharge. The director may notify any such person in writing of the
19 opportunity to perform voluntarily corrective action in accordance with an administrative
20 consent order entered into with the director within such period of time as may be
21 specified by the director in written correspondence to the person.

22 ~~(b)~~(2) The division shall supply to the person causing the pollution such technical and
23 scientific information as may be helpful in reducing or eliminating the polluting effects
24 of the discharge, but the responsibility for development and application of means of
25 preventing pollution rests with the person causing the pollution.

26 ~~(e)~~(3) Whenever any person refuses to cooperate with the efforts of the director to reduce
27 pollution, the director may issue an order to bring about the reduction or elimination of
28 the pollution. Such order shall specify the alleged violation and shall prescribe a
29 reasonable time for corrective action to be accomplished. Any order issued by the
30 director under this article shall become final unless the person aggrieved requests in
31 writing a hearing before the director no later than 30 days after such order is served.
32 However, before issuing or enforcing such an order, the director shall allow any person
33 a reasonable time to make the necessary financial arrangements or make other necessary
34 preparations for the elimination of the pollution.

35 ~~(d)~~(b)(1) Whenever the division determines that a violation of any provision of this
36 article or any rule or regulation promulgated pursuant to this article relating to the
37 withdrawal, diversion, or impoundment of surface water has occurred, the division shall
38 by conference, conciliation, or persuasion attempt to convince the violator to cease such
39 violation. The director may notify any such person in writing of the opportunity to
40 perform voluntarily corrective action in accordance with an administrative consent order
41 entered into with the director within such period of time as may be specified by the
42 director in written correspondence to the person.

43 (2) If in the opinion of the director such efforts fail, the director may issue an order to
44 bring about the cessation of such violation. Such order shall specify the alleged violation
45 and shall prescribe a reasonable time for corrective action to be accomplished. Any order
46 issued pursuant to this subsection shall become final unless the person aggrieved requests
47 a hearing in writing before the director not later than 30 days after such order is served.

48 (c)(1) Any consent order entered into under subsection (a) or (b) of this Code section
49 shall include a reasonable schedule for completion; provided, however, that the director
50 may extend the completion date by up to six months if, in his or her opinion, the person
51 has made a good faith attempt to complete the corrective action within the time provided
52 in the consent order and that the corrective action can be completed within the period of
53 the extension.

54 (2) As a condition of any consent order entered into under subsection (a) or (b) of this
55 Code section with a local government as defined by Code Section 50-23-4 and in lieu of
56 a civil penalty as otherwise authorized by law, the director may require a performance
57 bond or letter of credit to further assist in the assurance that the local government
58 complies with the consent order. Such a performance bond or letter of credit shall specify
59 the corrections that shall be made and a reasonable period of time for the completion of
60 necessary corrective action. Any such local government which is required to obtain a
61 performance bond or letter of credit pursuant to this paragraph shall file with the director
62 the following:

- 63 (A) A performance bond, payable to the Georgia Environmental Finance Authority and
64 issued by an insurance company authorized to issue such bonds in this state; or
65 (B) An irrevocable letter of credit, issued in favor of and payable to the Georgia
66 Environmental Finance Authority, from a commercial bank or other financial institution
67 approved by the director of such authority.
- 68 (3) Any bond or letter of credit required pursuant to paragraph (2) of this subsection shall
69 be:
- 70 (A) Conditioned upon faithful compliance with the conditions and terms of the consent
71 order; and
72 (B) In such amount as determined by the director as necessary to ensure the
73 compliance with the conditions and terms of the consent order.
- 74 (4) Upon a determination by the director that such a local government has violated the
75 terms or conditions of a consent order which required a performance bond or letter of
76 credit, the Georgia Environmental Finance Authority may, after written notice of the
77 violation to the person:
- 78 (A) Forfeit or draw that amount of such bond or letter of credit that the Georgia
79 Environmental Finance Authority determines necessary to correct the violation
80 determined and continue or resume lawful operation; and
81 (B) Expend such amount for such purposes, to the extent that such expenditure is a cost
82 of any project as such term is defined by Code Section 50-23-4.
- 83 (5) No action taken by the director or the Georgia Environmental Finance Authority
84 pursuant to this subsection, including the forfeiture of a bond or the drawing of funds
85 from a letter of credit, shall relieve any such local government from compliance with all
86 provisions of this article, any rules and regulations promulgated pursuant to this article,
87 or the terms and conditions of any order of the director."

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SECTION 2.

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