

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.