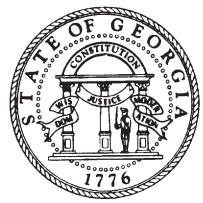
OFFICIAL CODE OF GEORGIA ANNOTATED

With Provision for Subsequent Pocket Parts

Prepared by

The Code Revision Commission
The Office of Legislative Counsel
and
The Editorial Staff of LexisNexis®



Published Under Authority of the State of Georgia

Volume 10

2021 Edition

Title 12. Conservation and Natural Resources

Including Acts of the 2021 Session of the General Assembly of Georgia
and Annotations taken from the Georgia Reports
and the Georgia Appeals Reports

LexisNexis®
Miamisburg, Ohio
2021

ISBN 978-1-66331-257-0
441903

(Pub. 41805)

THE STATE OF GEORGIA

OFFICE OF SECRETARY OF STATE

I, Brad Raffensperger, Secretary of State of the State of Georgia, do hereby certify that

the statutory portion of the Official Code of Georgia Annotated contained in this volume is a true and correct copy of such material as enacted by the General Assembly of Georgia; all as the same appear on file and record in this office.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of my office, at the Capitol, in the City of Atlanta, this 1st day of July, in the year of our Lord Two Thousand and Twenty-one and of the Independence of the United States of America the Two Hundred and Forty-Fifth.

Brad Raffensperger

Brad Raffensperger, Secretary of State

Preface

This volume replaces the 2012 edition of Volume 10 of the Official Code of Georgia Annotated, as supplemented by the 2020 Cumulative Supplement. The 2012 Volume 10 and its 2020 Cumulative Supplement may be recycled or, if so desired, retained for historical purposes.

This volume contains all laws specifically codified in Title 12 by the General Assembly through the 2021 Session. This volume also contains case annotations reflecting decisions posted to LexisNexis® through May 14, 2021. These annotations will appear in the following traditional reporter sources: Georgia Supreme Court Opinions; Georgia Appeals Court Opinions; Southeastern Reporter, Second Series; Supreme Court Reporter; Federal Reporter, Third Series; Federal Supplement, Second Series; Federal Rules Decisions; and Bankruptcy Reporter. As official and traditional citations become available, substitutions for the LexisNexis® citations will be made.

Additionally, LexisNexis® has prepared annotations and references to Attorney General Opinions, law reviews, and other research sources that we hope will be beneficial as you utilize this product. A complete listing of those sources is as follows: Official and Unofficial Attorney General Opinions; Opinions of the Judicial Qualifications Commission; Advisory Opinions of the State Disciplinary Board of the State Bar; Formal Advisory Opinions of the State Disciplinary Board of the State Bar, issued by the Supreme Court of Georgia; Emory Law Journal; Georgia Law Review; Georgia State University Law Review; Mercer Law Review; Georgia State Bar Journal; American Law Reports; American Jurisprudence 2d; American Jurisprudence Pleading and Practice, American Jurisprudence Proof of Facts; American Jurisprudence Trials; Corpus Juris Secundum; and Uniform Laws Annotated. Also included, where appropriate, are cross references to the Official Code of Georgia Annotated.

This volume retains amendment notes and effective date notes for Acts passed during the 2019, 2020 and 2021 Sessions of the General Assembly. In order to determine the changes which were made or the effective date applied to a Code section by an Act passed prior to the 2019 Session of the General Assembly, the user should consult the Georgia Laws.

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User's Guide

In order to assist both the legal profession and the layperson in obtaining the maximum benefit from the Official Code of Georgia Annotated, a User's Guide containing comments and information on the many features found within the Code has been included in Volume 1 of the Official Code of Georgia Annotated.

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Cross references. — Authority of General Assembly to restrict land use so as to protect and preserve natural resources, environment, and vital areas of state, Ga. Const. 1983, Art. III, Sec. VI, Para. II. Game and fish generally, T. 27. Water rights generally, T. 44, C. 8.

Law reviews. — For annual survey of

law on environment, natural resources, and land use, see 35 Mercer L. Rev. 147 (1983). For article discussing recent developments in environmental law, see 39 Mercer L. Rev. 411 (1987). For article, "Energy Partnership," see 65 Emory L.J. 695 (2016). For annual survey on environmental law, see 70 Mercer L. Rev. 1007 (2019).

For note, "What Does 'Green' Mean? Anthropogenic Climate Change, Geoengineering, and International Environmental Law," see 43 Ga. L. Rev. 901 (2009).

RESEARCH REFERENCES

Am. Jur. Trials. — Handling a Mass Disaster as a Class Action, 27 Am. Jur. Trials 485.

Contractor's Liability for Mishandling Toxic Substance, 37 Am. Jur. Trials 115.

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Use and Examination of Experts in Environmental Litigation, 50 Am. Jur. Trials 471.

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Administrative rules and regulations. — Administration, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Chapter 391-1 et seq.

12-1-1. "Department" defined.

As used in this title, the term "department" means the Department of Natural Resources.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 53, 54.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 2, 7, 19 et seq.

12-1-2. References to administrative law judge or hearing officer; references to final decision of Board of Natural Resources; filing request for administrative review.

(a) Any reference in this title to an administrative law judge or hearing officer shall mean an administrative law judge appointed by the chief state administrative law judge. The decision of an administrative law judge shall constitute the final administrative decision in any matter, and any party to the matter, including without limitation the department, the director of the Environmental Protection Division, the Asbestos Licensing Board, and the Shore Protection and Coastal Marshlands Protection Committees, shall have the right of judicial review in accordance with Chapter 13 of Title 50.

(b) Any reference in this title to a final decision of the Board of Natural Resources shall mean a final administrative decision by an administrative law judge.

(c) Any request for administrative review by an administrative law judge shall be filed with the decision maker or entity within the department whose decision is to be reviewed.

History. — Code 1981, § 12-1-2, enacted by Ga. L. 1995, p. 706, § 1.

Law reviews. — For note on the 1995 enactment of this Code section, see 12 Ga. St. U.L. Rev. 51 (1995).

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Editor's notes. — By resolution (Ga. L. 1991, p. 1236), the General Assembly directed the commissioner of natural resources to dedicate the Department of Natural Resources Regional Headquarters Building in Brunswick, Georgia in honor of Samuel Thomas Coffer.

Cross references. — Community greenspace preservation, T. 36, C. 22.

Administrative rules and regulations. — Organization and public participation, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-1-1 et seq.

Agricultural Nonpoint Source Grants, Official Compilation of the Rules and Regulations of the State of Georgia, State Soil and Water Conservation Commission, Grants, Subject 600-5-5.

OPINIONS OF THE ATTORNEY GENERAL

Constructing permanent improvement to land not encompassed in park system prohibited. — Department of State Parks (now Department of Natural Resources) is prohibited from constructing or contracting for the construction of any permanent improvement to land which is neither encompassed in the state park system nor under the park system's control. 1967 Op. Att'y Gen. No. 67-298.

RESEARCH REFERENCES

ALR. — Power of state to prohibit or restrict exportation of natural resources, 32 A.L.R. 331.

Conservation: validity, construction, and application of enactments restricting land development by dredging or tilling, 46 A.L.R.3d 1422.

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GENERAL PROVISIONS

Law reviews. — For article discussing important cases applying natural resource and game and fish law in 1976 and 1977, see 29 Mercer L. Rev. 131 (1977).

For comment, "The Right to Rainwater: An Unlikely Fairy Tale," see 69 Mercer L. Rev. 575 (2018).

12-2-1. Department created; commissioner of natural resources; affirmation of board decision by operation of law; appellate review.

(a) There is created a Department of Natural Resources.

(b)(1) There is created the position of commissioner of natural resources. The commissioner shall be both appointed and removed by the Board of Natural Resources subject to approval of the Governor. Subject to the general policy established by the Board of Natural Resources, the commissioner shall supervise, direct, account for, organize, plan, administer, and execute the functions vested in the Department of Natural Resources by this article.

(2) The commissioner may delegate to any person in the Department of Natural Resources the power to be present and participate, including the power to vote as his or her representative or substitute, at any meeting, hearing, or other proceeding of any association, authority, committee, board, or other body upon which the commissioner serves pursuant to this title.

(c) Notwithstanding any other law to the contrary, when a petition for judicial review of a final decision of the Board of Natural Resources in any matter arising under this title is filed pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," if the superior court in which the petition for review is filed does not hear the case

within 90 days from the date the petition for review is filed with the court, the final decision of the board shall be considered affirmed by operation of law unless a hearing originally scheduled to be heard within the 90 days has been continued to a date certain by order of the court. In the event a hearing is held later than 90 days after the date the petition for review is filed with the superior court because a hearing originally scheduled to be heard within the 90 days has been continued to a date certain by order of the court, the final decision of the board shall be considered affirmed by operation of law if no order of the court disposing of the issues presented for review has been entered within 30 days after the date of the continued hearing. If a case is heard within 90 days from the date the petition for review is filed, the final decision of the board shall be considered affirmed by operation of law if no order of the court dispositive of the issues presented for review has been entered within 30 days of the date of the hearing.

(d) A decision of the board affirmed by operation of law under subsection (c) of this Code section shall be subject to appellate review in the same manner as a decision of the superior court. The date of entry of judgment for purposes of appeal pursuant to Code Section 5-6-35 of a decision affirmed by operation of law without action of the superior court shall be the last date on which the superior court could have taken action under subsection (c) of this Code section. Upon the setting aside of any such decision of the board, the court may recommit the controversy to the board for further hearing or proceedings in conformity with the judgment and opinion of the court; or such court may enter the proper judgment upon the findings, as the nature of the case may demand. Such decree of the court shall have the same effect and all proceedings in relation thereto shall, subject to the other provisions of this chapter, thereafter be the same as though rendered in an action heard and determined by the court.

History. — Ga. L. 1911, p. 137, § 1; Ga. L. 1921, p. 192, §§ 1, 4; Ga. L. 1924, p. 101, §§ 1, 3, 4; Ga. L. 1925, p. 199, § 1; Ga. L. 1931, p. 7, §§ 19, 21, 25; Ga. L. 1937, p. 264, §§ 1, 4, 5, 9; Ga. L. 1943, p. 128, §§ 1, 2, 14; Ga. L. 1943, p. 180, §§ 1-3; Ga. L. 1949, p. 1079, §§ 1, 2, 5; Ga. L. 1955, p. 483, § 3; Ga. L. 1972, p. 1015, §§ 1501-1504, 1527; Ga. L. 1985, p. 1465, § 1; Ga. L. 1990, p. 223, § 2; Ga. L. 1991, p. 94, § 12; Ga. L. 1995, p. 105, § 1.

JUDICIAL DECISIONS

Constitutionality of procedure. — Georgia Administrative Procedure Act, O.C.G.A. § 50-13-1 et seq., and O.C.G.A. § 12-2-1 govern the procedure for judicial review of final decisions of the Department of Natural Resources and, when a party seeking review failed to make a timely request therefor, affirmance of the final decision of the department violated neither equal protection nor due process. Nix v. Long Mtn. Resources, Inc., 262 Ga. 506, 422 S.E.2d 195 (1992).

Hearing of administrative appeal. — Trial court had jurisdiction to hear administrative appeal regarding a solid waste handling permit granted by the

Environmental Protection Division of the Department of Natural Resources when, even though the hearing was not held within 90 days because appellants kept postponing the hearing, the hearing was held within 30 days of the 90-day period on "a date certain." Dixie Recycling Sys. v. Barnes, 206 Ga. App. 365, 425 S.E.2d 297 (1992).

Effect of affirmance of decision by operation of law. — Superior court's affirmance by operation of law under the circumstances set forth in subsection (c) of O.C.G.A. § 12-2-1 did not violate equal protection or due process. Due process does not require a written opinion by the superior court because the presumption is that the superior court does not write an order if the court agrees with the result of the Department of Natural Resources Board's decision. Rouse v. Georgia Dep't of Natural Resources, 271 Ga. 726, 524 S.E.2d 455 (1999).

Cited in Ctr. for a Sustainable Coast v. Coastal Marshlands Prot. Comm., 284 Ga. 736, 670 S.E.2d 429 (2008); Aaron v. Jekyll Island-State Park Authority, 348 Ga. App. 332, 822 S.E.2d 829 (2019).

OPINIONS OF THE ATTORNEY GENERAL

Commissioner is contracting authority of department. — Except for contracts within the purview of the Environmental Protection Division and the Department of Administrative Services, the contracting authority of the Department of Natural Resources is the commissioner of natural resources. 1980 Op. Att'y Gen. No. 80-38.

Powers concerning state park expansion project. — Commissioner of natural resources is authorized to request issuance of general obligation bonds and execute any subsequent contracts to effect a state park expansion project in accordance with powers otherwise vested in the department. 1982 Op. Att'y Gen. No. 82-12.

12-2-2. Environmental Protection Division; Environmental Advisory Council; duties of council and its members and director; appeal procedures generally; permit applications; inspections.

(a) There is created within the Department of Natural Resources an Environmental Protection Division.

(b)(1) The division shall have a director who shall be both appointed and removed by the Board of Natural Resources with the approval of the Governor. The director shall appoint an assistant director of the division. The director and the assistant director shall be qualified professionals, competent in the field of environmental protection. The director and the assistant director shall be in the unclassified service. In the event of a vacancy in the office of the director or in his absence or if he is disabled, the assistant director shall perform all the duties of the director. The director shall be responsible for enforcing the environmental protection laws of Georgia. The director shall hire the personnel for the division and shall supervise, direct, account for, organize, plan, and execute the functions vested in the division.

(2)(A) The Governor shall appoint an Environmental Advisory Council. The council shall consist of 15 members who shall be representative of professional and lay individuals, organizations,

and governmental agencies associated or involved with environmental matters. The term of each member of the council shall be for two years, provided that of the members first appointed, seven shall be appointed for terms of one year and eight for terms of two years. Vacancies shall be filled by similar appointment for unexpired terms.

(B) The council shall advise the Governor, the board, and the director as to the efficacy of the state's environmental protection programs, the need for legislation relating to the environment, the need for expansion or reduction of specific environmental programs, and the need for specific changes in the state's environmental protection programs. The council may review and prepare written comments on proposed state plans and on standards, rules, and regulations proposed by the division. Such comments may be submitted to the director, the board, and any other individual or agency deemed appropriate.

(C) Members of the council shall serve without compensation but shall receive the same expense allowance as that received by members of the General Assembly and the same mileage allowance for the use of a personal car or a travel allowance of actual transportation cost if traveling by public carrier as that received by all other state officials and employees.

(c)(1)(A) The director shall issue all orders and shall grant, deny, revoke, or amend all permits or variances provided for in the laws to be enforced by the division. The director shall also issue any certification which is required by any law of this state or the United States to be issued by the director, the Department of Natural Resources, or the State of Georgia relating to pollution control facilities or matters. The director shall develop and implement procedures for timely processing of applications made to the division for issuance or renewal of permits or variances, including but not limited to procedures for expedited review and granting of applications upon payment of a fee in an amount established by the director to offset the cost of expediting, all subject to compliance with requirements of law regarding such applications. Such procedures shall also provide any applicant who has applied to the division for issuance or renewal of a permit or variance with the ability to securely track the status of his or her application, with real time updates, via the division's internet website. The director shall notify all permit or variance applicants within ten days of receipt of the application as to the completeness of the application and, if the director finds the same to be incomplete, what specific additional materials the applicant need submit to make the application complete. The director shall notify applicants within ten

days of receipt of a completed application as to the name and address of the person assigned to perform the review and the date, time, and location of the application review. The director shall grant or deny any permit or variance within 90 days after receipt of all required application materials by the division, provided that the director may for any application order not more than one extension of time of not more than 60 days within which to grant or deny the permit or variance.

(B)(i) The director may identify professionals qualified to review certain permit applications in accordance with rules and regulations adopted by the board of the Department of Natural Resources.

(ii) A permit applicant may retain a qualified professional to review an application prior to submittal to the division. If the qualified professional certifies an application as complete, the division shall act expeditiously on the application.

(iii) A qualified professional certifying an application shall be independent of any professional preparing the application.

(iv) The applicant shall directly pay the fees of the qualified professional.

(v) The director may remove the qualified status of a professional if the professional provides a certification for an inaccurate application.

(2)(A) Any person who is aggrieved or adversely affected by any order or action of the director shall, upon petition to the director within 30 days after the issuance of such order or the taking of such action, have a right to a hearing before an administrative law judge of the Office of State Administrative Hearings assigned under Code Section 50-13-40 and acting in place of the Board of Natural Resources. The hearing before the administrative law judge shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and the rules and regulations adopted by the board pursuant thereto. Any administrative law judge so assigned shall fully meet and qualify as to all applicable conflict of interest requirements provided for in Section 304(h)(2)(D) of the Federal Water Pollution Control Act of 1972, as amended, and the rules, regulations, and guidelines promulgated thereunder.

(B) In any case involving the grant of a permit, permit amendment, or variance by the director, the filing of such a petition by a person to whom such order or action is not directed shall stay such order or action until such time as the hearing has been held and for

ten days after the administrative law judge renders his or her decision on the matter. The petition shall be transmitted to the administrative law judge not more than seven days after the date of filing. The provisions of subsection (c) of Code Section 50-13-41 notwithstanding, the hearing shall be held and the decision of the administrative law judge shall be rendered not later than 90 days after the date of the filing of the petition by such a person unless such period is extended for a time certain by order of the administrative law judge upon consent of all parties; in addition, the administrative law judge may extend the 90 day period for good cause shown for a period not to exceed an additional 60 days.

(C) The provisions of subparagraph (B) of this paragraph notwithstanding, in any case involving the grant of a permit, permit amendment, or variance by the director regarding water withdrawal for farm uses under Code Section 12-5-31 or Code Section 12-5-105, the filing of a petition under subparagraph (A) of this paragraph by any person to whom such order or action is not directed shall not stay such order or action.

(D) The decision of the administrative law judge shall constitute the final decision of the board and any party to the hearing, including the director, shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50.

(3)(A) Persons are "aggrieved or adversely affected," except as set forth in subparagraph (B) of this paragraph, where the challenged action has caused or will cause them injury in fact and where the injury is to an interest within the zone of interests to be protected or regulated by the statutes that the director is empowered to administer and enforce. In the event the director asserts in response to the petition before the administrative law judge that the petitioner is not aggrieved or adversely affected, the administrative law judge shall take evidence and hear arguments on this issue and thereafter make a ruling on this issue before continuing with the hearing. The burden of going forward with evidence on this issue shall rest with the petitioner.

(B) Persons are not aggrieved or adversely affected by the listing of property in the hazardous site inventory in accordance with Code Section 12-8-97 if such property was so listed prior to July 1, 2014, nor are persons aggrieved or adversely affected by an order of the director issued pursuant to Part 2 of Article 3 of Chapter 8 of this title, the "Georgia Hazardous Site Response Act," unless or until the director seeks to recover response costs, enforce the order, or recover a penalty for violation of such order; provided, however, that persons are aggrieved or adversely affected if the director designates property as needing corrective action pursuant to para-

graph (8) of subsection (a) of Code Section 12-8-97. Any person aggrieved or adversely affected by any such listing occurring after July 1, 2014, or any such designation shall be entitled to a hearing as provided in Code Section 12-8-73.

(4) Notwithstanding any other law to the contrary, in seeking civil penalties for the violation of those laws to be enforced by the division and where the imposition of such penalties is provided for therein, the director upon written request may cause a hearing to be conducted before an administrative law judge appointed by the Board of Natural Resources for the purpose of determining whether such civil penalties should be imposed in accordance with the law there involved. The hearing before the administrative law judge shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and the rules and regulations adopted by the board pursuant thereto. The decision of the administrative law judge shall constitute the final decision of the board and any party to the hearing, including the director, shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50.

(5) Notwithstanding any other law to the contrary, for purposes of establishing criminal violations of the standards, rules, and regulations promulgated by the Board of Natural Resources as provided in this title, the term "standards, rules, and regulations" shall mean those standards, rules, and regulations of the Board of Natural Resources in force and effect on January 1, 2021.

(6) Notwithstanding any other law to the contrary, whenever the division determines that a violation of any provision of this title or any rule or regulation promulgated pursuant to this title relating to those laws to be enforced by the division has occurred, the division shall be required to attempt by conference, conciliation, or persuasion to convince the violator to cease such violation. If the director finds that the public health, safety, or welfare requires emergency action and incorporates a finding to that effect in his or her order, such order may summarily provide for the immediate cessation of any activity constituting such violation. Whether negotiated or directed, such order shall specify the alleged violation and shall prescribe a reasonable time for corrective action to be accomplished. Any order issued pursuant to this subsection shall become final unless the person aggrieved requests a hearing in writing before the director not later than 30 days after such order is served.

(d) Whenever the Constitution and laws of the United States or the State of Georgia require the issuance of a warrant to make an inspection under any law administered by the director, the procedure set forth in paragraphs (1) through (7) of this subsection shall be employed.

(1) The director or any person authorized to make inspections for the division shall make application for an inspection warrant to a person who is a judicial officer within the meaning of Code Section 17-5-21.

(2) An inspection warrant shall be issued only upon cause and when supported by an affidavit particularly describing the place, dwelling, structure, premises, or vehicle to be inspected and the purpose for which the inspection is to be made. In addition, the affidavit shall contain either a statement that consent to inspect has been sought and refused or facts or circumstances reasonably justifying the failure to seek such consent. Cause shall be deemed to exist if either reasonable legislative or administrative standards for conducting a routine or area inspection are satisfied with respect to the particular place, dwelling, structure, premises, or vehicle, or there is reason to believe that a condition of nonconformity exists with respect to the particular place, dwelling, structure, premises, or vehicle.

(3) An inspection warrant shall be effective for the time specified therein, but not for a period of more than 14 days, unless extended or renewed by the judicial officer who signed and issued the original warrant, upon satisfying himself that such extension or renewal is in the public interest. Such inspection warrant must be executed and returned to the judicial officer by whom it was issued within the time specified in the warrant or within the extended or renewed time. After the expiration of such time, the warrant, unless executed, is void.

(4) An inspection pursuant to an inspection warrant shall be made between 8:00 A.M. and 6:00 P.M. of any day or at any time during operating or regular business hours. An inspection should not be performed in the absence of an owner or occupant of the particular place, dwelling, structure, premises, or vehicle unless specifically authorized by the judicial officer upon a showing that such authority is reasonably necessary to effectuate the purpose of the regulation being enforced. An inspection pursuant to a warrant shall not be made by means of forcible entry, except that the judicial officer may expressly authorize a forcible entry where facts are shown which are sufficient to create a reasonable suspicion of a violation of this title, which, if such violation existed, would be an immediate threat to health or safety, or where facts are shown establishing that reasonable attempts to serve a previous warrant have been unsuccessful. Where prior consent has been sought and refused and a warrant has been issued, the warrant may be executed without further notice to the owner or occupant of the particular place, dwelling, structure, premises, or vehicle to be inspected.

(5) It shall be unlawful for any person to refuse to allow an inspection pursuant to an inspection warrant issued as provided in

this subsection. Any person violating this paragraph shall be guilty of a misdemeanor.

(6) Under this subsection, an inspection warrant is an order, in writing, signed by a judicial officer, directed to the director or any person authorized to make inspections for the division, and commanding him or her to conduct any inspection required or authorized by this title or regulations promulgated pursuant to this title.

(7) Nothing in this subsection shall be construed to require an inspection warrant when a warrantless inspection is authorized by law or a permit issued under this title.

(e) Where this title does not otherwise specify the disposition of moneys collected by the division pursuant to an order issued by the director or the disposition of civil penalties collected by the division, such moneys and civil penalties shall be deposited in the state treasury to the credit of the general fund but shall be available for appropriation by the General Assembly to the department for inclusion in the hazardous waste trust fund continued in existence by subsection (a) of Code Section 12-8-95 in keeping with the legislative intent expressed in subsection (b) of Code Section 12-8-91.

History. — Ga. L. 1972, p. 1015, §§ 17, 1534; Ga. L. 1972, p. 1266, § 1; Ga. L. 1973, p. 344, § 2; Ga. L. 1981, p. 838, § 1; Ga. L. 1984, p. 404, § 1; Ga. L. 1985, p. 1465, § 2; Ga. L. 1991, p. 1738, § 1; Ga. L. 1992, p. 2234, § 1; Ga. L. 1993, p. 500, § 1; Ga. L. 1994, p. 1101, § 1; Ga. L. 1996, p. 319, § 1; Ga. L. 1998, p. 253, § 1; Ga. L. 2000, p. 877, § 1; Ga. L. 2005, p. 818, § 1/SB 190; Ga. L. 2006, p. 237, § 1/SB 191; Ga. L. 2007, p. 127, § 1/HB 463; Ga. L. 2012, p. 622, § 1/SB 427; Ga. L. 2013, p. 171, § 3/HB 320; Ga. L. 2013, p. 274, § 6/HB 226; Ga. L. 2014, p. 817, § 1/SB 333; Ga. L. 2014, p. 819, § 1/HB 904; Ga. L. 2016, p. 432, § 1/HB 840; Ga. L. 2021, p. 105, § 1-1/HB 362; Ga. L. 2021, p. 922, § 12/HB 497.

The 2021 amendments. — The first 2021 amendment, effective April 27, 2021, substituted "January 1, 2021" for "January 1, 2016" at the end of paragraph (c)(5). The second 2021 amendment, effective May 10, 2021, part of an Act to revise, modernize, and correct the Code, substituted "internet" for "Internet" in the fourth sentence of subparagraph (c)(1)(A).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "Act," was substituted for "Act" in paragraphs (c)(2) and (c)(4).

Editor's notes. — Ga. L. 2000, p. 877, § 2, not codified by the General Assembly, provides that the Act shall apply with respect to applications pending on July 1, 2000, as well as applications submitted on or after July 1, 2000.

Ga. L. 2016, p. 432, § 6/HB 840, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2016, and shall apply to all offenses occurring on or after such date."

Law reviews. — For article, "State Administrative Agency Contested Case Hearings," see 24 Ga. St. B.J. 193 (1988). For article, "From Marshes to Mountains, Wetlands Come Under State Regulation," see 41 Mercer L. Rev. 865 (1990). For annual survey of administrative law, see 67 Mercer L. Rev. 1 (2015).

For note on 1993 amendment of this Code section, see 10 Ga. St. U.L. Rev. 55 (1993). For note on 2000 amendment of this Code section, see 17 Ga. St. U.L. Rev. 26 (2000).

JUDICIAL DECISIONS

Failure to address constitutional issue on part of trial court. — Trial court erred by failing to address whether a 1993 county zoning ordinance was constitutional because the record established that the landfill permit applicant raised a constitutional challenge to the zoning ordinance before the trial court in its response to the challengers' motion for partial summary judgment and, in fact, in its transfer order to the appellate court, the trial court specifically stated that the court did not rule on the applicant's constitutional argument. Southern States-Bartow County, Inc. v. Riverwood Farm Prop. Owners Ass'n, Inc., 331 Ga. App. 878, 769 S.E.2d 823 (2015).

Remedies. — Superior court had jurisdiction to enter an injunction against the city to prevent the city from taking action on a siting decision for a landfill, when the city failed to follow the notice and meeting requirements for selecting and siting landfills, and aggrieved citizens did not have adequate remedy at law, because the existing landfill permit process and appeal under O.C.G.A. § 12-2-2 did not provide an administrative remedy to prevent the city's ultra vires actions. Emmons v. City of Arcade, 270 Ga. 196, 507 S.E.2d 464 (1998).

Legislative intent. — Homeowners lacked standing to appeal consent orders entered by the Director of the Environmental Protection Division of the Department of Natural Resources until the Director sought to enforce the orders, but the homeowners were authorized to sue those directly responsible for polluting the homeowners' property, irrespective of the homeowners' right of access to the courts; hence, the underlying intent of O.C.G.A. § 12-2-2(c)(3)(B) was to preclude such attacks on the director's exercise of the administrative authority to determine the scope of remedial measures set forth in consent orders issued under the Hazardous Site Response Act, O.C.G.A. § 12-8-90 et seq. Couch v. Parker, 280 Ga. 580, 630 S.E.2d 364 (2006).

Judicial review of air quality permit. — Trial court decision invalidating an air quality permit issued by the Environmental Protection Division (EPD) of the Georgia Department of Natural Resources to a power company to construct a pulverized coal-fired electric power plant in a particular county contained an erroneous ruling that the permit was invalid because the permit failed to include a limit on the power plant's carbon dioxide gas (CO2) emissions since no provisions of the Clean Air Act (CAA), 42 U.S.C. § 7401 et seq., or the state implementation plan controlled or limited CO2 emissions. Because CO2 was not a pollutant that "otherwise is subject to regulation under the CAA," CO2 was not a regulated new source review pollutant in the Prevention of Significant Deterioration (PSD) program and was not required to be controlled by use of best available control technology (BACT), therefore, the trial court erred by ruling that the PSD permit was required to include a BACT emission limit to control the power company's CO2 emissions. Longleaf Energy Assocs., LLC v. Friends of the Chattahoochee, Inc., 298 Ga. App. 753, 681 S.E.2d 203 (2009), cert. denied, No. S09C1879, 2009 Ga. LEXIS 809 (Ga. 2009).

Failure to challenge consent order. — Because a city could have challenged an agency consent order under O.C.G.A. §§ 12-2-2(c) and 50-13-19 but did not, the city's appeal of a judgment to enforce the consent order arose from proceedings under O.C.G.A. § 12-5-189; since the city did not appeal the director's decision, the appellate issue was limited to the propriety of the judgment and not the correctness of the decision. City of Rincon v. Couch, 272 Ga. App. 411, 612 S.E.2d 596 (2005).

Organization lacked standing to appeal consent order. — Trial court erred by concluding that an organization had standing to appeal a consent order between a property owner and the Director of the Environmental Protection Division (EPD) with regard to soil erosion as it lacked standing to appeal based upon its inability to demonstrate redressability as it failed to identify a procedural requirement the EPD violated, and the consent order did not fall within the categories of orders that required provision of notice

and opportunity for comment. Ctr. for a Sustainable Coast, Inc. v. Turner, 324 Ga. App. 762, 751 S.E.2d 555 (2013).

Cited in George v. Department of Natural Resources, 250 Ga. 491, 299 S.E.2d 556 (1983); Chambers of Ga., Inc. v. Department of Natural Resources, 232 Ga. App. 632, 502 S.E.2d 553 (1998).

OPINIONS OF THE ATTORNEY GENERAL

Division responsible for handling and managing solid waste. — Former Solid Waste Management Act, Ga. L. 1972, p. 1002 et seq., places the responsibility and power to regulate solid waste handling and management in Georgia in the hands of the Environmental Protection Division. 1976 Op. Att'y Gen. No. 76-17.

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 2, 3, 4, 5, 7. 63C Am. Jur. 2d, Public Officers and Employees, § 43.

C.J.S. — 39A C.J.S., Health and Environment, § 120. 73 C.J.S., Public Administrative Law and Procedure, §§ 2, 7, 19 et seq, 70.

ALR. — Conclusiveness of governor's decision in removing or suspending officers, 92 A.L.R. 998.

Third-party defense to liability under § 107 of Comprehensive Environmental Response, Compensation, and Liability Act (42 USCS § 9607), 105 A.L.R. Fed 21.

12-2-3. Departmental purposes.

It shall be the objectives of the department:

(1) To have the powers, duties, and authority formerly vested in the Division of Conservation and the commissioner of conservation;

(2) By means of investigation, recommendation, and print or electronic publication, to aid:

(A) In the promotion of the conservation and development of the natural resources of the state;

(B) In promoting a more profitable use of lands and waters;

(C) In promoting the development of commerce and industry; and

(D) In coordinating existing scientific investigations with any related work of other agencies for the purpose of formulating and promoting sound policies of conservation and development;

(3) To collect and classify the facts derived from such investigations and from the work of other agencies of the state as a source of information accessible to the citizens of the state and to the public generally, which facts set forth the natural, economic, industrial, and commercial advantages of the state; and

(4) To establish and maintain perfect cooperation with any and every agency of the federal government interested in or dealing with the subject matter of the department.

History. — Ga. L. 1937, p. 264, § 4; Ga. L. 1949, p. 1079, § 1; Ga. L. 1992, p. 6, § 12; Ga. L. 2010, p. 838, § 11/SB 388.

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 3, 4, 5.

C.J.S. — 39A C.J.S., Health and Environment, § 120.

ALR. — Power of state to prohibit or restrict exportation of natural resources, 32 A.L.R. 331.

Construction of highway through park as violation of use to which park property may be devoted, 60 A.L.R.3d 581.

12-2-4. Powers and duties of department.

(a) The department shall make investigations of the natural mining industry and commercial resources of the state and shall take such measures as it may deem best suited to promote the conservation and development of such resources.

(b) The department shall have the care of the state parks and other recreational areas now owned or to be acquired by the state.

(c) Reserved.

(d) The department shall make such examination, survey, and mapping of the geology, mineralogy, and topography of the state, including their industrial and economic utilization, as it may consider necessary.

(e) The department shall make an investigation of the water supply and water power of the state with recommendations and plans for promoting their more profitable use and shall take such measures as it may consider necessary to promote their development.

(f) The department shall make investigations of existing conditions of trade, commerce, and industry in the state, paying particular attention to the causes which may hinder or encourage their growth, and may devise and recommend such plans as may be considered best suited to promote the development of their interests.

(g) The department may take such other measures as it may deem advisable to obtain and make public a more complete knowledge of the state and its resources, and it is authorized to cooperate with other departments and agencies of the state in obtaining and making public such information. It shall be the duty of the department to arrange and classify the facts derived from its investigations so as to provide a general source of information in regard to the state, its advantages, and its resources.

(h) The department shall prepare a report to be submitted by the Governor to each General Assembly, showing the nature and progress of the department.

(i) The department shall from time to time prepare for print or electronic publication reports and statements, with illustrations, maps, and other descriptions which adequately set forth the natural and material resources of the state and its industrial and commercial development, with a view toward furnishing information to educate the people regarding the material advantages of the state, to encourage and foster the existing industries, and to present inducements for investments in new enterprises. Such reports and information shall be published and distributed as the department may direct, at the expense of the state, as other public documents.

(j) It is the intent and purpose, in creating the Department of Natural Resources, that the department shall confer with, cooperate with, and work in harmony with the Department of Economic Development on all new activities of the Department of Natural Resources.

(k) The department shall without any fee therefor accept applications for certification of environmentally sensitive conservation use property or constructed storm water wetland conservation use property as provided for in Code Section 48-5-7.4 and shall certify property to local boards of tax assessors and to the applicable local governing authority as meeting or not meeting the criteria of such Code section.

History. — Ga. L. 1937, p. 264, § 8; Ga. L. 1981, p. 838, § 1; Ga. L. 1984, p. 22, § 12; Ga. L. 1989, p. 1641, § 7; Ga. L. 1991, p. 1903, § 12; Ga. L. 2003, p. 271, § 1; Ga. L. 2004, p. 690, § 7; Ga. L. 2005, p. 60, § 12/HB 95; Ga. L. 2010, p. 838, § 11/SB 388.

Cross references. — Powers and duties of Environmental Protection Division as to mineral and geological resources, § 12-4-1. Powers and duties of department relating to game and fish laws, T. 27. Bona fide conservation use property, § 48-5-7.4. Authority of department to convey property for purposes of constructing and operating boat-launching ramps thereon, § 50-16-45. Powers and duties of department with regard to boat safety, § 52-7-1 et seq. Powers and duties of department with regard to river and harbor development, T. 52, C. 9.

Editor's notes. — Ga. L. 1989, p. 1641, § 18, not codified by the General Assembly, provides that: "In the event of any substantive conflict between this Act and any other Act of the 1989 General Assembly, such other Act shall control over this Act."

Ga. L. 1991, p. 1903, § 14, effective April 24, 1991, not codified by the General Assembly, provides: "To assist counties and boards of education in planning, volumes of standing timber harvested in each county through the last business day of the second and third quarters of 1991 shall be reported by the purchaser, or by the harvester if there is no purchaser, to the tax assessors of the county or counties in which the timber was harvested by November 15, 1991. Such reports shall show the number of pounds, if available, or measured volume of softwood and hardwood pulpwood, chip and saw logs, saw timber, poles, posts, and fuel wood so harvested. The commissioner, after consultation with the Georgia Forestry Commission, shall provide the tax assessor of each county with the weighted average unit price in pounds and measured volume paid through the last business day of such period for each such product class, no later than November 15, 1991."

Ga. L. 1991, p. 1903, § 15, provides that the amendment to this Code section shall be applicable beginning January 1, 1992, with respect to ad valorem taxation of timber and shall be applicable beginning January 1, 1992, for all other purposes.

Taxation for prior periods shall continue to be governed by prior law.

Ga. L. 2003, p. 271, § 3, not codified by the General Assembly, provides that the amendment by that Act to subsection (k) is applicable to all taxable years beginning on or after January 1, 2004.

Law reviews. — For note, "Regulation of Artificial Lakes and Recreational Subdivisions in Georgia," recommending methods for future regulation, see 8 Ga. St. B.J. 580 (1972). For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 182 (1992).

OPINIONS OF THE ATTORNEY GENERAL

Appointment of park personnel as peace officers authorized. — Commissioner of natural resources has the authority to make appointments of department personnel as peace officers at the direction of the Governor. 1971 Op. Att'y Gen. No. 71-155.

Commissioner decides authority to attach prejudice to former employee's record. — Commissioner of conservation (now commissioner of natural resources) should decide who has the specific authority to attach prejudice to the record of an employee separated from a division of the Department of Mines, Mining, and Geology (now Department of Natural Resources). 1971 Op. Att'y Gen. No. 71-62.

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 2, 3, 4, 5, 7. 63C Am. Jur. 2d, Public Officers and Employees, § 43.

C.J.S. — 39A C.J.S., Health and Environment, § 120. 73 C.J.S., Public Administrative Law and Procedure, § 2 et seq. 81A C.J.S., States, § 266.

12-2-5. Essential services for inhabitants of coastal islands authorized.

On the coastal islands of the State of Georgia, where there is no causeway or other means of land transportation and where essential services are not otherwise provided, the department is authorized to contract for or to provide essential services and water transportation for the employees of the department and their families, other state employees and their families, and any permanent residents of the islands. This authorization is applicable only to those islands owned or controlled by the State of Georgia and upon which the department has facilities located, or on other islands where an emergency condition is found to exist.

History. — Ga. L. 1975, p. 866, § 1.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 266.

12-2-6. Authority to arrange for and accept federal aid and cooperation; volunteer services; cooperation with other government entities and civic organizations; creation of nonprofit corporation.

(a) In carrying out its objectives, the department is authorized to arrange for and accept such aid and cooperation from the several United States governmental bureaus and departments and from such other sources as may lend assistance.

(b)(1) The commissioner is authorized to accept the services of individuals without compensation as volunteers for or in aid of environmental protection, coastal resources, historic preservation, interpretive functions, hunter safety and boating safety instruction, hunter safety and boating safety programs, wildlife management, recreation, visitor services, conservation measures and development, public education on conservation, and any other activities in and related to the objectives, powers, duties, and responsibilities of the department.

(2) The commissioner is authorized to provide for reimbursement of volunteers for incidental expenses such as transportation, uniforms, lodging, and subsistence. The commissioner is also authorized to provide general liability coverage and fidelity bond coverage for such volunteers while they are rendering service to or on behalf of the department.

(3) Except as otherwise provided in this Code section, a volunteer shall not be deemed to be a state employee and shall not be subject to the provisions of law relating to state employment, including, without limitation, those relating to hours of work, rates of compensation, leave, unemployment compensation, and state employee benefits.

