

House Bill 271

By: Representatives Petrea of the 166th, Stephens of the 164th, Jones of the 167th, Spencer of the 180th, Hogan of the 179th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 2 of Article 4 of Chapter 5 of Title 12 of the Official Code of Georgia
2 Annotated, relating to shore protection, so as to revise various provisions relative to shore
3 protection; to revise and add definitions; to establish authority and powers of the Department
4 of Natural Resources; to revise provisions relating to permit activities and procedures; to
5 provide for applicability; to strike obsolete language and correct cross-references; to provide
6 for an effective date; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Part 2 of Article 4 of Chapter 5 of Title 12 of the Official Code of Georgia Annotated,
10 relating to shore protection, is amended in Code Section 12-5-232, relating to definitions, by
11 revising paragraphs (8) and (13) and by adding a new paragraph to read as follows:

12 "(8) 'Dynamic dune field' means the dynamic area of beach and sand dunes, varying in
13 height and width, the ocean boundary of which extends to the ordinary high-water mark
14 and the landward boundary of which is ~~the first occurrence either of live native trees 20~~
15 ~~feet in height or greater or of a structure existing on July 1, 1979.~~ The landward
16 ~~boundary of the dynamic dune field shall be the seaward most line connecting any such~~
17 ~~tree or structure as set forth in this part to any other such tree or structure if the distance~~
18 ~~between the two is a reasonable distance not to exceed 250 feet. In determining what is~~
19 ~~a reasonable distance for purposes of this paragraph, topography, dune stability,~~
20 ~~vegetation, lot configuration, existing structures, distance from the ordinary high-water~~
21 ~~mark, and other relevant information shall be taken into consideration in order to~~
22 ~~conserve the vital functions of the sand-sharing system. If a real estate appraiser certified~~
23 ~~pursuant to Chapter 39A of Title 43 determines that an existing structure, shoreline~~
24 ~~engineering activity, or other alteration which forms part of the landward boundary of the~~
25 ~~dynamic dune field has been more than 80 percent destroyed by storm driven water or~~
26 ~~erosion, the landward boundary of the dynamic dune field shall be determined as though~~

27 ~~such structure had not been in existence on July 1, 1979~~ along a line that passes through
 28 the most landward of the following as determined by the department:

29 (A) 25 feet landward of the ordinary high water mark;

30 (B) 25 feet landward of the landward toe of the most landward sand dunes; or

31 (C) 25 feet landward of the crest of a visible and functional structure associated with
 32 a shoreline stabilization activity."

33 "(10.1) 'Minor activity' means an activity such as the construction or installation of decks,
 34 patios, or porches, or the alteration of native landscaping, so long as such construction,
 35 installation, or alteration does not impact more than a total of one-third of the parcel or
 36 portion thereof, subject to the jurisdiction of this part; or the construction and installation
 37 of elevated crosswalks providing access across sand dunes."

38 "(13) 'Permit-issuing authority' means the Shore Protection Committee or a local unit of
 39 government which has adopted a program of shore protection which meets the standards
 40 of this part and which has been certified by the board as an approved program Reserved."

41 **SECTION 2.**

42 Said part is further amended by revising Code Section 12-5-235, relating to the Shore
 43 Protection Committee, as follows:

44 "12-5-235.

45 (a) There is created the Shore Protection Committee within the department. The
 46 committee shall be composed of five members, including the commissioner of natural
 47 resources and four people selected by the board. Each of three persons selected by the
 48 board shall be a resident of Camden, Glynn, McIntosh, Liberty, Bryan, or Chatham County.
 49 Three members of the committee shall constitute a quorum. The members of the
 50 committee shall be entitled to and shall be reimbursed from moneys appropriated to the
 51 department for their expenses, such as mileage and per diem, as set by the board.

