

House Bill 271 (COMMITTEE SUBSTITUTE) (AM)

By: Representatives Petrea of the 166<sup>th</sup>, Stephens of the 164<sup>th</sup>, Jones of the 167<sup>th</sup>, Spencer of the 180<sup>th</sup>, Hogan of the 179<sup>th</sup>, 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:~~

28 (A) For property not owned by the state, is the most landward of the following, as  
 29 determined by the department:

30 (i) 25 feet landward of the ordinary high water mark;

31 (ii) 25 feet landward of the landward toe of the most landward sand dunes; or

32 (iii) 25 feet landward of the crest of a visible and functional structure associated with  
 33 a shoreline stabilization activity; and

34 (B)(i) For property owned by the state, is the most landward of the following, as  
 35 determined by the department:

36 (I) 25 feet landward of the landward toe of the most landward sand dunes; or

37 (II) 25 feet landward of the crest of a visible and functional structure associated  
 38 with a shoreline stabilization activity; or

39 (ii) In the absence of any such sand dunes or structure, 100 feet from the ordinary  
 40 high water mark."

41 "(10.1) 'Minor activity' means an activity such as the construction or installation of decks,  
 42 patios, or porches, or the alteration of native landscaping, so long as such construction,  
 43 installation, or alteration does not impact more than a total of one-third of the parcel or  
 44 portion thereof, subject to the jurisdiction of this part; or the construction and installation  
 45 of elevated crosswalks providing access across sand dunes."

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

## 49 SECTION 2.

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

52 "12-5-235.

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

60 (b) The committee shall have the authority to issue orders and to grant, suspend, revoke,  
 61 modify, extend, condition, or deny permits as provided in this part. Permits may, at the

62 committee's discretion, be revoked, suspended, or modified upon a finding that the  
 63 permittee is not in compliance with permit conditions or that the permittee is in violation  
 64 of any rule or regulation promulgated pursuant to this part.

65 (c) The ~~chairman~~ chairperson of the committee, upon application by the permittee, may  
 66 issue renewal of a permit previously granted by the committee. Such action must be based  
 67 upon recommendations of staff, past committee actions, and the results of public  
 68 comments. The ~~chairman~~ chairperson may refer the request for renewal to the committee  
 69 to decide on renewals that, in ~~his~~ his or her judgment, should receive broader consideration.  
 70 A committee member may choose to have the full committee decide on renewals that the  
 71 member feels should receive broader consideration.

72 (d) A permit for a minor activity may be issued by the commissioner after consideration  
 73 of staff findings and recommendations regarding the proposed activity, past committee  
 74 actions as applicable, public comments, and committee member input. Upon request by  
 75 any committee member, a permit application for a minor activity shall be considered by the  
 76 full committee at its next scheduled meeting. A permit issued pursuant to this subsection  
 77 shall be deemed an order or action of the committee."

### 78 SECTION 3.

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

81 "12-5-238.

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

- 85 (1) The name and address of the applicant;
- 86 (2) A brief description of the proposed project;
- 87 (3) Construction documents showing the applicant's proposed project and the manner or  
 88 method by which the project shall be accomplished. Such document shall identify the  
 89 dynamic dune field affected;
- 90 (4) A copy of the deed or other instrument under which the applicant claims title to the  
 91 property or, if the applicant is not the owner, a copy of the deed or other instrument under  
 92 which the owner claims the title together with written permission from the owner to carry  
 93 out the project on ~~his~~ the owner's land. In lieu of a deed or other instrument referred to  
 94 in this paragraph, the ~~permit-issuing authority~~ committee may accept some other  
 95 reasonable evidence of ownership of the property in question or other lawful authority  
 96 to make use of the property. If all or any part of the proposed construction or alteration  
 97 shall take place on property which is owned by the State of Georgia, the applicant shall

98 present an easement, revocable license, or other written permission from the state to use  
 99 the property for the proposed project; in the alternative, the ~~permit-issuing authority~~  
 100 committee may condition the issuance of the permit on the requirement to obtain written  
 101 permission from the state. The ~~permit-issuing authority~~ committee will not adjudicate  
 102 title disputes concerning the property which is the subject of the application; provided,  
 103 however, that the ~~permit-issuing authority~~ committee may decline to process an  
 104 application when submitted documents show conflicting deeds;