(4) Volunteers performing work under the terms of this Code section may be authorized by the department to operate state owned vehicles. They may also be treated as employees of the state for the purposes of inclusion in any automobile liability insurance or self-insurance, general liability insurance or self-insurance, or fidelity bond coverage provided by the department for its employees while operating state owned vehicles.

(5) No volunteer shall be authorized or allowed to enter privately owned or operated lands, facilities, or properties without the express prior written permission of the owner or operator of such privately owned or operated lands, facilities, or properties; provided, however, that such prohibition shall not apply to lands, facilities, or properties leased to the State of Georgia.

(c) The department shall have the power and authority to create, establish, and operate a program or programs to facilitate, amplify, or

supplement the objectives and functions of the department through the use of volunteer services, including, but not limited to, the recruitment, training, and use of volunteers.

(d) The department is directed to cooperate with and coordinate its work with the work of each department of the federal government dealing with the same subject matters dealt with by the Department of Natural Resources. The department is authorized to cooperate with the counties of the state in any surveys to ascertain the natural resources of the counties. The department is also authorized to cooperate with the governing bodies of municipalities and boards of trade and other local civic organizations in examining and locating water supplies and in giving advice concerning and in recommending plans for other municipal improvements and enterprises. Such cooperation is to be conducted upon such terms as the department may direct.

(e) The department shall have the authority to participate with public and private groups, organizations, and businesses in joint advertising and promotional projects that promote environmental protection, coastal resource conservation, historic preservation, interpretive functions, hunter safety and boating safety instruction and programs, outdoor recreation, wildlife management, recreation, visitor services, conservation measures and development, public education on conservation, and any other activities in and related to the objectives, powers, duties, and responsibilities of the department and that make efficient use of funds appropriated for advertising and promotions; provided, however, that nothing in this subsection shall be construed so as to authorize the department to grant any donation or gratuity.

(f)(1) The department shall have the power and authority to incorporate one nonprofit corporation that could qualify as a public foundation under Section 501(c)(3) of the Internal Revenue Code to aid the department in carrying out any of its powers and in accomplishing any of its purposes. Any nonprofit corporation created pursuant to this power shall be created pursuant to Chapter 3 of Title 14, the "Georgia Nonprofit Corporation Code," and the Secretary of State shall be authorized to accept such filing.

(2) Any nonprofit corporation created pursuant to this subsection shall be subject to the following provisions:

(A) In accordance with the Constitution of Georgia, no governmental functions or regulatory powers shall be conducted by any such nonprofit corporation;

(B) Upon dissolution of any such nonprofit corporation incorporated by the department, any assets shall revert to the department or to any successor to the department or, failing such succession, to the State of Georgia;

(C) The board of directors of any such nonprofit corporation shall always include three members of the Board of Natural Resources who shall serve as nonvoting members. Service by a member of the Board of Natural Resources as a nonvoting member of the board of directors of any such nonprofit corporation shall not constitute a conflict of interest. No member of the Board of Natural Resources shall be a voting member of the board of directors of any such nonprofit corporation;

(D) As used in this subparagraph, the term "direct employee costs" means salary, benefits, and travel expenses. To avoid the appearance of undue influence on regulatory functions by donors, no donations to any such nonprofit corporation from private sources shall be used for direct employee costs of the department;

(E) Any such nonprofit corporation shall be subject to all laws relating to open meetings and the inspection of public records;

(F) The department shall not be liable for the action or omission to act of any such nonprofit corporation;

(G) No debts, bonds, notes, or other obligations incurred by any such nonprofit corporation shall constitute an indebtedness or obligation of the State of Georgia nor shall any act of any such nonprofit corporation constitute or result in the creation of an indebtedness of the state. No holder or holders of any such bonds, notes, or other obligations shall ever have the right to compel any exercise of the taxing power of the state nor to enforce the payment thereof against the state; and

(H) Any nonprofit corporation created pursuant to this Code section shall not acquire or hold a fee simple interest in real property by any method, including but not limited to gift, purchase, condemnation, devise, court order, and exchange.

(3) Any nonprofit corporation created pursuant to this subsection shall make public and provide an annual report showing the identity of all donors and the amount each person or entity donated as well as all expenditures or other disposal of money or property donated. Such report shall be provided to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons of the House Committee on Natural Resources and Environment, the House Committee on Game, Fish, and Parks, and the Senate Natural Resources and the Environment Committee. Any such nonprofit corporation shall also provide such persons with a copy of all corporate filings with the federal Internal Revenue Service.

History. — Ga. L. 1937, p. 264, § 12; Ga. L. 1992, p. 6, § 12; Ga. L. 1992, p. 2328, § 1; Ga. L. 2000, p. 1566, §§ 1, 2; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L.

2010, p. 107, § 1/HB 1199; Ga. L. 2012, p. 446, § 2-4/HB 642; Ga. L. 2012, p. 775, § 12/HB 942; Ga. L. 2013, p. 269, § 1/HB 381.

OPINIONS OF THE ATTORNEY GENERAL

Permanent improvements on state parks. — State can make permanent improvements on state parks which the state owns in fee simple. 1954-56 Op. Att'y Gen. p. 655.

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 3, 4, 5.

C.J.S. — 39A C.J.S., Health and Environment, § 120. 81A C.J.S., States, § 266.

12-2-7. Duty to advise Governor on environmental matters.

(a) The department shall have the duty of providing special counsel to the Governor concerning environmental matters affecting the state.

(b) In providing counsel to the Governor on environmental matters, the department shall:

(1) Advise the Governor on comprehensive environmental policy for the state;

(2) Develop guidelines for balancing environmental quality with economic development;

(3) Study and from time to time report to the Governor on environmental conditions and trends in the state;

(4) Make or recommend such special environmental studies as it deems appropriate or desirable; and

(5) Recommend environmental policies for improvement and maintenance of the quality of environmental conditions within the state.

History. — Ga. L. 1971, p. 788, §§ 1, 2.

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 3, 4, 5.

C.J.S. — 39A C.J.S., Health and Environment, § 120. 81A C.J.S., States, § 266.

12-2-8. Promulgation of minimum standards and procedures for protection of natural resources, environment, and vital areas of state; stream and reservoir buffers.

(a) The local governments of the State of Georgia are of vital importance to the state and its citizens. The state has an essential public interest in promoting, developing, sustaining, and assisting local

governments. The natural resources, environment, and vital areas of the state are also of vital importance to the state and its citizens. The state has an essential public interest in establishing minimum standards for land use in order to protect and preserve its natural resources, environment, and vital areas. The purpose of this Code section is to provide for the department to serve these essential public interests of the state. This Code section shall be liberally construed to achieve its purpose. This Code section is enacted pursuant to the authority granted the General Assembly in the Constitution of the State of Georgia, including, but not limited to, the authority provided in Article III, Section VI, Paragraphs I and II(a)(1) and Article IX, Section II, Paragraphs III and IV.

(b) The department is therefore authorized to develop minimum standards and procedures, in accordance with paragraph (2) of subsection (b) of Code Section 50-8-7.1 and in accordance with the procedures provided in Code Section 50-8-7.2 for the promulgation of minimum standards and procedures, for the protection of the natural resources, environment, and vital areas of the state, including, but not limited to, the protection of mountains, the protection of river corridors, the protection of watersheds of streams and reservoirs which are to be used for public water supply, for the protection of the purity of ground water, and for the protection of wetlands, which minimum standards and procedures shall be used by local governments in developing, preparing, and implementing their comprehensive plans as that term is defined in paragraph (3) of subsection (a) of Code Section 50-8-2.

(c) As used in this Code section, the term:

(1) "Land-disturbing activity" means any grading, scraping, excavating, or filling of land; clearing of vegetation; and any construction, rebuilding, or alteration of a structure. Land-disturbing activity shall not include activities such as ordinary maintenance and landscaping operations, individual home gardens, yard and grounds upkeep, repairs, additions or minor modifications to a single-family residence, and the cutting of firewood for personal use.

(2) "Mountain" or "protected mountain" means all land area 2,200 feet or more above mean sea level that has a percentage slope of 25 percent or greater for at least 500 feet horizontally and shall include the crests, summits, and ridge tops which lie at elevations higher than any such area.

(3) "River corridor" means all land not regulated under Code Sections 12-5-440 through 12-5-457, and Part 4 of Article 4 of Chapter 5 of this title, the "Coastal Marshlands Protection Act of 1970," in the areas of a perennial stream or watercourse with an average annual flow of at least 400 cubic feet per second as defined by the United

States Geologic Survey and being within 100 feet on both sides of the river as measured from the river banks at mean high water.

(d) The minimum standards and procedures for watershed protection referred to in subsection (b) of this Code section shall specifically include, but shall not be limited to, buffer areas along streams and reservoirs, land development densities, and land use activities. Local governments shall submit for approval by the department a watershed protection plan which shall include watershed protection standards and procedures. The department may adopt differing minimum standards and procedures of watershed protection based on the size of the watershed, the size or flow volume of the stream or reservoir, and whether or not the actual use of the municipal water supply is existing or proposed. Standards and procedures for buffer areas along streams and reservoirs shall comply with subsection (b) of this Code section and Code Section 12-7-6.

(e) The minimum standards and procedures for protection of ground water referred to in subsection (b) of this Code section shall also specifically include, but shall not be limited to, land use activities and development densities for the protection of ground water. The department may adopt differing minimum standards and procedures for ground-water purity protection based on the relative sizes, depths, and water volumes of various aquifers and based on the relative susceptibility of ground water to contamination by various land use activities and development densities.

(f) The minimum standards and procedures for protection of wetlands referred to in subsection (b) of this Code section shall include, but shall not be limited to, land use activities, land development densities, and activities which involve alteration of wetlands. The department may adopt differing minimum standards and procedures for wetlands protection based on the size or type of wetlands, the need to protect endangered or protected species or other unusual resources, and the need for a particular land use activity which will affect a wetland.

(g) The department shall, by January 1, 1992, promulgate the minimum standards and procedures for protection of river corridors referred to in subsection (b) of this Code section including, but not limited to, regulated activities within river corridor areas. In promulgating such standards, the department may classify river corridor areas and activities by type, size, and other factors relevant to the advancement of the policies and purposes of this Code section. Such standards shall include, but are not limited to, the following:

(1) Perennial river corridors shall be protected by the following criteria:

(A) A natural vegetative buffer area shall be maintained for a distance of 100 feet on both sides of the stream as measured from

the stream banks; provided, however, that nothing in such standards shall prohibit or be construed to prohibit the building of a single-family dwelling, including the usual appurtenances thereto, within said area subject to the following conditions: (i) such dwelling must be in compliance with all other local zoning regulations; (ii) a septic tank or tanks serving such dwelling may be located in said area but the drainfield for any such tank or tanks must be outside said area; and (iii) any such dwelling must be located on a tract containing at least two acres of land and there shall be only one such dwelling on each such two-acre or larger tract;

(B) Except as expressly provided otherwise in subparagraph (A) of this paragraph, septic tanks and septic tank drainfields are prohibited within such set-back area; and

(C) Such criteria shall provide for encroachments into the buffer area as needed for the construction of public roads and public utility crossings of river corridors and must meet all applicable requirements of Chapter 7 of this title, the "Erosion and Sedimentation Act of 1975," and of any applicable local ordinances on soil erosion and sedimentation control.

(2) Local governments shall identify existing river corridors and shall adopt river corridor protection plans as part of their planning process. Local governments may exempt from the planning process:

(A) Land uses existing prior to the promulgation of a river corridor protection plan from the criteria of the river corridor protection plan;

(B) Mining activities permitted by the Department of Natural Resources pursuant to Part 3 of Article 2 of Chapter 4 of this title, the "Georgia Surface Mining Act of 1968," from the criteria of the river corridor protection plan;

(C) Utilities from the buffer and set-back area criteria of the river corridor protection plan if such utilities cannot feasibly be located outside of such areas, provided that:

(i) The utilities shall be located as far from the stream bank as reasonably possible;

(ii) The installation and maintenance of the utilities shall be such as to protect the integrity of the buffer and set-back areas as well as is reasonably possible; and

(iii) The utilities shall not impair the drinking quality of the stream water; and

(D) Specific forestry and agricultural activities from buffer and set-back criteria in accordance with the following conditions:

(i) The activity shall be consistent with the best management practices established by the State Forestry Commission or the State Soil and Water Conservation Commission; and

(ii) The activity shall not impair the drinking quality of the stream water as defined by the federal Clean Water Act of 1977 (P.L. 95-217);

(3) River corridors shall be appropriately identified and mapped in the land use plans developed by local and regional governments. Such land use plans shall address, at a minimum, the following considerations with regard to river corridors:

(A) Whether the impact the land use plan has on an area would adversely affect the public health, safety, welfare, or the property of others;

(B) Whether the area is unique or significant in the conservation and movement of flora and fauna including threatened, rare, or endangered species;

(C) Whether alteration or the effects of alteration to river corridors will adversely affect the function, including the flow or quality of water, cause erosion or shoaling, or have an adverse impact on navigation;

(D) Whether modification or the effects of modification by a project would adversely affect fishing or recreational use of river corridors;

(E) Whether an alteration or the effects of alteration would be temporary in nature;

(F) Whether the project contains significant state historical and archeological resources, defined as "Properties on or Eligible for the National Register of Historic Places"; and

(G) Whether alteration of river corridors would have a measurably adverse impact on adjacent sensitive natural areas;

(4)(A) Land use plans shall provide the following acceptable uses of river corridors without long-term impairment of functions:

(i) Timber production and harvesting;

(ii) Wildlife and fisheries management;

(iii) Waste-water treatment;

(iv) Recreation;

(v) Natural water quality treatment or purification;

(vi) Agriculture production and management; and

(vii) Other uses including those permitted by the Department of Natural Resources or under Section 404 of the Federal Water Pollution Control Act as amended by the federal Clean Water Act of 1977 (P.L. 95-217).

(B) The following uses shall not be acceptable:

(i) Receiving areas for toxic or hazardous waste or other contaminants;

(ii) Hazardous or sanitary waste landfills; and

(iii) Other uses unapproved by local governments;

(5) The provisions of this subsection shall apply to each local government which contains within its boundaries any river corridor.

(h) The department shall, by January 1, 1992, promulgate the minimum standards and procedures for protection of mountains referred to in subsection (b) of this Code section including, but not limited to, land-disturbing activities within protected mountain areas. Such standards shall include, but are not limited to:

(1) The proposed land-disturbing activity must meet all applicable requirements of Chapter 7 of this title, the "Erosion and Sedimentation Act of 1975," and of any applicable local ordinances on soil erosion and sedimentation control;

(2) Where one or more septic tanks are to be used for individual sewage disposal, the proposed land-disturbing activity must meet all applicable requirements imposed by the local governing authority;

(3) Where one or more wells are to be used for individual water supply, the proposed land-disturbing activity must meet all applicable requirements of Part 3 of Article 3 of Chapter 5 of this title, the "Water Well Standards Act of 1985," the requirements of the rules and regulations of the Department of Public Health regarding individual or nonpublic wells, and any more stringent requirements imposed by the local governing authority;

(4) If sewage treatment is to be provided by any means other than one or more individual septic tanks, the sewage treatment must meet all applicable requirements of Article 2 of Chapter 5 of this title, the "Georgia Water Quality Control Act";

(5) If a public water supply system is to be provided, the water supply system must meet all applicable requirements of Part 5 of Article 3 of Chapter 5 of this title, the "Georgia Safe Drinking Water Act of 1977";

(6) No single-family residences may be constructed at a density of more than one per acre, but no such acre shall be less than 100 feet

wide at the building site, except that this density restriction shall not apply to:

(A) Any lot of less than one acre if such lot was as of July 1, 1991, owned and described as a discrete parcel of real property according to the instrument of title of the person or persons owning the lot on July 1, 1991; or such lot was as of July 1, 1991, shown as a discrete parcel of real property on a plat of survey properly recorded in the real property records of the clerk of superior court by the person or persons owning the lot on July 1, 1991; or

(B) Any land or part of any land which was contained in or subject to any master plan, planned unit development, special approved development plan, or any other development plan if such plan was filed with and approved by the local governing authority prior to July 1, 1991, pursuant to a duly enacted planning and zoning ordinance; provided, further, that any such planning and zoning ordinance must have provided for rules and procedures and governed lot sizes, density, types of buildings, and other limitations usually associated with the implementation of local zoning ordinances;

(7) No multifamily residences may be constructed at a density of more than four dwelling units per acre, except where there is a public water supply and sewerage system available to this property then the density may be increased to no more than six dwelling units per acre, but no such acre shall be less than 100 feet wide at the building site;

(8) Any application for a building permit to construct a commercial structure shall contain a detailed landscaping plan. Such landscaping plan shall identify all trees which are to be removed that exceed eight inches in diameter as measured at a point on such tree four and one-half feet above the surface of the ground and shall contain a plan for replacement of any such trees that are removed. Such application shall also include a topographical survey of the project site and an assessment of the impact that the project will have on the environment of the protected mountain after it has been completed and is in operation. Nothing in this paragraph shall be construed to require commercial structures to comply with the density provision of paragraphs (6) and (7) of this subsection;

(9) No structure may extend more than 40 feet, as measured from the highest point at which the foundation of such structure intersects the ground, above the uppermost point of the crest, summit, or ridge top of the protected mountain on which the structure is constructed; provided, however, that this height restriction shall not apply to water, radio, or television towers or any equipment for the transmission of electricity or to minor vertical projections of a parent building,

including chimneys, flagpoles, flues, spires, steeples, belfries, cupolas, antennas, poles, wires, or windmills; and

(10) No person engaging in land-disturbing activity shall remove more than 50 percent of the existing trees which exceed eight inches in diameter as measured at a point on such tree four and one-half feet above the surface of the ground unless such person has filed with the application a plan of reforestation developed by a registered forester.

History. — Code 1981, § 12-2-8, enacted by Ga. L. 1989, p. 1317, § 5.1; Ga. L. 1991, p. 1719, § 1; Ga. L. 1992, p. 6, § 12; Ga. L. 1993, p. 91, § 12; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214; Ga. L. 2011, p. 752, § 12/HB 142; Ga. L. 2014, p. 597, § 1/SB 299; Ga. L. 2015, p. 5, § 12/HB 90; Ga. L. 2017, p. 774, § 12/HB 323.

Cross references. — Stream buffers, §§ 12-5-451, 12-5-453, 12-5-582, 12-7-6.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, "minimum" was substituted for "miminum" in the first sentence of subsection (g).

Pursuant to Code Section 28-9-5, in 1992, "two-acre" was substituted for "two acre" in subparagraph (g)(1)(A).

Pursuant to Code Section 28-9-5, in 1996, "State Soil and Water Conservation Commission" was substituted for "Georgia Soil and Water Conservation Commission" in division (g)(2)(D)(i).

Editor's notes. — By resolution (Ga. L. 1990, p. 406), the General Assembly ratified the initial minimum standards and procedures for the protection of the natural resources, environment, and vital areas of the state adopted by the Department and Board of Natural Resources on December 6, 1989.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 11 (1992).

RESEARCH REFERENCES

ALR. — Actions brought under Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act) (33 USCA § 1251 et seq.) — Supreme Court cases, 163 A.L.R. Fed. 531.

Validity, construction, and application of lead limitations and "lead and copper" rule of Safe Drinking Water Act, 16 A.L.R. Fed. 3d 3.

Citizen's cause of action under Safe Drinking Water Act, 42 U.S.C.A. § 300j-8, 16 A.L.R. Fed. 3d 4.

Validity, Construction, and Application of Part C of the Safe Drinking Water Act Relating to Protection of Underground Sources of Drinking Water, 42 U.S.C.A. §§ 300h to 300h-8, and Related Regulations, 20 A.L.R. Fed. 3d 12.

12-2-9. Accreditation of commercial analytical laboratories submitting regulatory data.

All commercial analytical laboratories submitting data for regulatory purposes shall be accredited or approved as specified in the Environmental Protection Division's rules and regulations. Such regulations shall provide for procedures, identification of accrediting organizations, reciprocity, and an effective date which allows a phase-in period; provided, however, that the effective date of such rules and regulations shall be on or after July 1, 2001. This Code section shall not apply to turbidity data submitted pursuant to individual or general permits for

storm-water discharges from construction activities authorized in subparagraphs (a)(1)(N) and (a)(1)(O) of Code Section 12-5-23.

History. — Code 1981, § 12-2-9, enacted by Ga. L. 1997, p. 574, § 1; Ga. L. 2000, p. 213, § 1; Ga. L. 2001, Ex. Sess., p. 317, § 1; Ga. L. 2002, p. 415, § 12.

12-2-10. Qualifications to practice public soil science.

(a) As used in this Code section, the term:

(1) "Public practice of soil science" means any service or work, the adequate performance of which requires education in the physical, chemical, and biological sciences, as well as soil science; training and experience in the application of special knowledge of these sciences to the use and management of soils by accepted principles and methods; investigation, evaluation, and consultation in the use and management of soils; and in which the performance is related to the public welfare by safeguarding life, health, property, and the environment. The term includes, but is not limited to, investigating and evaluating the interaction between water, soil, nutrients, plants, and other living organisms that are used to prepare soil scientists' reports for subsurface ground absorption systems, including infiltration galleries; land application of residuals such as sludge, septage, and other wastes; spray irrigation of waste water; soil remediation at conventional rates; land application of agricultural products and processing residues; bioremediation and volatilization; soil erodibility and sedimentation; and identification of hydric soil and redoximorphic features.

(2) "Soil science" means the science dealing with soils as an environmental resource. Soil science includes soil characterization, classification, and mapping; the physical, chemical, hydrologic, mineralogical, biological, and microbiological analysis of soil; and the assessment, analysis, modeling, testing, evaluation, and use of soil for the benefit of mankind. Soil science does not include design or creative works, the adequate performance of which requires extensive geological, engineering, land surveying, forestry, or landscape architecture education, training, and experience or requires registration as a geologist under Chapter 19 of Title 43, professional engineer or land surveyor under Chapter 15 of Title 43, or forester under Part 2 of Article 1 of Chapter 6 of this title or licensing as a landscape architect under Chapter 23 of Title 43.

(3) "Soil scientist" means a person who engages in the public practice of soil science.

(b) Any person who:

(1) Holds at least a bachelor's degree in science from an accredited college or university with a major in soil science or a related field of

science, which degree includes a minimum of 30 semester hours or equivalent quarter credit hours in agricultural, biological, chemical, physical, or earth sciences, with a minimum of 15 semester credit hours or equivalent quarter credit hours in soil science courses; and

(2) Has at least four years of work experience as a soil scientist under the supervision of a person who meets the qualifications of paragraph (1) of this subsection and who provides satisfactory evidence of such qualifications to the department

shall be authorized and qualified, for purposes of assisting persons in meeting the requirements of this title, to engage in the public practice of soil science on behalf of such persons and submit soil science evaluations and reports to the department when such are required for purposes of satisfying requirements of this title, and such reports by a soil scientist shall be accepted by the department for such purposes.

(c) This Code section shall not be construed to prevent or affect:

(1) The practice of registered professional engineers from lawfully practicing soil mechanics, foundation engineering, and other professional engineering as provided in Chapter 15 of Title 43; or

(2) Persons registered as professional engineers or professional geologists from practicing soil science within their areas of engineering or geologic competency.

(d) It shall be unlawful for a soil scientist to engage in the design of engineering works and systems unless the soil scientist is also a registered professional engineer under Chapter 15 of Title 43.

History. — Code 1981, § 12-2-10, enacted by Ga. L. 2007, p. 542, § 1/SB 226.

12-2-11. Control of aviation; power of department.

(a)(1) The department shall be authorized to acquire, operate, maintain, house, and dispose of all state aviation assets assigned to the department, to provide aviation services and oversight of such state aircraft and aviation operations for the mission of the department and legitimate state business purposes, to achieve policy objectives through aviation missions, and to provide for the efficient operation of such state aircraft.

(2) All aircraft under the custody and control of the Georgia Aviation Authority as of June 30, 2012, which were previously transferred to the authority by the department and associated parts and equipment and any budgeted operating funds associated with such aircraft shall be transferred on July 1, 2012, back to the custody and control of the department.

(3) Any persons who as of June 30, 2012, were employed by the Georgia Aviation Authority pursuant to previous transfer from the department to the authority shall be transferred back to the department on July 1, 2012, and shall no longer be under the administration or direction of the authority.

(4) All airfields and appurtenances, including hangars, previously transferred to the Georgia Aviation Authority by the department and all accounts receivable, budgeted operating funds, other funds, contracts, liabilities, and obligations associated with the aircraft being transferred back to the department as of July 1, 2012, shall become the property, accounts receivable, budgeted operating funds, other funds, contracts, liabilities, and obligations of the department on such date.

(5) The department shall be responsible for providing aviation services in support of the mission of the department. The department shall be authorized to dispose of any state aircraft assigned to the department and apply the proceeds derived therefrom to the purchase of replacement aviation assets.

(b) The department shall have the power to:

(1) Hire, organize, and train personnel to operate, maintain, house, purchase, and dispose of aviation assets;

(2) Purchase, lease, maintain, develop, and modify facilities to support aviation assets and operations;

(3) Develop operating, maintenance, safety, security, training, education, and scheduling standards for department aviation operations and conduct inspections, audits, and other similar oversight to determine practices and compliance with such standards;

(4) Develop an accountability system for department aviation operations and activities;

(5) Identify the costs associated with training, education, and the purchase, operation, maintenance, and administration of state aircraft assigned to the department and aviation operations and related facilities;

(6) In conjunction with the Georgia Aviation Authority, develop an appropriate joint billing structure for passenger transportation where the aircraft is designated and operated as a "civil aircraft" under Part 91 of the Federal Aviation Regulations and charge agencies and other state entities for the full variable hourly costs for the operation of each type of aircraft, evaluated annually and adjusted as necessary based upon the price of fuel, maintenance, and other fees that are a direct result of flying the aircraft on that specific

trip; provided, however, that any billing to an agency by the department shall be suspended whenever the Governor declares a state of emergency on any cost associated with aircraft used during and in response to such state of emergency;

(7) Retain appropriate external consulting and auditing expertise;

(8) Engage aviation industry representatives to ensure best practices for department aviation assets;

(9) Delegate certain powers pursuant to this article to other state entities;

(10) Otherwise implement appropriate and efficient management practices for department aviation operations; and

(11) Enter into agreements with the Georgia Aviation Authority for mutual use of state airfields and appurtenances, including aircraft hangars.

History. — Code 1981, § 12-2-11, enacted by Ga. L. 2012, p. 1082, § 2/SB 339.

Cross references. — Aviation authority, T. 6, C. 5.

RESEARCH REFERENCES

ALR. — Liability of United States for negligence of air traffic controller, 46 A.L.R. Fed. 24.

Liability of United States for negligence of person other than air traffic controller in connection with aviation control operations, 47 A.L.R. Fed. 85.

ARTICLE 2

BOARD OF NATURAL RESOURCES

Cross references. — Board of Natural Resources, Ga. Const. 1983, Art. IV, Sec. VI, Para. I.

Law reviews. — For survey of Georgia cases dealing with environment, natural resources, and land use from June 1977 through May 1978, see 30 Mercer L. Rev. 75 (1978).

RESEARCH REFERENCES

ALR. — Constitutionality of statute limiting or controlling exploitation or waste of natural resources, 24 A.L.R. 307; 78 A.L.R. 834.

12-2-20. Short title.

This article shall be known and may be cited as the "Natural Resources Act of 1973."

History. — Ga. L. 1973, p. 139, § 1.

12-2-21. Composition of Board of Natural Resources; appointment and confirmation of members; terms of members; vacancies.

The Board of Natural Resources shall consist of one member from each congressional district in this state; one additional member from one of the following named counties: Chatham, Bryan, Liberty, McIntosh, Glynn, or Camden; and four members from the state at large. The members shall be appointed by the Governor and confirmed by the Senate. Except as otherwise specifically provided in this Code section, members shall be appointed for a term of seven years from the expiration of the previous term. The four members from the state at large shall be appointed initially for terms of one, three, five, and seven years, respectively, to be designated by the Governor; all succeeding appointments of at-large members shall be for a term of seven years. In as far as it is practical, the members of the Board of Natural Resources shall be representative of all areas and functions encompassed within the Department of Natural Resources. All members of the Board of Natural Resources shall hold office until their successors are appointed and qualified. Vacancies in office shall be filled by appointment by the Governor and submitted to the Senate for confirmation at the next session of the General Assembly after the making of the appointment. Any member so appointed shall serve until the expiration of the vacated term. No more than two members shall come from the same congressional district.

History. — Ga. L. 1943, p. 128, § 2; Ga. L. 1955, p. 483, §§ 3, 5, 6; Ga. L. 1972, p. 1015, § 1527; Ga. L. 1973, p. 139, § 3.

Cross references. — Board of Natural Resources, Ga. Const. 1983, Art. IV, Sec. VI, Para. I.

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 3, 4, 5.

C.J.S. — 39A C.J.S., Health and Environment, § 120.

12-2-22. Oath of office; bond.

Persons appointed to the Board of Natural Resources shall take oath of office and give bond in the sum of $1,000.00 in the usual form required of state officers.

History. — Ga. L. 1973, p. 139, § 4.
Cross references. — Official bonds, T. 45, C. 4.

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 26 et seq.

12-2-23. Officers; meetings; quorum; compensation of members; reimbursement of members for expenses.

(a) The members of the Board of Natural Resources shall elect a chairman, a vice-chairman, and a secretary. These officers shall be elected for a period of one year and shall be elected annually at the January meeting.

(b) The board shall hold regular meetings at least once every 60 days and may not hold more than six special or called meetings in any one calendar year. A special or called meeting may be called by the chairman or a majority of the members of the board. The board shall meet at such times and at such designated places in this state as it may determine.

(c) Eight members of the board shall constitute a quorum.

(d) The members, including the chairperson, shall each receive the per diem prescribed in Code Section 45-7-21 for each day of actual attendance at meetings of the board, or any committee thereof, and shall be reimbursed for travel expenses, lodging, meals, and transportation at the same rates established in the travel regulations for state employees. The members, including the chairperson, while on committee assignment approved in advance by the chairperson, shall receive the same per diem and reimbursement of travel expenses as those authorized for attendance at meetings. Notwithstanding any other provision of this Code section, the total per diem compensation paid in any year to any member of the board shall not exceed $3,000.00. Such per diem and actual expense shall be paid from funds of the department.

History. — Ga. L. 1973, p. 139, § 5; Ga. L. 2011, p. 558, § 1/SB 121.

Cross references. — Legal mileage allowance, § 50-19-7.

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 3, 4, 5.

12-2-24. Powers and duties of Board of Natural Resources; rules and regulations; fee refunds; policies.

(a)(1) The Board of Natural Resources may make such rules and regulations as it may deem advisable to govern the work of the department and the duties of its employees under this title.

(2) Without limiting paragraph (1) of this subsection, the board may establish, by rule or regulation, a procedure to refund fees collected in error or overpayment or to which the department or state is not otherwise entitled.

(b) The Board of Natural Resources shall have the power to establish the general policies to be followed by the department.

(c) The commissioner of natural resources shall have the power to administer the department pursuant to the general policies established by the Board of Natural Resources.

History. — Ga. L. 1911, p. 137, § 1; Ga. L. 1924, p. 101, §§ 1, 3, 4; Ga. L. 1931, p. 7, § 25; Ga. L. 1937, p. 264, §§ 1, 4, 9; Ga. L. 1943, p. 128, §§ 1, 2, 14; Ga. L. 1955, p. 483, § 3; Ga. L. 1972, p. 1015, § 1527; Ga. L. 1973, p. 344, § 1; Ga. L. 1984, p. 22, § 12; Ga. L. 2011, p. 558, § 2/SB 121.

Cross references. — Powers and duties of Board of Natural Resources relating to vehicle emissions, § 12-9-40 et seq. Rule-making power of Board of Natural Resources with regard to game and wildlife, § 27-1-4. Rule-making power of Board of Natural Resources with regard to registration, operation, and sale of watercraft, § 52-7-23.

Administrative rules and regulations. — Administration, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Chapter 391-1 et seq.

JUDICIAL DECISIONS

Cited in Longleaf Energy Assocs., LLC v. Friends of the Chattahoochee, Inc., 298 Ga. App. 753, 681 S.E.2d 203 (2009).

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 3, 4, 5.

C.J.S. — 39A C.J.S., Health and Environment, §§ 120, 123, 126, 132, 135, 139. 81A C.J.S., States, § 266.

CHAPTER 3

PARKS, HISTORIC AREAS, MEMORIALS, AND RECREATION

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12-3-620. Definitions.
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12-3-640. Designation.

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12-3-650. Definitions [Repealed].
12-3-651. Redesignated.
12-3-652 through 12-3-661. [Repealed].
12-3-662. Redesignated.

Article 12

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12-3-680 through 12-3-708 [Repealed].

ARTICLE 1

GENERAL PROVISIONS

Cross references. — Preservation of scenic or historic buildings, property, or land and water by means of facade and conservation easements or by means of municipal ordinances, T. 44, C. 10. Limitation of liability of owners of property used for recreational purposes, § 51-3-20 et seq.

Editor's notes. — By resolution (Ga. L. 1987, p. 704), the General Assembly provided that the lodge and conference center to be constructed at Little Ocmulgee State Park in Wheeler County, Georgia be named and known as the "L.L. (Pete) Phillips Conference Center."

By resolution (Ga. L. 1988, p. 174), the General Assembly designated the state park on Lake Walter F. George in Clay County as the "George T. Bagby State Park."

RESEARCH REFERENCES

ALR. — State's liability for personal injuries from criminal attack in state park, 59 A.L.R.4th 1236.

PART 1

GENERAL PROVISIONS

Editor's notes. — Ga. L. 1995, p. 105, § 2 designated existing Code Sections 12-3-1 through 12-3-11 as Part 1 of Article 1 of Chapter 3 of this title.

12-3-1. Duties and powers of department as to recreational policies and programs.

(a) It shall be the duty of the Department of Natural Resources:

(1) To formulate in cooperation with other state agencies, interested organizations, and citizens a comprehensive recreation policy for the State of Georgia;

(2) To study and appraise recreational needs of the state and to assemble and disseminate information relative to recreation;

(3) To cooperate in the promotion and organization of local recreational systems or programs for municipalities, counties, school districts, and other areas of the state and upon request to advise them in the planning of recreation areas and facilities and to consult with them in the planning and financing of recreational programs;

(4) To aid in recruiting, educating, and placing recreation workers and in promoting recreational institutes and conferences;

(5) To help establish and promote recreation standards;

(6) To cooperate with state and federal agencies, commercial and industrial recreational interests, voluntary agencies, and other agencies interested in the promotion of recreational opportunities;

(7) To submit an annual report of activities and recommendations to the Governor and to notify the General Assembly of the availability of the annual report in the manner which it deems to be most effective and efficient; and

(8) To do such other things as are necessary and proper to effectuate the purposes of this Code section.

(b) The department shall have the following powers:

(1) To assist upon request any department, commission, board, agency, or officer of the state in rendering recreational services in conformity with their respective authorized powers and duties and to encourage and assist in the coordination of federal, state, and local recreation activities;

(2) To request from the various state departments and other agencies and authorities of the state and its political subdivisions and their agencies and authorities such available information as it may require in its work with regard to recreation; all of these agencies and authorities shall within a reasonable time furnish such requested available information to the department; and

(3) To make recommendations as to the operation of recreation facilities.

History. — Ga. L. 1958, p. 337, §§ 3, 4; Ga. L. 1963, p. 445, §§ 3, 4; Ga. L. 2005, p. 1036, § 4/SB 49.

Cross references. — Recreation systems for counties and municipalities, T. 36, C. 64.

Law reviews. — For note, "Regulation of Artificial Lakes and Recreational Subdivisions in Georgia," recommending methods for future regulation, see 8 Ga. St. B.J. 580 (1972).

OPINIONS OF THE ATTORNEY GENERAL

State can make permanent improvements on state parks which the state owns in fee simple. 1954-56 Op. Att'y Gen. p. 655.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 266.

12-3-2. Disposition of miscellaneous funds by department.

Notwithstanding any other provision of law, the department is authorized to retain all miscellaneous funds generated by the operation of its park, historic, and recreational sites and facilities for use in the operation and maintenance of those sites and facilities. Any such funds not expended for this purpose in the fiscal year in which they are generated shall be deposited in the state treasury, provided that nothing in this Code section shall be construed so as to allow the department to retain any funds required by the Constitution of Georgia to be paid into the state treasury; provided, further, that the department shall comply with all provisions of Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act," except Code Section 45-12-92, prior to expending any such miscellaneous funds.

History. — Ga. L. 1980, p. 324, § 2; Ga. L. 1992, p. 6, § 12.

Cross references. — Revenue to be paid into general fund, Ga. Const. 1983, Art. VII, Sec. III, Para. II.

OPINIONS OF THE ATTORNEY GENERAL

State can make permanent improvements on state parks which the state owns in fee simple. 1954-56 Op. Att'y Gen. p. 655.

12-3-3. Powers of department as to projects generally.

(a) As used in this Code section, the term:

(1) "Governing authority of a county" means the county commissioner, board of county commissioners, judge of the probate court, or other person or body of persons at the time entrusted by law with the administration of the fiscal affairs of any county.

(2) "Governing authority of a municipality" means the council, board of aldermen, or other person or body of persons at the time

entrusted by law with the administration of the fiscal affairs of any municipal corporation.

(3) "Project" means the acquiring, constructing, equipping, maintaining, operating, managing, and promoting of recreation and accommodation and tourist facilities and services, including, but not limited to, recreation centers, outdoor recreation experiment stations, playgrounds, parks, marinas, swimming and wading pools, lakes, golf courses, tennis courts, athletic fields and courts, club houses, gymnasiums, museums, convention halls, pageants, auditoriums, stables, restaurants, hotels, motels, hunting and fishing preserves, historic sites and attractions, and any other facilities or services that the department may desire to undertake, including the related buildings and the usual and convenient facilities appertaining to any undertakings and any extensions or improvements of any facilities, and the acquisition of necessary property therefor, all as may be related to the development of recreational and tourist accommodations and facilities as the department may deem necessary, convenient, or desirable.

(b) The department shall have power:

(1) To acquire by purchase, lease, or otherwise and to hold, lease, use, and operate any personal property of every kind and character for its purposes under this Code section. Upon request of the department, the State Properties Commission is authorized, subject to the provisions of Article 2 of Chapter 16 of Title 50, to acquire by purchase, acceptance, or condemnation, for and on behalf of the State of Georgia, any and all lands to be used in a project as defined by this Code section. When a project is proposed for construction on any lands owned by any county or by any municipality, the governing authority or body of the county or of the municipality is authorized to convey title to such lands to the department through the State Properties Commission if the property is unserviceable or cannot be advantageously or beneficially used by the county or municipality so conveying; provided, however, payment shall be to the credit of the general funds of the county or municipality and shall be equal to the reasonable value of the lands as may be determined by three appraisers to be agreed upon by the governing authority or body of such county or municipality and the chairman of the State Properties Commission;

(2) To execute contracts, deeds, leases, subleases, and all other necessary or convenient instruments, including contracts for construction of projects and leases of projects or contracts with respect to the use of projects which the department causes to be erected or acquired, provided that no deed, lease, sublease, or similar instrument by which the department conveys an interest in land shall be

valid unless approved in writing by the Governor, the Attorney General, and the state auditor;

(3) To accept grants of money or materials or property of any kind from the United States of America or any agency or instrumentality thereof for the purposes of the department under this Code section, provided that any grant shall be upon such terms and conditions as the United States of America, or any agency or instrumentality thereof, may impose;

(4) To act as agent for the United States of America, or any agency, department, corporation, or instrumentality thereof, in any manner within the purposes or powers of the department under this Code section;

(5) To receive gifts, donations, or contributions from any person, firm, or corporation for the purposes of the department under this Code section;

(6) To hold, use, administer, and expend such sum or sums as may hereafter be received as income or as gifts, or as may be appropriated by authority of the General Assembly for any of the purposes of the department under this Code section;

(7) To prescribe, fix, collect, and revise from time to time rates, fees, tolls, and charges for the services, facilities, or commodities furnished, including leases, concessions, or subleases of the department's lands or facilities;

(8) To contract with institutions of higher learning for the purpose of securing qualified specialists to aid in any of its projects;

(9) To do all things necessary, convenient, or incidental to carry out the intent of, and the purpose and powers expressed and given in, this Code section; and

(10) Notwithstanding the provisions of any other law, including the provisions of paragraph (2) of this subsection and the provisions of Article 2 of Chapter 16 of Title 50, the "State Properties Code," the commissioner of natural resources is authorized to sublease the Park Marina property on Lake Allatoona at Red Top Mountain State Park, Bartow County, Georgia, and the Beaverdam Marina property on Richard B. Russell Lake, Elbert County, Georgia, for terms which coincide with the primary leases between the State of Georgia and the United States Army Corps of Engineers; provided, however, that said subleases are approved by the primary lessor, the United States Army Corps of Engineers.