52 (b) The committee shall have the authority to issue orders and to grant, suspend, revoke,
 53 modify, extend, condition, or deny permits as provided in this part. Permits may, at the
 54 committee's discretion, be revoked, suspended, or modified upon a finding that the
 55 permittee is not in compliance with permit conditions or that the permittee is in violation
 56 of any rule or regulation promulgated pursuant to this part.

57 (c) The ~~chairman~~ chairperson of the committee, upon application by the permittee, may
 58 issue renewal of a permit previously granted by the committee. Such action must be based
 59 upon recommendations of staff, past committee actions, and the results of public
 60 comments. The ~~chairman~~ chairperson may refer the request for renewal to the committee
 61 to decide on renewals that, in ~~his~~ his or her judgment, should receive broader consideration.

62 A committee member may choose to have the full committee decide on renewals that the
 63 member feels should receive broader consideration.
 64 (d) A permit for a minor activity may be issued by the commissioner after consideration
 65 of staff findings and recommendations regarding the proposed activity, past committee
 66 actions as applicable, public comments, and committee member input. Upon request by
 67 any committee member, a permit application for a minor activity shall be considered by the
 68 full committee at its next scheduled meeting. A permit issued pursuant to this subsection
 69 shall be deemed an order or action of the committee."

70 **SECTION 3.**

71 Said part is further amended by revising Code Section 12-5-238, relating to form and content
 72 of permit applications, as follows:

73 "12-5-238.

74 All applications for permits required by this part must be on forms prescribed by the
 75 ~~permit-issuing authority~~ committee, must be properly executed, and must include the
 76 following:

- 77 (1) The name and address of the applicant;
- 78 (2) A brief description of the proposed project;
- 79 (3) Construction documents showing the applicant's proposed project and the manner or
 80 method by which the project shall be accomplished. Such document shall identify the
 81 dynamic dune field affected;
- 82 (4) A copy of the deed or other instrument under which the applicant claims title to the
 83 property or, if the applicant is not the owner, a copy of the deed or other instrument under
 84 which the owner claims the title together with written permission from the owner to carry
 85 out the project on ~~his~~ the owner's land. In lieu of a deed or other instrument referred to
 86 in this paragraph, the ~~permit-issuing authority~~ committee may accept some other
 87 reasonable evidence of ownership of the property in question or other lawful authority
 88 to make use of the property. If all or any part of the proposed construction or alteration
 89 shall take place on property which is owned by the State of Georgia, the applicant shall
 90 present an easement, revocable license, or other written permission from the state to use
 91 the property for the proposed project; in the alternative, the ~~permit-issuing authority~~
 92 committee may condition the issuance of the permit on the requirement to obtain written
 93 permission from the state. The ~~permit-issuing authority~~ committee will not adjudicate
 94 title disputes concerning the property which is the subject of the application; provided,
 95 however, that the ~~permit-issuing authority~~ committee may decline to process an
 96 application when submitted documents show conflicting deeds;
- 97 (5) A plat showing the boundaries of the proposed project site;

98 (6) The names and addresses of all landowners of property adjoining or abutting the
 99 parcel of land on which the proposed project is to be located. If the property to be altered
 100 is bordered on any side by other property of the applicant, the applicant shall supply the
 101 names and addresses of the nearest landowners, other than the applicant, of property
 102 adjoining the applicant's property. If the applicant cannot determine the identity of
 103 adjoining landowners or their addresses, the applicant shall file in lieu thereof an affidavit
 104 stating that a diligent search, including a search of the records of the county tax assessor's
 105 office, has been made but that the applicant was not able to ascertain the names or
 106 addresses of adjoining landowners;

107 ~~(7) An application fee in such reasonable amount as is designated by the permit-issuing~~
 108 ~~authority or, if the committee is the permit-issuing authority, a nonrefundable application~~
 109 ~~fee as set by the board which reflects the cost to the department to evaluate the~~
 110 ~~application. Fees for the renewal of a permit shall be equal to the application fee.~~
 111 ~~Application fees shall not exceed \$1,000.00 for any one proposal. If the committee is the~~
 112 ~~permit-issuing authority, such fees shall be paid to the department~~ A nonrefundable
 113 application fee to be set by the committee, not to exceed \$1,000.00. Fees for the renewal
 114 of a permit shall be equal to the application fee;