105 (5) A plat showing the boundaries of the proposed project site;

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

115 (7) ~~An application fee in such reasonable amount as is designated by the permit-issuing~~  
 116 ~~authority or, if the committee is the permit-issuing authority, a nonrefundable application~~  
 117 ~~fee as set by the board which reflects the cost to the department to evaluate the~~  
 118 ~~application. Fees for the renewal of a permit shall be equal to the application fee.~~  
 119 ~~Application fees shall not exceed \$1,000.00 for any one proposal. If the committee is the~~  
 120 ~~permit-issuing authority, such fees shall be paid to the department~~ A nonrefundable  
 121 application fee to be set by the committee, not to exceed \$1,000.00. Fees for the renewal  
 122 of a permit shall be equal to the application fee;

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

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

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

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

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

137 **SECTION 4.**

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

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

151 **SECTION 5.**

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

154 **SECTION 6.**

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

157 "12-5-247.

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

164 (1) The department may issue an administrative order specifying the provision of this  
 165 part or the rule, or both, alleged to have been violated and require the person so ordered  
 166 to cease and desist from such activity and to take corrective action within a reasonable  
 167 period of time as prescribed in the order; provided, however, that the issuance of such

168 order shall not affect the availability of relief under Code Section 12-5-244. Such  
169 corrective action may include, but shall not be limited to, requiring that the sand dunes,  
170 beaches, and submerged lands be returned to their condition prior to the violation of this  
171 part or a rule adopted pursuant to this part. Any such order shall become final unless the  
172 person named therein requests in writing a hearing before a hearing officer appointed by  
173 the board no later than ten days after the issuance of such order. Review of such order  
174 shall be available as provided in subsection (a) of Code Section 12-5-244;

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

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

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

196 (b) Any person who violates any provision of this part or any rule or regulation adopted  
197 under this part, any permit issued under this part, or final or emergency order of the  
198 department shall be subject to a civil penalty not to exceed \$10,000.00 for each act of  
199 violation. Each day of continued violation shall subject ~~said~~ such person to a separate civil  
200 penalty. An administrative law judge appointed by the board after a hearing conducted in  
201 accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' shall  
202 determine whether or not any person has violated any provision of this part, any rule or  
203 regulation adopted under this part, any permit, or any final or emergency order of the  
204 department or ~~permit-issuing authority~~ committee and shall upon proper finding issue an

205 order imposing such civil penalties as provided in this subsection. Review of such order  
 206 shall be available as provided in subsection (a) of Code Section 12-5-244. All civil  
 207 penalties recovered by the department as provided in this subsection shall be paid into the  
 208 state treasury to the credit of the general fund.

209 (c) Any person who causes or permits any removal, filling, or other alteration of the  
 210 dynamic dune field or submerged lands in this state without first obtaining a permit from  
 211 the ~~permit-issuing authority~~ committee shall be liable in damages to the state and any  
 212 political subdivision of the state for any and all actual or projected costs and expenses and  
 213 injuries occasioned by such alteration of the dynamic dune field or submerged lands. The  
 214 amount of damages assessed pursuant to this Code section shall include, but shall not be  
 215 limited to, any actual or projected costs and expenses incurred or to be incurred by the state  
 216 or any political subdivision thereof in restoring as nearly as possible the natural topography  
 217 of the sand-sharing system and replacing the vegetation destroyed by any alteration of the  
 218 dynamic dune field or submerged lands. Damages to the state shall be recoverable in a  
 219 civil action instituted by the department and shall be paid to the department to cover cost  
 220 of restoration. Damages to a political subdivision shall be recoverable in a civil action  
 221 instituted by ~~said~~ such subdivision.

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

224 **SECTION 7.**

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

- 227 (1) Code Section 12-5-233, relating to area of operation of part;  
 228 (2) Code Section 12-5-239, relating to permit application completion and permit  
 229 requirements;  
 230 (3) Code Section 12-5-240, relating to posting of permit; and  
 231 (4) Code Section 12-5-248, relating to criminal violations.

232 **SECTION 8.**

233 This Act shall become effective upon its approval by the Governor or upon its becoming law  
 234 without such approval for purposes of promulgating rules and regulations necessary to  
 235 administer the provisions of this Act and shall become effective on December 31, 2017, for  
 236 all other purposes.

237 **SECTION 9.**

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