History. — Ga. L. 1963, p. 357, §§ 3, 6, 7; Ga. L. 1964, p. 369, § 1; Ga. L. 1968, p. 291, §§ 3, 5, 6; Ga. L. 1972, p. 1015, §§ 411, 1513; Ga. L. 1973, p. 857, § 1; Ga.

L. 1982, p. 3, § 12; Ga. L. 1989, p. 274, §§ 1-3; Ga. L. 1990, p. 8, § 12; Ga. L. 1994, p. 173, § 1; Ga. L. 1995, p. 10, § 12.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 266.

12-3-4. Powers of department and Board of Natural Resources as to Lake Lanier Islands Development.

(a) As used in this Code section, the term:

(1) "Lake Lanier Islands" means such islands and adjacent land located in Lake Lanier, Hall County, Georgia, which are at present or in the future may be licensed to the State of Georgia by the United States through its agency, the United States Army Corps of Engineers, or which are otherwise acquired for use by the department.

(2) "Project" means the acquiring, constructing, equipping, maintaining, operating, managing, and promoting of recreation and accommodation and tourist facilities and services, including, but not limited to, camping sites, recreation centers, playgrounds, parks, swimming and wading pools, lakes, airports, golf courses, tennis courts, athletic fields and courts, club houses, gymnasiums, museums, concession buildings, convention halls, pageants, auditoriums, stables, marinas, piers, docks, restaurants, hotels, motels, hunting and fishing preserves, and any other facilities or services that the department may desire to undertake, including the related buildings and the usual and convenient facilities appertaining to any such facilities or services and the acquisition of necessary property therefor, all as may be related to the development of recreational and tourist accommodations and facilities on the islands as the department may deem necessary, convenient, or desirable.

(b) The department shall have power:

(1) To acquire by purchase, lease, or otherwise and to hold, lease, use, and operate real and personal property of every kind and character necessary or incidental to the project or the purposes of the department under this Code section;

(2) To enter into and execute contracts, deeds, leases, subleases, concession agreements, easements, and any and all instruments necessary or convenient to the project or the purposes of the department under this Code section, including contracts for construction of projects and leases of projects or contracts with respect to the use of projects which the department causes to be erected or acquired and to sell, lease, sublease, transfer, or dispose of any property, real or

personal, tangible or intangible, or any interest therein in furtherance of the project;

(3) To accept grants of money or materials or property of any kind from the United States of America or any agency or instrumentality thereof upon such terms and conditions as the United States of America or such agency or instrumentality thereof may impose;

(4) To act as agent for the United States of America, or any agency, department, corporation, or instrumentality thereof, in any manner within the purposes or powers of the department under this Code section;

(5) To receive gifts, donations, or contributions from any person, firm, or corporation in furtherance of the purposes of the department under this Code section;

(6) To hold, use, administer, and expend such sum or sums as may hereafter be received as income, as gifts, or appropriated by authority of the General Assembly for any of the purposes of the department under this Code section;

(7) To accept and receive land adjacent to or rights of way to the Lake Lanier Islands from the State of Georgia or from any county or municipality therein, or from the United States of America, or from any agency, department, corporation, or instrumentality thereof;

(8) To prescribe, fix, revise, and collect rates, fees, tolls, and charges for the services, facilities, or commodities furnished, including leases, concessions, or subleases of the department's lands or facilities;

(9) To do any other things necessary or proper to beautify, improve, and render self-supporting the development of Lake Lanier Islands as provided for in this Code section, to make the facilities available to people of average income, and to advertise the attractions to the world;

(10) To do all things necessary, convenient, or incidental to carry out the intent, purpose, and powers expressed and given in this Code section; and

(11) To grant, on an exclusive or nonexclusive basis, the right to use and occupy streets, roads, sidewalks, and other public places for the purpose of rendering utility services, upon such conditions and for such time as the department may deem wise.

(c) The Board of Natural Resources shall have power to promulgate all rules and regulations reasonably designed to accomplish the purposes of this Code section or to carry out the provisions of this Code section.

History. — Ga. L. 1969, p. 392, § 5; Ga. L. 1972, p. 3507, § 1.

Cross references. — Lake Lanier Islands Development Authority, § 12-3-310 et seq.

Administrative rules and regulations. — State parks and historic sites system, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-5-1.

12-3-5. Authority of state to make grants, leases, contracts, and cooperative agreements in regard to public-use areas; powers of department.

(a) The State of Georgia is authorized to make grants, as funds are available, to any county, municipality, or other local government, or any combination thereof, or to any public authority, agency, commission, or institution, for the purpose of acquiring, establishing, developing, improving, maintaining, protecting, restoring, preserving, constructing, reconstructing, or renovating any public boat ramps, fishing piers, fishing lakes or areas, hunting areas, stream access areas, fisherman catwalks, parks, recreational or natural areas, historic, archeologic or scientific sites, or other similar property for public use. In addition, these grants may be made to further, or assist in furthering, any of the services, purposes, duties, responsibilities, or functions vested in the department.

(b) The State of Georgia is authorized to enter into leases of real and personal property belonging to the State of Georgia with any county, municipality, or other local government, or any combination thereof, or with any public authority, agency, commission, or institution, for the development, improvement, maintenance, establishment, or operation of any public parks, recreational or natural areas, historic, archeologic or scientific sites, or any other similar property for public use; provided, however, that such leases shall have the prior approval of the State Properties Commission.

(c) The State of Georgia is authorized to contract and make cooperative agreements, leases, and rental agreements with the United States government; any county, municipality, or local government, or any combination thereof; any public or private corporation or firm; any persons whatsoever; or any public authority, agency, commission, or institution, or to arrange for contracts, agreements, or leases between state agencies, for any of the services, purposes, duties, responsibilities, or functions vested in the department.

(d) The department shall administer all grants made under the authority of this Code section and is authorized to specify the terms and conditions under which any grants of funds are made. The use of any granted funds by the grantee shall be under and subject to such terms and conditions as shall be prescribed by the department.

(e) The leases, contracts, cooperative agreements, and rental agreements executed under the authority of this Code section shall be entered into and made by the department acting for the State of Georgia. The department may place such terms, limitations, restrictions, and conditions in such leases, cooperative agreements, contracts, and rental agreements as are deemed necessary to ensure that the utilization of the property is in the public interest.

History. — Ga. L. 1974, p. 273, § 1.

OPINIONS OF THE ATTORNEY GENERAL

State can make permanent improvements on state parks which the state owns in fee simple. 1954-56 Op. Att'y Gen. p. 655.

RESEARCH REFERENCES

Am. Jur. 2d. — 59 Am. Jur. 2d, Parks, Squares, and Playgrounds, § 5. 63C Am. Jur. 2d, Public Lands, § 67. 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 73, 74, 78.

C.J.S. — 81A C.J.S., States, §§ 266, 281, 291, 353 et seq.

12-3-6. Federal Land and Water Conservation Fund Act of 1965 — Creation of office for administration of federal funds.

The commissioner of natural resources, with the approval of the Governor, is authorized to implement the federal Land and Water Conservation Fund Act of 1965, by creating within the Department of Natural Resources or within any other department of the executive branch an office to administer the federal funds available to the state and its departments, agencies, boards, bureaus, and political subdivisions.

History. — Ga. L. 1969, p. 855, § 1; Ga. L. 1970, p. 183, § 1; Ga. L. 1972, p. 1015, § 1532.

U.S. Code. — The federal Land and Water Conservation Fund Act of 1965, referred to in this Code section, is codified at 16 U.S.C. § 460l-4 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 3, 4, 5.

C.J.S. — 39A C.J.S., Health and Environment, § 120. 81A C.J.S., States, § 266.

12-3-7. Federal Land and Water Conservation Fund Act of 1965 — Designation of office as state agency to deal with secretary of interior; powers of head of office.

The office created by the commissioner of natural resources under Code Section 12-3-6 shall be considered as the state agency authorized

to deal with the secretary of the interior pursuant to the requirements of the federal Land and Water Conservation Fund Act of 1965, and in this respect the head of the agency thus designated is authorized, with the approval of the Governor and the commissioner of natural resources, to appoint personnel for such office, establish the compensation for such personnel, and set out the powers, duties, and authority of such office and personnel therein.

History. — Ga. L. 1969, p. 855, § 3; Ga. L. 1970, p. 183, § 2.

U.S. Code. — The federal Land and Water Conservation Fund Act of 1965, referred to in this Code section, is codified at 16 U.S.C. § 460l-4 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 3, 4, 5.

C.J.S. — 39A C.J.S., Health and Environment, § 120. 81A C.J.S., States, § 266.

12-3-8. Federal Land and Water Conservation Fund Act of 1965 — Establishment of state assistance fund to provide matching funds for local recreational projects; limitations on use of fund; approval of projects by federal government.

The commissioner of natural resources, with the approval of the Governor, is authorized to establish a fund to be known as the state assistance fund which may be used to match federal, municipal, and county funds to acquire lands for recreational purposes and to improve, expand, develop, or construct outdoor recreation facilities. Such fund cannot be used to finance more than 25 percent of the total cost of each local project for such purpose, and each local authority improving, expanding, developing, or constructing such local outdoor recreation facilities shall be required to finance at least 25 percent of the total cost of each such project before any state funds can be utilized. No state funds shall be available to such local units unless such projects shall be approved by the federal government.

History. — Ga. L. 1969, p. 855, § 2; Ga. L. 1972, p. 1015, § 1532.

OPINIONS OF THE ATTORNEY GENERAL

Purpose of section is to provide a method for the implementation of the Land and Water Conservation Fund Act of 1965 (16 U.S.C. § 460l-4 et seq.). 1969 Op. Att'y Gen. No. 69-501 (see O.C.G.A. § 12-3-8).

Fund limited in matching federal funds. — State assistance fund may not be used to match federal funds provided under any act other than the Land and Water Conservation Fund Act of 1965, 16 U.S.C. § 460l-4 et seq. 1969 Op. Att'y Gen. No. 69-501.

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 3, 4, 5.

C.J.S. — 39A C.J.S., Health and Environment, § 120. 81A C.J.S., States, § 266.

12-3-9. Adoption and promulgation by Board of Natural Resources of rules and regulations regarding parks, historic sites, and recreational areas.

(a) The Board of Natural Resources is authorized to adopt and promulgate rules and regulations relating to:

(1) The use or occupancy of state parks, historic sites, and recreational areas; and

(2) The protection of the health, safety, and welfare of persons using state parks, historic sites, and recreational areas, and the protection of state property thereon, provided that nothing in this Code section shall be construed to repeal, diminish, or supersede the authority of the Department of Public Health to promulgate rules and regulations for the protection of the public health.

(b) Nothing in this Code section shall be construed to give additional authority to the Board of Natural Resources to adopt and promulgate rules and regulations relating to the game and fish laws of this state.

History. — Ga. L. 1976, p. 1160, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Cross references. — Power of Board of Natural Resources to adopt and promulgate rules and regulations relating to game and fish laws, § 27-1-4.

Administrative rules and regulations. — State parks and historic sites system, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-5-1.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

OPINIONS OF THE ATTORNEY GENERAL

State can make permanent improvements on state parks which the state owns in fee simple. 1954-56 Op. Att'y Gen. p. 655.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 266.

12-3-9.1. Discount for certified disabled veterans.

(a) As used in this Code section, the term:

(1) "Disabled veteran" means a veteran discharged under honorable conditions from any branch of the armed forces of the United States who has a physical disability which was incurred during the

period of service in the armed forces and who is a resident of the State of Georgia.

(2) "Fee" means the charge or fee established by the Board of Natural Resources for the use or occupancy of any state park, historic site, or recreational area and specifically includes, but is not limited to, entrance or admittance fees, rental fees for cabins or other overnight lodgings, rental fees for campsites, and fees for the use of golf courses or other recreational facilities.

(b) Any disabled veteran may apply to the commissioner of veterans service for certification as a disabled veteran as defined by paragraph (1) of subsection (a) of this Code section. The commissioner of veterans service is authorized and directed to certify such applicants as disabled veterans and to issue to such applicants such proof of certification as the commissioner finds appropriate. The commissioner of veterans service may by rule or regulation require such documentation as may be necessary to certify disabled veterans as provided in this subsection.

(c) Any disabled veteran who is certified as such by the commissioner of veterans service as provided in subsection (b) of this Code section shall be granted a discount of 25 percent of the fee otherwise applicable at any state park, historic site, or recreational area operated by or pursuant to the authority of the Department of Natural Resources or any division or other agency of said department.

(d) The discount provided for in subsection (c) of this Code section:

(1) Shall apply to rental fees for cabins, campsites, or other overnight accommodations for the disabled veteran and members of the disabled veteran's immediate family who occupy the overnight accommodations with the disabled veteran; and

(2) Shall not apply to rental or use fees for any group facilities or accommodations.

History. — Code 1981, § 12-3-9.1, enacted by Ga. L. 1989, p. 517, § 1.

Cross references. — Veterans benefits, T. 38, C. 4, A. 2

12-3-10. Directing persons to leave parks, historic sites, or recreational areas upon their refusal to observe rules and regulations; prohibited acts generally.

(a) As used in this Code section, the term "park, historic site, or recreational area" means a park, historic site, or recreational area which is operated by or for and is under the custody and control of the department.

(b) It shall be unlawful for any person to enter upon any park, historic site, or lands managed by the Department of Natural Resources

except when in compliance with all applicable laws and all rules, regulations, and permits adopted pursuant to paragraph (1) of subsection (a) of Code Section 12-3-9.

(c) It shall be unlawful for any person, in any manner, to mark on, deface, injure, displace, dig, excavate, remove, or construct on any real or personal property on any park, historic site, or recreational area, except when done with special written permission granted by the commissioner of natural resources or his authorized representative.

(d) It shall be unlawful for any person to drive a vehicle on any roads in a park, historic site, or recreational area in excess of 35 miles per hour. It shall also be unlawful for any person to drive a vehicle in excess of 15 miles per hour within 200 feet of an intensive-use area in a park, historic site, or recreational area. As used in this subsection, the term "vehicle" means any wheeled conveyance for the transportation of persons or materials. As used in this subsection, the term "intensive-use area" means a picnic area, a beach or pool area, a check-in station, or a camping or cabin area.

(e) With the exceptions of law enforcement and official use by the department, it shall be unlawful for any person to have or use a boat on the waters of any park, historic site, or recreational area in violation of any prohibition or restriction posted therein by the department. The posting of signs at entrances of a park, historic site, or recreational area designating any prohibitions of, or restrictions on the use of, boats on the waters of that park, historic area, or recreational area shall constitute sufficient notice for the entire park, historic area, or recreational area.

(f) Reserved.

(g) Reserved.

(h) Reserved.

(i) It shall be unlawful for any person to fish in waters of any park, historic site, or recreational area, except for boat fishing between the hours of 7:00 A.M. and sunset and bank or wade fishing between the hours of 7:00 A.M. and 10:00 P.M., unless otherwise prohibited. It shall also be unlawful to fish in waters of any park, historic site, or recreational area which have been closed and posted by the department.

(j) It shall be unlawful to fish commercially or to buy or sell fish caught in the waters of any park, historic site, or recreational area.

(k) It shall be unlawful to fish with any device other than a pole and line or rod and reel in the waters of any park, historic site, or recreational area, except with the written permission of the commissioner of natural resources or his authorized representative.

(l) It shall be unlawful to hunt, trap, or otherwise pursue or catch any wildlife in any park, historic site, or recreational area, unless such activity involves the use of bows and arrows, primitive weapons, rifles, or shotguns and has been approved by prior written permission of the commissioner of natural resources or the commissioner's authorized representative. It shall also be unlawful to shoot into a park, historic site, or recreational area from beyond the boundaries of such park, historic site, or recreational area.

(m) It shall be unlawful for any intoxicated person to enter or remain on any park, historic site, or recreational area. It shall also be unlawful for any person to consume or use alcoholic beverages or intoxicants in any public use area of a park, historic site, or recreational area. As used in this subsection, the term "public use area" shall not include cabins, rooms, trailers, tents, and conference facilities which facilities are rented for exclusive use by one individual or group.

(n) It shall be unlawful for any person to use in any park, historic site, or recreational area any electronic device for the detection of metals, minerals, artifacts, or lost articles or for treasure hunting.

(o)(1) It shall be unlawful for any person to use or possess in any park, historic site, or recreational area any fireworks, explosives, or firecrackers, unless stored so as not to be readily accessible or unless such use has been approved by prior written permission of the commissioner of natural resources or his or her authorized representative.

(2) It shall be unlawful for any person to use or possess in any park, historic site, or recreational area any firearms other than a handgun, as such term is defined in Code Section 16-11-125.1.

(3) It shall be unlawful for any person to use or possess in any park, historic site, or recreational area any handgun without a valid weapons carry license issued pursuant to Code Section 16-11-129.

(4) It shall be unlawful for any person to use or possess in any park, historic site, or recreational area any bows and arrows, spring guns, air rifles, slingshots, or any other device which discharges projectiles by any means, unless the device is unloaded and stored so as not to be readily accessible or unless such use has been approved within restricted areas by prior written permission of the commissioner of natural resources or his or her authorized representative.

(p) It shall be unlawful to refuse to leave a park, historic site, or recreational area after violating any law or regulation of the Board of Natural Resources promulgated pursuant to Code Section 12-3-9 and after being directed to leave by an authorized representative of the department.

(q) It shall be unlawful for any person to park a vehicle at any place within any park, historic site, or recreational area, including upon the right of way of any county, state, or federal highway which traverses the park, historic site, or recreational area, where signs placed at the direction of the commissioner of natural resources or his official designee prohibit parking or condition the privilege of parking upon the purchase and display of a parking permit. The posting of signs at the entrances of a park, historic site, or recreational area designating the places for which a parking permit is required shall constitute sufficient notice for the entire park, historic site, or recreational area.

(r) Any person who violates any of the provisions of this Code section commits the offense of criminal trespass.

(s)(1) The jurisdiction of the probate courts of the several counties of this state is enlarged and extended so that probate courts, acting by and through the judge or presiding officer, shall have the right and power to receive pleas of guilty and impose sentence upon defendants violating the provisions of this Code section.

(2) When a person is arrested for any violation of the provisions of this Code section, the arresting officer may, at his discretion, choose to issue to the offender a summons to appear before a court of jurisdiction. Every such summons shall show:

(A) That it is issued by authority of the department;

(B) The name of the person summoned or, if the person to be summoned refuses to give his name or the officer serving the summons believes the name given is false or if the officer is for other cause unable to ascertain the correct name of the person to be summoned, a fictitious name plainly identified as such;

(C) The offense with which the person being summoned is charged and the date and location of the alleged offense;

(D) The location of the court and the day and hour at which he is summoned to appear;

(E) That failure to so appear is a violation of Georgia laws and subject to prosecution;

(F) The date the summons is served; and

(G) The name and official designation of the officer serving it.

(3) Personal delivery of the summons to the person charged or, if the violation is for a vehicle parking violation and the vehicle illegally parked is unattended, the placement of the summons on the windshield of the driver's side of the illegally parked vehicle shall constitute due and proper service of the summons.

(4) Every person so summoned shall appear at the place and on the date ordered except in cases where a bond has been posted in lieu of the summons or where the court has granted a continuance.

(5) The officer serving a summons pursuant to this subsection shall, on or before the return date of the summons, deliver a copy thereof to the court before which it is returnable, or to the clerk of such court, and shall file any information and such affidavits as may be required with respect to the alleged offense.

(6) If the person charged shall fail to appear as specified in the summons, the judge having jurisdiction of the offense may issue a warrant ordering the apprehension of the person commanding that he be brought before the court to answer the charge contained within the summons and the charge of his failure to appear as required. The person shall then be allowed to make a reasonable bond to appear on a given date before the court.

History. — Ga. L. 1976, p. 1160, § 2; Ga. L. 1977, p. 1175, § 1; Ga. L. 1982, p. 3, § 12; Ga. L. 1984, p. 374, §§ 1-3; Ga. L. 1986, p. 437, §§ 1, 2; Ga. L. 1991, p. 1007, § 1; Ga. L. 1992, p. 1547, § 1; Ga. L. 1995, p. 945, § 1; Ga. L. 1996, p. 6, § 12; Ga. L. 1998, p. 253, § 2; Ga. L. 1999, p. 81, § 12; Ga. L. 1999, p. 159, § 1; Ga. L. 2006, p. 96, § 1/HB 1490; Ga. L. 2010, p. 963, § 2-2/SB 308; Ga. L. 2012, p. 1074, § 1/SB 319.

Cross references. — Game and fish laws, generally, T. 27. Prohibition against certain acts on public hunting or fishing or game management areas, § 27-1-33. Operation of watercraft in state generally, T. 52, C. 7.

Editor's notes. — Ga. L. 1991, p. 1007, § 2, not codified by the General Assembly, provides as follows: "The General Assembly recognizes the imminent need for increased funding of maintenance and rehabilitation programs for the facilities and structures of state parks, historic sites, and recreational areas and natural areas. The General Assembly declares its intent to ensure that if the Board of Natural Resources establishes a parking permit requirement for parking at state parks, historic sites, and recreational areas and natural areas, funding provided by the sale of parking permits by the Department of Natural Resources will be used to implement programs of maintenance and rehabilitation of facilities and structures located in the state parks, historic sites, and recreational areas and natural areas. The General Assembly further declares its intent that such funding may be used to carry out all aspects of the programs of maintenance and rehabilitation including, but not limited to, the employment of personnel and the acquisition of equipment and supplies. No schedule of parking fees shall be effective until adopted under the same procedure as the adoption of rules under the Administrative Procedure Act."

Ga. L. 1992, p. 1547, § 3, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 1992, and shall apply to violations of the provisions of Code Section 12-3-10 of the O.C.G.A. which take place on or after July 1, 1992."

Ga. L. 2010, p. 963, § 3-1/SB 308, not codified by the General Assembly, provides, in part, that the amendment of this Code section shall apply to all offenses committed on and after June 4, 2010, and shall not affect any prosecutions for acts occurring before June 4, 2010, and shall not act as an abatement of any such prosecution.

Law reviews. — For article, "Crimes and Offenses," see 27 Ga. St. U.L. Rev. 131 (2011). For article, "Proposed Constitutional Carry Act of 2019: To Amend Title 12 of the Official Code of Georgia Annotated, Relating to the Use or Possession of Any Handgun in Parks, Historic Sites, or

Recreational Areas; and to Amend Title 16 of the Official Code of Georgia Annotated, Relating to the Definition of Carrying and Possession of Firearms & Executive Order by the Governor Temporarily Extending Renewal Requirements for Weapons Carry Licenses," see 37 Ga. St. U.L. Rev. 219 (2020).

OPINIONS OF THE ATTORNEY GENERAL

State can make permanent improvements on state parks which the state owns in fee simple. 1954-56 Op. Att'y Gen. p. 655.

Fingerprinting not required. — Offenses arising from a violation of paragraph (o)(1) of O.C.G.A. § 12-3-10 do not appear to be an offense for which fingerprinting is required. 2010 Op. Att'y Gen. No. 10-6.

RESEARCH REFERENCES

Am. Jur. 2d. — 12 Am. Jur. 2d, Boats and Boating, § 7. 79 Am. Jur. 2d, Weapons and Firearms, § 30.

C.J.S. — 81A C.J.S., States, §§ 266, 278.

12-3-10.1. Directing persons to leave parks, historic sites, or recreation areas; penalty.

(a) Any person who violates any rules and regulations adopted pursuant to paragraph (1) of subsection (a) of Code Section 12-3-9 and who refuses to cease such violation after notice may be directed to leave the park, historic site, or recreational area on which the violation occurs. A person shall have no legal authority, right, or privilege to remain upon a state park, historic site, or recreational area after receiving such a direction.

(b) Any person violating the provisions of this Code section shall be guilty of a misdemeanor.

History. — Code 1981, § 12-3-10.1, enacted by Ga. L. 1998, p. 253, § 3.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting. — An offense under O.C.G.A. § 12-3-10.1 would not be designated as one which requires fingerprinting. 1998 Op. Att'y Gen. No. 98-20.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, § 110.

12-3-11. Civil penalty; reports to department by clerk of court regarding disposition of actions; compensation of clerk for reports.

Any person who violates any provision of Code Section 12-3-9 or 12-3-10 or the provisions of any law administered by the department concerning parks, historic sites, and recreational areas, or any regulations or orders promulgated and administered thereunder, shall be liable civilly for a penalty in a maximum amount of $1,000.00 for each and every violation thereof, such civil penalty to be recoverable by a civil action brought in the name of the commissioner of natural resources by the prosecuting attorney of the county in which the alleged violator resides. The commissioner on his motion may, or, upon complaint of any interested party charging a violation, shall refer the matter directly to the prosecuting attorney of the county in which the violator resides. The proceeds from all civil penalties arising from enforcement of such laws, regulations, and orders shall, except as otherwise provided in this Code section, be applied initially toward payment of the proper officers of the trial court as prescribed by law. The money remaining after such officers have been compensated shall be remitted promptly by the clerk of the court in which the case is disposed of to the treasurer of the county in which the civil penalty is assessed, or other officer having charge of the fiscal affairs of the county, who shall deposit the funds in the general fund of the county, such funds to be allocated to the county board of education for school purposes. The clerk of the court in which each case is disposed shall promptly make a written report to the department showing the disposition of each case. For making each report, he shall be entitled to an additional fee of $1.00 in each case, unless otherwise prohibited by law, to be added to the costs allowed by law against the defendant, to be retained by the clerk as his special compensation for making the report. The civil penalty prescribed in this Code section shall be concurrent with, alternative to, and cumulative of any and all other civil, criminal, or alternative rights, remedies, forfeitures, or penalties provided, allowed, or available to the department with respect to any violation of the laws administered by the department and any regulations or orders promulgated and administered thereunder.

History. — Ga. L. 1977, p. 1175, § 2.

12-3-12. Notification of local governing authorities prior to certain significant changes in services at state parks, historic sites, or recreational areas.

(a) As used in this Code section, the term “change in services” means the:

(1) Permanent change of a primary existing operational function;

(2) Reduction by 50 percent or more of the hours of operation or services; or

(3) Closure

of any state park, historic site, or recreational area operated by or pursuant to the authority of the department.

(b) Prior to making a change in services, the department shall provide 60 days' notice to the governing authority of each municipality and county in which any part of the state park, historic site, or recreational area is located regarding the specific proposed change in services. The notice required by this Code section shall be made in writing and sent to the applicable chairperson of the county commissioners and the mayor of the municipality.

History. — Code 1981, § 12-3-12, enacted by Ga. L. 2013, p. 647, § 1/HB 189.

Part 2

Recreational Authorities Overview Committee

12-3-20. Creation of committee; members and organization; duty to review operations of Stone Mountain Memorial Association, Jekyll Island — State Park Authority, North Georgia Mountains Authority, and Lake Lanier Islands Development Authority.

There is created as a joint committee of the General Assembly the Recreational Authorities Overview Committee to be composed of three members of the House of Representatives appointed by the Speaker of the House of Representatives and three members of the Senate appointed by the President of the Senate. The members of the committee shall serve two-year terms concurrent with their terms as members of the General Assembly. The chairperson of the committee shall be appointed by the Speaker of the House of Representatives from the membership of the committee, and the vice chairperson of the committee shall be appointed by the President of the Senate from the membership of the committee. The chairperson and vice chairperson shall serve terms of two years concurrent with their terms as members of the General Assembly. Vacancies in an appointed member's position or in the offices of chairperson or vice chairperson of the committee shall be filled for the unexpired term in the same manner as the original appointment. The committee shall periodically inquire into and review the operations of the Stone Mountain Memorial Association, the North Georgia Mountains Authority, and the Lake Lanier Islands Develop-

ment Authority and shall periodically review and evaluate the success with which each of the said authorities is accomplishing its statutory duties and functions as provided in this chapter.

History. — Code 1981, § 12-3-20, enacted by Ga. L. 1995, p. 105, § 2; Ga. L. 2007, p. 711, § 2/HB 214.

12-3-21. Assistance by state officers and agencies.

The state auditor, the Attorney General, and all other agencies of state government, upon request by the committee, shall assist the committee in the discharge of its duties as set forth in this part.

History. — Code 1981, § 12-3-21, enacted by Ga. L. 1995, p. 105, § 2.

12-3-22. Reporting requirements; enforcement.

The Stone Mountain Memorial Association, the Jekyll Island—State Park Authority, the North Georgia Mountains Authority, and the Lake Lanier Islands Development Authority shall cooperate with the committee, its agents, the Attorney General, the state auditor, the state accounting officer, and other state agencies in order that the duties of the committee set forth in this part may be timely and efficiently discharged. Each of the named authorities shall submit to the committee such reports and data as the committee shall reasonably require of the authority in order that the committee may adequately perform its functions. At least annually the commissioner of natural resources and the department's director of state parks and historic sites shall make a report to the committee of any legislative changes or revisions that may be needed to assist the named authorities in accomplishing their statutory duties and functions as provided in this chapter, either individually or as a group. The Attorney General is authorized to bring appropriate legal actions to enforce any laws specifically or generally relating to the authorities named in this part. The committee shall, on or before the first day of January of each year, and at such other times as it deems necessary, submit to the chairpersons of the appropriate standing committees of each house of the General Assembly a report of its findings and recommendations based upon the review of each of the named authorities, as set forth in this part.

History. — Code 1981, § 12-3-22, enacted by Ga. L. 1995, p. 105, § 2; Ga. L. 2005, p. 694, § 21/HB 293.

12-3-23. Evaluation criteria.

In the discharge of its duties, the committee shall evaluate the performance of the Stone Mountain Memorial Association, the Jekyll Island—State Park Authority, the North Georgia Mountains Authority, and the Lake Lanier Islands Development Authority consistent with the following criteria:

(1) Prudent, legal, and accountable expenditure of public funds;

(2) Efficient operation; and

(3) Performance of its statutory responsibilities.

History. — Code 1981, § 12-3-23, enacted by Ga. L. 1995, p. 105, § 2.

12-3-24. Authorized expenditures; compensation of members; funding.

(a) The committee is authorized to expend state funds available to the committee for the discharge of its duties. Said funds may be used for the purposes of compensating staff personnel; paying for services of independent accountants, engineers, and consultants; and paying all other necessary expenses incurred by the committee in performing its duties.

(b) The members of the committee shall receive the same compensation, per diem, expenses, and allowances for their service on the committee as is authorized by law for members of interim legislative study committees.

(c) The funds necessary for the purposes of the committee shall come from the funds appropriated to and available to the legislative branch of government.

History. — Code 1981, § 12-3-24, enacted by Ga. L. 1995, p. 105, § 2.

12-3-25. Information required in annual reports.

The committee shall report in each of its annual reports to the chairperson of the standing committees of each house of the General Assembly whether or not any of the authorities named in this part have undertaken activities having a projected cost of over $1 million without having first evaluated the feasibility of involving private persons or entities in the development, construction, operation, and management of the authority's existing projects and such proposed activities or has failed to file a copy of such evaluation with the Office of Planning and Budget.

History. — Code 1981, § 12-3-25, enacted by Ga. L. 1995, p. 105, § 2.

ARTICLE 2

STATE PARKS AND RECREATIONAL AREAS GENERALLY

Editor's notes. — By resolution (Ga. L. 1987, p. 704), the General Assembly provided that the lodge and conference center to be constructed at Little Ocmulgee State Park in Wheeler County, Georgia be named and known as the "L.L. (Pete) Phillips Conference Center."

By resolution (Ga. L. 1988, p. 174), the General Assembly designated the state park on Lake Walter F. George in Clay County as the "George T. Bagby State Park."

Administrative rules and regulations. — State parks and historic sites, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-5-1 et seq.

12-3-30. Definitions.

As used in this article, the term:

(1) "Land" means upland; land under water; the water of any lake, pond, or stream; any and all incorporeal hereditaments; and all rights, estates, interests, privileges, easements, encumbrances, and franchises, legal and equitable, in land or water, including terms for years, and by way of judgment, mortgage or otherwise, and all claims for damages thereto.

(2) "Park" or "recreational area" means any land which, by reason of natural features or scenic beauty, with or without historical, archeological, or scientific buildings or other objects thereon, possesses distinctive, innate or potential physical, intellectual, creative, social, or other recreational or educational value or interest.

History. — Ga. L. 1937, p. 264, § 9.

OPINIONS OF THE ATTORNEY GENERAL

State can make permanent improvements on state parks which the state owns in fee simple. 1954-56 Op. Att'y Gen. p. 655.

12-3-31. Parks and recreational areas acquired by state as constituting state park system; control and management of system by department.

All parks and recreational areas acquired by the state, whether before or after November 1, 1982, shall constitute the state park system and shall be under the immediate control and management of the department.

History. — Ga. L. 1937, p. 264, § 9.

OPINIONS OF THE ATTORNEY GENERAL

State can make permanent improvements on state parks which the state owns in fee simple. 1954-56 Op. Att'y Gen. p. 655.

Department authorized to make changes on parks property. — State Parks Department (now Department of Natural Resources) is authorized to change the rates for group camps and other activities on parks property. 1960-61 Op. Att'y Gen. p. 315.

Authority to accept roadside park given to state. — Any land given to the state for use as a roadside park should be given to the Department of State Parks, Historic Sites and Monuments (now Department of Natural Resources). 1945-47 Op. Att'y Gen. p. 333.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 266.

12-3-32. Powers and duties of department as to parks and recreational areas and facilities.

(a) The Department of Natural Resources is empowered and directed:

(1) In cooperation with other state and local agencies and any agency of the United States government, to study and ascertain the state's present park, parkway, and recreational resources and facilities, the need for such resources and facilities, and the extent to which such needs are being currently met. The department shall also conduct a survey to identify land suitable and desirable for acquisition by the state as a part of the state park system, due consideration being given to scenic, recreational, historical, archeological, and other special features. The results of such study and survey shall be reported to the Governor and the next succeeding session of the General Assembly and shall be accompanied by such recommendations as the department shall deem advisable;

(2) To acquire in the name of the state, by purchase, lease, agreement, or condemnation, such land within the state as it may deem necessary or proper for the extension of the state park system. The right of eminent domain shall be exercised in accordance with the provisions of law now or hereafter existing for the condemnation of property for public purposes, provided that no land or other property shall be taken or contracted to be taken unless or until the General Assembly has appropriated money therefor or funds have otherwise become available for such purpose;

(3) To accept in its discretion, in fee or otherwise, land entrusted, donated, or devised to the state by the United States government, by a political subdivision of the state, or by any person, firm, association,

or corporation, with the intent that the land shall become a part of the state park system. The department shall also in its discretion accept gifts, bequests, or contributions of money or other property to be used in extending, improving, or maintaining the state park system;

(4) To make expenditures from available funds for the care, supervision, improvement, and development of the state park system;

(5) To cooperate with other state agencies, with counties, municipalities, and other political subdivisions of the state, with other states, and with the United States government in matters relating to the acquiring, planning, establishing, developing, improving, or maintaining of any park, parkway, or recreational area;

(6) To contract and make cooperative agreements with the United States government, with political subdivisions of the state, or with corporations, associations, or individuals, with proper bond where deemed advisable, to protect, restore, preserve, mark, maintain, or operate any historic, archeologic, or scientific site, ground, reservations, structure, building, object, or other property for public use, provided that no contract or cooperative agreement shall be made or entered into unless or until the General Assembly has appropriated money therefor or funds have otherwise become available for such purposes;

(7) To enter into contracts and agreements for the construction, renovation, and repair of any improvements on any park or other property under its control for the purpose of providing suitable public service privileges, conveniences, and facilities and for improvements necessary for the operation and maintenance of such property; provided, however, that all such contracts shall be conducted and negotiated by the Department of Administrative Services in accordance with Code Section 50-5-72;

(8) To provide and maintain adequate recreational facilities and to initiate, conduct, and supervise suitable programs and activities in connection therewith;

(9) To grant concessions for the operation of public service privileges, conveniences, and facilities when the department determines in its discretion that such private concessions are in the best interest of the general public and the department. Such concessions may be granted to any responsible person, partnership, firm, association, or corporation for a period not to exceed five years and upon such terms as the department may deem advisable and consistent with other laws of this state;

(10) To establish and, from time to time, to alter rules and regulations governing the use, occupancy, and protection of the land

and property under its control and to preserve the peace therein. The department is empowered to confer on such employees as it may designate the full authority of peace officers for all land and property under its control;

(11) To plan and conduct a program of information and publicity as to the scenic, recreational, historical, archeological, and scientific points and places within the state designed to attract tourists and visitors to this state;

(12) To cooperate with the Department of Transportation in the establishment and maintenance of roadside parks and developments for the convenience and enjoyment of the traveling public; and

(13) To purchase and provide uniforms to such of its officers, assistants, and employees as it deems advisable.

(b) All of the functions of the former Department of State Parks are transferred to the Department of Natural Resources.

History. — Ga. L. 1937, p. 264, § 9; Ga. L. 1943, p. 180, §§ 1, 3, 4, 7; Ga. L. 1951, p. 788, § 1; Ga. L. 1958, p. 634, § 1; Ga. L. 1972, p. 1015, § 1503; Ga. L. 1981, p. 980, §§ 1, 2, 6.

Law reviews. — For note, "Regulation of Artificial Lakes and Recreational Subdivisions in Georgia," recommending methods for future regulation, see 8 Ga. St. B.J. 580 (1972).

JUDICIAL DECISIONS

Word "concession" means a grant or lease of a portion of premises for some specific use, or of a right to enter upon premises for some specific purpose. Collier v. Akins, 102 Ga. App. 274, 116 S.E.2d 121 (1960).

OPINIONS OF THE ATTORNEY GENERAL

State can make permanent improvements on state parks which the state owns in fee simple. 1954-56 Op. Att'y Gen. p. 655.

Lands through which pipelines will be laid. — Department is not required to obtain fee simple title to lands through which pipelines will be laid. A water main would not constitute an improvement to the realty, but is a trade fixture used in the conduct of the park and, as such, is removable at the option of the department, without consent of the landowners. 1968 Op. Att'y Gen. No. 68-57.

Authority to dispose of park property by lease or easement limited. — There is no authority in this section for the Department of Parks (now Department of Natural Resources) to dispose of, or to encumber, park property by lease or easement, other than to grant concessions to a responsible person, firm, or corporation. 1948-49 Op. Att'y Gen. p. 230 (see O.C.G.A. § 12-3-32).