115 (8) Site plans for the proposed project site showing existing and proposed streets,
 116 utilities, buildings, and any other physical structures;

117 (9) A certification by a registered architect or engineer licensed by this state certifying
 118 that all proposed structures, if any, for which the permit is applied are designed to meet
 119 suitable hurricane-resistant standards;

120 (10) Any and all other relevant data required by the ~~permit-issuing authority~~ committee
 121 for the purposes of ascertaining that the proposed improvements, activities, and uses will
 122 meet the standards of this part;

123 (11) A certificate or letter from the local governing authority or authorities of the
 124 political subdivision in which the property is located stating that the applicant's proposal
 125 ~~is not violative of~~ would not violate any zoning law; and

126 (12) A statement from the applicant that he or she has made inquiry to the appropriate
 127 authorities that the proposed project is not over a landfill or hazardous waste site and that
 128 the site is otherwise suitable for the proposed project."

129 **SECTION 4.**

130 Said part is further amended in Code Section 12-5-239, relating to permit application
 131 completion and permit requirements, by replacing '30' with '15' in subsection (b) and revising
 132 subsection (e) as follows:

133 "(e) Every permit shall require that the proposed project be completed within five years
 134 after the date of issuance of the permit and shall expire five years after the date of issuance.
 135 Such time may be extended five additional years upon a showing that all due efforts and
 136 diligence toward the completion of the project have been made. If a ~~permit~~ the holder of
 137 an unexpired permit sells, leases, rents, or otherwise conveys the land or any portion of the
 138 land for which ~~the~~ such permit was issued, such permit shall be continued in force in favor
 139 of the new owner, lessee, tenant, or other assignee so long as there is no change in the use
 140 of the land as set forth in the original application. The ~~permittee must~~ owner shall notify
 141 the ~~permit-issuing authority~~ committee within 30 days after change of ownership of
 142 ~~property~~ the land or any portion thereof."

143 **SECTION 5.**

144 Said part is further amended in Code Section 12-5-244, relating to administrative and judicial
 145 review, by striking subsection (b) and redesignating subsection (c) as subsection (b).

146 **SECTION 6.**

147 Said part is further amended by revising Code Section 12-5-247, relating to enforcement and
 148 civil penalty, as follows:

149 "12-5-247.

150 (a) If the department determines that any person is violating any provision of this part or
 151 any rule or regulation adopted pursuant to this part or the terms and conditions of any
 152 permit issued under this part, ~~and such violation is in an area where the committee is the~~
 153 ~~permit-issuing authority~~, the department may employ ~~any one, or any combination of any~~
 154 ~~or all, of the enforcement methods specified in paragraphs (1) through (4) of this subsection~~
 155 following:

156 (1) The department may issue an administrative order specifying the provision of this
 157 part or the rule, or both, alleged to have been violated and require the person so ordered
 158 to cease and desist from such activity and to take corrective action within a reasonable
 159 period of time as prescribed in the order; provided, however, that the issuance of such
 160 order shall not affect the availability of relief under Code Section 12-5-244. Such
 161 corrective action may include, but shall not be limited to, requiring that the sand dunes,
 162 beaches, and submerged lands be returned to their condition prior to the violation of this
 163 part or a rule adopted pursuant to this part. Any such order shall become final unless the
 164 person named therein requests in writing a hearing before a hearing officer appointed by
 165 the board no later than ten days after the issuance of such order. Review of such order
 166 shall be available as provided in subsection (a) of Code Section 12-5-244;