Leasing land to extend state park system authorized. — Department is authorized and empowered to lease land within the state as the state may deem necessary or proper in the extension and best operation of the state parks system. 1965-66 Op. Att'y Gen. No. 66-70.

Installation of water service at state park constitutes "improvement" within the meaning of paragraph (a)(4) of this section. 1968 Op. Att'y Gen. No. 68-57 (see O.C.G.A. § 12-3-32).

Department may not expend appropriations for improvement of park owned by United States for which the

state has only a license to use for limited purposes. 1945-47 Op. Att'y Gen. p. 328.

State may bear expense of extending pipeline from the limits of an existing distribution system to the park itself, provided the necessary appurtenant easements are secured therefor. 1968 Op. Att'y Gen. No. 68-57.

Department may pay surcharge on normal metered rate to cover cost of extended service if a pipeline is installed by a municipality and becomes part of the municipal water system, and if the proposed surcharge bears a reasonable relationship to the nature of the service. 1968 Op. Att'y Gen. No. 68-57.

Future maintenance contract illegal. — It is not legal for the department to incur a contractual obligation with respect to future maintenance of erosion control structures at historic sites. 1965-66 Op. Att'y Gen. No. 65-44.

Property and casualty insurance. — Department may require concessionaire to take out casualty and accident insurance for the use and benefit of individuals who may be harmed by the operation of the concession. 1958-59 Op. Att'y Gen. p. 227.

Sale of materials directly to concessionaire unauthorized. — Department has no authority, under paragraph (a)(9) of this section, to sell materials directly to a concessionaire. 1958-59 Op. Att'y Gen. p. 227 (see O.C.G.A. § 12-3-32).

Approval of commissioner not required in paragraph (a)(9). — Paragraph (a)(9) of this section does not require approval of the commissioner of conservation (now commissioner of natural resources). 1963-65 Op. Att'y Gen. p. 518 (see O.C.G.A. § 12-3-32).

Committee appointed from state park's county. — It is necessary to appoint a county advisory committee from the county or counties in which each state park is located. 1954-56 Op. Att'y Gen. p. 653.

Department has police power over state parks. 1954-56 Op. Att'y Gen. p. 653.

Appointment of peace officers authorized. — Commissioner of natural resources has the authority to make appointments of the department personnel as peace officers at the direction of the Governor. 1971 Op. Att'y Gen. No. 71-155.

Regulation of park traffic by ranger legal. — Park ranger may legally be invested by the commissioner with power to regulate traffic within a state park. 1971 Op. Att'y Gen. No. U71-2.

Employees ineligible for participation in retirement fund. — Since the peace office authority of the department employees is limited by paragraph (a)(10) of this section to enforcing laws on state park property and, since the employees will not be devoting full time to work as general law enforcement officers, the employees are not eligible for participation in the Peace Officers' Annuity and Benefit Fund. 1971 Op. Att'y Gen. No. 71-155 (see O.C.G.A. § 12-3-32).

RESEARCH REFERENCES

Am. Jur. 2d. — 26 Am. Jur. 2d, Eminent Domain, §§ 17, 51, 75.

C.J.S. — 29A C.J.S., Eminent Domain, §§ 23, 58. 81A C.J.S., States, § 266.

ALR. — Construction of highway through park as violation of use to which park property may be devoted, 60 A.L.R.3d 581.

12-3-33. County and municipal aid to state park system.

Any county, and any municipality therein, may use any available funds to aid in the purchase of any land or other property within the county which is to become the property of the state for incorporation into the state park system, provided that the department shall have first agreed in writing to the acceptance of the same. Any county, and any municipality therein, may contribute any available funds to or

perform services for the department in furtherance of the improvement, maintenance, and operation of any state owned park or other property which is as of November 1, 1982, or may thereafter become a part of the state park system.

History. — Ga. L. 1937, p. 264, § 9; Ga. L. 1959, p. 75, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, in the second sentence, "state owned" was substituted for "state-owned".

OPINIONS OF THE ATTORNEY GENERAL

State can make permanent improvements on state parks which the state owns in fee simple. 1954-56 Op. Att'y Gen. p. 655.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 195. 59 Am. Jur. 2d, Parks, Squares, and Playgrounds, § 5.

12-3-34. Permits for construction, maintenance, and use of boat docks and boat shelters on High Falls Lake.

(a) The Department of Natural Resources is authorized to issue revocable permits for the construction, maintenance, and use of boat docks and boat shelters on High Falls Lake by the owners or lessees of private property abutting the high-water mark of such lake. Such permits shall constitute limited revocable licenses. Such permits shall be issued for periods of three years from the date of issuance and shall be transferable; provided, however, that in order to stagger the renewal periods, the department is authorized to issue permits of one- or two-year duration with the fee prorated appropriately. The fee for such permit for each three-year period shall be fixed by rule or regulation of the Board of Natural Resources in a reasonable amount not to exceed $75.00 for boat docks and $75.00 for boat shelters. The fees collected for such permits shall be miscellaneous funds for purposes of use by the Department of Natural Resources pursuant to Code Section 12-3-2.

(b) No person shall construct or maintain a boat dock or boat shelter below the high-water mark of High Falls Lake without a valid permit from the Department of Natural Resources. It shall be the duty of the owner of any boat dock or boat shelter on High Falls Lake to keep such dock or shelter in good repair. All such boat docks and boat shelters shall conform to standards for construction, design, maintenance, and repair specified in rules and regulations of the department and restrictions or conditions in the permit. It shall be the duty of the owner of such boat dock or boat shelter to remove any such dock or shelter which is not in compliance with such rules and regulations or permit.

(c) It shall be the duty of the owner of any boat dock or boat shelter or the holder of any permit issued under this Code section to notify the

department when he or she sells or otherwise transfers the property for which the boat dock or boat shelter is permitted.

(d) The department and any official or employee thereof is authorized to inspect any boat dock or boat shelter on High Falls Lake and to remove or cause to be removed any such dock or shelter for which a permit is not in effect or which violates the standards for construction, design, maintenance, and repair or the permit conditions imposed by the department.

(e) The Board of Natural Resources is authorized to adopt rules and regulations necessary or convenient to carry out this Code section and is authorized to impose reasonable terms and conditions on the granting of permits and the construction of boat docks and boat shelters on High Falls Lake by the owners or lessees of private property abutting the high-water mark of such lake.

(f) Any permit may be revoked by the department for any violation of this Code section, any rule or regulation of the Board of Natural Resources, or any condition contained in such permit.

History. — Code 1981, § 12-3-34, enacted by Ga. L. 1993, p. 396, § 1; Ga. L. 2010, p. 118, § 1/SB 99.

Administrative rules and regulations. — Permitting boat docks at High Falls State Park Lake, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-5-12.

ARTICLE 3

HISTORIC AREAS

Editor's notes. — By resolution (Ga. L. 1985, p. 563), the General Assembly directed the Department of Natural Resources to place a historical marker at the entrance to Souther Field in Americus, Georgia, to honor Charles A. Lindbergh.

By resolution (Ga. L. 1985, p. 592), the General Assembly directed the Department of Natural Resources to erect a historical marker honoring Robert Toombs at the site of the Toombs Oak on the campus of the University of Georgia.

By resolution (Ga. L. 1988, p. 335), the General Assembly designated certain public roads and highways as the Chieftains Trail.

By resolution (Ga. L. 1988, p. 792), the General Assembly designated Georgia Highway 28 through the City of Augusta as the Savannah River Scenic Highway.

Administrative rules and regulations. — Designation of historic buildings and landmark museum buildings, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-5-8.

RESEARCH REFERENCES

ALR. — Validity and construction of statute or ordinance protecting historical landmarks, 18 A.L.R.4th 990.

PART 1

GENERAL PROVISIONS

12-3-50. Powers and duties of department as to historic preservation and promotion.

(a) The Department of Natural Resources shall have the following powers and duties:

(1) To promote and increase knowledge and understanding of the history of this state from the earliest times to the present, including the archeological, Indian, Spanish, colonial, and American eras, by adopting and executing general plans, methods, and policies for permanently preserving and marking objects, sites, areas, structures, and ruins of historic or legendary significance, such as trails, post roads, highways, or railroads; inns or taverns; rivers, inlets, millponds, bridges, plantations, harbors, or wharves; mountains, valleys, coves, swamps, forests, or everglades; churches, missions, campgrounds, and places of worship; schools, colleges, and universities; courthouses and seats of government; places of treaties, councils, assemblies, and conventions; factories, foundries, industries, mills, stores, and banks; cemeteries and burial mounds; and battlefields, fortifications, and arsenals. Such preservation and marking may include the construction of signs, pointers, markers, monuments, temples, and museums, which structures may be accompanied by tablets, inscriptions, pictures, paintings, sculptures, maps, diagrams, leaflets, and publications explaining the significance of the historic or legendary objects, sites, areas, structures, or ruins;

(2) To promote and assist in the publicizing of the historical resources of the state by preparing and furnishing the necessary historical material to agencies charged with such publicity; to promote and assist in making accessible and attractive to travelers, visitors, and tourists the historical features of the state by advising and cooperating with state, federal, and local agencies charged with the construction of roads, highways, and bridges leading to such historical points;

(3) To coordinate any of its objectives, efforts, or functions with those of any agency or agencies of the federal government, this state, other states, and local governments having duties, powers, or objectives similar or related to those of the department, and to cooperate with, counsel, and advise them;

(4) To cooperate with, counsel, and advise local societies, organizations, or groups staging celebrations, festivals, or pageants commemorating historical events;

(5) To enter into contracts with both public and private parties in connection with the exercise of the powers and duties of the department under this Code section; and

(6) To send its employees onto property, the title to which is not in the department or the State of Georgia, for the purpose of research and exploration, provided that the express written consent of the owner of such property is first obtained; provided, further, that the findings of such research and exploration shall, by prior agreement, be available to the department in the exercise of its functions under this Code section.

(b) Nothing in this Code section shall prohibit a person from restoring and utilizing an agricultural structure, including but not limited to barns, erected prior to 1965 that previously promoted Georgia tourist destinations to the traveling public for the purpose of advertising or promoting Georgia products or tourist destinations. The department shall approve applications for such structures so long as no public funds from the State of Georgia are used in connection with such restoration or utilization.

History. — Ga. L. 1951, p. 789, § 14; Ga. L. 1970, p. 189, § 7; Ga. L. 2013, p. 523, § 1/SB 194; Ga. L. 2014, p. 866, § 12/SB 340.

Cross references. — Historic preservation generally, T. 44, C. 10. Division of Archives and History, T. 45, C. 13, A. 3.

OPINIONS OF THE ATTORNEY GENERAL

Agreements with other agencies. — Department is legally authorized to cooperate and enter into agreements with certain other agencies of the state respecting such matters as erosion control at historic sites. 1965-66 Op. Att'y Gen. No. 65-44.

Agreement with private corporation to maintain light on department's historic land. — Georgia Historical Commission (now Department of Natural Resources) is empowered to enter into an agreement with a private corporation to install and maintain a mercury light on a piece of land owned by the commission (now department) which contains a battlefield monument. 1967 Op. Att'y Gen. No. 67-180.

Incurring contractual obligation for future maintenance at historic sites illegal. — It is not legal for the Department of Natural Resources to incur a contractual obligation with respect to future maintenance of erosion control structures at historic sites. 1965-66 Op. Att'y Gen. No. 65-44.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 346 et seq.

12-3-50.1. Grants for preservation of "historic properties"; additional powers and duties of department.

(a) It is declared to be the public policy of the State of Georgia, in furtherance of its responsibility to promote and preserve the health, prosperity, and general welfare of the people, to encourage the preservation of historic properties which have historical, cultural, and archeological significance to the state.

(b) The State of Georgia is authorized to make grants, as funds are available, to any private or public organization or corporation for the preservation of "historic properties," as that term is defined by Section 301 of the National Historic Preservation Act, 16 U.S.C. 470w.

(c) The Department of Community Affairs shall have the additional powers and duties:

(1) To cooperate with agencies of the federal government, other agencies of the state and political subdivisions thereof, and private organizations and individuals, to direct and conduct a comprehensive state-wide survey of historic properties;

(2) To maintain an inventory and register of historic properties;

(3) To document, research, record, and evaluate the significance of historic properties;

(4) To prepare comprehensive state-wide and regional historic preservation plans;

(5) To provide technical assistance to and cooperate with agencies of the federal government, other agencies of the state and political subdivisions thereof, and private organizations and individuals in the development of historic preservation plans, programs, and projects;

(6) To cooperate with agencies of the federal government, other agencies of the state and political subdivisions thereof, and private organizations and individuals, in order that historic properties are taken into consideration at all levels of planning and development;

(7) To propose programs and activities to protect, preserve, and encourage the preservation of historic properties in this state;

(8) To administer programs of financial and technical assistance for historic preservation projects, including all grants made under authority of this Code section, and to specify the terms and conditions under which any grants of funds are made or used;

(9) To make recommendations on the certification and eligibility of historic properties for tax incentives and other programs of public benefit or assistance;

(10) To perform those duties and responsibilities assigned to the Department of Community Affairs under Article 3 of Chapter 2 of Title 8, under Article 1 of Chapter 10 of Title 44, and under Article 2 of Chapter 10 of Title 44;

(11) To provide public information and education, technical assistance, and training relating to historic preservation;

(12) To encourage public interest and participation in historic preservation;

(13) To advise and assist the state historic preservation officer, who shall be appointed to serve at the pleasure of the Governor; and

(14) To advise the Governor and the General Assembly on matters relating to historic preservation.

History. — Code 1981, § 12-3-50.1, enacted by Ga. L. 1986, p. 399, § 1; Ga. L. 1996, p. 6, § 12; Ga. L. 2020, p. 38, § 1/SB 473.

The 2020 amendment, effective July 1, 2020, substituted "Community Affairs" for "Natural Resources, through its Division of Historic Preservation" in subsection (c) and substituted "Department of Community Affairs" for "department" in paragraph (c)(10).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, a misspelling of "archeological" was corrected in subsection (a).

Administrative rules and regulations. — State and federal grants programs, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-5-13.

12-3-50.2. Georgia Register of Historic Places.

(a)(1) The Department of Community Affairs shall establish, maintain, and expand an inventory and register of historic places in this state, which register shall be known as the Georgia Register of Historic Places. Such register shall include:

(A) Historic property which is listed in the National Register of Historic Places pursuant to the National Historic Preservation Act (16 U.S.C. Section 470, et seq.); and

(B) Historic property which is defined as districts, sites, buildings, structures, or objects which possess integrity of location, design, setting, materials, workmanship, feeling, and association and which is determined to meet the criteria for listing in the Georgia Register of Historic Places according to the criteria outlined in regulations promulgated by the Board of Community Affairs.

(b) The Department of Community Affairs shall be authorized to remove from the Georgia Register of Historic Places any property which no longer qualifies or meets the criteria for listing in such register.

(c) The Department of Community Affairs shall provide an adequate and qualified state historic preservation review board designated by the state historic preservation officer.

(d) Any person or entity may apply to the Department of Community Affairs to have property included in the Georgia Register of Historic Places. The Department of Community Affairs shall receive evidence, make investigations of such property, consult with other historic preservation experts, and obtain the recommendations of the state historic preservation review board to determine if such property should be included in the Georgia Register of Historic Places.

(e) Any person who is aggrieved or adversely affected by any order or action of the Department of Community Affairs pursuant to this Code section shall, upon petition within 30 days after the issuance of such order or taking of such action, have a right to a hearing before an administrative law judge appointed by the Department of Community Affairs. The hearing before the administrative law judge shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The decision of the administrative law judge shall constitute the final decision of the Department of Community Affairs and any party to the hearing, including the Department of Community Affairs, shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History. — Code 1981, § 12-3-50.2, enacted by Ga. L. 1989, p. 1598, § 1; Ga. L. 1996, p. 6, § 12; Ga. L. 2020, p. 38, §§ 2, 9, 11/SB 473.

The 2020 amendment, effective July 1, 2020, substituted "Department of Community Affairs" for "Division of Historic Preservation of the Department of Natural Resources" in subsection (b); substituted "Department of Community Affairs" for "Department of Natural Resources" in subsection (c); substituted "Department of Community Affairs" for "Division of Historic Preservation of the department" at the beginning of paragraph (a)(1) and twice in subsection (d); and, in subsection (e), substituted "Department of Community Affairs" for "department" twice, for "Board of Natural Resources", and for "board".

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, "16 U.S.C. Section 470" was substituted for "16 U.S.C. 470" in subparagraph (a)(1)(A).

Pursuant to Code Section 28-9-5, in 2020, "Board of Community Affairs" was substituted for "Board of Natural Resources" at the end of subparagraph (a)(1)(B).

Law reviews. — For article, "The Tax Abatement Program for Historic Properties in Georgia," see 28 Ga. St. B.J. 129 (1992).

For note on 1989 enactment of this Code section, see 6 Ga. St. U.L. Rev. 173 (1989).

12-3-51. Grants and gifts to department.

For carrying out any of the objectives stated in Code Section 12-3-50, the department may accept grants and gifts from the federal government; the state government; any county, municipal, or local govern-

ment; any board, bureau, commission, agency, or establishment of any such government; any other organization, public or private; and any individual or groups of individuals. Such grants or gifts shall be held and administered subject to Code Section 12-3-50, this Code section, and Code Sections 12-3-52 through 12-3-54.

History. — Ga. L. 1951, p. 789, § 15; Ga. L. 1952, p. 152, § 1; Ga. L. 1992, p. 6, § 12; Ga. L. 1996, p. 6, § 12.

Cross references. — State grants to municipalities for repair of public facilities declared by General Assembly to be of historical value, § 36-40-1.

OPINIONS OF THE ATTORNEY GENERAL

Gift conditioned on undertaking archeological excavation on donor's property. — Department cannot accept a gift on the condition that the money be used to undertake an archeological excavation on the private property of the donor. 1969 Op. Att'y Gen. No. 69-207.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 346 et seq.

12-3-52. Archeological exploration, excavation, or surveying; administrative appeal of department orders.

(a) The State of Georgia, acting through the department and its authorized officers and employees, reserves to itself the exclusive right and privilege of exploring, excavating, or surveying all prehistoric and historic sites, ruins, artifacts, treasure, and treasure-trove, and other similar sites and objects found on all lands owned or controlled by the state, provided that this reservation shall not apply to property under the jurisdiction of the Board of Regents of the University System of Georgia.

(b) All findings of such ruins, artifacts, treasure, treasure-trove, and other similar sites and objects shall be reported to the department within two days, Saturdays, Sundays, and legal holidays excluded, after being found.

(c) The department is authorized to grant permits to or enter into contractual agreements with recognized scientific institutions or qualified individuals to conduct field archeological research or salvage archeology through data recovery on such state properties if, in the opinion of the department, conditions or situations warrant such arrangements or agreements. All such permits and agreements that affect burial sites or burial objects shall be issued by the department in accordance with the procedures outlined in subsection (d) of this Code section. All such information and archeologically significant objects derived from archeological research conducted on state lands shall be

utilized solely for scientific or public educational purposes and shall remain the property of the state with the exception of those items required to be repatriated by Public Law 101-601 or by Code Section 44-12-262. In addition, the State of Georgia urges that all archeological research conducted on privately owned land within the boundaries of the state be likewise undertaken solely by recognized scientific institutions or qualified individuals.

(d)(1) The department shall issue permits and enter into contractual agreements with recognized scientific institutions or qualified individuals for the purposes enumerated in subsection (c) of this Code section on all state owned or state controlled lands.

(2) Applicants or contractors shall submit a detailed research plan for conducting such field archeological research or salvage archeology which outlines the location, objectives, scope, methods, and expected results.

(3) If burial sites are involved, the research plan or design must include a plan for identifying and notifying lineal descendants, for skeletal analysis, and for curation and disposition as prescribed by Public Law 101-601 or by Part 1 of Article 7 of Chapter 12 of Title 44.

(4) The department, as custodian of all prehistoric and historic sites, ruins, artifacts, treasure, and treasure-trove, and other similar sites and objects found on state owned or state controlled lands, is empowered to promulgate such rules and regulations as may be necessary to preserve, survey, protect, recover, and repatriate such findings.

(5) Permits may be renewed upon or prior to expiration upon such terms and conditions as the department deems appropriate.

(6) A permit may be revoked by the department upon a determination by the department that the permit holder has violated this chapter or any term or condition of its permit. Any determination to revoke or deny a permit may be administratively and judicially reviewed in the manner provided in subsection (e) of this Code section.

(7) Upon issuing a permit or entering into a contract that involves aboriginal, prehistoric, or American Indian burial sites, the department shall send written notice to the Council on American Indian Concerns created by Code Section 44-12-280.

(e) Any person who is aggrieved or adversely affected by any order or action of the department shall, upon petition within 30 days after the issuance of such order or taking of such action, have a right to a hearing before an administrative law judge appointed by the Board of Natural Resources. The hearing before the administrative law judge shall be

conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The decision of the administrative law judge shall constitute the final decision of the board and any party to the hearing, including the department, shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Persons are "aggrieved or adversely affected" where the challenged action has caused or will cause them injury in fact and where the injury is to an interest within the zone of interests to be protected or regulated by the statutes that the department is empowered to administer and enforce. In the event the department asserts in response to the petition before the administrative law judge that the petitioner is not aggrieved or adversely affected, the administrative law judge shall take evidence and hear arguments on this issue and thereafter make a ruling on same before continuing on with the hearing. The burden of going forward with evidence on this issue shall rest with the petitioner.

History. — Ga. L. 1969, p. 993, § 1; Ga. L. 1985, p. 906, § 1; Ga. L. 1992, p. 1790, § 1; Ga. L. 1993, p. 91, § 12.

12-3-53. State archeologist.

In order to implement the protective and research policies as outlined in Code Section 12-3-52, the department will appoint a state archeologist whose duties will be:

(1) To direct, coordinate, and otherwise engage in fundamental archeological research on state lands containing sites or objects of archeological significance and to advise the commissioner of natural resources in permitting or entering into contractual agreements with recognized scientific institutions or qualified individuals to do the same;

(2) To cooperate with other agencies of the state which have authority in areas where sites are located;

(3) To conduct a survey of important archeological sites located on state land and, upon request, to survey and officially to recognize significant archeological sites on privately owned land, thereby encouraging the owner to cooperate with the state to preserve the site;

(4) To conduct salvage archeology through data recovery on state sites threatened with destruction;

(5) To protect, preserve, display, or store objects of archeological significance discovered by field archeology at state sites or discovered during the course of any construction or demolition work;

(6) To establish training programs, either independently or in conjunction with institutions of higher learning, in order to disseminate knowledge concerning archeology and its related disciplines; and

(7) To encourage the dissemination of archeological facts through the print or electronic publication of reports of archeological research conducted by the department.

History. — Ga. L. 1969, p. 993, § 2; Ga. L. 1985, p. 906, § 2; Ga. L. 2010, p. 838, § 11/SB 388.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, a comma was deleted following "archeologist" in the introductory language, and a comma was deleted following "significance" in paragraph (1).

12-3-54. Penalty.

Any person who intentionally violates Code Section 12-3-52 or who intentionally defaces, injures, destroys, displaces, or removes an object or site of archeological or historical value located on areas as designated in Code Section 12-3-52 shall be guilty of a misdemeanor.

History. — Ga. L. 1969, p. 993, § 3; Ga. L. 1985, p. 906, § 3.

12-3-55. General provisions; preservation of state owned historic properties.

(a) As used in this Code section, the term:

(1) "Commissioner" means the commissioner of community affairs.

(2) "Department" means the Department of Community Affairs.

(b) The heads of all state agencies shall assume responsibility for the preservation of historic properties which are owned by such agency. Prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities, each state agency shall use, to the maximum extent, and as operationally appropriate and economically feasible, historic properties available to the agency.

(c) The provisions of this Code section shall be implemented as follows:

(1) Each agency shall commence by not later than December 31, 1998, consistent with the preservation of such properties and the mission of the agency and professional preservation standards established by the department and in consultation with the Department of Community Affairs and with the 1998 Joint Study Committee on Historic Preservation, a study of planning processes which may be

required for any preservation as may be necessary to effectuate this Code section;

(2) Not later than February 15, 1999, each state agency to which this Code section will become applicable shall prepare cost estimates for the implementation of this Code section which shall include, but not be limited to, agency implementation costs and personnel utilizations. An annually updated report of such cost estimates shall be presented to the Appropriations Committee of the House of Representatives and the Appropriations Committee of the Senate during the 1999 and 2000 regular sessions of the General Assembly;

(3) Not later than May 1, 1999, each state agency shall formally adopt a process for developing a preservation program;

(4) Not later than July 1, 1999, each state agency shall commence formulation of a preservation program; and

(5) Not later than July 1, 2000, each state agency shall establish and implement, in consultation with the Department of Community Affairs, a preservation program for the identification, evaluation, and nomination of historic properties to the Georgia Register of Historic Places to further the protection of such historic properties.

(d) Each agency preservation program shall ensure that:

(1) Historic properties under the jurisdiction of the agency are identified, evaluated, and nominated to the Georgia Register of Historic Places;

(2) Historic properties under the jurisdiction of the agency, as they are listed in or may be eligible for the Georgia Register of Historic Places, are managed and maintained in a way that considers the preservation of their historic, archeological, architectural, and cultural values in compliance with historic preservation provisions of this part and gives special consideration to the preservation of such values in the case of properties designated as having historic significance to this state;

(3) The agency's preservation related activities are carried out in consultation with other federal, state, and local agencies, Native American tribes, and the private sector; and

(4) The agency's procedures for compliance with historic preservation provisions of this part:

(A) Are consistent with procedures issued by the Environmental Protection Division of the Department of Natural Resources pursuant to Chapter 16 of this title, the "Environmental Policy Act," as amended;

(B) Provide a process for the identification and evaluation of historic properties for listing in the Georgia Register of Historic Places and the development and implementation of agreements in consultation with the commissioner, local governments, Native American tribes, and the interested public, as appropriate, regarding the means by such adverse effects on such properties will be considered; and

(C) Provide for the disposition of Native American cultural items from state or tribal land in a manner consistent with Section 3(c) of the Native American Graves Protection and Repatriation Act, 25 U.S.C. Section 3002(c), as amended.

(e) Each state agency shall initiate measures to assure that where, as a result of state action or assistance carried out by a state agency, a historic property is to be substantially altered or demolished, timely steps are taken to make or have made appropriate records, and that such records are then deposited with the Department of Community Affairs for future use and reference.

(f) The head of each state agency shall designate a qualified official to be known as the agency's "preservation officer" who shall be responsible for coordinating that agency's activities under this Code section. Each preservation officer may, in order to be considered qualified, satisfactorily complete training programs established by the Department of Community Affairs.

(g) Consistent with the agency's mission and mandates, all state agencies shall carry out agency programs and projects in accordance with the purposes of this Code section and give consideration to programs and projects which will further the purposes of this Code section.

(h) The commissioner of Community Affairs shall review and comment on plans of transferees of surplus state owned historic properties not later than 90 days after such commissioner's receipt of such plans to ensure that the prehistorical, historical, architectural, or culturally significant values will be preserved or enhanced.

(i) Prior to the approval of any state undertaking which may directly and adversely affect any national historic landmark, the head of the responsible state agency shall, to the maximum extent possible, undertake such planning and actions as may be necessary to minimize harm to such landmark and shall afford the commissioner of Community Affairs an opportunity to comment on the undertaking.

(j) The commissioner of Community Affairs shall establish an annual preservation awards program and provide citations for special achievement to officers and employees of state agencies in recognition of their

outstanding contributions to the preservation of historic resources. Such program may include the issuance of annual awards by the Governor to any citizen of the state recommended for such an award by the commissioner of Community Affairs.

(k) The commissioner of Community Affairs shall promulgate regulations under which the requirements of this Code section may be waived in whole or in part in the event of a major natural disaster or an imminent threat to the national security.

(l) Each state agency shall ensure that the agency will not grant a loan, loan guarantee, permit, license, or other assistance to an applicant who, with intent to avoid the requirements of this part, has intentionally and significantly adversely affected a historic property to which the grant would relate or, having legal power to prevent it, allowed such significant adverse effect to occur unless the agency determines that circumstances justify granting such assistance despite the adverse effect created or permitted by the applicant. Each agency shall consult with the commissioner of Community Affairs and shall allow comment on the proposed action.

(m) With respect to any undertaking subject to review under this part which adversely affects any property included or eligible for inclusion in the Georgia Register of Historic Places, the head of such agency shall document any decision made pursuant to this part. The head of such agency may not delegate his or her responsibilities pursuant to this part. Where a memorandum of agreement under this part has been executed with respect to an undertaking, such memorandum shall govern the undertaking and all of its parts.

(n) In actions where the Georgia Department of Transportation is complying with and working under the provisions of Chapter 16 of this title, the "Environmental Policy Act," as amended, for state-aid actions and the National Environmental Policy Act of 1969, 16 U.S.C. Sections 4321-4347, as amended, and Section 106 of the National Historic Preservation Act of 1966, 16 U.S.C. Section 470, as amended, for federal-aid actions, the Georgia Department of Transportation shall be exempt from the requirements of this Code section.

History. — Code 1981, § 12-3-55, enacted by Ga. L. 1998, p. 1037, § 1; Ga. L. 1999, p. 81, § 12; Ga. L. 2020, p. 38, §§ 3, 7, 8/SB 473.

The 2020 amendment, effective July 1, 2020, rewrote subsection (a), which read: "(a) As used in this Code section, the term

"(1) 'Director' means the director of the Division of Historic Preservation of the department.

"(2) 'Division' means the Division of Historic Preservation of the department."; in paragraph (c)(1), substituted "department" for "division" and "Department of Community Affairs" for "division"; substituted "Department of Natural Resources" for "department" in subparagraph (d)(4)(A); substituted "commissioner" for "director" in subparagraph (d)(4)(B); substituted "Department of Community Affairs" for "division" in subsections (e) and

(f); and substituted "commissioner of Community Affairs" for "director" in subsections (h), (i), (j), (k) and (l).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, a misspelling of "archeological" was corrected and a comma was inserted following "architectural" near the middle of paragraph (d)(2).

Pursuant to Code Section 28-9-5, in 2020, "commissioner's" was substituted for "director's" in the middle of subsection (h).

12-3-56. Revitalization of central business districts; government presence in historic districts.

(a) As used in this Code section, the term "department" means the Department of Community Affairs.

(b) The General Assembly recognizes that the State of Georgia has undertaken various efforts to revitalize the central business districts and in-town areas of municipalities in this state which have historically served as the centers for growth, commerce, and government in our metropolitan areas. Accordingly, the General Assembly reaffirms the commitment to strengthen those municipalities by encouraging the location of state facilities in central business districts. The General Assembly also reaffirms the commitment to provide leadership in the preservation of historic resources and to acquire and utilize space in suitable buildings of historic, architectural, or cultural significance. To this end, the state agencies shall utilize and maintain, wherever operationally appropriate and economically prudent, historic properties and districts, especially those located in central business areas. When implementing these policies, state agencies shall institute practices and procedures that are sensible, understandable, and compatible with current authority and that impose the least burden on, and provide the maximum benefit to, society.

(c) Whenever operationally appropriate and economically prudent, when locating state facilities, state agencies shall give first consideration to historic properties within historic districts. If no such property is suitable, then state agencies shall consider other developed or undeveloped sites within historic districts. State agencies shall then consider historic properties outside of historic districts, if no suitable site within a district exists. Any rehabilitation or construction that is undertaken pursuant to this order must be architecturally compatible with the character of the surrounding historic district or properties. County, city, and other local governmental agencies are also encouraged to conform to this subsection.

(d) State agencies with responsibilities for leasing, acquiring, locating, maintaining, or managing state facilities or with responsibilities for the planning for, or managing of, historic resources shall take steps to reform, streamline, and otherwise minimize regulation, policies, and procedures that impede the state government's ability to establish or

maintain a presence in historic districts or to acquire historic properties to satisfy state space needs, unless such regulations, policies, and procedures are designed to protect human health and safety or the environment. State agencies are encouraged to seek the assistance of the Department of Community Affairs when taking these steps.

(e) In implementation of this part, the Department of Community Affairs and each state agency shall seek appropriate partnerships with local governments, Indian tribes, and appropriate private organizations with the goal of enhancing participation of these parties in the state historic preservation program. Such partnerships should embody the principles of administrative flexibility, reduced paperwork, and increased service to the public.

(f) This Code section is not intended to create, nor does it create, any right or benefit, substantive or procedural, enforceable at law by a party against the State of Georgia, its agencies or instrumentalities, its officers or employees, or any other person.

History. — Code 1981, § 12-3-56, enacted by Ga. L. 1998, p. 1037, § 1; Ga. L. 2020, p. 38, §§ 4, 7/SB 473.

The 2020 amendment, effective July 1, 2020, in subsection (a), substituted "'department'" for "'division'" and "Department of Community Affairs" for "Division of Historic Preservation of the department"; and substituted "Department of Community Affairs" for "division" in subsections (d) and (e).

Cross references. — Community redevelopment generally, Ga. Const. 1983, Art. IX, Sec. II, Para. VII. Downtown development authorities, T. 36, C. 42. City business improvement districts, T. 36, C. 43. Urban redevelopment, T. 36, C. 61.

RESEARCH REFERENCES

Am. Jur. 2d. — 83 Am Jur. 2d, Zoning and Planning, § 205 et seq.

12-3-57. Legislative findings; historical and cultural museum assistance program; responsibilities.

(a) As used in this Code section, the term:

(1) "Commissioner" means the commissioner of community affairs.

(2) "Department" means the Department of Community Affairs.

(3) "Local jurisdiction" means any county or municipality in this state and any duly authorized agency or instrumentality of a county or municipality.

(4) "Museum" means a facility in this state which is organized on a nonprofit basis for essentially educational or preservation purposes and which:

(A) Owns or utilizes tangible inanimate objects of historical or cultural significance;

(B) Is organized for the care of those objects and exhibits them to the public on a regular schedule; and

(C) Interprets the state's cultural heritage or the state's history, natural history, or history of science and technology.

(5) "Nonprofit organization" means a corporation, foundation, local jurisdiction, or other legal entity, no part of the net earnings of which inures to the benefit of any private shareholder or individual holding an interest in such entity.

(6) "Program" means the historical and cultural museum assistance program established under subsection (e) of this Code section.

(b)(1) It is found and declared by the General Assembly that:

(A) Historical and cultural heritage museums present, interpret, and preserve unusual and significant objects of this state's heritage for the benefit, enjoyment, and education of the citizens from every community in the state;

(B) Historical and cultural heritage museums are unique and beneficial resources which supplement the state's educational system;

(C) These museums are the repositories and caretakers of irreplaceable cultural items for the benefit not only of today's generation, but of those yet to come;

(D) Museums, many of which are located in small communities, play an important and cost-effective role in the leisure time and tourism industry of this state; and

(E) It is desirable that the entire history and heritage of the state be displayed and interpreted to the public where this happened, creating centers of community pride and dispersing tourist activity throughout the state.

(2) The General Assembly declares that the public interest is served by the establishment of a program of financial and technical assistance to help historical and cultural heritage museums become more accessible to the citizens and visitors of this state and to assist the citizenry in better understanding its diverse cultural heritage by supporting the upgrade, care, research, interpretation, documentation, and display of the state's irreplaceable historical and cultural museum collections.

(c) Pending appropriation of funding to conduct such, there is established a historical and cultural museum assistance program in the Department of Community Affairs to provide assistance to local jurisdictions and private nonprofit organizations for museums.

(d) The department shall:

(1) Manage, supervise, and administer the program; and

(2) Coordinate the program with federal, state, or private programs that complement or facilitate carrying out the program.

(e)(1) The purpose of the program is to make grants to local jurisdictions and nonprofit organizations for use by museums for:

(A) Research related to collections, exhibits, or other educational activities;

(B) The care, conservation, interpretation, and documentation of collections;

(C) The planning, design, and construction of exhibits;

(D) Educational programs and projects;

(E) The development of master plans for museums, including activities required to achieve accreditation by the American Association of Museums or other pertinent entity that provides museum accreditation;

(F) The construction of minor structural modifications to existing museum facilities; and

(G) The development of plans and specifications and the provision of architectural, engineering, or other special services directly related to the construction or rehabilitation of museum facilities.

(2) Grants may not be made:

(A) For routine administrative overhead expenses; or

(B) To museums operated, in whole or in part, by this state.

(3) In any fiscal year, the commissioner may allocate up to 20 percent of the total moneys appropriated for the program to be held in reserve for unanticipated projects that are eligible for assistance in accordance with paragraph (2) of subsection (d) of this Code section.

(4) The department shall make grants to museums giving due consideration to equal geographic distribution throughout the state.

(5) A grant may not exceed $10,000.00 to any single museum in any one year.

(6) The department may not make a grant to a museum under this program unless the museum has been in existence as a nonprofit institution for at least five years prior to the date of application for the grant.

(f) The department shall:

(1) Conduct a survey to identify the locations, resources, and needs of museums in this state;

(2) Provide technical and general advisory assistance to museums that qualify or seek to qualify for grants under the program; and

(3) Encourage the development of long-range planning and accreditation by the American Association of Museums or other pertinent entity that provides museum accreditation and assists museums in meeting professional standards.

(g)(1) The department shall carry out the purposes of the program under provisions of Article 5 of Chapter 5 of Title 28, the "Fair and Open Grants Act of 1993," as amended.

(2) The filing by the department with the Secretary of State under the provisions of Article 5 of Chapter 5 of Title 28, the "Fair and Open Grants Act of 1993," as amended, shall include:

(A) Application procedures and review processes;

(B) Procedures for adequate public notice of available assistance under the program; and

(C) A set of selection criteria which the Department of Community Affairs shall consider in recommending approval of applications for grants and which must include:

(i) The relative merits of the project or activities within identified state-wide needs;

(ii) The extent to which there is any contribution by the appropriate local jurisdiction to support the project being financed by the grant;

(iii) The potential for the project to stimulate increased tourism, attendance, or museum self-sufficiency; and

(iv) Other factors that may be relevant, such as the geographic distribution of grant assistance under the program.

History. — Code 1981, § 12-3-57, enacted by Ga. L. 1998, p. 1037, § 1; Ga. L. 2001, p. 4, § 12; Ga. L. 2020, p. 38, §§ 7, 8, 11/SB 473.

The 2020 amendment, effective July 1, 2020, in paragraph (a)(1), substituted "Commissioner of the Department of Community Affairs" for "Director" and substituted "commissioner of the Department of Community Affairs" for "director of the Division of Historic Preservation of the department"; substituted "'Department of Community Affairs' means the Department of Community Affairs" for "'Division' means the Division of Historic Preservation of the department"; and substituted "Department of Community Affairs" for "division" in subsection (c) and in subparagraph (g)(2)(C).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2020, "'Commissioner' means the commissioner of community affairs." was substituted for "'Commissioner' of the Department of Community Affairs' means the commissioner of the Department of Community

Affairs." in paragraph (a)(1), and "'Department' means the Department of Community Affairs." was substituted for "'Department of Community Affairs' means the Department of Community Affairs." in paragraph (a)(2).

12-3-58. Powers, duties, and authority of the Department of Community Affairs; historic preservation grant program.

(a) As used in this Code section, the term:

(1) "Commissioner" means the commissioner of community affairs.

(2) "Department" means the Department of Community Affairs.

(3) "Grant fund" means the historic preservation grant fund created under subsection (b) of this Code section.

(4) "Grant program" means the historic preservation grant program created under subsection (b) of this Code section.

(5) "Historic property" means a district, site, building, structure, monument, or object significant in prehistory, history, upland and underwater archeology, architecture, engineering, or culture of this state, including artifacts, records, and remains related to a district, site, structure, or object. For purposes of this paragraph, sites significant in the history of this state shall be deemed to include without limitation combat veterans' gravesites in this state.

(6) "Local jurisdiction" means any county or municipality in this state and any duly authorized agency or instrumentality of a county or municipality.

(7) "Nonprofit organization" means a corporation, foundation, governmental entity, or other legal entity, no part of the net earnings of which inures to the benefit of any private shareholder or individual holding an interest in such entity.

(8) "Preservation" means the identification, evaluation, recordation, documentation, curation, acquisition, protection, management, rehabilitation, restoration, stabilization, maintenance, and reconstruction of a historic property.

(b) Pending appropriation of funding for such, there is created a historic preservation grant program to be administered by the Department of Community Affairs. The purpose of the grant program is to implement and encourage the preservation of historic properties as well as to promote interest in and study of such matters.

(c) The Department of Community Affairs shall:

(1) Manage, supervise, and administer the grant program; and

(2) Coordinate the grant program with federal or state programs that complement or facilitate carrying out the grant program.

(d) The grant program may be used to:

(1) Make grants to nonprofit organizations and local jurisdictions for the purpose of acquiring, rehabilitating, or restoring historic properties;

(2) Make grants to nonprofit organizations and local jurisdictions for the purpose of financing costs directly related to the rehabilitation or restoration project, which may include the costs of studies, surveys, plans and specifications, and architectural, engineering, or other special services;

(3) Make grants to nonprofit organizations and local jurisdictions for the purpose of funding historic preservation education and promotion, including the research, survey, and evaluation of historic properties and the preparation of historic preservation planning and educational materials;

(4) Fund the costs of state and local preservation revolving funds for the restoration or rehabilitation of historic properties for resale or lease subject to appropriate preservation covenants which may include costs directly related to restoration or rehabilitation, such as the costs of studies, surveys, plans, and specifications and architectural, engineering, or other special services;

(5) Fund historic preservation education and promotion by the Department of Community Affairs, including the research, survey, and evaluation of historic properties and the preparation of historic preservation planning documents and educational materials; and

(6) Fund the routine administration of the grant program.

(e)(1) The commissioner of the Department of Community Affairs shall approve each grant or expenditure of moneys from the grant fund.

(2) Except for the emergency reserve allocation referred to in paragraph (3) of this subsection, the commissioner's decision on the granting of moneys from the grant fund to nonprofit organizations and local jurisdictions shall be based on a competitive selection process.

(3) In any given fiscal year, the commissioner may allocate up to 20 percent of the total moneys available in the grant fund to be held in reserve for unanticipated emergency use in accordance with subsection (d) of this Code section.

(4) In any given year, expenditures for routine administration of the grant program may not exceed 10 percent of the total moneys available in the grant fund.

(f) The Department of Community Affairs shall:

(1) Ensure that funding under the grant program for the acquisition, restoration, or rehabilitation of historic properties is used only if the property has been listed in or is eligible for the Georgia Register of Historic Places or is a combat veteran's gravesite in this state; and

(2) Require recipients of grants made under the grant program to enter into an agreement to preserve, maintain, and allow limited public access to the historic property. This agreement shall be a recordable conservation easement for the purpose of preserving the historical aspects of the property if the property is real property, unless the commissioner has determined that such an agreement or easement is impracticable or infeasible under the circumstances in accordance with the regulations.

(g)(1) The department shall carry out the purposes of the grant program under provisions of Article 5 of Chapter 5 of Title 28, the "Fair and Open Grants Act of 1993," as amended.

(2) In addition to provisions otherwise required by this Code section, the filing by the department with the Secretary of State under the provisions of Article 5 of Chapter 5 of Title 28, the "Fair and Open Grants Act of 1993," as amended, shall include the following:

(A) Application procedures;

(B) Procedures for adequate public notice of available assistance under the grant program;

(C) Provisions for the review of plans and specifications and the inspection of projects during construction; and

(D) A set of selection criteria which the Department of Community Affairs must consider in recommending approval of applications for grants and which must include:

(i) The relative historical or cultural significance of, and urgency of need for, the project being financed with the grant;

(ii) The extent to which there is any proposed contribution by the appropriate local jurisdiction to support the project being financed with the grant; and

(iii) Other factors which may be relevant, such as the geographic distribution of grant assistance from the grant fund.

(h) On or before December 31 of each year, the Department of Community Affairs shall report to the Governor and the General Assembly the financial status of the grant program and a summary of its operations for the preceding year.

History. — Code 1981, § 12-3-58, enacted by Ga. L. 1998, p. 1037, § 1; Ga. L. 2003, p. 566, §§ 1, 2; Ga. L. 2020, p. 38, §§ 5, 7, 8, 11/SB 473; Ga. L. 2021, p. 922, § 12/HB 497.

The 2020 amendment, effective July 1, 2020, rewrote paragraph (a)(1), which read: "'Director' means the director of the Division of Historic Preservation of the department."; rewrote paragraph (a)(2), which read: "'Division' means the Division of Historic Preservation of the department."; substituted "Department of Community Affairs" for "division" in subsections (b), (c), (d), (f), (g), and (h); substituted "commissioner of the Department of Community Affairs" for "director shall review and make recommendations to the commissioner who" in paragraph (e)(1); and substituted "commissioner of the Department of Community Affairs decision" for "director's recommendations to the commissioner" in paragraph (e)(2).

The 2021 amendment, effective May 10, 2021, part of an Act to revise, modernize, and correct the Code, substituted "commissioner's decision" for "commissioner of the Department of Community Affairs decision" in the middle of paragraph (e)(2).

Cross references. — Historic preservation generally, T. 44, C. 10.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, a misspelling of "archeology" was corrected near the middle of paragraph (a)(5).

Pursuant to Code Section 28-9-5, in 2020, "'Commissioner' means the commissioner of community affairs." was substituted for "'Commissioner of the Department of Community Affairs' means the commissioner of the Department of Community Affairs." in paragraph (a)(1), and "'Department' means the Department of Community Affairs." was substituted for "'Department of Community Affairs' means the Department of Community Affairs." in paragraph (a)(2).

Part 2

Heritage Trust Program

12-3-70. Short title.

This part shall be known and may be cited as the "Heritage Trust Act of 1975."

History. — Ga. L. 1975, p. 962, § 1.

12-3-71. Legislative purpose.

The General Assembly finds that certain real property in Georgia, because it exhibits unique natural characteristics, special historical significance, or particular recreational value, constitutes a valuable heritage which should be available to all Georgians, now and in the future. The General Assembly further finds that much of this real property, because of Georgia's rapid progress over the past decade, has been altered, that its value as part of our heritage has been lost, and that such property which remains is in danger of being irreparably altered. The General Assembly declares, therefore, that there is an urgent public need to preserve important and endangered elements of Georgia's heritage, so as to allow present and future citizens to gain an understanding of their origins in nature and their roots in the culture of the past and to ensure a future sufficiency of recreational resources.

The General Assembly asserts the public interest in the state's heritage by creating the Heritage Trust Program which shall be the responsibility of the Governor and the Department of Natural Resources and which shall seek to protect this heritage through the acquisition of fee simple title or lesser interests in valuable properties and by utilization of other available methods.

History. — Ga. L. 1975, p. 962, § 2.
Cross references. — Historic preservation generally, T. 44, C. 10. Division of Archives and History, T. 45, C. 13, A. 3.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 346 et seq.

12-3-72. Definitions.

As used in this part, the term:

(1) "Board" means the Board of Natural Resources.

(2) "Heritage area" means an area of land, marsh, or water which has been identified by the board as having significant historical, natural, or cultural value.

(3) "Heritage preserve" means a heritage area to which the state holds fee simple title or some lesser estate and which has been dedicated under this part.

(4) "Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity.

History. — Ga. L. 1975, p. 962, § 4; Ga. L. 2021, p. 599, § 1/HB 619.
The 2021 amendment, effective July 1, 2021, added paragraph (4).

12-3-73. Creation of Heritage Trust Commission; appointment and criteria for selection of members; terms of office; reimbursement of members for expenses; duties.

Reserved. Repealed by Ga. L. 2019, p. 919, § 4-1/HB 553, effective July 1, 2019.

Editor's notes. — This Code section was based on Ga. L. 1975, p. 962, § 3; Ga. L. 1982, p. 3, § 12; Ga. L. 1983, p. 460, § 1.

12-3-74. Powers and duties of board as to Heritage Trust Program.

(a) The board shall have the following powers and duties with regard to the Heritage Trust Program:

(1) To adopt and promulgate all policies, rules, and regulations necessary for the identification and acquisition of heritage areas and for the selection, dedication, management, and use of heritage preserves;

(2) To acquire heritage areas in the name of the State of Georgia as otherwise provided by law;

(3) To advocate and approve the dedication of heritage preserves; and

(4) To provide general supervision and direction in the protection, management, operation, and use of heritage preserves.

(b) Notwithstanding any other provision of this Code section, the board shall not have any power of purchase, condemnation, lease, agreement, gift, or devise which would have the effect of preventing, blocking, or in any manner hindering the construction of the Spewrell Bluff Dam Project authorized by P. L. 88-253, approved December 30, 1963.

History. — Ga. L. 1975, p. 962, § 5.

Cross references. — Historic preservation generally, T. 44, C. 10. Division of Archives and History, T. 45, C. 13, A. 3.

Administrative rules and regulations. — State parks and historic sites system, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-5-1.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 346 et seq.

12-3-75. Dedication of property as a heritage preserve.

A heritage area which has been acquired by the Department of Natural Resources for the Heritage Trust Program may become dedicated as a heritage preserve after written recommendation of the board and approval by the Governor. Any other real property owned by the State of Georgia and under the custody of the department may be similarly dedicated. The written recommendation shall contain a provision which designates the best and most important use or uses to which the land is to be put. The dedication as a heritage preserve shall become effective when the written recommendation and the approval of the Governor are filed with the office of the Secretary of State. The

written recommendation and the approval of the Governor shall be filed in the office of the clerk of the superior court of the county or counties in which the heritage preserve is located.

History. — Ga. L. 1975, p. 962, § 6.

RESEARCH REFERENCES

Am. Jur. 2d. — 23 Am. Jur. 2d, Dedication, §§ 4, 5, 11, 24.

C.J.S. — 26 C.J.S., Dedication, §§ 6, 9, 10.

12-3-76. Use of heritage preserves; state authorized to transfer interest in heritage preserve property to county, local government, or private entity upon certain conditions.

(a) Heritage preserves shall be held by the state in trust for the benefit of the present and future generations of the people of the State of Georgia. Each heritage preserve shall be put to the designated use or uses which confer the best and most important benefit to the public. Heritage preserves shall not be put to any use other than the dedicated use or uses except pursuant to the following procedure:

(1) A state agency, department, or authority with a direct interest in the use of a heritage preserve must submit in writing a petition to the board that an imperative and unavoidable necessity for such other use exists;

(2) Upon receipt of such petition, the board shall give public hearing thereon in the county or counties in which the heritage preserve is located;

(3) The board shall consider fully all testimony relative to the proposed use and submit a recommendation to the General Assembly; and

(4) The General Assembly may then determine if such use is in the public interest and may by statute approve such other use of the heritage preserve.

(b) The State of Georgia and the Department of Natural Resources may convey fee simple title in a property dedicated as a heritage preserve under Code Section 12-3-75 for good and valuable consideration as determined by the State Properties Commission to a willing county or local government pursuant to the following procedures:

(1) The department shall submit a request in writing to the board to remove the heritage preserve dedication from the property and to convey the property to the county or local government, subject to the grant of a perpetual conservation easement to the State of Georgia and the department that is consistent with the best and most

important uses established in the written recommendation and approval of the Governor dedicating the property as a heritage preserve and the conservation values identified by the department, as well as any other restrictions applicable to the property;

(2) The board shall make a determination, after a public hearing, that the removal of the heritage preserve dedication from the property and its conveyance to the county or local government subject to a conservation easement is in the best interest of the State of Georgia;

(3) The conveyance is approved by the General Assembly and the State Properties Commission; and

(4) The department shall file with the Secretary of State and the office of the clerk of the superior court of the county or counties in which the property is located a notice of the removal of the heritage preserve dedication simultaneously with the recordation of the conservation easement in the real property records of the county or counties in which the property is located.

(c) Nothing in this Code section shall be construed so as to give county or local governments the authority to assign their interests in property conveyed pursuant to subsection (b) of this Code section to a private entity.

(d) Nothing in this Code section shall be construed so as to compel a county or local government to accept conveyance of a heritage preserve, and no conveyance shall take place without the approval of the local governing authority.

(e) In the event that a county, local government, or private entity that is in receipt of property pursuant to this Code section determines that it is in the best interest of the county, local government, or private entity, fee simple title to the property may, if approved by the department and the State Properties Commission, revert to the State of Georgia.

(1) The State of Georgia and the Department of Natural Resources may convey fee simple title in the property described in paragraph (2) of this subsection, and only said property, for good and valuable consideration as determined by the State Properties Commission to a willing private entity pursuant to the following procedure:

(A) The department shall submit a request in writing to the board to remove the heritage preserve dedication from the property and to convey the property to the private entity, subject to the grant of a perpetual conservation easement to the State of Georgia and the department that is consistent with the best and most important uses established in the written recommendation and the conserva-

tion values identified by the department and approval of the Governor dedicating the property as a heritage preserve, as well as any other restrictions applicable to the property;

(B) The board shall make a determination, after a public hearing, that the removal of the heritage preserve dedication from the property and its conveyance to the private entity, subject to a conservation easement, is in the best interest of the State of Georgia;

(C) The conveyance is approved by the General Assembly and the State Properties Commission; and

(D) The department shall file with the Secretary of State and the office of the clerk of the superior court of the county in which the property is located a notice of the removal of the heritage preserve dedication simultaneously with the recordation of the conservation easement in the real property records of the county in which the property is located.

(2) All that tract of parcel of land lying and being 8.618 acres located in Land Lots 371 and 372 of the 6th Land District of Berrien County, Georgia, described as follows: Begin at a point located at the intersection of the West city limits of the Town of Enigma, GA, and the North right-of-way line of the abandoned Seaboard Coastline Railroad tracts and from said POINT OF BEGINNING run along said city limits South 05 degrees 45 minutes 59 seconds West for a distance of 200.00 feet to a point located on the South right-of-way line of said tracts; thence run along said South right-of-way line North 84 degrees 14 minutes 01 seconds West for a distance of 434.95 feet; thence run North 05 degrees 45 minutes 59 seconds East for a distance of 100 feet to a point located on the center line of said tracks; thence run along said center line North 84 degrees 14 minutes 01 seconds West for a distance of 2884.14 feet; thence run North 05 degrees 45 minutes 59 seconds East for a distance of 100 feet to a point located on the North right-of-way line of said tracks; thence run South 84 degrees 14 minutes 01 seconds East along said North right-of-way line for a distance of 3319.09 feet to said POINT OF BEGINNING. Said tract is more particularly described as Tract 13 on that certain plat of survey entitled "Patrick's Fishing Paradise", dated the 22nd day of May, 1989, prepared by R. Bayne Stone for Department of Natural Resources, State of Georgia. Said plat was revised July 11, 1989, and is recorded in Plat Cabinet 1, Slide C-48 in the Clerk's office of Berrien County Superior Court.

History. — Ga. L. 1975, p. 962, § 7; Ga. L. 2011, p. 672, § 1/HB 90; Ga. L. 2021, p. 599, § 2/HB 619.

The 2021 amendment, effective July 1, 2021, deleted "individual or" following "a private" at the end of subsection (c); in subsection (e), substituted "county, local government, or private entity" for "county

or local government" in two places and added paragraphs (e)(1) and (e)(2).

Cross references. — Historic preservation generally, T. 44, C. 10. Division of Archives and History, T. 45, C. 13, A. 3.

RESEARCH REFERENCES

C.J.S. — 26 C.J.S., Dedication, § 94.

12-3-77. Effect on protected status of property of dedication or other action taken by board.

Neither the dedication of a piece of property as a heritage preserve nor any action taken by the board pursuant to this part shall operate to void, preempt, or dilute any protected status which that property had or would have had but for its dedication as a heritage preserve.

History. — Ga. L. 1975, p. 962, § 8.

Part 3

Submerged Cultural Resources

Administrative rules and regulations. — Submerged cultural resources, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-5-9.

12-3-80. "Submerged cultural resources" defined; title and exclusive right to regulate investigation, survey, and recovery; exceptions.

As used in this part, the term "submerged cultural resources" means all prehistoric and historic sites, ruins, artifacts, treasure, treasure-trove, and shipwrecks or vessels and their cargo or tackle which have remained on the bottom for more than 50 years, and similar sites and objects found in the Atlantic Ocean within the three-mile territorial limit of the state or within its navigable waters. Title to, and the exclusive right to regulate the investigating, surveying, and recovery of, all such submerged cultural resources is declared to be in the State of Georgia; provided, however, that the Board of Natural Resources may determine and provide by rule that certain submerged cultural resources are of no cultural or economic value to the State of Georgia such that items or areas so designated are not subject to the provisions of this part, including any permit requirements of Code Section 12-3-82.

History. — Code 1981, § 12-3-80, enacted by Ga. L. 1985, p. 906, § 4; Ga. L. 1988, p. 945, § 1.

JUDICIAL DECISIONS

State of Georgia's mere constructive possession of logs submerged in the state's rivers was insufficient to claim Eleventh Amendment immunity in salvage company's in rem admiralty actions to salvage the logs; actual possession was required, and Georgia's claimed possession by locating the logs using sonar, under O.C.G.A. § 12-3-80 et seq., to confer ownership and control over the logs, owning the land on which the logs were situated, and patrolling the rivers was insufficient to establish actual possession. Aqua Log, Inc. v. Georgia, 594 F.3d 1330 (11th Cir. 2010).

Submerged logs not subject to provisions. — When the plaintiff sought to salvage logs which sank after the logs were placed in the river as part of logging operations over a hundred years ago for transport to lumber mills, the logs were not subject to the plain language of the Submerged Cultural Resources Act, O.C.G.A. § 12-3-80 et seq., because the logs were not capable of having "cargo or tackle." Aqua Log, Inc. v. Lost & Abandoned Pre-Cut Logs & Rafts of Logs, 94 F. Supp. 3d 1345 (2015).

Pre-cut logs that had been at a river bottom for over 100 years were not subject to the plain language of the Submerged Cultural Resources Act (SCRA), O.C.G.A. § 12-3-80 et seq., because, although the logs were cut at both ends, the logs did not appear to be included within the purview of the SCRA because the logs were not capable of having cargo or tackle. Aqua Log, Inc. v. Lost & Abandoned Pre-Cut Logs & Raft of Logs, 103 F. Supp. 3d 1369 (M.D. Ga. 2015).

RESEARCH REFERENCES

ALR. — Validity, construction, and application of Abandoned Shipwreck Act of 1987 (43 USCA § 2101 et seq.), 163 A.L.R. Fed. 421.

12-3-81. Department named custodian of submerged cultural resources; rules and regulations; reporting findings; duties of state archeologist.

(a) The custodian of all submerged cultural resources shall be the Department of Natural Resources. The Board of Natural Resources is empowered to promulgate such rules and regulations as may be necessary to preserve, survey, protect, and recover such underwater properties and are necessary for the effective administration of this part.

(b) All findings of submerged cultural resources shall be reported to the department within two days, Saturdays, Sundays, and legal holidays excluded, after being found.

(c) The state archeologist shall have such duties in conducting and supervising the surveillance, protection, preservation, survey, and recovery of submerged cultural resources as he is given by Code Section 12-3-53 for similar land resources.

History. — Code 1981, § 12-3-81, enacted by Ga. L. 1985, p. 906, § 4; Ga. L. 1988, p. 945, § 2.

Administrative rules and regulations. — Submerged cultural resources, Official Compilation of the Rules and Reg-

ulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-5-9.

JUDICIAL DECISIONS

Neither O.C.G.A. § 12-3-81 nor O.C.G.A. § 12-3-82(a) are unconstitutional because the statutes do not impinge on federal salvage law and the statutes are not preempted by federal salvage law. Aqua Log, Inc. v. Lost & Abandoned Pre-cut Logs & Rafts of Logs, 584 F. Supp. 2d 1367 (S.D. Ga. 2008), aff'd, 594 F.3d 1330 (11th Cir. Ga. 2010).

State's right to underwater abandoned pre-cut logs. — State of Georgia asserted a colorable claim to abandoned pre-cut logs that sank in a Georgia river decades earlier under O.C.G.A. § 12-3-81 and the Submerged Lands Act of 1953, 43 U.S.C. § 1311(a)(1), which was one of three grounds the state was required to establish in order to assert the state's immunity from suit under U.S. Const., amend. XI and deprive a federal district court of jurisdiction over a salvor's suit to recover the logs. Aqua Log, Inc. v. Lost & Abandoned Pre-cut Logs & Rafts of Logs, 584 F. Supp. 2d 1367 (S.D. Ga. 2008), aff'd, 594 F.3d 1330 (11th Cir. Ga. 2010).

Constructive possession of submerged logs, as claimed by intervenor state under O.C.G.A. §§ 12-3-81 and 12-3-82, was an insufficient interest in the logs to permit the state to assert the state's sovereign immunity to bar plaintiff salvor's suit under U.S. Const., amend. XI; the state did not have possession so as to defeat admiralty jurisdiction due to Eleventh Amendment immunity. Aqua Log, Inc. v. Lost & Abandoned Pre-cut Logs & Rafts of Logs, 632 F. Supp. 2d 1342 (M.D. Ga. 2008).

RESEARCH REFERENCES

ALR. — Validity, construction, and application of Submerged Lands Act (SLA) of 1953, 43 U.S.C.A. §§ 1301 et seq., 68 A.L.R. Fed. 2d 363.

12-3-82. Permits and authorization to contract for investigation, survey, or recovery operations; renewal and revocation of permits.

(a) Any person desiring to conduct investigation, survey, or recovery operations, in the course of which any part of a submerged cultural resource may be endangered, removed, displaced, or destroyed, shall first make application to the department for a permit to conduct such operations. The applicant shall submit a detailed plan outlining the location, objectives, scope, methods, plans for the preservation and storage of any submerged cultural resources to be recovered, and such other information about its proposed operation as the department may require. The applicant shall also submit the name of the professional archeologist who will supervise or conduct the operation.

(b) If the department determines that the public interest and the preservation and protection of the submerged cultural resource will be served by allowing the operation for which a permit is sought, the department shall grant a permit subject to such terms and conditions as the department deems appropriate for the protection of the public interest and the preservation and protection of the submerged cultural

resource. No permits shall be issued allowing the permittee to retain any recovered submerged cultural resources, or portion thereof, unless the department determines the resources to be retained are of no significant historical, archeological, or monetary value or are of such limited historical, archeological, or monetary value as to be reasonable compensation for the efforts of the permittee in furthering the public interest through the investigation, survey, protection, preservation, or recovery of other related underwater cultural resources.

(c) Permits may be renewed upon or prior to expiration upon such terms and conditions as the department deems appropriate.

(d) A permit may be revoked by the department upon a determination by the department that the permit holder has violated this part or any term or condition of its permit. Any determination to revoke or deny a permit may be administratively and judicially reviewed in the manner provided in subsection (d) of Code Section 12-3-52.

(e) The department is authorized to contract with any person for the investigation, survey, protection, preservation, or recovery of underwater cultural resources on such terms and conditions as the department deems appropriate.

History. — Code 1981, § 12-3-82, enacted by Ga. L. 1985, p. 906, § 4; Ga. L. 1988, p. 945, § 3; Ga. L. 2005, p. 632, § 1/SB 283.

JUDICIAL DECISIONS

Neither O.C.G.A. § 12-3-81 nor O.C.G.A. § 12-3-82(a) are unconstitutional because the statutes do not impinge on federal salvage law and the statutes are not preempted by federal salvage law. Aqua Log, Inc. v. Lost & Abandoned Pre-cut Logs & Rafts of Logs, 584 F. Supp. 2d 1367 (S.D. Ga. 2008), aff'd, 594 F.3d 1330 (11th Cir. Ga. 2010).

Statute does not grant "actual possession". — Constructive possession of submerged logs, as claimed by intervenor state under O.C.G.A. §§ 12-3-81 and 12-3-82, was an insufficient interest in the logs to permit the state to assert the state's sovereign immunity to bar plaintiff salvor's suit under U.S. Const., amend. XI; the state did not have possession so as to defeat admiralty jurisdiction due to Eleventh Amendment immunity. Aqua Log, Inc. v. Lost & Abandoned Pre-cut Logs & Rafts of Logs, 632 F. Supp. 2d 1342 (M.D. Ga. 2008).

12-3-82.1. Permits for investigation, survey, or recovery of deadhead logs.

Repealed by Ga. L. 2005, p. 632, § 2/SB 283, effective January 1, 2008.

Editor's notes. — This Code section was based on Code 1981, § 12-3-82.1, enacted by Ga. L. 2005, p. 632, § 2/SB 283; Ga. L. 2006, p. 72, § 12/SB 465.

12-3-83. Prohibited acts constituting misdemeanor.

Any person who violates this part by failing to obtain a required permit or who intentionally defaces, injures, destroys, displaces, or removes any underwater cultural resource or portion thereof in any manner not in accordance with a permit issued by the department shall be guilty of a misdemeanor.

History. — Code 1981, § 12-3-83, enacted by Ga. L. 1985, p. 906, § 4.

ARTICLE 4

NATURAL AREAS

12-3-90. Short title.

This article shall be known and may be cited as the "Georgia Natural Areas Act."

History. — Ga. L. 1966, p. 330, § 1; Ga. L. 1969, p. 750, § 1.

12-3-91. Legislative findings and declaration of purpose.

The General Assembly finds that there is an increasing nation-wide concern over the deterioration of man's natural environment in rural as well as urban areas; that there is a serious need to study the long-term effects of our civilization on our natural environment; that while the State of Georgia is still richly endowed with relatively undisturbed natural areas, these areas are rapidly being drastically modified and even destroyed by human activities; that it is of the utmost importance to preserve examples of such areas in their natural state, not only for scientific and educational purposes but for the general well-being of our society and its people. Therefore, it shall be the purpose and function of the Department of Natural Resources to:

(1) Identify natural areas in the State of Georgia which are of unusual ecological significance;

(2) Use its influence and take any steps within its power to secure the preservation of such areas in an undisturbed natural state in order that such areas may:

(A) Be studied scientifically;

(B) Be used for educational purposes;

(C) Serve as examples of nature to the general public; and

(D) Enrich the quality of our environment for present and future generations; and

(3) Recommend areas or parts of areas for recreational use.

History. — Ga. L. 1969, p. 750, § 2; Ga. L. 1972, p. 1015, § 1511.

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, § 7.
C.J.S. — 39A C.J.S., Health and Environment, §§ 94, 96, 97, 120, 157, 158. 81A C.J.S., States, § 266.

12-3-92. "Natural areas" defined.

As used in this article, the term "natural areas" means a tract of land in its natural state which may be set aside and permanently protected or managed for the purpose of the preservation of native plant or animal communities, rare or valuable individual members of such communities, or any other natural features of significant scientific, educational, geological, ecological, or scenic value.

History. — Ga. L. 1966, p. 330, § 2; Ga. L. 1969, p. 750, § 3.

12-3-93. Powers and duties of department as to natural areas.

It shall be the duty of the Department of Natural Resources under this article, and it shall have the power and authority, to:

(1) Determine the acceptance or rejection of areas of special scientific interest that may be offered as a donation by individuals or organizations for preservation;

(2) Make recommendations to appropriate federal agencies or national scientific organizations of areas in the state that are considered worthy to be listed as natural areas of national importance;

(3) Prepare and publish in print or electronically an official state list of natural areas available for research and the teachings of conservation and natural history and recommend publication of studies made in connection with these areas;

(4) Cooperate with federal agencies, other states, counties, or organizations concerned with purposes similar to those to be carried out by the department under this article; and

(5) Take such other action as may be deemed advisable to facilitate the administration, development, maintenance, or protection of the natural area system or any part or parts thereof.

History. — Ga. L. 1966, p. 330, § 7; Ga. L. 1972, p. 1015, § 1511; Ga. L. 2010, p. 838, § 10/SB 388.

OPINIONS OF THE ATTORNEY GENERAL

Land lying within boundaries of river. — Department may acquire title to land lying within authorized boundaries of river or a section of a river previously designated by the General Assembly as a scenic river, but upon acquisition, the title must be transferred to another state agency designated by the General Assembly. 1970 Op. Att'y Gen. No. 70-6.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 120. 81A C.J.S., States, § 266.

12-3-94. Appropriation of funds to department.

Any funds necessary to carry out this article shall come from funds appropriated or otherwise made available to the department for the purposes expressed in this article.

History. — Ga. L. 1969, p. 750, § 4.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, § 76.

ARTICLE 5

SCENIC TRAILS

12-3-110. Short title.

This article shall be known and may be cited as the "Georgia Scenic Trails Act."

History. — Ga. L. 1972, p. 142, § 1.

12-3-111. Legislative purpose.

In order to provide for the increasing outdoor recreation needs of an expanding population with an increasing amount of leisure time, in order to promote the enjoyment and appreciation of the outdoor areas of Georgia, and in order to provide for a healthful alternative to motorized travel, trails should be established in urban, suburban, rural, and wilderness areas of Georgia. Therefore, the purpose of this article is to provide for a Georgia Scenic Trails System.

History. — Ga. L. 1972, p. 142, § 2.

12-3-112. "System" defined.

As used in this article, the term "system" means the Georgia Scenic Trails System provided for in this article.

History. — Ga. L. 1972, p. 142, § 3; Ga. L. 1975, p. 799, § 1.

12-3-113. Duties and powers of department as to system; requirements as to title to land traversed by system.

The Department of Natural Resources shall have the responsibility of creating a Georgia Scenic Trails System. In carrying out such responsibilities, it shall be the duty of the department to identify and plan the system, to acquire or otherwise gain control over or rights to the use of the necessary land for the system, and to construct, manage, and maintain the system. For the purpose of carrying out its primary duties as provided in this article, the department shall be authorized to exercise any powers heretofore provided by law for the department, except for the powers of eminent domain. Notwithstanding the provisions of any other statute concerning the improvement of land held in fee simple by the State of Georgia, the department shall be authorized to expend state funds for construction, maintenance, and management of trails on lands acquired through purchase, easement, lease, or donation; provided, however, that no buildings shall be constructed on any real estate to which the State of Georgia does not hold title in fee simple, unless it is held under a quitclaim deed with a reversionary interest in the federal government or under a long-term federal license agreement with a reversionary interest in the federal government.

History. — Ga. L. 1972, p. 142, § 4; Ga. L. 1972, p. 1015, § 1511; Ga. L. 1973, p. 1260, § 1.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 266.

12-3-114. Policies to guide department in creating and administering system.

The department shall be guided by the following policies in creating and administering the Georgia Scenic Trails System:

(1) A balanced system of trails throughout the state should be sought, including, but not limited to, the following types of trails:

(A) **Urban trails.** These would be located within or close to urban centers and would accommodate intensive use from urban residents. Activities would include jogging, walking, and touring historic sites and other points of interest;

(B) **Bicycle trails.** These would be located in urban, suburban, or rural areas and should be easily accessible to population centers. Bicycle trails in urban areas should provide an acceptable alternative to certain motorized transportation, and the cyclist should be protected from motorized traffic capable of traveling over 20 miles per hour;

(C) **Horse trails.** These may extend through urban, suburban, rural, or wilderness areas and should be accessible to population centers. Supporting facilities may include stables, corrals, drinking water, primitive campsites, and shelter;

(D) **Rural hiking trails.** These would be accessible to, but not within, population centers and may traverse areas of historic or scenic interest, pastureland, and woodland. Activities would include hiking, walking, jogging, touring, camping, and fishing. Support facilities may include simple toilet facilities, drinking water, primitive campsites, and picnic tables and benches;

(E) **Primitive hiking trails.** These would be primarily to provide the beauty and inspiration of the wilderness experience to an increasingly urban society. They may traverse small areas of pastoral land or roadway but would be largely in undisturbed wilderness areas. Any facilities should be primitive in nature and widely separated;

(F) **Historical trails.** These would emphasize important events in the history of Georgia and would be appropriately marked to allow the user to become familiar with such history;

(G) **Bikeways.** These would be publicly owned and maintained paved paths, ways, or trails designated and signed as bicycle and electric assisted bicycle routes and located in urban, suburban, or rural areas. Notwithstanding any other provisions of this article, the routes of such bikeways shall be determined by the local governing authority wherein such bikeways would be located and shall be approved by the Department of Transportation. For purposes of this subparagraph, the term "electric assisted bicycle" shall have the same meaning as set forth in Code Section 40-1-1; and

(H) **Combination trails.** These would be trails consisting of combinations of any of the types of trails described in subparagraphs (A) through (G) of this paragraph;

(2) The use of the trails should be limited to those activities for which intended, and appropriate steps should be taken to enforce this policy;

(3) The physical facilities provided for the trails, such as trail markers, signs, toilet facilities, shelters, drinking water, campsites, picnic tables, and parking areas, should be in keeping with the intended use of the trails and with health, sanitation, and safety requirements but should make minimum changes in the natural environment consistent with those objectives;

(4) Assistance and encouragement should be provided for local governments in the development of trails, and a procedure should be adopted whereby such trails could be regulated and maintained as a part of the system;

(5) The advice, cooperation, and assistance of other state agencies, local governments and agencies thereof, and private associations and organizations should be sought in developing and maintaining the system;

(6) Planning and developing the system should be coordinated with the regional commissions and the Department of Community Affairs;

(7) Trails should be planned, constructed, and maintained on a long-term basis, and in connection therewith long-term control of the land making up the trails should be established by the acquisition in fee simple of rights of way to such land or by leases, easements, or other appropriate long-term agreements; and where feasible, rights of way should be of sufficient width to preserve the recreational, scenic, or historical uniqueness of the trail; and

(8) A program for the education of the public on the effective use and care of trails should be established.

History. — Ga. L. 1972, p. 142, § 5; Ga. L. 1975, p. 799, § 2; Ga. L. 1989, p. 1317, § 6.3; Ga. L. 1992, p. 6, § 12; Ga. L. 2008, p. 181, § 19/HB 1216; Ga. L. 2019, p. 264, § 1/HB 454; Ga. L. 2020, p. 493, § 12/SB 429.

The 2019 amendment, effective July 1, 2019, in subparagraph (1)(B), in the second sentence, inserted "certain" in the middle, and added "capable of traveling over 20 miles per hour" at the end; and, in subparagraph (1)(G), inserted "and electric assisted bicycle" in the middle of the first sentence, and added the third sentence.

The 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, added "and" at the end of subparagraph (1)(G).

Cross references. — Operating requirements for bicycles, § 40-6-290 et seq.

JUDICIAL DECISIONS

Cited in DeWaters v. City of Atlanta, 169 Ga. App. 41, 311 S.E.2d 232 (1983).

12-3-115. Construction of bicycle trails and bikeways by Department of Transportation.

(a) The Department of Transportation is authorized and directed to construct bicycle trails and bikeways in this state after the routes of such trails and bikeways have been determined by the Department of Natural Resources or by local governing authorities and approved by the Department of Transportation pursuant to this article.

(b) Nothing contained in this Code section shall be deemed or construed to prevent local governing authorities or private associations and organizations from constructing bicycle trails in this state, provided that the power of eminent domain shall not be exercised for the acquisition or construction of such trails.

History. — Ga. L. 1973, p. 470, § 1; Ga. L. 1975, p. 799, § 3.

Cross references. — Operating requirements for bicycles, § 40-6-290 et seq.

RESEARCH REFERENCES

ALR. — State and local government liability for injury or death of bicyclist due to defect or obstruction in public bicycle path, 68 A.L.R.4th 204.

12-3-116. Responsibility and liability of owners of premises traversed by system.

(a) Any person who goes upon or through the premises, including, but not limited to, lands, waters, and private ways, of another with or without permission to hunt, fish, swim, trap, camp, hike, sightsee, or for any other purpose, without the payment of monetary consideration, or with the payment of monetary consideration directly or indirectly on his behalf by an agency of the state or federal government, is not thereby entitled to any assurance that the premises are safe for such purpose. The owner of such premises does not assume responsibility for or incur liability for any injury to person or property caused by an act or failure to act of other persons using such premises.

(b) Nothing in this Code section shall be construed as affecting the existing case law of Georgia regarding liability of owners or possessors of premises with respect to business invitees in commercial establishments or to invited guests, nor shall this Code section be construed so as to affect the attractive nuisance doctrine. In addition, nothing in this Code section shall excuse the owner or occupant of premises from

liability for injury to persons or property caused by the malicious or illegal acts of the owner or occupant.

History. — Ga. L. 1972, p. 142, § 6.

RESEARCH REFERENCES

Am. Jur. 2d. — 57A Am. Jur. 2d, Negligence, §§ 18, 120. 62 Am. Jur. 2d, Premises Liability, §§ 1, 4, 5, 6, 13, 23, 67, 87, 88, 108, 206, 209, 280.

C.J.S. — 65A C.J.S., Negligence, § 397 et seq.

ALR. — Liability for injury or death of nonparticipant caused by water skiing, 67 A.L.R.3d 1218.

Liability of swimming facility operator for injury or death allegedly resulting from defects of diving board, slide, or other swimming pool equipment, 85 A.L.R.3d 849.

Liability of swimming facility operator for injury to or death of trespassing child, 88 A.L.R.3d 1197.

Liability of swimming facility operator for injury or death inflicted by third person, 90 A.L.R.3d 533.

12-3-117. Adoption and promulgation of rules and regulations by Board of Natural Resources.

The Board of Natural Resources is authorized to adopt and promulgate such rules and regulations as may be necessary to carry out this article.

History. — Ga. L. 1972, p. 142, § 7.

Administrative rules and regulations. — State parks and historic sites system, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-5-1.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 266.

ARTICLE 6

MEMORIALS

Editor's notes. — By resolution (Ga. L. 1988, p. 2071), the General Assembly directed the Georgia Building Authority to select a site on the grounds of the James H. "Sloppy" Floyd Veterans Memorial Building to erect the Vietnam Memorial.

PART 1

FRANKLIN D. ROOSEVELT WARM SPRINGS POOLS AND SPRINGS SITE COMMISSION

12-3-130 through 12-3-133.

Reserved. Repealed by Ga. L. 2001, p. 873, § 1, effective July 1, 2001.

Editor's notes. — This part was based on Ga. L. 1979, p. 997, §§ 1-4; Ga. L. 1995, p. 1302, § 15; Ga. L. 2001, p. 4, § 12.

Part 2

Franklin D. Roosevelt Warm Springs Memorial

Editor's notes. — By resolution (see Ga. L. 1982, p. 1323), the General Assembly designated the Roosevelt Warm Springs Institute for Rehabilitation as a living memorial to President Franklin Delano Roosevelt and requested congressional and presidential acknowledgment and acceptance of the institute as a living memorial.

OPINIONS OF THE ATTORNEY GENERAL

Authorized use of firefighting equipment. — Broad grant of authority given by this part, when coupled with the specific legislative statement liberally construed, would seem to authorize the commission (now department) to use the commission's (now department's) fire truck and firefighting equipment anywhere the commission (now department) pleases, provided the commission (now department) be deemed by that body that such use would be in the furtherance of the purposes for which the commission (now department) was created. 1948-49 Op. Atty. Gen. p. 351 (see O.C.G.A. § 12-3-30 et seq.).