167 (2) Whenever the committee finds that an emergency exists requiring immediate action
168 to protect the public or private interest where the public interest is served, it may issue
169 an order reciting the existence of such an emergency and requiring or allowing that such
170 action be taken as it deems necessary to meet the emergency. Notwithstanding any other
171 provision of this part, such order shall be effective immediately. If an order requiring a
172 person to take action is issued pursuant to this paragraph, such person shall be entitled to
173 a hearing within ten days of the date of issuance of the order. Any person who is
174 aggrieved or adversely affected by an emergency order of the committee, upon petition
175 within ten days after issuance of such order, shall have a right to a hearing before an
176 administrative law judge appointed by the board. The committee shall hold a meeting no
177 sooner than 30 days after the issuance of an emergency order to review such order to
178 determine whether the order has been complied with, whether the order should continue
179 in force, and any possible effects of such order on the sand-sharing system;

180 (3) The committee may file in the appropriate superior court a certified copy of an
181 unappealed final order of the administrative law judge or of a final order of the
182 administrative law judge affirmed upon appeal or other orders of the committee,
183 whereupon the court shall render judgment in accordance therewith and notify the parties.
184 Such judgment shall have the same effect, and all proceedings in relation thereof shall
185 thereafter be the same, as though such judgment has been rendered in an action duly
186 heard and determined by the court; and

187 (4) The department may seek injunctive relief pursuant to Code Section 12-5-245.

188 (b) Any person who violates any provision of this part or any rule or regulation adopted
189 under this part, any permit issued under this part, or final or emergency order of the
190 department shall be subject to a civil penalty not to exceed \$10,000.00 for each act of
191 violation. Each day of continued violation shall subject ~~said~~ such person to a separate civil
192 penalty. An administrative law judge appointed by the board after a hearing conducted in
193 accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' shall
194 determine whether or not any person has violated any provision of this part, any rule or
195 regulation adopted under this part, any permit, or any final or emergency order of the
196 department or ~~permit-issuing authority~~ committee and shall upon proper finding issue an
197 order imposing such civil penalties as provided in this subsection. Review of such order
198 shall be available as provided in subsection (a) of Code Section 12-5-244. All civil
199 penalties recovered by the department as provided in this subsection shall be paid into the
200 state treasury to the credit of the general fund.

201 (c) Any person who causes or permits any removal, filling, or other alteration of the
202 dynamic dune field or submerged lands in this state without first obtaining a permit from
203 the ~~permit-issuing authority~~ committee shall be liable in damages to the state and any

204 political subdivision of the state for any and all actual or projected costs and expenses and
205 injuries occasioned by such alteration of the dynamic dune field or submerged lands. The
206 amount of damages assessed pursuant to this Code section shall include, but shall not be
207 limited to, any actual or projected costs and expenses incurred or to be incurred by the state
208 or any political subdivision thereof in restoring as nearly as possible the natural topography
209 of the sand-sharing system and replacing the vegetation destroyed by any alteration of the
210 dynamic dune field or submerged lands. Damages to the state shall be recoverable in a
211 civil action instituted by the department and shall be paid to the department to cover cost
212 of restoration. Damages to a political subdivision shall be recoverable in a civil action
213 instituted by ~~said~~ such subdivision.

214 (d) Owners of property with knowledge of unauthorized activities occurring thereon are
215 responsible under this part."

216 **SECTION 7.**

217 Said part is further amended by replacing 'permit-issuing authority' with 'committee'
218 wherever the former phrase occurs in:

- 219 (1) Code Section 12-5-233, relating to area of operation of part;
220 (2) Code Section 12-5-239, relating to permit application completion and permit
221 requirements;
222 (3) Code Section 12-5-240, relating to posting of permit; and
223 (4) Code Section 12-5-248, relating to criminal violations.

224 **SECTION 8.**

225 This Act shall become effective upon its approval by the Governor or upon its becoming law
226 without such approval for purposes of promulgating rules and regulations necessary to
227 administer the provisions of this Act and shall become effective on July 1, 2017, for all other
228 purposes.

229 **SECTION 9.**

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