12-3-150. Duty of department to administer and maintain memorial.

It shall be the duty of the Department of Natural Resources to proceed with the making and developing of plans for, administering, and maintaining a memorial in the vicinity of Warm Springs, Georgia, to perpetuate the memory of the late Franklin D. Roosevelt.

History. — Ga. L. 1946, p. 31, § 2.

OPINIONS OF THE ATTORNEY GENERAL

Establishment of obligation to pay funds into state treasury resulting from a transfer of functions under this part is a matter of substantive law, and under Ga. Const. 1976, Art. III, Sec. X, Para. IV (see Ga. Const. 1983, Art. III, Sec. IX, Para. III), substantive laws cannot be contained in the General Appropriations Act. 1980 Op. Att'y Gen. No. 80-118.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 8 et seq., 91, 230, 231.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 17, 18, 20, 22, 73, 147.

12-3-151. Powers of department.

The department shall have the following powers:

(1) To acquire, hold, and dispose of personal property for accomplishing the purposes of the department under this part;

(2) To accept donations, grants, and subsidies from any source and use them in purchasing and improving such property as the department may deem necessary to effectuate its aims and purposes under this part;

(3) To employ special talent, advertise, and provide such recreational facilities as it may deem necessary and advisable;

(4) To acquire in the name of the state by donation or by purchase any real property or interest in real property in compliance with Article 2 of Chapter 16 of Title 50, the "State Properties Code."

(5) To make contracts and to execute all instruments necessary or convenient for the purposes expressed in this part, including contracts for construction of such memorial and improvements thereto;

(6) To construct, erect, acquire, own, repair, remodel, maintain, add to, extend, improve, equip, operate, and manage self-liquidating projects or concessions to be located on property owned by the department;

(7) To accept loans or grants of money, materials, or property of any kind from the United States of America or any agency or instrumentality thereof, including the Department of Housing and Urban Development or any similar agency, or from any state or any political subdivision, agency, or instrumentality thereof, and such loan or grant shall be upon such terms and conditions as the lending or granting body may impose;

(8) To fix and recommend from time to time fees, rentals, and other charges for the use of the facilities and services furnished by the department; to charge and collect them; and to lease and to make contracts with any person with respect to the use of any facility or part thereof;

(9) To do all things necessary or convenient to carry out the powers expressed in this part.

History. — Ga. L. 1946, p. 31, § 3; Ga. L. 1953, Jan.-Feb. Sess., p. 118, § 1; Ga. L. 1960, p. 1039, § 1; Ga. L. 1980, p. 593, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Department authorized to conduct concession stands at site. — This section grants the commission (now department) full authority to conduct concession stands at the park site, provided the profits from such stands are used for the advancement of the purpose for which the commission (now department) was created. 1948-49 Op. Att'y Gen. p. 350 (see O.C.G.A. § 12-3-151).

Department may contract for firefighting equipment. — Commission

(now department) may in the commission's (now department's) discretion conclude contracts with neighboring towns for the use of the firefighting equipment if by so doing the commission (now department) may further the purposes for which the commission (now department) was created. 1948-49 Op. Att'y Gen. p. 351.

Under the authority contained in Ga. L. 1946, p. 31, §§ 3 and 4 (see O.C.G.A. §§ 12-3-151 and 12-3-153), the Franklin D. Roosevelt Warm Springs Memorial Commission (now Department of Natural Resources) has the authority and power to enter into a contract with the Warm Springs Foundation, a private corporation, whereby the latter furnishes, as consideration for the use of the firefighting equipment, the necessary water supply to the department. 1948-49 Op. Att'y Gen. p. 353.

Purchases by the commission (now department) are subject to general statutory budgetary requirements, as are those of other state departments. 1950-51 Op. Att'y Gen. 442.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 8 et seq., 227, 229.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 17 et seq., 73, 147.

12-3-152. Franklin D. Roosevelt Warm Springs Memorial Advisory Committee created; composition; duties of committee; officers; quorum; reimbursement for expenses; appointment of successors; terms of members.

(a) There is created the Franklin D. Roosevelt Warm Springs Memorial Advisory Committee. The members of the committee shall consist of the members of the heretofore existing Franklin D. Roosevelt Warm Springs Memorial Commission in office on May 1, 1981, each of whom shall serve for the unexpired portion of his respective office on the commission.

(b) The committee shall consult with and advise the Governor, the Board of Natural Resources, and the department concerning the execution of the functions conferred on the department by this part.

(c) The committee shall elect one of its members as chairman and another as vice-chairman and shall also elect a secretary and treasurer, who need not be members of the committee.

(d) A majority of the committee shall constitute a quorum.

(e) No member of the committee shall be entitled to compensation, but each member shall be reimbursed from state funds for actual transportation costs while traveling by public carrier, at the legal mileage rate for use of a personal automobile, and the actual cost of lodging and meals while away from his office on official state business.

(f) As the terms of office of members expire, successors shall be appointed by the Governor for terms of seven years and until their successors are appointed and qualified.

History. — Ga. L. 1980, p. 593, § 1; Ga. L. 1981, p. 849, § 1; Ga. L. 1982, p. 3, § 12.

Cross references. — Legal mileage allowance, § 50-19-7.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 8, 21, 91.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 17 et seq., 73.

12-3-153. Construction of part.

This part shall be liberally construed to effect the purposes hereof.

History. — Ga. L. 1946, p. 31, § 4.

OPINIONS OF THE ATTORNEY GENERAL

Contracting for firefighting equipment authorized. — Under the authority contained in Ga. L. 1946, p. 31, §§ 3 and 4 (see O.C.G.A. §§ 12-3-151 and 12-3-153), the Franklin D. Roosevelt Warm Springs Memorial Commission (now Department of Natural Resources) has the authority and power to enter into a contract with the Warm Springs Foundation, a private corporation, whereby the latter furnishes, as consideration for the use of the firefighting equipment, the necessary water supply to the department. 1948-49 Op. Att'y Gen. p. 353.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 8, 21, 91.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 17 et seq., 73.

Part 3

Ty Cobb Memorial

Administrative rules and regulations. — Transfer of Ty Cobb Baseball Memorial Commission, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-5-7.

12-3-170. Making and developing plans for administration and maintenance of memorial or shrine.

It shall be the duty of the Department of Natural Resources to proceed with the making and developing of the plans for administering and maintaining a memorial or shrine at or in the vicinity of Royston, Franklin County, Georgia, to perpetuate the memory of the late Ty Cobb.

History. — Ga. L. 1962, p. 706, § 2.

Editor's notes. — Pursuant to Ga. L. 1976, p. 736, the Ty Cobb Baseball Memorial was conveyed to the City of Royston on October 15, 1976.

12-3-171. Powers of department as to memorial or shrine.

The department shall have the following powers and authority under this part:

(1) To acquire, hold, and dispose of personal property for accomplishing the purposes of the department under this part;

(2) To accept donations, grants, and subsidies from any source and use them in purchasing and improving such property as the department may deem necessary to effectuate its aims and purposes under this part;

(3) To employ special talent, advertise, and provide such recreational facilities as it may deem necessary and advisable;

(4) To provide for public admission to such memorial or shrine and to provide for revenue for maintenance and improvements by charging admissions or in other ways as may be desired, provided that all such income shall be used for the advancement of the purposes of the department under this part;

(5) To acquire in its own name, by donation or by purchase, on such terms and conditions and in such manner as it may deem proper, in accordance with and subject to the provisions of law, real property or rights or easements therein or franchises necessary or convenient for the purposes specified in this part; and to lease, make contracts with respect to the use of, or dispose of the same in any manner as it deems best;

(6) To make contracts and to execute all instruments necessary or convenient for the purposes expressed in this part, including contracts for construction of such memorial or shrine and improvements thereto;

(7) To construct, erect, acquire, own, repair, remodel, maintain, add to, extend, improve, equip, operate, and manage self-liquidating projects or concessions to be located on property owned, leased, or otherwise used by the department;

(8) To accept loans or grants of money, materials, or property of any kind from the United States of America or any agency or instrumentality thereof, including the Department of Housing and Urban Development or any similar agency, or from any state or any political subdivision, agency, or instrumentality thereof, upon such terms and conditions as the lending or granting body may impose;

(9) To fix and recommend from time to time fees, rentals, and other charges for the use of the facilities and services furnished by the

department; to charge and collect the same; and to lease and to make contracts with any person with respect to the use of any facility or part thereof;

(10) To provide for honorary committees of representative citizens in every section of the United States who are interested in perpetuating the name of Ty Cobb; and

(11) To do all things necessary or convenient to carry out the powers expressed in this part.

History. — Ga. L. 1962, p. 706, § 3; Ga. L. 1972, p. 1015, § 1508; Ga. L. 1982, p. 3, § 12.

12-3-172. Construction of part.

This part shall be liberally construed to effect the purposes hereof.

History. — Ga. L. 1962, p. 706, § 4.

Part 4

Stone Mountain Memorial Association

Cross references. — Prohibition against selling real property, § 50-16-3.1.

12-3-190. Short title.

This part may be cited as the "Stone Mountain Memorial Association Act."

History. — Ga. L. 1958, p. 61, § 1.

12-3-191. Definitions.

As used in this part, the term:

(1) "Association" means the Stone Mountain Memorial Association created by this part or any authority or body in which the duties and liabilities of the association created hereby may hereafter become vested.

(2) "Bonds" or "revenue bonds" means any bonds issued by the association under this part, including refunding bonds.

(3) "Cost of project" means the cost of acquiring, constructing, developing, improving, equipping, adding to, extending, remodeling, managing, and operating the project or any part thereof, including, without being limited to, the cost of all lands, properties, franchises,

easements, and rights in property; the cost of all machinery and equipment necessary for constructing, improving, developing, adding to, remodeling, managing, maintaining, and operating the project; financing charges and interest accruing on any bonds issued by the association prior to and during the period estimated as necessary to complete the construction, development, and improvement of the project, and for one year thereafter; the cost of plans and specifications; the cost of engineering, engineers, and architects; legal fees; other expenses necessary or incident to determining the feasibility or practicality of the project or any part thereof; administrative expenses; and such other expenses as may be necessary or incidental to the financing authorized by this part, including fiscal agents' fees and the estimated cost of operating the project for a period not exceeding 12 months, and the expense of construction, development, improvement, management, maintenance, operation, or any other action permitted by this part with respect to the project and the placing of the same in operation, and including any other expense authorized by this part to be incurred by the association which is incurred with respect to any action as regards the project. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a cost of the project and may be paid or reimbursed as such out of the proceeds of bonds issued under this part for such project.

(4) "Governing authority of a county" means the commissioner, board of commissioners, commission, or other person or body of persons at the time entrusted by law with the administration of the fiscal affairs of any county.

(5) "Governing authority of a municipality" means the council, board of aldermen, or other person or body of persons at the time entrusted by law with the administration of the fiscal affairs of any municipal corporation.

(6) "Master plan" means that document created by Robert and Company and adopted by the association in December, 1992, consisting of districts and plans for various construction projects as amended prior to January 1, 1995, and as it may be amended from time to time pursuant to Code Section 12-3-194.2.

(7) "Project" means Stone Mountain and property adjacent thereto acquired by the association and all accommodations, utilities, facilities, services, and equipment necessary or convenient, and all property, real, personal, or mixed, used or useful, including franchises and easements, in constructing, erecting, improving, remodeling, developing, equipping, adding to, extending, maintaining, managing, and operating Stone Mountain, located in DeKalb County, Georgia, and property adjacent thereto, as a Confederate memorial and public recreational area, and the construction, improvement, development,

maintenance, management, operation, and extension of any part thereof, as to which the association has undertaken or agreed to undertake any action permitted by this part.

History. — Ga. L. 1958, p. 61, § 2; Ga. L. 1964, p. 357, § 1; Ga. L. 1995, p. 105, § 3.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, former paragraphs (4) and (5) were redesignated as present paragraphs (5) and (4), respectively, to alphabetize the definitions.

12-3-192. Creation of association.

(a) There is created a body corporate and politic and instrumentality and public corporation of this state to be known as the Stone Mountain Memorial Association. It shall have perpetual existence. In such name it may contract and be contracted with, sue and be sued, implead and be impleaded, and complain and defend in all courts.

(b) The association is assigned to the Department of Natural Resources for administrative purposes only.

History. — Ga. L. 1958, p. 61, § 3; Ga. L. 1972, p. 1015, § 1520.

Cross references. — Effect of assignment for administrative purposes, § 50-4-3.

12-3-192.1. Purposes of association.

The purposes of the Stone Mountain Memorial Association shall include:

(1) To preserve the natural areas situated within the Stone Mountain Park area;

(2) To provide access to Stone Mountain for Georgia's citizens; and

(3) To maintain an appropriate and suitable memorial for the Confederacy.

History. — Code 1981, § 12-3-192.1, enacted by Ga. L. 1999, p. 160, § 1.

12-3-193. Members of association; terms; vacancies; officers; bylaws; quorum; reimbursement for expenses; compensation of employees; books and records.

(a) The association shall be composed of the commissioner of natural resources or his or her designee and eight members to be appointed by the Governor, one of whom shall be a resident of the metropolitan Atlanta area. The members appointed by the Governor shall be appointed for terms of four years, with the beginning and ending dates of terms to be specified by the Governor, and until the appointment and

qualification of their successors, except that the fourth member to be appointed by the Governor as provided for in this part shall be appointed for an initial term of three years and until the appointment and qualification of his or her successor, and except that the members of the association appointed by the Governor and in office on July 1, 1978, shall continue in office until the expiration of the terms for which they were appointed and until the appointment and qualification of their successors, and except that the fifth member to be appointed by the Governor shall be appointed for an initial term beginning July 1, 1985, and ending December 31, 1987, and until the appointment and qualification of a successor. Appointments by the Governor to fill vacancies on the association shall be made for the unexpired term.

(b) The Governor shall appoint the chairperson of the association for a term of one year from among the members of the association which the Governor appoints. A member may serve no more than two consecutive terms as chairperson nor more than two terms as chairperson in any one four-year term as a member of the association. The association shall also elect a secretary and a treasurer who need not be members. The office of secretary and treasurer may be combined in one person.

(c) The association may make such bylaws for its government as is deemed necessary but is under no duty to do so.

(d) Any five members of the association shall constitute a quorum necessary for the transaction of business, and a majority vote of those present at any meeting at which there is a quorum shall be sufficient to do and perform any action permitted to the association by this part. No vacancy on the association shall impair the right of a quorum to transact any and all business as aforesaid.

(e) The members shall receive no compensation for their services, but all members shall be entitled to be reimbursed for actual expenses, including travel and any other expenses, incurred while in the performance of their duties. Employees of the association shall receive reasonable compensation, to be determined by the members of the association, for their services.

(f) Members of the association shall be accountable as trustees. They shall cause to be kept adequate books and records of all transactions of the association, including records of income and disbursements of every nature. The books and records shall be inspected and audited by the state auditor at least once in each year.

History. — Ga. L. 1958, p. 61, § 4; Ga. L. 1978, p. 2041, §§ 1, 2; Ga. L. 1984, p. 501, § 1; Ga. L. 1985, p. 149, § 12; Ga. L. 1985, p. 465, § 1; Ga. L. 1990, p. 872, § 2; Ga. L. 1991, p. 1690, § 1; Ga. L. 1995, p. 105, § 4.

Cross references. — Legal mileage allowance, § 50-19-7.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, a hyphen was inserted between "four" and "year" in the second sentence of subsection (b).

OPINIONS OF THE ATTORNEY GENERAL

Meetings of the association may be conducted by speaker telephone conference when public access is provided. 1985 Op. Att'y Gen. No. 85-26.

12-3-194. Powers of association generally.

The association shall have, in addition to any other powers conferred in this part, the following powers:

(1) To have a seal and alter it at its pleasure;

(2) To acquire Stone Mountain and such surrounding area as the association may deem necessary for the proper development, management, preservation, and protection of Stone Mountain, by purchase from the owner or owners thereof, and to pay therefor such price as may be agreed upon;

(3) To acquire, by purchase, lease, or otherwise, and to hold, lease, and dispose of, in any manner, real and personal property of every kind and character for its corporate purposes; provided, however, that as provided in subsection (b) of Code Section 50-16-3.1, no real property may be sold unless necessary for a public road right of way;

(4) To appoint such additional officers, who need not be members of the association, as the association deems advisable, and to employ such experts, agents, and employees as may be in its judgment necessary to carry on properly the business of the association; to fix the compensation for such officers, experts, agents, and employees and to promote and discharge same; provided, however, that all legal services for the association except legal services in validating and approving bonds authorized by this part shall be rendered by the Attorney General and his staff and no fee shall be paid to any attorney or law firm for legal services within or outside the State of Georgia, except for validating and approving such bonds. The association shall have authority to pay such federal fees, stamps, and all licenses, together with any court costs that may be incurred by virtue of the powers granted by this part;

(5) To make such contracts and agreements as the legitimate and necessary purposes of this part shall require and to make all other contracts and agreements as may be necessary or convenient in the management of the affairs of the association or in the operation of the project, including, but not limited to, any lease of the project or any part thereof, and any contract with respect to the use of the property or any part thereof for concessions, services, or accommodations to be

offered to the public within the project area. Any and all persons, firms, and corporations, including any public officer or agency, are authorized to enter into contracts, leases, or agreements with the association upon such terms and for such purposes as may be deemed advisable;

(6) To construct, reconstruct, lay out, repair, develop, improve, maintain, equip, manage, and operate the project as defined in Code Section 12-3-191, the cost of any such action to be paid in whole or in part from the proceeds of revenue bonds of the association; provided, however, that:

(A) The association shall not undertake any such activity having a projected cost of over $1 million unless it has first evaluated the feasibility of involving private persons or entities in the development, construction, operation, and management of the project, including the proposed activities, and has filed a copy of such evaluation with the Office of Planning and Budget and with the Recreational Authorities Overview Committee; and

(B) Except as contained in the master plan as it existed on January 1, 1995, no development shall occur within the bounds of the natural district. The venues for the 1996 Summer Olympic Games for archery and for the velodrome shall be removed at the completion of the Olympic Games and the grounds returned to an undeveloped state. After the removal of such construction, only construction contained in the master plan as it existed on January 1, 1995, may take place in the natural district except as the master plan may be amended in accordance with Code Section 12-3-194.2;

(7) To borrow money for any of its corporate purposes and to issue bonds and other evidence of indebtedness for such purposes as provided in this part;

(8) To pledge to the payment of its bonds any property or revenues derived therefrom;

(9) To establish rates, tolls, fees, and charges for its facilities and services, including fees or charges for access to the memorial, and to alter such rates and charges, and to collect and enforce collection of the same; provided, however, that the association shall be a nonprofit organization, and such rates, tolls, fees, and charges shall be only sufficient to produce funds necessary to construct, reconstruct, develop, improve, equip, manage, and operate the project and to pay the principal of and the interest on obligations of the association and expenses in connection therewith and to create reserves therefrom for the purpose of adding to, extending, improving, and equipping the project;

(10) To exercise any power which may be granted or authorized to be granted to private corporations, not in conflict with the Constitution and laws of this state nor with the other provisions of this part;

(11) To prescribe rules and regulations for the operation of the project, should the association deem such rules and regulations necessary;

(12) To do and perform all things necessary or convenient to carry out the powers conferred upon the association;

(13) To make reasonable regulations for the installation, construction, maintenance, repair, renewal, removal, and relocation of pipes, mains, conduits, cables, wires, poles, towers, tracts, and other equipment and appliances of any public utility in, on, along, over, or under the project or any part thereof; and

(14) To sell, upon obtaining a license from the Department of Revenue, alcoholic beverages, as defined in Title 3, at any motel, hotel, restaurant, coliseum area, or convention center of the association and at any group or meeting function closed to the general public and for which services are provided by contract with the association within or upon property or facilities owned, operated, used, or controlled by the Stone Mountain Memorial Association, but no licenses for the sale of alcoholic beverages in unbroken packages for carry-out purposes shall be issued.

History. — Ga. L. 1958, p. 61, § 5; Ga. L. 1959, p. 333, § 1; Ga. L. 1982, p. 3, § 12; Ga. L. 1982, p. 804, § 1; Ga. L. 1983, p. 3, § 9; Ga. L. 1988, p. 218, § 1; Ga. L. 1992, p. 6, § 12; Ga. L. 1993, p. 1781, § 1; Ga. L. 1995, p. 105, § 5; Ga. L. 1996, p. 6, § 12.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, "$1 million" was substituted for "$1,000,000.00" in subparagraph (6)(A).

Pursuant to Code Section 28-9-5, in 1995, in paragraph (6), a comma was inserted between "provided" and "however" in the introductory language and a semicolon was substituted for the period at the end of subparagraph (6)(B).

12-3-194.1. Police and legislative powers of association; appointment of peace officers; jurisdiction and venue of park offenses; sale of confederate memorabilia.

(a)(1) The association is empowered to exercise such of the police powers of the state as may be necessary to maintain peace and order and to enforce any and all user and personal conduct restrictions upon the properties and facilities and the persons under its jurisdiction to the extent that such is lawful under the laws of the nation and the state.

(2) In addition to the powers provided in paragraph (1) of this subsection, the association is empowered to exercise the police

powers of the state in an area extending not more than 500 yards from the park boundaries adjacent to the entrances and exits, other than entrances or exits adjacent to the corporate limits of a municipality, which are used regularly by patrons attending functions at Stone Mountain Park and in an area extending not more than 500 yards from the tennis center.

(b) The association shall have legislative power to adopt reasonable ordinances relating to the property, affairs, and administration of Stone Mountain Park for which no provision has been made by general law and which are not inconsistent with the general laws or the Constitution of this state. The association is further authorized to adopt ordinances adopting by reference any or all of the provisions of Chapter 6 of Title 40 in accordance with Code Section 40-6-372. Within the limits of Stone Mountain Park and within the area described in paragraph (2) of subsection (a) of this Code section, the association is authorized to appoint peace officers, who are authorized and empowered to serve and execute warrants and to make arrests for violation of ordinances adopted by the association. Within the limits of Stone Mountain Park and within the area described in paragraph (2) of subsection (a) of this Code section, such peace officers shall have the same authority, powers, and privileges regarding enforcement of laws as peace officers employed by county and municipal police departments of this state. Prosecutions for violations of the ordinances of the association shall be upon citation or upon accusation as provided in Code Sections 15-10-62 and 15-10-63. The association may provide that ordinance violations may be tried upon citations with or without a prosecuting attorney as well as upon accusations in the manner prescribed in Code Section 15-10-63.

(c) For purposes of this Code section, the Magistrate Court of DeKalb County shall have jurisdiction and authority to hear and try those offenses occurring within the limits of Stone Mountain Park which violate the ordinances of the association and to punish violations of such ordinances, all in the manner and to the extent prescribed in Article 4 of Chapter 10 of Title 15. The State Court of DeKalb County shall have jurisdiction and authority to hear and try all cases removed from the Magistrate Court of DeKalb County for jury trial by any defendant charged with one or more violations of the ordinances of the association. The Superior Court of DeKalb County shall have jurisdiction to review all convictions by certiorari to the superior court. The jurisdiction and authority of the courts of DeKalb County provided for in this Code section shall be in addition to and not in limitation of the jurisdiction and authority of such courts as may be now or hereafter provided.

(d) The Stone Mountain Memorial Association shall continue the practice of stocking, restocking, and sales of confederate memorabilia.

History. — Ga. L. 1963, p. 649, § 1; Code 1981, § 12-3-194.1, enacted by Ga. L. 1985, p. 448, § 1; Ga. L. 1986, p. 10, § 12; Ga. L. 2000, p. 1178, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, in subsection (d), a comma was added following "restocking".

Editor's notes. — The provisions of subsection (b) which relate to the appointment of security officers were previously enacted in similar form by Ga. L. 1963, p. 649, § 1, which was not codified in the O.C.G.A. until 1985.

12-3-194.2. Adherence to master plan; survey required; amendment of plan; uses to which natural district may be put.

(a) The association, in the exercise of its authority to develop, manage, preserve, and protect Stone Mountain, shall be guided by and shall adhere to the master plan. That area shown on the master plan as the "natural district" shall be surveyed on or before December 1, 1995, by a Georgia registered engineer or surveyor and that survey, as approved by the association members at a regularly scheduled public meeting of the association, shall become a part of the master plan.

(b) Except as otherwise provided in subsection (c) of this Code section, the association may, from time to time, amend the master plan but only in compliance with the following procedure:

(1) Any proposed amendment to the master plan shall be described in written form and, if capable of such description, in visual form and presented publicly at a regular meeting of the association;

(2) A brief summary of the proposed change shall be advertised in the legal organs of DeKalb and Gwinnett counties along with the date on which a meeting of the association shall be held to consider the proposed change. Directions as to the manner of receiving comments from the public, including the time and place of the public hearing on the proposed change required by paragraph (6) of this subsection, shall be provided. Information describing the proposed change and the public hearing also shall be distributed to the media by news release and published in appropriate publications of the association;

(3) The association shall transmit three copies of the summary provided for in paragraph (2) of this subsection to the legislative counsel. The copies shall be transmitted at least 30 days prior to the date of the association's intended action. Within three days after receipt of the copies, if possible, the legislative counsel shall furnish the presiding officers of each house with a copy of the summary, and the presiding officers shall assign the summary to the chairperson of the appropriate standing committee in each house for review and provide a copy to any member of that house who makes a standing written request. In the event a presiding officer is unavailable for the

purpose of making the assignment within the time limitations, the legislative counsel shall assign the summary to the chairperson of the appropriate standing committee and provide the copies to members of each house who have made standing written requests. The legislative counsel shall also transmit within the time limitations provided in this paragraph a notice of the assignment to the chairperson of the appropriate standing committee;

(4) In the event a standing committee to which a summary is assigned as provided in paragraph (3) of this subsection files an objection to a proposed amendment to the master plan with the chairperson of the association prior to its adoption and the association adopts the proposed amendment over the objection, the amendment may be considered by the branch of the General Assembly whose committee objected to its adoption by the introduction of a resolution for the purpose of overriding the amendment at any time within the first 30 days of the next regular session of the General Assembly. It shall be the duty of the association if it adopts a proposed amendment to the master plan over such objection to notify the presiding officers of the Senate and the House of Representatives, the chairpersons of the Senate and House committees to which the summary was referred, and the legislative counsel within ten days after the adoption of the amendment to the master plan. In the event the resolution is adopted by such branch of the General Assembly, it shall be immediately transmitted to the other branch of the General Assembly. It shall be the duty of the presiding officer of the other branch of the General Assembly to have such branch, within five days after the receipt of the resolution, to consider the resolution for the purpose of overriding the amendment to the master plan. In the event the resolution is adopted by two-thirds of the votes of each branch of the General Assembly, the amendment shall be void on the day after the adoption of the resolution by the second branch of the General Assembly. In the event the resolution is ratified by less than two-thirds of the votes of either branch, the resolution shall be submitted to the Governor for his or her approval or veto. In the event of the Governor's veto, the amendment to the master plan shall remain in effect. In the event of the Governor's approval, the amendment to the master plan shall be void on the day after the date of his or her approval;

(5) Any proposed changes to the boundaries of that area delineated on the master plan as the natural district shall be surveyed and marked at least seven days prior to the public hearing required by paragraph (6) of this subsection in such a fashion as to be readily discernible on the ground by members of the public;

(6) A public hearing shall be held no earlier than 15 days after the most recent publication of the notice required by paragraph (2) of this

subsection in either the legal organ of DeKalb or Gwinnett County; and

(7) No sooner than 30 days after the meeting of the association at which the proposed change was announced pursuant to paragraph (1) of this subsection, the association shall meet and consider in an open and public meeting the proposed change which, if approved, shall become a part of the master plan, subject, however, to the provisions of paragraph (4) of this subsection.

(c)(1) The properties designated as the natural district on the master plan, as it exists on April 14, 1997, shall be held by the association in trust for the benefit of the present and future generations of the people of the State of Georgia. The natural district shall be put to the designated use or uses which are shown within the master plan as it exists on April 14, 1997, which use or uses are found to confer the best and most important benefit to the public. The natural district shall not be put to any uses other than those shown on the master plan except pursuant to the following procedures:

(A) If the association determines that there may exist an imperative and unavoidable necessity for a use of the natural district other than those uses identified in the master plan, the association shall hold a public hearing thereon in either DeKalb County or Gwinnett County;

(B) The association shall consider fully all testimony relative to the proposed use of the natural district and submit a recommendation to the General Assembly; and

(C) The General Assembly may then determine if such use is in the public interest and may by statute or joint resolution approve such other use of the natural district.

(2) Neither the designation of a piece of property as a part of the natural district nor any action taken by the association pursuant to this Code section shall operate to void, preempt, or dilute any protected status which that property had or would have had but for its inclusion within the natural district.

(3) Notwithstanding any other provision of this Code section to the contrary, the association shall:

(A) Consider in all of its decisions regarding changes to, and implementation of, the master plan the effect of such change or implementation upon the rare plant known as the rock aster, *Aster Avitus,* growing within Stone Mountain Park; and

(B) Maintain the services of a qualified naturalist to assure that rare and endangered plants within Stone Mountain Park, whether growing inside or outside of the natural areas, are protected.

History. — Code 1981, § 12-3-194.2, enacted by Ga. L. 1995, p. 105, § 6; Ga. L. 1996, p. 6, § 12; Ga. L. 1997, p. 839, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, "April 14, 1997" was substituted for "the effective date of this subsection" in two places in paragraph (c)(1).

12-3-195. Obligations of state under lease contracts with association; failure or refusal of lessee to perform; assignment of rentals due.

(a) The rentals contracted to be paid by the state or any department, agency, or institution of the state to the association under leases entered upon pursuant to this part shall constitute obligations of the state for the payment of which the good faith of the state is pledged. Such rentals shall be paid as provided in the lease contracts from funds appropriated for such purposes by the terms of the Constitution of Georgia. It shall be the duty of the state or any department, agency, or institution of the state to see to the punctual payment of all such rentals.

(b) In the event of any failure or refusal on the part of lessees punctually to perform any covenant or obligation contained in any lease entered upon pursuant to this part, the association may enforce performance by any legal or equitable process against lessees, and consent is given for the institution of any such action.

(c) The association shall be permitted to assign any rental due it by the lessees to a trustee or paying agent as may be required by the terms of any trust indenture entered into by the association.

History. — Ga. L. 1958, p. 61, § 22; Ga. L. 1964, p. 357, § 3.

12-3-196. Condemnation of property for developing Stone Mountain; conveyance of property and rights of way to association; facilities, equipment, and services.

(a) In the event any portion of Stone Mountain proper or of the area surrounding the mountain, which portion or area may be necessary in the opinion of the Governor for use in developing the property, cannot be acquired by purchase, it shall be the duty of the Governor, the state auditor, and the Attorney General to acquire the same by condemnation proceedings, such condemnation proceedings to be subject to the applicable provisions of law relating to the condemnation of property by the State of Georgia. The Governor, the state auditor, and the Attorney General are authorized and directed to proceed to acquire by condemnation, as authorized by such law, and in the way and manner provided by such law, any such portion of the property deemed by the Governor to be necessary for the proper development of Stone Mountain which cannot be acquired by the association by gift or purchase.

(b) The Governor is authorized to convey to the association, on behalf of the state, Stone Mountain and the property adjacent thereto or any interest therein and any rights of way now or hereafter owned by the state. The consideration for such conveyance shall be determined by the Governor and expressed in a deed of conveyance; provided, however, that such consideration shall be nominal, the benefits flowing to the state and its citizens constituting full and adequate actual consideration. Upon such conveyance being executed and delivered, all right, power, and authority of any instrumentality, agency, department, or office of the state to possess or improve or otherwise deal with the Stone Mountain property, except as provided by this part, shall terminate.

(c) The governing authority of any county or municipality of this state is authorized and empowered on behalf of such county or municipality to convey to the association any interest of such county or municipality in Stone Mountain and any property adjacent thereto and any rights of way for roads or highways, including such roads and highways traversing any such property, now or hereafter owned by such county or municipality. The consideration for any such conveyance shall be determined by the governing authority of such county or municipality and expressed in a deed of conveyance; provided, however, that such consideration shall be nominal, the benefits flowing to the county or municipality and its citizens constituting full and adequate actual consideration.

(d) The state, any department, board, or agency of the state, and any county or municipality of the state are authorized to furnish to the association any available facilities, machinery, equipment, services, or labor needful or necessary in the improvement of the property of the association, without cost to the association. The expense of any such facilities or services shall be deemed proper and legitimate expenses of the state or of such department, board, agency, county, or municipality.

History. — Ga. L. 1958, p. 61, § 6; Ga. L. 1982, p. 3, § 12.

Cross references. — Condemnation procedure generally, T. 22, C. 2.

12-3-197. Transfer of funds to association.

The Governor is authorized and directed to transfer to the association, for use in acquiring Stone Mountain and the surrounding area, any available funds of the state not otherwise appropriated.

History. — Ga. L. 1958, p. 61, § 7.

12-3-198. Location, construction, improvement, and maintenance of highways, roads, streets, and rights of way.

(a) The State Transportation Board is authorized to make such studies and estimates in connection with the location and relocation of highways, roads, streets, and rights of way in connection with the project, whether within or without the project area, as may be necessary to the relocation of any roads, streets, or highways within the property of the association. The board shall, at the expense of the Department of Transportation, relocate such roads, streets, and highways so as to conform to the plan of the association for the development and improvement of the project.

(b) The association may grant rights of way and easements for highways and roads within the project area to the Department of Transportation. The Department of Transportation is authorized to lay out, construct, improve, and maintain any such roads and rights of way. The cost of any such undertaking shall be deemed to be a proper and legitimate expense of the Department of Transportation.

(c) The State Transportation Board or its successors and the Department of Transportation are empowered to acquire, in any manner permitted by law, real property, any interest therein, or rights of way for the location and relocation of highways and roads located in proximity to the project. The board and the department are authorized to expend any available funds for the purpose of such locating and relocating and for constructing, improving, and maintaining any such highways and roads; and the cost of any such undertaking shall be deemed a proper and legitimate expense of such board or department.

History. — Ga. L. 1958, p. 61, § 8.

12-3-199. Association fund.

(a) All revenues in excess of all obligations of the association of every nature which are not otherwise pledged or restricted as to disposition and use by the terms of any trust indenture entered into by the association for the security of bonds issued under this part, together with all receipts and gifts of every kind and nature whatsoever, shall be and become the association fund.

(b) The association, in its discretion, shall pledge or utilize the association fund for any one or more of the following purposes:

(1) Pledges to the payment of any bond issue requirements, or to sinking or reserve funds, as may be provided for under the terms of this part;

(2) Payment of any outstanding unpaid bond obligations or administrative expenses;

(3) The most advantageous obtainable purchase, redemption, and retirement of the association's bonds pursuant to privileges accorded to the association in the various issues of bonds outstanding; and

(4) Investment or reinvestment in any of the following obligations:

(A) Obligations of this state or other states;

(B) Obligations issued by the United States;

(C) Obligations fully insured or guaranteed by a United States government agency;

(D) Obligations of any corporation of the United States;

(E) Prime bankers' acceptances;

(F) The local government investment pool established by Chapter 83 of Title 36, the "Local Government Investment Pool Act";

(G) Repurchase agreements;

(H) Obligations of other political subdivisions of this state; and

(I) Certificates of deposit;

provided, however, that funds so invested and income from such investments shall always be available to and ultimately expended for other purposes authorized by this chapter.

(c) After all outstanding bonds or obligations of the association issued to pay the cost of the project or any part thereof have been paid or satisfied by payment redemption and retirement, or otherwise, all revenues from the project in excess of those necessary to maintain, operate, and manage such project (including extensions, renewals, and additions thereto), unless otherwise allocated or pledged as provided in this Code section, shall be paid to the state treasury and become a part of the general funds of the state.

History. — Ga. L. 1958, p. 61, § 9; Ga. L. 1982, p. 1864, §§ 1, 2.

12-3-200. Revenue bonds — Power of association to adopt resolutions providing for and to issue bonds.

The association, or any association, authority, or body which has succeeded or which may in the future succeed to the powers, duties, and liabilities vested in the association, shall have power and is authorized at one time, or from time to time, to issue negotiable bonds in a sum not to exceed $15 million in principal amount outstanding at any one time, for the purpose of paying all or any part of the cost of the project, including the acquisition of the property authorized by paragraph (2) of Code Section 12-3-194 to be acquired by the association, in the event

funds for such acquisition do not become available under Code Section 12-3-197. The association shall also have the power to adopt all necessary and appropriate resolutions to provide for the issuance of such negotiable bonds.

History. — Ga. L. 1958, p. 61, § 10; Ga. L. 1959, p. 333, § 2; Ga. L. 1964, p. 357, § 2; Ga. L. 1967, p. 794, § 1.

Cross references. — Revenue bonds generally, § 36-82-60 et seq.

12-3-201. Revenue bonds — Sale by public competitive bidding; determination of price and rate of interest; dating of bonds; payment of principal and interest; time of maturity.

(a) All bonds of the association shall be sold at public competitive bidding at a price of not less than par plus accrued interest to date of delivery, provided that the association may obligate itself to deliver any given issue of bonds to the purchasers thereof within any reasonable period of time after the sale and may pay as a penalty for delay in such delivery such reasonable sums as may be agreed upon in advance in writing with the purchasers. All bonds of the association shall be advertised and offered prior to the fixing of the interest rates thereon; and bids thereon shall be competitive as to the interest rate offered by each bidder, provided that as to any issue of bonds the association may make rules limiting the number of divisions into which the bonds of various maturity dates may be divided and the number and percentage spreads of the different interest rates which may be bid to apply to such divisions of bonds. The association may require reasonable security for the performance of the contract of purchase of any successful bidder at any public competitive bidding.

(b) Bonds shall be dated, shall bear interest determined as provided in subsection (a) of this Code section, and shall be payable as to both principal and interest in such manner as may be determined by the association. The principal of and interest on such bonds shall be payable solely from the special fund provided in Code Section 12-3-212 for such payment.

(c) Bonds shall mature not more than 25 years from the date of such bonds and may be made redeemable before maturity at the option of the association at such price or prices and under such terms and conditions as may be fixed by the association in the resolution providing for the issuance of bonds.

History. — Ga. L. 1958, p. 61, § 11.

12-3-202. Revenue bonds — Form; denominations; place of payment of principal and interest; issuance in coupon or registered form.

The association shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of the principal and interest thereon, which may be at any bank or trust company within or without the state. The bonds may be issued in coupon or registered form, or both, as the association may determine, and provision may be made for the registration of any coupon bond as to principal alone or as to both principal and interest.

History. — Ga. L. 1958, p. 61, § 12.

12-3-203. Revenue bonds — Signatures; seal.

All bonds shall be signed by the chairman of the association, shall be attested by the secretary thereof, and shall bear the official seal of the association. Any coupons attached thereto shall bear the signature of the chairman of the association and may, if the resolution authorizing the issuance of the bonds so provides, be attested by the secretary of the association. Any coupon may bear the facsimile signature of such persons, and any bond may be signed, sealed, and attested on behalf of the association by such persons as at the actual time of the execution of such bonds shall be duly authorized to hold the proper office, although at the date of such bonds such persons may not have been so authorized or shall not have held such office. In case any officer whose signature shall appear on any bonds or whose facsimile signature shall appear on any coupon shall cease to be such officer before the delivery of such bonds, such signature shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery.

History. — Ga. L. 1958, p. 61, § 13.

12-3-204. Revenue bonds — Status as negotiable instruments; tax exemption for bonds and income therefrom.

All bonds issued under this part shall have and are declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments laws of this state. Such bonds and the income thereof shall be exempt from all taxation within the state.

History. — Ga. L. 1958, p. 61, § 14.

12-3-205. Revenue bonds — Use and manner of disbursement of proceeds; procedure where proceeds are less than or greater than cost of projects.

The proceeds of bonds shall be used solely for the payment of the cost of the project and shall be disbursed upon requisition or order of the chairman of the association or its duly bonded agents under such restrictions, if any, as the resolution authorizing the issuance of the bonds or the trust indentures may provide. If the proceeds of such bonds, by error of calculation or otherwise, shall be less than the cost of the project, then unless otherwise provided in the resolution authorizing the issuance of the bonds or in the trust indenture, additional bonds may in like manner be issued to provide the amount of such deficit. These additional bonds, unless otherwise provided in the resolution authorizing the issuance of the bonds or in the trust indenture, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose. If the proceeds of the bonds of any issue shall exceed the amount required for the purpose for which such bonds were issued, all surplus shall be paid into the sinking fund provided in Code Section 12-3-212 for the payment of principal and interest of such bonds.

History. — Ga. L. 1958, p. 61, § 15.

12-3-206. Revenue bonds — Issuance of interim receipts, interim certificates, and temporary bonds.

Prior to the preparation of definitive bonds, the association may, under like restrictions, issue interim receipts, interim certificates, or temporary bonds, with or without coupons, exchangeable for definitive bonds upon the issuance of the latter.

History. — Ga. L. 1958, p. 61, § 16.

12-3-207. Revenue bonds — Replacement of mutilated, destroyed, or lost bonds.

The association may provide for the replacement of any bond which becomes mutilated or is destroyed or lost.

History. — Ga. L. 1958, p. 61, § 17.

12-3-208. Revenue bonds — Immediate effectiveness of resolutions providing for issuance of bonds; time and manner of passage of resolutions.

Resolutions for the issuance of bonds may be adopted without any other proceedings or the happening of any other conditions or things than those proceedings, conditions, and things which are specified or required by this part. Any resolution providing for the issuance of bonds under this part shall become effective immediately upon its passage and need not be published or posted. Any such resolution may be passed at any regular, special, or adjourned meeting of the association by a majority of its members.

History. — Ga. L. 1958, p. 61, § 18.

12-3-209. Revenue bonds — Status as constituting debt or pledge of credit of state; effect of issuance of bonds on obligation of state to tax or make appropriations; recitals on face of bonds.

Bonds issued under this part shall not be deemed to constitute a debt of the State of Georgia or a pledge of the credit of the state. Such bonds shall be payable solely from the fund provided for in Code Section 12-3-212; and the issuance of such bonds shall not directly, indirectly, or contingently obligate the state to levy or to pledge any form of taxation whatsoever therefor or to make any appropriation for their payment. All such bonds shall contain recitals on their face covering substantially the foregoing provisions of this Code section.

History. — Ga. L. 1958, p. 61, § 19.

12-3-210. Revenue bonds — Securing bonds by trust indenture.

(a) In the discretion of the association, any issue of bonds may be secured by a trust indenture by and between the association and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the state.

(b) Resolutions providing for the issuance of bonds and trust indentures may contain such provisions for protecting and enforcing the rights and remedies of the bondholders, including the right to the appointment of a receiver for the project upon the default of any principal or interest payment upon the bonds thereof, and including the right of any receiver or indenture trustee to enforce collections of rents, revenues, or other charges for the use of the project necessary to pay all costs of operation, the principal and interest on the issue, the cost of collection, and all things reasonably necessary to accomplish the collection of such sums, in the event of any default of the association.

(c) Such resolutions or trust indentures may include covenants setting forth the duties of the association in relation to the acquisition of the property, the construction of the project, the maintenance, operation, repair, and insurance of the project, and the custody, safeguarding, and application of all moneys and may also contain provisions concerning the conditions, if any, upon which additional bonds may be issued. An indenture may also set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations. In addition, an indenture may contain such other provisions as the association may deem advisable, reasonable, and proper for the security of the bondholders.

(d) It shall be lawful for any bank or trust company incorporated under the laws of this state to act as such depository and to furnish such indemnifying bonds or pledge such securities as may be required by the association.

(e) All expenses incurred in carrying out such trust indenture may be treated either as a part of the cost of maintenance, operation, and repair of the project affected by such indenture or as an administrative expense of the association.

History. — Ga. L. 1958, p. 61, § 20.

12-3-211. Revenue bonds — Designation of recipient of bond proceeds.

The association shall, in the resolution providing for issuance of bonds or in the trust indenture, provide for the payment of the proceeds of the sale of the bonds to any officer or person who, or any agency, bank, or trust company which, shall act as trustee of such funds and shall hold and apply the same to the purposes expressed in this part, subject to such regulations as this part and such resolution or trust indenture may provide.

History. — Ga. L. 1958, p. 61, § 21.

12-3-212. Revenue bonds — Establishment of sinking funds for payment of principal, interest, and other costs.

(a) The revenues, rents, and earnings derived from the project may be pledged by the association to the payment of principal and interest on bonds of the association as any resolution authorizing the issuance of the bonds or any trust instrument may provide. Such funds so pledged, from whatever source received, may include funds received from one or more or all sources and may be set aside into sinking funds

at regular intervals which may be provided in any resolution or trust indenture.

(b) All such sinking funds shall be pledged to and charged with the payment of:

(1) The interest upon such bonds as such interest shall fall due;

(2) The principal of the bonds as the same shall fall due;

(3) The necessary charges of paying agents for paying principal and interest; and

(4) Any premium upon bonds retired by call or purchase as provided in Code Section 12-3-199.

(c) The use and disposition of such sinking fund shall be subject to such regulations as may be provided for in the resolution authorizing the issuance of the bonds or in the trust indenture; but, except as may otherwise be provided in such resolutions or trust indentures, such sinking funds, individually, shall be funds for the benefit of all revenue bonds without distinction or priority of one over another.

(d) Subject to the provisions of the resolution authorizing the issuance of the bonds or the provisions of the trust indenture of any given bond issue, any moneys in all sinking funds, after all bonds and interest thereon for which such sinking funds were pledged have been paid, may be paid into the association fund provided for in Code Section 12-3-199.

History. — Ga. L. 1958, p. 61, § 22.

12-3-213. Revenue bonds — Revenue refunding bonds.

The association is authorized, subject to the provisions of any prior resolution or trust indenture, to provide by resolution for the issuance of refunding bonds of the association for the purpose of refunding any bonds issued under this part and then outstanding, together with accrued interest thereon. The issuance of such refunding bonds, the maturities and all other details thereof, the rights of the holders thereof, and the duties of the association in respect to the same shall be governed by this part insofar as the same may be applicable.

History. — Ga. L. 1958, p. 61, § 23.

12-3-214. Revenue bonds — Remedies of bondholders, coupon holders, and trustee.

Except to the extent the rights given in this Code section may be restricted by resolution passed before the issuance of bonds or by a trust indenture, any holder of revenue bonds or interest coupons issued

under this part, any receiver for such holders, or any indenture trustee, if there are any, may either at law or in equity, by action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the State of Georgia or granted by this part or under such resolution or trust indenture. Such holder, receiver, or trustee may enforce and compel performance of all duties required by this part, or by resolution or trust indenture, to be performed by the association or any officer thereof, including the fixing, charging, and collecting of revenues, rents, and other charges for the use of the project or projects. In the event of default of the association upon the principal and interest obligations of any revenue bond issue, such holder, receiver, or trustee shall be subrogated to each and every right, specifically including the contract rights of collecting rental, which the association may possess against the state or any department, agency, or institution of the state and, in the pursuit of his or its remedies as subrogee, may proceed either at law or in equity, by action, mandamus, or other proceedings, to collect any sums by such proceedings due and owing to the association and pledged or partially pledged directly or indirectly to the benefit of the revenue bond issue of which such holder, receiver, or trustee is representative. No holder, receiver, or trustee shall have the right to compel any exercise of the taxing power of the state to pay any such bond or the interest thereon or the right to enforce the payment thereof against any property of the state; nor shall any such bond constitute a charge, lien, or encumbrance, legal or equitable, upon the property of the state, provided that any provision of this part or any other law to the contrary notwithstanding, any such holder, receiver, or trustee shall have the right by appropriate legal or equitable proceedings (including, without being limited to, mandamus) to enforce compliance by the appropriate public officials with the provisions of Article VII, Section IV of the Constitution of Georgia, and permission is given for the institution of any such proceedings to compel the payment of lease obligations.

History. — Ga. L. 1958, p. 61, § 24; Ga. L. 1964, p. 357, § 4; Ga. L. 1982, p. 3, § 12; Ga. L. 1983, p. 3, § 49.

12-3-215. Revenue bonds — Status as legal investment and as securities for deposits.

The bonds authorized by this part shall be securities in which all public officers and bodies of the state; all municipalities and all municipal subdivisions; all insurance companies and associations and other persons carrying on an insurance business; all banks, bankers, trust companies, saving banks, and saving associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business; all administrators, guardians, executors, trustees, and other fiduciaries;

and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state may properly and legally invest funds, including capital in their control or belonging to them. The bonds are also made securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of the bonds or other obligations of this state is now or may hereafter be authorized.

History. — Ga. L. 1958, p. 61, § 25.

12-3-216. Revenue bonds — Protection of bondholders; part as constituting a contract with bondholders.

While any of the bonds issued by the association remain outstanding, the powers, duties, or existence of the association or of its officers, employees, or agents shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of such bonds; nor will the state itself in any way obstruct, prevent, impair, or render impossible the due and faithful performance of all project rental or lease contracts and all the covenants thereof entered into under this part. This part shall be for the benefit of the state, the association, and each and every holder of the association's bonds and, upon and after the issuance of bonds under this part, shall constitute an irrevocable contract with the holders of such bonds.

History. — Ga. L. 1958, p. 61, § 29.

12-3-217. Revenue bonds — Validation.

Bonds of the association shall be confirmed and validated in accordance with the procedure of Article 3 of Chapter 82 of Title 36.

History. — Ga. L. 1958, p. 61, § 28.

12-3-218. Moneys received by association as constituting trust funds; bondholders' lien on funds.

All moneys received pursuant to the authority of this part, whether as proceeds from the sale of bonds or as revenues, tolls, and earnings, shall be deemed trust funds to be held and applied solely as provided in this part. The bondholders paying or entitled to receive the benefit of such funds shall have a lien on all such funds until applied as provided for in any resolution or trust indenture of the association.

History. — Ga. L. 1958, p. 61, § 30.

12-3-219. Association property, activities, income, and bonds exempt from taxation and assessment; facilities, services, and charges subject to certain taxes.

(a) It is found, determined, and declared that the creation of the association and the carrying out of its corporate purposes are in all respects for the benefit of the people of this state and that the association is an institution of purely public charity and will be performing an essential governmental function in the exercise of the power conferred upon it by this part. Except as otherwise provided in subsection (b) of this Code section, this state covenants with the holders of the bonds that the association shall be required to pay no taxes or assessment upon any of the property acquired or leased by it under its jurisdiction, control, possession, or supervision, or upon its activities in the operation or maintenance of the project erected by it, or upon any fees, rental, or other charges for the use of the facilities or services of the project, or upon other income received by the association. Further, this state covenants that the bonds of the association, their transfer, and the income therefrom shall at all times be exempt from taxation from within the state.

(b)(1) Facilities, services, and charges for the use of facilities and services of any project owned or operated by the association shall not be exempt from and shall be subject to taxes under Article 3 of Chapter 13 of Title 48, notwithstanding any provision to the contrary in paragraph (1) of subsection (a) of Code Section 48-13-51, and shall not be exempt from and shall be subject to any taxes on alcoholic beverages under Title 3, the "Georgia Alcoholic Beverage Code," to the extent that either or both such taxes are levied.

(2) Notwithstanding any provision of paragraph (3) of subsection (a) of Code Section 48-13-51 to the contrary:

(A) The association shall retain and not remit to the county or municipality levying such tax, in each fiscal year during which a tax is collected under paragraph (3) of subsection (a) of Code Section 48-13-51, an amount equal to the amount by which the total taxes collected under Code Section 48-13-51 exceed the taxes which would be collected at the rate of 3 percent;

(B) The association shall expend the funds retained for the purposes of promotion and advertising of the project operated under the jurisdiction of the association from which the money was collected or for similar purposes of promoting, advertising, stimulating, and developing conventions and tourism in the county or municipality in which the project is operated as long as said promotion or advertising prominently features the project operated under the jurisdiction of the association; and

(C) The association shall submit a report to the governing authority of the county or municipality levying such tax for each fiscal year during which a tax is collected under paragraph (3) of subsection (a) of Code Section 48-13-51 which report shall include the total funds retained by the association under this paragraph and the manner in which such funds were expended.

History. — Ga. L. 1958, p. 61, § 26; Ga. L. 1995, p. 935, § 1.

12-3-220. Venue and jurisdiction for actions under part.

Any action to declare, protect, or enforce any rights or duties under this part, brought in the courts of the state, shall be brought in the Superior Court of DeKalb County, Georgia; and any action pertaining to validation of any bonds issued under this part shall likewise be brought in such court, which shall have exclusive original jurisdiction of such actions.

History. — Ga. L. 1958, p. 61, § 27; Ga. L. 1959, p. 333, § 3.

ARTICLE 7

PUBLIC AUTHORITIES

PART 1

JEKYLL ISLAND—STATE PARK AUTHORITY

Cross references. — Prohibition against selling real property, § 50-16-3.1.

JUDICIAL DECISIONS

Cited in Fouche v. Jekyll Island-State Park Auth., 713 F.2d 1518 (11th Cir. 1983).

OPINIONS OF THE ATTORNEY GENERAL

Dairy processing plant license not required to operate ice cream parlor. — Authority, created as a body corporate and politic and deemed to be an instrumentality of the state and a public corporation, is not required to obtain a dairy processing plant license to operate an ice cream parlor. 1958-59 Op. Att'y Gen. p. 5.

12-3-230. Short title.

This part may be cited as the "Jekyll Island—State Park Authority Act."

History. — Ga. L. 1950, p. 152, § 1; Ga. L. 1963, p. 391, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Mean high tide controls. — Jekyll Island State Park Authority does not have discretion to adopt the "65/35 Task Force" Recommendation to the extent that it uses a measurement reference point other than Mean High Tide. Any proposal to modify the 1996 Master Plan so as to increase substantially the measured land area of the island be thoroughly evaluated in a public process and finally adopted only after the General Assembly has been given the opportunity to weigh in on the proposal. 2013 Op. Att'y Gen. No. 13-2.

12-3-231. Definitions.

As used in this part, the term:

(1) "Authority" means the Jekyll Island—State Park Authority created by this part.

(2) "Bonds" or "revenue bonds" means any bonds issued by the authority under this part, including refunding bonds.

(3) "Cost of the project" means the cost of construction; the cost of all lands, properties, rights, easements, and franchises acquired; the cost of all machinery and equipment; financing charges; interest prior to and during construction and for one year after completion of construction; cost of engineering; architectural and legal expenses, cost of plans and specifications, and other expenses necessary or incident to determining the feasibility or practicability of the project; administrative expense; and such other expenses as may be necessary or incident to the financing authorized by this part, the construction of any project, the placing of the same in operation, and the condemnation of property necessary for such construction and operation. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of the proceeds of revenue bonds issued under this part for such project.

(4) "Developed land" means land that is built upon or paved or land that has been disturbed and no longer retains original, natural functions. Specific examples include, but are not limited to:

(A) Roads and bike paths in active use, whether by the authority or the general public;

(B) Multiuse trails and pathways, whether paved or of pervious surface material;

(C) Utility easements;

(D) Firebreaks intended to protect residential areas;

(E) Man-made ponds and borrow pits; and

(F) Golf courses.

(5) "Master plan" means that document created under the auspices of and adopted by the authority of Jekyll Island and as it may be amended from time to time pursuant to Code Section 12-3-243.1.

(6) "Park" means present and future parks, parkways, park and recreational resources and facilities of the state or any department, agency, or institution of the state, and any such facility constituting part of the State Parks System and shall specifically include Jekyll Island State Park.

(7) "Project" means any subdivision, hotel, cottage, apartment house, public building, school, utility, dock, facility, watercourse, airport, bridge, golf course, tennis court, or other resort recreational facility. This term also means one or a combination of two or more of the following: buildings and facilities, and all other structures, electric, gas, steam, water, and sewerage utilities and facilities of every kind and character deemed by the authority to be necessary or convenient for the efficient operation of any department, board, commission, authority, or agency of the State of Georgia.

(8) "Undeveloped area" means any area that remains free from the built environment. The term shall include, but not be limited to:

(A) Marsh and forest where the canopy and understory remain intact;

(B) Wooded areas that are altered only by installation of fire-breaks;

(C) Dirt roads no longer in use and serving no practical function;

(D) Dirt footpaths fewer than six feet in width;

(E) Sand dunes and beach, including associated crossovers; and

(F) Fresh water wetlands.

History. — Ga. L. 1950, p. 152, § 5; Ga. L. 1960, p. 89, § 3; Ga. L. 1963, p. 391, §§ 3, 4; Ga. L. 1964, p. 100, § 1; Ga. L. 1995, p. 105, § 7; Ga. L. 2014, p. 64, § 1/HB 715; Ga. L. 2014, p. 69, § 1/SB 296.

Law reviews. — For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014). For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 1 (2014).

12-3-232. Creation of authority as instrumentality of state and public corporation; delegation of powers and duties; duration of existence.

(a) There is created a body corporate and politic to be known as the Jekyll Island—State Park Authority, which shall be deemed to be an instrumentality of the state and a public corporation, and by that name, style, and title such body may contract and be contracted with, sue and be sued, implead and be impleaded, and complain and defend in all courts. The authority may delegate to one or more of its members, or to its officers, agents, and employees, such powers and duties as it may deem proper. The authority shall exist for 99 years and, upon the expiration thereof, shall exist for an additional 40 years.

(b) The authority is assigned to the Department of Natural Resources for administrative purposes only.

History. — Ga. L. 1950, p. 152, § 2; Ga. L. 1951, p. 782, § 1; Ga. L. 1963, p. 391, § 2; Ga. L. 1972, p. 1015, § 1519; Ga. L. 2007, p. 711, § 3/HB 214.

Cross references. — Effect of assignment for administrative purposes, § 50-4-3.

JUDICIAL DECISIONS

Waiver of immunity to state court actions. — O.C.G.A. §§ 12-3-232 and 12-3-275 waived a state park authority's immunity to suits in state court but not in federal court. Fouche v. Jekyll Island-State Park Auth., 713 F.2d 1518 (11th Cir. 1983).

Eleventh Amendment immunity. — Consent to suit in state court does not necessarily waive Eleventh Amendment immunity. Fouche v. Jekyll Island-State Park Auth., 713 F.2d 1518 (11th Cir. 1983).

Eleventh Amendment bars a 42 U.S.C. § 1983 federal civil rights claim against a state park authority, which, although a public corporation, is closely controlled by the state; a suit against the authority is effectively a suit against the state. Fouche v. Jekyll Island-State Park Auth., 713 F.2d 1518 (11th Cir. 1983).

Glynn County has no authority to require county license for sale of alcoholic beverages on Jekyll Island since the island is owned by the state and is governed by the Jekyll Island—State Park Authority. Glynn County v. Davis, 228 Ga. 588, 186 S.E.2d 872 (1972).

Cited in Aaron v. Jekyll Island-State Park Authority, 348 Ga. App. 332, 822 S.E.2d 829 (2019).

OPINIONS OF THE ATTORNEY GENERAL

Authority is not required to obtain dairy processing plant license to operate an ice cream parlor. 1958-59 Op. Att'y Gen. p. 5.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 8, 42, 43.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 17 et seq., 73.

12-3-233. Appointment of members; terms; vacancies; officers; quorum; reimbursement for expenses; members as constituting policy-making body of authority; executive director.

(a) The authority shall be composed of the commissioner of natural resources or his or her designee and eight residents of this state, two of whom shall be from Chatham, Bryan, Liberty, McIntosh, Glynn, or Camden counties, to be appointed by the Governor. The eight members appointed by the Governor shall be selected from the state at large but shall be representative of the geographical areas of the state. Except as provided in this Code section, the members appointed by the Governor shall serve for a term of four years and until the appointment and qualification of their successors. The first four appointments made by the Governor shall be as follows: one member shall be appointed for a term of one year beginning July 1, 1978; one member shall be appointed for a term of two years beginning July 1, 1978; one member shall be appointed for a term of three years beginning July 1, 1978; and one member shall be appointed for a term of four years beginning July 1, 1978. The fifth member appointed by the Governor shall serve for a term of four years beginning July 1, 1984. The sixth member appointed by the Governor shall serve for an initial term beginning upon appointment and ending on June 30, 1997. The seventh member appointed by the Governor shall serve for an initial term beginning upon appointment and ending on June 30, 1998. The eighth member appointed by the Governor shall serve for an initial term beginning upon appointment and ending on June 30, 1999. Subsequent terms for those members appointed as the sixth, seventh, and eighth members, or their successors, shall be for four years. An appointment by the Governor to fill a vacancy shall be made for the unexpired term.

(b) The Governor shall appoint the chairperson of the authority for a term of one year. A member may serve no more than two consecutive terms as chairperson nor more than two terms as chairperson in any one four-year term as a member of the authority. The authority shall elect one of its members as vice chairperson and shall elect a secretary and treasurer who may not necessarily be a member of the authority. The chairperson shall be selected from among the members appointed by the Governor.

(c) Five members of the authority shall constitute a quorum. No vacancy in the authority shall impair the right of a quorum to exercise all the rights and perform all the duties of the authority.

(d) Reserved.

(e) Membership on the authority does not constitute public office and no member shall be disqualified from holding public office by reason of his or her membership.

(f) The members of the authority shall not be entitled to compensation for their services but shall be reimbursed for their actual expenses necessarily incurred in the performance of their duties.

(g) The members of the authority shall constitute the policy-making body of the authority. The authority shall employ a full-time executive director to execute the policy decisions of the authority and to provide continuing professional management of the day-to-day activities of the authority.

History. — Ga. L. 1950, p. 152, § 3; Ga. L. 1957, p. 608, § 1; Ga. L. 1978, p. 2043, § 1; Ga. L. 1984, p. 430, § 1; Ga. L. 1990, p. 872, § 3; Ga. L. 1995, p. 105, § 8; Ga. L. 2007, p. 711, § 4/HB 214.

Cross references. — Legal mileage allowance, § 50-19-7.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, in subsection (b), "four-year" was hyphenated in the second sentence and a hyphen was taken out of "vice chairperson" in the third sentence.

Editor's notes. — Former subsection (d) was repealed and reserved by its own terms effective December 31, 2009.

JUDICIAL DECISIONS

Cited in Fouche v. Jekyll Island-State Park Auth., 713 F.2d 1518 (11th Cir. 1983).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 8.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 15 et seq., 21, 22, 24, 25.

12-3-233.1. Jekyll Island Citizens Resource Council; purpose; members; meetings; reimbursement for expenses.

(a) The Governor shall appoint a body to be known as the Jekyll Island Citizens Resource Council. The purpose of the Citizens Resource Council shall be to improve, foster, and encourage communication and the exchange of thoughts and ideas between the authority and the community of persons interested in Jekyll Island including, but not limited to, residents of Jekyll Island; owners, operators, and employees of businesses located on or providing services to Jekyll Island; and environmental organizations.

(b) The Citizens Resource Council shall consist of seven members. Three members shall be representative of the Jekyll Island residential and business community with two of these members being residents of Jekyll Island and one being an owner, manager, or employee of a business or commercial facility located on Jekyll Island. Four members shall be appointed at large. The term of each member shall be for two years, provided that of the members first appointed, three shall be

appointed for terms of one year, and four for terms of two years. Vacancies shall be filled by similar appointment for unexpired terms.

(c) The Citizens Resource Council shall meet once a month. The meetings shall be attended by the authority's executive director and at least one member of the authority. Once in every calendar quarter, the meeting of the Citizens Resource Council shall be held as a town meeting at which comments and sentiments from the Jekyll Island community at large may be received.

(d) The Citizens Resource Council shall be available to consult with the authority, if requested by the authority to do so, as to the authority's programs, projects, and actions concerning Jekyll Island. The Citizens Resource Council may also, upon request of the authority, review and prepare written comments on proposed authority plans and projects. Such written comments may be submitted to the authority's executive director, the authority, and the Governor.

(e) Members of the Citizens Resource Council shall serve without compensation, but its members who are not employees or officials of state or local governmental entities shall receive reimbursement from funds available to the authority for their actual expenses necessarily incurred in the performance of their duties.

History. — Code 1981, § 12-3-233.1, enacted by Ga. L. 1995, p. 105, § 10.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, a comma was inserted after "projects" in the first sentence of subsection (d).

12-3-234. Accountability of authority members as trustees; maintenance of financial records and books; creation of Jekyll Island—State Park Authority Oversight Committee.

(a) The members of the authority shall be accountable in all respects as trustees. The authority shall keep suitable and proper books and records of all receipts, income, and expenditures of every kind and shall submit for inspection all of the books, together with a proper statement of the authority's financial position, once a year on or about December 31 to the state auditor and to the Jekyll Island—State Park Authority Oversight Committee. The books and records shall be inspected and audited by the state auditor at least once in each year. The authority shall also submit a quarterly summary of each lease and contract agreement involving an amount in excess of $50,000.00 to the legislative oversight committee. Upon request, a copy of the lease or contract agreement or other documents so requested shall be provided to the members of the oversight committee.

(b) There is created as a joint committee of the General Assembly the Jekyll Island—State Park Authority Oversight Committee to be com-

posed of three members of the House of Representatives appointed by the Speaker of the House, one of whom shall be from the House Committee on State Properties, and three members of the Senate appointed by the President of the Senate, one of whom shall be from the Senate Committee on State Institutions and Property. The members of the committee shall serve two-year terms concurrent with their terms as members of the General Assembly. The chairperson of the committee shall be appointed by the President of the Senate from the membership of the committee, and the vice chairperson of the committee shall be appointed by the Speaker of the House from the membership of the committee during odd-numbered years. The chairperson of the committee shall be appointed by the Speaker of the House from the membership of the committee, and the vice chairperson of the committee shall be appointed by the President of the Senate from the membership of the committee during even-numbered years. The chairperson and vice chairperson shall serve terms of one year beginning January 1, 2007. Vacancies in an appointed member's position or in the offices of chairperson or vice chairperson of the committee shall be filled for the unexpired term in the same manner as the original appointment. The committee shall advise the General Assembly regarding the authority's compliance with the provisions required by this part. The committee shall meet upon the call of the chairperson.

History. — Ga. L. 1950, p. 152, § 4; Ga. L. 1995, p. 105, § 9; Ga. L. 2007, p. 711, § 5/HB 214; Ga. L. 2013, p. 141, § 12/HB 79.

JUDICIAL DECISIONS

Cited in Fouche v. Jekyll Island-State Park Auth., 713 F.2d 1518 (11th Cir. 1983).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 242 et seq.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 26 et seq.

12-3-235. Powers of authority generally.

The authority shall have power:

(1) To have a seal and alter it at pleasure;

(2) To acquire, hold, and dispose of personal property for its corporate purposes;

(3) To sell, by competitive bids, and dispose of all junk, salvage, and surplus materials, together with all obsolete, unused, or surplus machinery or equipment now or in the future upon or affixed to its

leasehold property; and to apply the proceeds therefrom to permanent improvements on the island;

(4) To appoint and select officers, agents, and employees, including engineering, architectural, and construction experts and attorneys, and to fix their compensation;

(5) To make contracts, and to execute all instruments necessary or convenient, including contracts for construction of projects or contracts with respect to the leasing or use of projects which it causes to be subdivided, erected, or acquired;

(6) To plan, survey, subdivide, improve, administer, construct, erect, acquire, own, repair, remodel, maintain, add to, extend, improve, equip, operate, and manage projects as defined in Code Section 12-3-231, to be located on property owned or leased by the authority, the cost of any such project to be paid from its income, from the proceeds of revenue anticipation certificates of the authority, or from such proceeds and any grant from the United States or any agency or instrumentality thereof, or from the State of Georgia; provided, however, that the authority shall not undertake any such activity having a projected cost of over $1 million unless it has first evaluated the feasibility of involving private persons or entities in the development, construction, operation, and management of the authority's existing projects and such proposed activities and has filed a copy of such evaluation with the Office of Planning and Budget and with the Recreational Authorities Overview Committee;

(7) To accept loans and grants, either or both, of money or materials or property of any kind from the United States or any agency or instrumentality thereof, including the Department of Housing and Urban Development, upon such terms and conditions as the United States or such agency or instrumentality, including the Department of Housing and Urban Development, may impose;

(8) To borrow money for any of its corporate purposes, to issue negotiable revenue anticipation certificates from earnings of such projects, and to provide for the payment of the same and for the rights of the holders thereof;

(9) To exercise any power usually possessed by private corporations performing similar functions, which power is not in conflict with the Constitution and laws of this state;

(10) To act as agent for the United States or any agency, department, corporation, or instrumentality thereof, in any manner coming within the purposes or powers of the authority;

(11) To adopt, alter, or repeal its own bylaws, rules, and regulations governing the manner in which its business may be transacted

and in which the power granted to it may be enjoyed, as the authority may deem necessary or expedient in facilitating its business;

(12) To receive gifts, donations, or contributions from any person, firm, or corporation;

(13) To hold, use, administer, and expend, for any of the purposes of the authority, such sum or sums as may hereafter be received as income or as gifts or as may be appropriated by authority of the General Assembly;

(14) To do any other things necessary or proper to beautify, improve, and render self-supporting the island park, to make its facilities available to people of average income, and to advertise its beauties to the world;

(15) To acquire in its own name, by purchase, on such terms and conditions and in such manner as it may deem proper, or by condemnation in accordance with any and all existing laws applicable to the condemnation of property for public use, real property or rights of easement therein or franchises necessary or convenient for its corporate purposes, and to use the same so long as its corporate existence shall continue, and to lease or make contracts with respect to the use of or dispose of the same in any manner it deems to be the best advantage of the authority, the authority being under no obligation to accept and pay for any property condemned under this part except from the funds provided under the authority of this part; and in any proceedings to condemn, such orders may be made by the court having jurisdiction of the suit, action, or proceeding as may be just to the authority and to the owners of the property to be condemned; and no property shall be acquired under this part upon which any lien or other encumbrance exists, unless at the time such property is so acquired a sufficient sum of money is deposited in trust to pay and redeem the fair value of such lien or encumbrance; and if the authority shall deem it expedient to construct any project on lands which are a part of the real estate holdings of the State of Georgia, the Governor is authorized to execute, for and on behalf of the state, a lease upon such lands to the authority for such parcel or parcels as shall be needed for a period not to exceed 50 years; and if the authority shall deem it expedient to construct any project on any other lands, the title to which shall then be in the State of Georgia, the Governor is authorized to convey, for and in behalf of the state, title to such lands to the authority;

(16) To acquire by purchase, lease, or otherwise, and to hold, lease, and dispose of, real and personal property of every kind and character for its corporate purposes;

(17) To make contracts and leases, and to execute all instruments necessary or convenient, including contracts for construction of

projects and leases of projects or contracts with respect to the use of projects which it causes to be erected or acquired; and any and all political subdivisions, departments, institutions, or agencies of the state are authorized to enter into contracts, leases, or agreements with the authority, upon such terms and for such purposes as they deem advisable; and without limiting the generality of the above, authority is specifically granted to any department, board, commission, or agency of the State of Georgia to enter into contracts and lease agreements for the use of any structure, building, or facility, or a combination of any two or more structures, buildings, or facilities, of the authority for a term not exceeding 50 years; and any department, board, commission, or agency of the State of Georgia may obligate itself to pay an agreed sum for the use of such property so leased and also to obligate itself as part of the lease contract to pay the cost of maintaining, repairing, and operating the property so leased from the authority;

(18) To construct, erect, acquire, own, repair, remodel, maintain, add to, extend, improve, equip, operate, and manage projects as defined in Code Section 12-3-231, to be located on property owned by or leased by the authority, the cost of any such project to be paid in whole or in part from the proceeds of revenue bonds of the authority or from such proceeds and any grant from the United States, the State of Georgia, or any agency or instrumentality thereof;

(19) To borrow money for any of its corporate purposes, to issue negotiable revenue bonds payable solely from funds pledged for that purpose, and to provide for the payment of the same and for the rights of the holders thereof;

(20) To grant franchises to and make contracts with utility companies, both public and private, providing electric light or power, gas, steam heat, telephone, telegraph, cable, television, water, or sewerage services, for the use and occupancy of Jekyll Island or any part thereof, on an exclusive or nonexclusive basis; to permit the rendering of such utility services upon such conditions and for such time as the authority may deem appropriate or convenient;

(21) To do all things necessary or convenient to carry out the powers expressly given in this part; and to do any and all other acts and things which this part authorizes or requires to be done, whether or not included in the general powers mentioned in this Code section;

(22) To provide and operate, at the discretion of the authority, a fire department which shall have the powers of a fire department of a county, municipality, or other political subdivision set forth in Chapter 3 of Title 25 and to exercise the powers of a county, municipality, or other political subdivision set forth in Code Section 25-3-4; and

Code Section 25-2-38.1 shall be applicable to the authority and any fire department of the authority in the provision of fire protection and suppression services provided;

(22.1) To sell, upon obtaining a license from the Department of Revenue, alcoholic beverages for consumption on the premises only upon property operated and controlled by the authority and located within the territorial limits of Jekyll Island, Georgia; and

(23) To charge fees to all persons, natural and artificial, using or relying upon fire protection and suppression services or public safety services provided by the authority or the Uniform Division of the Department of Public Safety, which fees and each installment thereof and the interest thereon shall be liens against each tract of land benefited by the fire protection and suppression services or public safety services so provided from the date each such fee is charged until fully paid; and such liens shall be superior to all other liens, except liens for state and county taxes and taxes levied for any and all school purposes, and shall be collected by officers designated by the authority in the same manner as state and county taxes are collected. The annual amount of any fee charged to any person, natural or artificial, or upon any property owned or leased by any such person under this paragraph shall not exceed the annual amount which would be levied for such services by the County of Glynn in the form of ad valorem taxes if such services had been provided by the County of Glynn.

History. — Ga. L. 1950, p. 152, § 6; Ga. L. 1951, p. 782, § 2; Ga. L. 1960, p. 89, § 2; Ga. L. 1976, p. 1560, § 1; Ga. L. 1982, p. 3, § 12; Ga. L. 1983, p. 643, § 1; Ga. L. 1983, p. 1213, § 1; Ga. L. 1984, p. 22, § 12; Ga. L. 1992, p. 6, § 12; Ga. L. 1993, p. 1781, § 2; Ga. L. 1995, p. 105, § 11.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, "$1 million" was substituted for "$1,000,000.00" in paragraph (6).

JUDICIAL DECISIONS

Constitutionality. — The last sentence of paragraph (23) of O.C.G.A. § 12-3-235, pertaining to the computation of the maximum annual fee, was unconstitutionally vague and indefinite; however, such finding did not render the balance of the paragraph unconstitutional. Jekyll Island-State Park Auth. v. Jekyll Island Citizens Ass'n, 266 Ga. 152, 464 S.E.2d 808 (1996).

Glynn County has no authority to require county license for sale of alcoholic beverages on Jekyll Island since the island is owned by the state and is governed by the Jekyll Island—State Park Authority. Glynn County v. Davis, 228 Ga. 588, 186 S.E.2d 872 (1972).

Cited in Crews v. Undercofler, 249 F. Supp. 13 (N.D. Ga. 1966).

OPINIONS OF THE ATTORNEY GENERAL

Authority empowered to own, operate, and expend funds for airport purposes. — Authority has the legal authority to plan, survey, improve, administer, construct, erect, acquire, own, repair, remodel, maintain, equip, operate, and manage an airport, and to receive and expend state and federal funds for airport purposes. 1963-65 Op. Att'y Gen. p. 671.

Department of Transportation may legally enter into airport contract with authority covering improvements to the Jekyll Island Airport. 1971 Op. Att'y Gen. No. 71-195.

RESEARCH REFERENCES

Am. Jur. 2d. — 26 Am. Jur. 2d, Eminent Domain, §§ 14, 59. 63C Am. Jur. 2d, Public Officers and Employees, § 227 et seq. 64 Am. Jur. 2d, Public Securities and Obligations, § 39.

C.J.S. — 29A C.J.S., Eminent Domain, §§ 24 et seq., 52. 73 C.J.S., Public Administrative Law and Procedure, §§ 17 et seq., 73, 79 et seq., 147, 207, 212 et seq. 81A C.J.S., States, §§ 449, 455 et seq.

ALR. — Condemnation of premises or part thereof as affecting rights of landlord and tenant inter se, 163 A.L.R. 679.

Condemner's waiver, surrender, or limitation, after award, of rights or part of property acquired by condemnation, 5 A.L.R.2d 724.

Admissibility, in eminent domain proceeding, of evidence as to price paid for condemned real property during pendency of the proceeding, 55 A.L.R.2d 781.

Admissibility, in eminent domain proceeding, of evidence as to price paid for condemned real property on sale prior to the proceeding, 55 A.L.R.2d 791.

Eminent domain: recovery of value of improvements made with knowledge of impending condemnation, 98 A.L.R.3d 504.

12-3-236. Exercise of police power of authority; delegation of power to state or county.

The authority is empowered to exercise such of the police powers of the state as may be necessary to maintain peace and order and to enforce any and all zoning, user, and personal conduct restrictions upon the properties and facilities and the persons under its jurisdiction to the extent that such is lawful under the laws of the nation and the state. The authority may delegate all or any part of performance of this function temporarily or permanently to the state or the county in which the park is located, or both.

History. — Ga. L. 1950, p. 152, § 14.

JUDICIAL DECISIONS

Ga. L. 1950, p. 152, § 14 (see O.C.G.A. § 12-3-236) did not give authority exclusive police power, including law enforcement on Jekyll Island, nor did it prohibit Glynn County police from exercising the powers granted them by former Code 1933, § 23-1403 (see O.C.G.A. § 36-8-5). Ferguson v. Leggett, 226 Ga. 333, 174 S.E.2d 913 (1970).

Cited in Crews v. Undercofler, 249 F. Supp. 13 (N.D. Ga. 1966).

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 97, 99 et seq.

12-3-236.1. Adoption and enforcement of ordinances and resolutions.

(a) The authority shall have legislative power to adopt reasonable ordinances and resolutions relating to the property, affairs, and government of Jekyll Island, including, without limitation, ordinances and resolutions adopting by reference any or all of the provisions of Chapter 6 of Title 40 in accordance with Code Section 40-6-372, for which no provision has been made by general law and which are not inconsistent with the general laws and Constitution of Georgia. Such ordinances and resolutions shall be enforced by the authority and members of the Uniform Division of the Department of Public Safety. Members of the Uniform Division of the Department of Public Safety are authorized to serve and execute warrants and to make arrests for violation of such ordinances and resolutions and shall, upon and within the limits of Jekyll Island, have the same authority, powers, and privileges regarding enforcement of law as the several sheriffs of this state, which authority, powers, and privileges shall be in addition to and not in limitation of all other powers of members of the Uniform Division of the Department of Public Safety as provided by law. Prosecutions for violations of the ordinances of the authority shall be upon citation or upon accusation as provided in Code Sections 15-10-62 and 15-10-63. The authority may provide that ordinance violations may be tried upon citations with or without a prosecuting attorney as well as upon accusations in the manner prescribed in Code Section 15-10-63.

(b) For purposes of this Code section, the Magistrate Court of Glynn County shall have jurisdiction and authority to hear and try those cases occurring within the limits of Jekyll Island in which a person is charged with violating an ordinance of the authority and to punish violations of such ordinances, all in the manner and to the extent prescribed in Article 4 of Chapter 10 of Title 15. The State Court of Glynn County shall have jurisdiction and authority to hear and try all cases removed from the Magistrate Court of Glynn County for jury trial by any defendant charged with one or more violations of the ordinances of the authority. The Superior Court of Glynn County shall have jurisdiction to review all convictions by certiorari to the superior court. The jurisdiction and authority of the courts of Glynn County provided for in this Code section shall be in addition to and not in limitation of the jurisdiction and authority of such courts as may be now or hereafter provided.

History. — Ga. L. 1981, p. 1436, § 1; Ga. L. 1987, p. 1117, § 1.

12-3-236.2. Continuation of ordinances and resolutions of authority in force as of April 13, 1981.

All of the provisions of any ordinances and resolutions adopted by the authority and which, as of April 13, 1981, are in force and effect and which are not inconsistent with nor repugnant to Code Section 12-3-236.1 and not in conflict with the Constitution or the general laws of Georgia or the Constitution of the United States shall remain in full force and effect, provided that the authority may at any time repeal, alter, or amend any of such ordinances and resolutions.

History. — Ga. L. 1981, p. 1436, § 3.

12-3-237. Rules and regulations for operation of projects authorized.

It shall be the duty of the authority to prescribe rules and regulations for the operation of each project or combination of projects constructed under this part, including rules and regulations to ensure maximum use or occupancy of each such project.

History. — Ga. L. 1960, p. 89, § 1.

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 207, 212 et seq.

12-3-238. Easements and rights of way for intracoastal waterway.

The authority shall be authorized to execute to the United States of America such spoilage easements and rights of way in the property leased to the authority by this part as shall be necessary in the construction and maintenance of the intracoastal waterway. Such easements and rights of way shall not exceed in length such period of time as the authority is to exist under this part.

History. — Ga. L. 1950, p. 152, § 23A; Ga. L. 1951, p. 782, § 5; Ga. L. 1952, p. 276, § 5; Ga. L. 1960, p. 89, § 4.

12-3-239. Establishment of museum.

The authority shall retain all books, china, furnishings, materials, and other personal property which are intrinsically associated with the history of Jekyll Island and its previous owners, so that an appropriate museum thereof may be later established.

History. — Ga. L. 1951, p. 782, § 6.

RESEARCH REFERENCES

Am. Jur. 2d. — 59 Am. Jur. 2d, Parks, Squares, and Playgrounds, § 24.

C.J.S. — 81A C.J.S., States, § 280.

12-3-240. Transfer of funds to authority; cooperation between authority and department.

The Office of Planning and Budget is authorized to transfer sufficient funds in the manner provided in Code Section 45-12-72 to provide for the development and operation of the facilities on Jekyll Island, which development and operation shall be carried on by the authority under agreement with the department.

History. — Ga. L. 1957, p. 608, § 6.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Funds, § 4.

C.J.S. — 81A C.J.S., States, § 398 et seq.

12-3-241. Lease to authority of Jekyll Island, adjacent marshes and marsh islands, rights of way, and rights and privileges of every kind.

(a) To the authority is granted, for and on the part of the State of Georgia, a lease for a term of 99 years, beginning on February 13, 1950, which term shall be automatically extended an additional 40 years upon the ending of the initial term. The lease shall be for all of that island of the State of Georgia, County of Glynn, being known as Jekyll Island and the marshes and marsh islands adjacent and adjoining the same owned by the State of Georgia; being that island of 11,000 acres, more or less, lying east of the mainland coast of Georgia, County of Glynn, bounded on its easterly shore by the Atlantic Ocean; bounded upon its northerly shore by Brunswick River, bounded on its westerly shore by Brunswick River, Jekyll Creek, Jekyll River, and Jekyll Sound; and bounded on its southerly shore by Jekyll Sound, together with the adjacent and adjoining marshes and marsh islands; which properties may also be described as all of the lands acquired by the State of

Georgia in a certain condemnation proceeding, *State of Georgia vs. Jekyll Island Club, Inc., et al.*, filed June 6, 1947, in Glynn County Superior Court; which properties may also be described in all conveyances, conveying any and all parts of Jekyll Island and the adjacent and adjoining marshes and marsh islands to the State of Georgia, recorded upon the official deed books of Glynn County as of February 13, 1950, all and each one of said conveyances being, by reference, expressly incorporated into this Code section and made in their entireties a part hereof.

(b) Also included in the lease granted by this Code section are all rights, rights of ways, water rights, immunities, easements, profits, appurtenances, and privileges thereof or relating thereto of every kind; all improvements, permanent or temporary, located thereon or dedicated to the use or service thereof; and in addition all personal property or property of any kind of the State of Georgia located thereon or dedicated to the use or service thereof.

(c) This lease shall be for and in consideration of $1.00 annually for each calendar year or fraction thereof paid in hand to and receipted for by the Office of the State Treasurer, and in consideration of the reasonable compliance of the authority with this part; provided, that the grant and conveyance made by this Code section shall include the right of the authority to dispose of that portion of the personal property conveyed by this Code section as is defined in paragraphs (2) and (3) of Code Section 12-3-235.

History. — Ga. L. 1950, p. 152, § 8; Ga. L. 1951, p. 782, § 3; Ga. L. 1953, Jan.-Feb. Sess., p. 261, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 1996, p. 6, § 12; Ga. L. 2007, p. 711, § 6/HB 214; Ga. L. 2010, p. 863, § 2/SB 296.

JUDICIAL DECISIONS

Cited in Crews v. Undercofler, 371 F.2d 534 (5th Cir. 1967).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, § 64.

C.J.S. — 73B C.J.S., Public Lands, § 294.

12-3-242. Lease payments by authority as constituting good, valuable, and sufficient consideration.

It is found, determined, and declared that the consideration paid and given and to be paid and given to the State of Georgia by the authority for its leasehold and privileges thereunder is good and valuable and sufficient consideration therefor and that this action on the part of the

authority and the state is in the interest of the public welfare of the State of Georgia and its citizens.

History. — Ga. L. 1950, p. 152, § 9.

12-3-243. Subdivision, improvement, lease, or sale of island by authority — Limitations on developed area; beaches to remain free and open; protected areas; disposition of proceeds of sale; creation of reserve fund; signing conveyances.

(a)(1)(A) The authority is empowered to convert no more than 1,675 acres of the total land area of Jekyll Island into developed land. All residual acreage shall forever be retained as undeveloped area. For purposes of this subparagraph, the 1,597 acres of Jekyll Island that, as of January 1, 2014, have been subdivided, leased, or improved according to the 2013 master plan shall be deemed as already converted to developed land.

(B) After July 1, 2014, undeveloped area shall be converted to developed land only as follows:

(i) Twelve acres to be used solely for the expansion of the existing campground;

(ii) Forty-six acres to be used solely for public health, public safety, or public recreation. As used in this division, the term "public recreation" specifically excludes residential and commercial development; and

(iii) Twenty acres to be available for unrestricted uses.

(C) After July 1, 2014, the proposed conversion of any undeveloped area to developed land shall be subject to the amendment procedure outlined in subsection (c) of Code Section 12-3-243.1.

(2)(A) The authority may survey, subdivide, and lease any acreage which may be converted to developed land in accordance with paragraph (1) of this subsection, provided that the authority shall in no way sell or otherwise dispose of any riparian rights; and provided, further, that the beach areas of Jekyll Island shall never be leased but shall be kept free and open for the use of the people of this state.

(B) That portion of Jekyll Island lying south of 31 degrees, 1 minute, 34 seconds north latitude as such latitude is depicted on the 1993 USGS topographic survey 7.5 minute series quadrangle map shall always be retained as undeveloped area, and the authority shall not enter into, renew, or extend any agreement or otherwise take any action regarding such southern portion of the

island on or after May 30, 2007, except as otherwise provided in this subparagraph. The removal of any improvement on such southern portion of the island which was completed prior to May 30, 2007, shall not be required. Upon the expiration or termination of any lease of a lot for a single-family residence on such southern portion of the island, the authority may again lease such lot to the same or another lessee for a single-family residence or noncommercial purpose or the authority may set aside the lot for public use; but the lot shall not be further subdivided, and the authority shall not lease such lot for any multifamily residence or commercial purpose. Those properties used for the Jekyll Island 4-H center and soccer complex may continue to be used and improved for the same or similar purposes under an extension or renewal of an existing lease or under a new lease. This subparagraph shall not prohibit the construction and use of any public bicycle trails, public nature trails, or public picnic areas on such southern portion of the island by the authority. This subparagraph shall not be applied to impair the obligation of any valid contract entered into prior to May 30, 2007.

(b) The authority shall deduct and retain as income from the amounts received for any sales of lots the value of its leasehold estate in such property, which shall be determined by agreement between the authority and the Governor. The remainder of such amounts shall be paid into the state treasury to the credit of the general fund. Ninety percent of the income received by the authority from the sale of lots shall be paid into a reserve fund to be set up by the authority to be used for general improvements or capital improvements, or both, on Jekyll Island.

(c) All conveyances for the sale of lots shall be signed by the authority on its own behalf and by the Governor on behalf of the state.

History. — Ga. L. 1950, p. 152, § 10; Ga. L. 1952, p. 276, § 1; Ga. L. 1953, Jan.-Feb. Sess., p. 261, § 2; Ga. L. 1957, p. 608, § 2; Ga. L. 1971, p. 452, § 1; Ga. L. 1995, p. 105, § 12; Ga. L. 2007, p. 711, § 7/HB 214; Ga. L. 2014, p. 64, § 2/HB 715; Ga. L. 2014, p. 69, § 2/SB 296.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2007, "May 30, 2007" was substituted for "the effective date of this subparagraph" in subparagraph (a)(2)(B) three times.

Editor's notes. — Ga. L. 2007, p. 711, § 1/HB 214, not codified by the General Assembly, provides: "The Georgia General Assembly finds that Jekyll Island is home to some of the state's most treasured natural and cultural resources and it is the expressed intent of this body to ensure the preservation of these resources for the enjoyment of all Georgians now and for future generations to come. For this reason, the state shall continue its commitment that not less than 65 percent of the land area of Jekyll Island which lies above water at mean high tide shall remain undeveloped. Jekyll Island proudly displays one of Georgia's largest stretches of barrier island property. It is the expressed intent of this body that the beach areas of Jekyll Island will remain free and open for the use of the people of the state. Commercial improvement is intended to better existing and future development of the

remaining 35 percent of Jekyll Island while retaining public access to the beaches for the pleasure of all of Georgia's citizens. The General Assembly further finds that the deteriorating conditions of public and commercial facilities is of great interest to the legislature and to the public and that by significantly extending the existing lease authority for the island's property, the state will thereby help to secure and encourage future investments and provide a basis for long-term revitalization of the island. Jekyll Island is recognized by this body as 'Georgia's Jewel,' and its remarkable beauties are hereby preserved so that they may continue to shine for all citizens of Georgia."

Law reviews. — For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014). For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 1 (2014).

OPINIONS OF THE ATTORNEY GENERAL

Mean high tide controls. — Jekyll Island State Park Authority does not have discretion to adopt the "65/35 Task Force" Recommendation to the extent that it uses a measurement reference point other than Mean High Tide. Any proposal to modify the 1996 Master Plan so as to increase substantially the measured land area of the island be thoroughly evaluated in a public process and finally adopted only after the General Assembly has been given the opportunity to weigh in on the proposal. 2013 Op. Att'y Gen. No. 13-2.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, § 64.

C.J.S. — 73B C.J.S., Public Lands, §§ 294, 295.

12-3-243.1. Master plan as to Jekyll Island; maintenance; contents; adherence to plan; amendments.

(a) The authority shall maintain a master plan for the management, preservation, protection, and development of Jekyll Island. The master plan shall delineate, based upon aerial survey, the present and permitted future uses of the land area of Jekyll Island and shall designate areas to be managed as environmentally sensitive, historically sensitive, and active use areas.

(b) The authority, in the exercise of its authority to develop, manage, preserve, and protect Jekyll Island, shall be guided by and shall adhere to the master plan as the same may from time to time be amended as provided in subsection (c) of this Code section.

(c) The authority may, from time to time, amend the master plan but only in compliance with the following procedure:

(1) Any proposed amendment to the master plan shall be described in written form and, if capable of such description, in visual form and presented publicly at a regular meeting of the authority;

(2) After the proposed amendment is presented publicly at a regular meeting of the authority, a brief summary of the proposed amendment shall be advertised in the legal organs of Glynn and

Fulton counties, distributed to the media by news release, and published in appropriate publications of the authority. Each such advertisement, news release, and publication shall also contain:

(A) The time and place of the public hearing on the proposed amendment, which public hearing shall be held no earlier than 15 days after the latest publication of the advertisement in the legal organ of Glynn or Fulton County as required by this paragraph;

(B) Directions as to the manner of receiving comments from the public regarding the proposed amendment; and

(C) The date on which the meeting of the authority at which the proposed amendment will be considered for approval or rejection, which meeting shall not be held any sooner than 30 days after the meeting of the authority at which the proposed amendment was announced pursuant to paragraph (1) of this subsection;

(3) The authority shall transmit by certified mail or personal service copies of the information required by paragraph (2) of this subsection and a complete copy of the proposed amendment to the Speaker of the House, President of the Senate, members of the Jekyll Island—State Park Authority Oversight Committee, and Office of Legislative Counsel at least 60 days prior to the date of the meeting at which the proposed amendment will be considered. The presiding officers of each house, or the Office of Legislative Counsel if a presiding officer is unavailable, shall then provide copies to any member of the General Assembly who makes, or has made, a standing written request;

(4) In the event the Jekyll Island—State Park Authority Oversight Committee files an objection to a proposed amendment to the master plan with the chairperson of the authority prior to the authority's taking action on the proposed amendment, then the same shall be stayed. Thereafter, by introduction of a resolution to consider the committee's objection within the first 30 days of the next regular session of the General Assembly, the objection may be considered for ratification by the General Assembly. In the event the resolution is adopted by a vote of two-thirds of the members of each branch, the amendment to the master plan shall not be adopted by the authority. In the event the resolution is ratified by a vote of less than two-thirds of the members of either house, the resolution shall be submitted to the Governor for approval or veto. In the event the resolution fails to pass both houses or is vetoed by the Governor, the amendment to the master plan may be adopted by the authority and the stay of the committee shall be lifted. In the event of the Governor's approval of the resolution, the amendment to the master plan shall be prohibited;

(5) Any proposed development of the 78 acres available for development under subparagraph (a)(1)(B) of Code Section 12-3-243 shall

be surveyed and marked at least seven days prior to the public hearing required by paragraph (2) of this subsection in such a fashion as to be readily discernible on the ground by members of the public; and

(6) At the meeting of the authority which has been identified in the advertisement required by paragraph (2) of this subsection as the meeting to consider the approval or rejection of the proposed amendment, the authority shall consider in an open and public meeting the proposed amendment to the master plan which, if approved, shall become a part of the master plan, subject, however, to the provisions of paragraph (4) of this subsection.

History. — Code 1981, § 12-3-243.1, enacted by Ga. L. 1995, p. 105, § 13; Ga. L. 1996, p. 6, § 12; Ga. L. 2001, p. 4, § 12; Ga. L. 2007, p. 711, § 8/HB 214; Ga. L. 2014, p. 64, § 3/HB 715; Ga. L. 2014, p. 69, § 3/SB 296.

Editor's notes. — Ga. L. 2007, p. 711, § 1/HB 214, not codified by the General Assembly, provides: "The Georgia General Assembly finds that Jekyll Island is home to some of the state's most treasured natural and cultural resources and it is the expressed intent of this body to ensure the preservation of these resources for the enjoyment of all Georgians now and for future generations to come. For this reason, the state shall continue its commitment that not less than 65 percent of the land area of Jekyll Island which lies above water at mean high tide shall remain undeveloped. Jekyll Island proudly displays one of Georgia's largest stretches of barrier island property. It is the expressed intent of this body that the beach areas of Jekyll Island will remain free and open for the use of the people of the state. Commercial improvement is intended to better existing and future development of the remaining 35 percent of Jekyll Island while retaining public access to the beaches for the pleasure of all of Georgia's citizens. The General Assembly further finds that the deteriorating conditions of public and commercial facilities is of great interest to the legislature and to the public and that by significantly extending the existing lease authority for the island's property, the state will thereby help to secure and encourage future investments and provide a basis for long-term revitalization of the island. Jekyll Island is recognized by this body as 'Georgia's Jewel,' and its remarkable beauties are hereby preserved so that they may continue to shine for all citizens of Georgia."

Law reviews. — For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014). For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 1 (2014).

OPINIONS OF THE ATTORNEY GENERAL

Mean high tide controls. — Jekyll Island State Park Authority does not have discretion to adopt the "65/35 Task Force" Recommendation to the extent that it uses a measurement reference point other than Mean High Tide. Any proposal to modify the 1996 Master Plan so as to increase substantially the measured land area of the island be thoroughly evaluated in a public process and finally adopted only after the General Assembly has been given the opportunity to weigh in on the proposal. 2013 Op. Att'y Gen. No. 13-2.

12-3-244. Subdivision, improvement, lease, or sale of island by authority — Sale and lease restrictions.

The leasing and sale of subdivided lots shall be under restrictive limitations as to the use, style, and character of the structures allowable thereon and such other limitations as the authority may deem wise. Any and all such restrictions may be incorporated in the leases and deeds as covenants and warranties and may, at the discretion of the authority, provide for termination and forfeiture upon breach. In the event of a breach of any such covenants and warranties, the authority is empowered to take such action as shall further and preserve its own best interest and the best interest of the state.

History. — Ga. L. 1950, p. 152, § 11; Ga. L. 1951, p. 782, § 4; Ga. L. 1952, p. 276, § 2; Ga. L. 1953, Jan.-Feb. Sess., p. 261, § 3; Ga. L. 1957, p. 608, § 3.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, § 64.

C.J.S. — 73B C.J.S., Public Lands, §§ 294, 295.

12-3-245. Subdivision, improvement, lease, or sale of island by authority — Term of leases; assignment; preservation, continuance, and survival of rights and privileges.

The leasing of the subdivided lots shall be for not more than 99 years. Such leases as the authority shall designate may be made freely assignable, subject to all the liabilities, obligations, and duties imposed upon the lessee by the authority in its original lease. In its leasehold conveyance or rental contracts, the authority may create and provide for the preservation of such rights and privileges in the present or future security grantees, mortgagees, or other lenders upon the security of the lessee's or tenant's rights, as the authority may deem wise. Such rights and privileges, when created, may also provide for their continuance or survival after termination or forfeiture of the original leasehold or rental contract.

History. — Ga. L. 1950, p. 152, § 11; Ga. L. 1951, p. 782, § 4; Ga. L. 1952, p. 276, § 2; Ga. L. 1953, Jan.-Feb. Sess., p. 261, § 3; Ga. L. 1957, p. 608, § 3.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, § 64 et seq.

C.J.S. — 73B C.J.S., Public Lands, § 294.

12-3-246. Subdivision, improvement, lease, or sale of island by authority — Limitation as to number of lots to be leased or sold to one party.

(a) Subject to the exceptions provided in subsections (b), (c), (d), and (e) of this Code section, no person, partnership, or corporation except the authority may, during the life of the authority, hold under lease or by deed or any combination of leases and deeds a total of more than three lots in the residential subdivisions made on Jekyll Island by the authority.

(b) No violation of the limitation provided in subsection (a) of this Code section by any party shall in any wise affect the good and sufficient title of any bona fide assignee or transferee or any subsequent assignee or transferee thereof.

(c) The limitation provided in subsection (a) of this Code section shall not apply to any bank, insurance company, building and loan association, mortgage loan company, or federal or state lending agency which may be holding lots under lease or by deed or under any combination of leases and deeds by virtue of foreclosure of loans made upon the security or improvements erected or existing on such lots.

(d) The authority may waive the limitation provided in subsection (a) of this Code section as regards groups of not more than 25 lots if the lessee or owner thereof is a person or a corporation or other business enterprise engaged in the construction and sale of houses, and such entity covenants to erect houses upon the lots so leased or owned and to sell and assign all lots so leased or owned as improved within a reasonable period of time as determined by the authority.

(e) The authority may waive the limitation provided in subsection (a) of this Code section as regards groups of not more than 25 lots when the lessee or owner thereof covenants to erect or causes to be erected a shopping center or business block or housing project thereon which, when completed, shall be offered for rental or sale, unit by unit, upon such terms and conditions as may be agreed to by the authority.

History. — Ga. L. 1950, p. 152, § 11; Ga. L. 1951, p. 782, § 4; Ga. L. 1952, p. 276, § 2; Ga. L. 1953, Jan.-Feb. Sess., p. 261, § 3; Ga. L. 1957, p. 608, § 3.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, § 64 et seq.

C.J.S. — 73B C.J.S., Public Lands, § 294.

12-3-247. Subdivision, improvement, lease, or sale of island by authority — Conditions on sale of residential lots; sale of commercial property; sale price; payment of state's share into state treasury.

(a) The authority shall not sell any residential lot unless obligated to do so under the terms of a valid lease agreement entered into prior to May 30, 2007, and such a sale shall be made only to the person who shall hold such lease, his or her assignee, or assigns. No conveyance of the fee simple title to any residential lot shall be made until the lessee of such lot has performed all the obligations regarding the improvement and erection of structures on the lot as are imposed by the lease.

(b) The authority shall not sell any commercial property on which improvements were erected prior to March 1, 1957; and the authority shall not sell any other commercial property unless obligated to do so under the terms of a valid lease agreement entered into prior to May 30, 2007, in which event the commercial property may be sold in the same manner as provided by this part for the sale of leased residential lots.

(c) All sales of residential lots and commercial property shall be made at the conversion price set by the authority in accordance with Code Section 12-3-250, provided that any person who purchases any residential lot sold by the authority shall be entitled to credit on the purchase price to the extent of all payments made by him or his assignors or predecessors in interest on such lease, provided that such credit shall not exceed the purchase price of such lot. If such credit shall equal the purchase price for such lot, the lessee shall be entitled to a conveyance of the fee simple title to such lot, and the authority shall thereupon pay into the state treasury an amount equal to the value of the state's interest in such property as determined as provided in Code Section 12-3-249. The authority shall establish proper reserves to ensure that funds will be available for such purpose.

(c.1) On and after May 30, 2007, the authority shall not enter into, extend, or renew any agreement providing for the sale of any residential or commercial lot on Jekyll Island, and Code Section 12-3-250 shall not apply to any new, extended, or renewed agreement.

(d) No credit shall be allowed to purchasers of commercial property for any prior rental payments.

History. — Ga. L. 1957, p. 608, § 3; Ga. L. 2007, p. 711, § 9/HB 214.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, "ensure" was substituted for "insure" in the last sentence of subsection (c).

Pursuant to Code Section 28-9-5, in 2007, "May 30, 2007" was substituted for "the effective date of this Code section" in subsections (a), (b), and (c.1).

Editor's notes. — Ga. L. 2007, p. 711, § 1/HB 214, not codified by the General Assembly, provides: "The Georgia General Assembly finds that Jekyll Island is home

to some of the state's most treasured natural and cultural resources and it is the expressed intent of this body to ensure the preservation of these resources for the enjoyment of all Georgians now and for future generations to come. For this reason, the state shall continue its commitment that not less than 65 percent of the land area of Jekyll Island which lies above water at mean high tide shall remain undeveloped. Jekyll Island proudly displays one of Georgia's largest stretches of barrier island property. It is the expressed intent of this body that the beach areas of Jekyll Island will remain free and open for the use of the people of the state. Commercial improvement is intended to better existing and future development of the remaining 35 percent of Jekyll Island while retaining public access to the beaches for the pleasure of all of Georgia's citizens. The General Assembly further finds that the deteriorating conditions of public and commercial facilities is of great interest to the legislature and to the public and that by significantly extending the existing lease authority for the island's property, the state will thereby help to secure and encourage future investments and provide a basis for long-term revitalization of the island. Jekyll Island is recognized by this body as 'Georgia's Jewel,' and its remarkable beauties are hereby preserved so that they may continue to shine for all citizens of Georgia."

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, § 64 et seq.

C.J.S. — 73B C.J.S., Public Lands, § 294.

12-3-248. Subdivision, improvement, lease, or sale of island by authority — Sales of property for which approval by General Assembly is required.

Notwithstanding any other provision of this part, the authority shall under no circumstances sell any real property on Jekyll Island on which a building or buildings were standing at the time the island was leased to the authority, without the express prior approval of the General Assembly to such sale or sales.

History. — Ga. L. 1957, p. 608, § 3.

JUDICIAL DECISIONS

Cited in Fouche v. Jekyll Island-State Park Auth., 713 F.2d 1518 (11th Cir. 1983).

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, § 64.

C.J.S. — 73B C.J.S., Public Lands, § 294.

12-3-249. Subdivision, improvement, lease, or sale of island by authority — Publication of schedule of lease rentals; applications exceeding available lots; leasing by negotiation; leases as constituting contracts.

(a) The lots in the various subdivisions created on Jekyll Island by the authority may be leased either singly or in groups deemed appropriate by the authority, only after publication of a complete schedule of the lease rentals applicable to the lots in the official organs of Glynn and Fulton counties.

(b) If at any time the number of acceptable applications for lots received by the authority shall exceed the number of lots available in any one of the property subdivisions created by the authority, a drawing shall be held to determine which of the acceptable applications shall be accepted by the authority for leases upon the available lots, and to determine the sequence in which they will be accepted.

(c) The authority may lease by negotiation any number or all of the existing buildings together with appropriate grounds, provided that the authority may lease by negotiation for commercial purposes any one or a number of the lots it shall set aside for commercial purposes; provided, further, that when in the exercise of its discretion the authority shall offer for lease groups of lots as provided for in Code Section 12-3-246, such blocks may be leased by negotiation.

(d) All such leases granted by the authority shall, upon execution, become a contract between the individual lessee, his approved assigns, the authority, and the State of Georgia.

History. — Ga. L. 1950, p. 152, § 12; Ga. L. 1952, p. 276, § 3; Ga. L. 1953, Jan.-Feb. Sess., p. 261, § 4.

JUDICIAL DECISIONS

Cited in Fouche v. Jekyll Island-State Park Auth., 713 F.2d 1518 (11th Cir. 1983).

OPINIONS OF THE ATTORNEY GENERAL

Leases executed by authority not mere subleases of authority. — Leases executed by the authority constitute contracts of lease between the individual lessees, the Jekyll Island Authority (now Jekyll Island—State Park Authority), and the state; not mere subleases of the authority. 1952-53 Op. Att'y Gen. p. 145.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, § 64 et seq.

C.J.S. — 73B C.J.S., Public Lands, § 294.

12-3-250. Subdivision, improvement, lease, or sale of island by authority — Conversion prices of lots.

Immediately upon the approval of this part, or as soon thereafter as practicable, the authority shall prepare and publish a conversion price for each residential lot then under lease, stating the price at which the lot may be purchased from the authority. Thereafter the authority shall publish at the same time and in the same manner as schedules of lease rentals are published, as required by Code Section 12-3-249, a conversion price for each residential lot that is available for lease. The conversion price for residential lots shall not be less than the appraised value of such lots, taking into consideration the market value of comparable resort property in Glynn County, as determined by an appraisal or appraisals made or to be made by the Glynn County Real Estate Board. Every lease which the authority may grant for a residential lot shall contain therein the conversion price at which the lot may be purchased.

History. — Ga. L. 1957, p. 608, § 4.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, § 64.

C.J.S. — 73B C.J.S., Public Lands, § 294.

12-3-251. Subdivision, improvement, lease, or sale of island by authority — Leases to counties for charitable purposes.

(a) The authority is directed, as soon as it deems it feasible to do so, to set aside sufficient land on Jekyll Island to provide a suitable plot for each county in the state for use for charitable purposes.

(b) The authorities having charge of the fiscal affairs of any county desiring to use such plot shall file with the authority a proposal setting forth the use to which such plot is to be placed, the person or persons to have charge and control of the same, and the nature of improvements to be placed thereon. Such proposal shall also disclose how funds are to be secured for the improvement and operation of the facilities.

(c) If the authority deems such proposal to be in the public interest and to the advantage of the state park, it may lease such plot for a period not exceeding 20 years to the fiscal authority of such county or to properly appointed trustees. Such lease shall provide such restrictions,

covenants, and conditions as the authority deems proper and shall provide for the termination of the lease upon violation of the provisions of the lease.

(d) Should the authorities having charge of the fiscal affairs of any county fail to claim and present a plan to improve on or before March 1, 1960, the plot of land set aside for such county under this Code section, the authority shall be under no further obligation to furnish any such plot of land on Jekyll Island.

History. — Ga. L. 1950, p. 152, § 13; Ga. L. 1957, p. 608, § 5.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, § 64 et seq.

C.J.S. — 73B C.J.S., Public Lands, § 294.

12-3-252. Revenue bonds — Issuance by authority; payment of principal and interest from special fund; dating of bonds; determination of rate of interest; medium of payment; redemption before maturity.

The authority, or any authority or body which has succeeded or which may succeed to the powers, duties, and liabilities vested in the authority created by this part, shall have power and is authorized at one time, or from time to time, to provide by resolution for the issuance of negotiable revenue bonds for the purpose of paying all or any part of the cost, as defined in Code Section 12-3-231, of any one or combination of projects. The principal and interest of such revenue bonds shall be payable solely from the special fund provided in Code Section 12-3-264 for such payment. The bonds of each issue shall be dated; shall bear interest at the lowest obtainable rate, payable in such medium of payment as to both principal and interest as may be determined by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority in the resolution providing for the issuance of the bonds.

History. — Ga. L. 1950, p. 152, § 15; Ga. L. 1960, p. 89, § 1.

Cross references. — Revenue bonds generally, § 36-82-60 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 39, 108, 152, 347.

C.J.S. — 81A C.J.S., States, §§ 449, 450, 455 et seq.

12-3-253. Revenue bonds — Form of bonds; denominations; place of payment of principal and interest; issuance in coupon or registered form; registration of coupon bonds.

The authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereof, which may be at any bank or trust company within or without the state. The bonds may be issued in coupon or registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bond as to principal alone and also as to both principal and interest.

History. — Ga. L. 1950, p. 152, § 17; Ga. L. 1952, p. 276, § 4; Ga. L. 1960, p. 89, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 149, 157, 161.

C.J.S. — 81A C.J.S., States, §§ 453, 454, 460..

12-3-254. Revenue bonds — Signatures; seal.

In case any officer whose signature shall appear on any bonds or whose facsimile signature shall appear on any coupon shall cease to be such officer before the delivery of such bonds, such signature shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All such bonds shall be signed by the chairman of the authority, and the official seal of the authority shall be affixed thereto and attested by the secretary of the authority; and any coupons attached thereto shall bear the signature or facsimile signature of the chairman of the authority. Any coupon may bear the facsimile signature of such person, and any bond may be signed, sealed, and attested on behalf of the authority by such persons, as at the actual time of the execution of such bonds shall be duly authorized to so sign, seal, or attest or shall hold the proper office, although at the date of such bonds such persons may not have been so authorized or shall not have held such office.

History. — Ga. L. 1950, p. 152, § 17; Ga. L. 1952, p. 276, § 4; Ga. L. 1960, p. 89, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 153.

C.J.S. — 81A C.J.S., States, § 454 et seq.

12-3-255. Revenue bonds — Status as negotiable instruments.

All revenue bonds issued under this part shall have and are declared to have all the qualities and incidents of negotiable instruments under the negotiable instruments law of the state.

History. — Ga. L. 1950, p. 152, § 16; Ga. L. 1960, p. 89, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 32.

C.J.S. — 81A C.J.S., States, § 458 et seq.

ALR. — Bond or warrant of governmental subdivision as subject of taxation or exemption, 44 A.L.R. 510.

12-3-256. Revenue bonds — Manner of sale; determination of price.

The authority may sell such bonds in such manner and for such price as it may determine to be for the best interests of the authority.

History. — Ga. L. 1950, p. 152, § 17; Ga. L. 1952, p. 276, § 14; Ga. L. 1960, p. 89, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 39, 174.

C.J.S. — 81A C.J.S., States, §§ 449, 455 et seq., 463 et seq.

12-3-257. Revenue bonds — Use and manner of disbursement of proceeds; procedure where proceeds are less than or greater than cost of projects.

The proceeds of such bonds shall be used solely for the payment of the cost of the project or combined project and shall be disbursed upon requisition or order of the chairman of the authority under such restrictions, if any, as the resolution authorizing the issuance of the bonds or the trust indenture mentioned in Code Section 12-3-262 may provide. If the proceeds of such bonds, by error of calculation or otherwise, shall be less than the cost of the project or combined project, then unless otherwise provided in the resolution authorizing the issuance of the bonds or in the trust indenture, additional bonds may in like manner be issued to provide the amount of such deficit, which

bonds, unless otherwise provided in the resolution authorizing the issuance of the bonds or in the trust indenture, shall be deemed to be of the same issue and shall be entitled to payment from the same fund without preference or priority of the bonds first issued for the same purpose. If the proceeds of the bonds of any issue shall exceed the amount required for the purpose for which such are issued, the surplus shall be paid into the fund provided for in Code Section 12-3-264 for the payment of principal and interest of such bonds.

History. — Ga. L. 1960, p. 89, § 1.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, §§ 449, 455 et seq.

12-3-258. Revenue bonds — Issuance of interim receipts, interim certificates, and temporary bonds.

Prior to the preparation of definitive bonds, the authority may, under the restrictions expressed in Code Section 12-3-257, issue interim receipts, interim certificates, or temporary bonds, with or without coupons, which receipts, certificates, or temporary bonds shall be exchangeable for definitive bonds upon the issuance of the latter.

History. — Ga. L. 1960, p. 89, § 1.

12-3-259. Revenue bonds — Replacement of mutilated, destroyed, or lost bonds.

The authority may provide for the replacement of any bond which becomes mutilated or is destroyed or lost.

History. — Ga. L. 1950, p. 152, § 19; Ga. L. 1960, p. 89, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 228.

12-3-260. Revenue bonds — Bonds of a single issue as payment for one or more projects; immediate effectiveness of resolutions providing for issuance of bonds; time and manner of passage of resolutions.

Revenue bonds may be issued without the conducting of any proceedings, or the satisfaction of any conditions, or the happening of any events other than those proceedings, conditions, and events which are

specified or required by this part. In the discretion of the authority, revenue bonds of a single issue may be issued for the purpose of paying the cost of any one or more, including a combination of, projects at any one institution or any number of institutions. Any resolution providing for the issuance of revenue bonds under this part shall become effective immediately upon its passage and need not be published or posted; and any such resolution may be passed at any regular or special or adjourned meeting of the authority by a majority of its members.

History. — Ga. L. 1960, p. 89, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 39, 113.

C.J.S. — 81A C.J.S., States, § 454.

12-3-261. Revenue bonds — Status as constituting debt or pledge of faith and credit of state; effect of issuance on obligation of state to tax or make appropriation; recitals on face of bonds.

Revenue bonds issued under this part shall not be deemed to constitute a debt of the State of Georgia or a pledge of the faith and credit of the state, but such bonds shall be payable solely from the fund provided for in Code Section 12-3-264, and the issuance of such revenue bonds shall not directly, indirectly, or contingently obligate the state to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. All such bonds shall contain recitals on their face covering substantially the foregoing provisions of this Code section. Notwithstanding any other provision of this Code section, such funds as may be received from state appropriations or from any other source are declared to be available and may be used by any department, board, commission, or agency of the State of Georgia for the performance of any lease contract entered into by the department, board, commission, or agency.

History. — Ga. L. 1950, p. 152, § 16; Ga. L. 1960, p. 89, § 1.

JUDICIAL DECISIONS

Cited in Fouche v. Jekyll Island-State Park Auth., 713 F.2d 1518 (11th Cir. 1983).

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, §§ 449, 455 et seq., 461, 462.

12-3-262. Revenue bonds — Securing by trust indenture.

(a) In the discretion of the authority, any issue of such revenue bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the state. Such trust indenture may pledge or assign rents, revenues, and earnings to be received by the authority.

(b) Either the resolution providing for the issuance of revenue bonds or the trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the acquisition of property; the construction of the project; the maintenance, operation, repair, and insurance of the project; and the custody, safeguarding, and application of all moneys and may also provide that any project shall be constructed and paid for under the supervision and approval of consulting engineers or architects employed or designated by the authority and satisfactory to the original purchasers of the bonds issued therefor. The resolution or the trust indenture may also require that the security given by contractors and by any depository of the proceeds of the bonds or revenues or other moneys be satisfactory to such original purchasers and may also contain provisions concerning the conditions, if any, upon which additional revenue bonds may be issued.

(c) It shall be lawful for any bank or trust company incorporated under the laws of this state to act as such depository and to furnish such indemnifying bonds or pledge such securities as may be required by the authority.

(d) The trust indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations.

(e) In addition to the foregoing, the trust indenture may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders.

(f) All expenses incurred in carrying out the trust indenture may be treated as a part of the cost of maintenance, operation, and repair of the project affected by the indenture.

History. — Ga. L. 1950, p. 152, §§ 19, 20; Ga. L. 1960, p. 89, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 159.

C.J.S. — 81A C.J.S., States, § 452.

12-3-263. Revenue bonds — Payment of proceeds to trustee.

The authority shall, in the resolution providing for issuance of revenue bonds or in the trust indenture, provide for the payment of the proceeds of the sale of the bonds to any officer, person, agency, bank, or trust company. The recipient so designated by the authority shall act as trustee of such funds and shall hold and apply the same to the purposes enumerated in this part, subject to such regulations as this part and such resolution or trust indenture may provide.

History. — Ga. L. 1950, p. 152, § 20; Ga. L. 1960, p. 89, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 159.

12-3-264. Revenue bonds — Pledging and allocating funds to payment of bonds; establishment of sinking fund for payment of principal, interest, and other costs.

(a) The revenues, rents, and earnings derived from any particular project or combined projects; any and all funds from any source received by any department, board, commission, or agency of the State of Georgia and pledged and allocated by it to the authority as security for the performance of any lease or leases; or any and all revenues, rents, and earnings received by the authority, regardless of whether or not such rents, earnings, and revenues were produced by a particular project for which bonds have been issued, may, unless otherwise pledged and allocated, be pledged and allocated by the authority to the payment of the principal and interest on revenue bonds of the authority as the resolution authorizing the issuance of the bonds or the trust instrument may provide.

(b) Such funds so pledged from whatever source received, which pledge may include funds received from one or more or all sources, shall be set aside at regular intervals as may be provided in the resolution or trust indenture into a sinking fund, which sinking fund shall be pledged to and charged with the payment of:

(1) The interest upon such revenue bonds as such interest shall fall due;

(2) The principal of the bonds as the same shall fall due;

(3) The necessary charges of paying agents for paying principal and interest; and

(4) Any premium upon bonds retired by call or purchase.

(c) The use and disposition of such sinking fund shall be subject to such regulations as may be provided in the resolution authorizing the issuance of the revenue bonds or in the trust indenture, but, except as may otherwise be provided in such resolution or trust indenture, such sinking fund shall be a fund for the benefit of all revenue bonds without distinction or priority of one over another.

(d) Subject to the provisions of the resolution authorizing the issuance of the bonds or in the trust indenture, surplus moneys in the sinking fund may be applied to the purchasing or redemption of bonds, and any such bonds so purchased or redeemed shall forthwith be canceled and shall not again be issued.

History. — Ga. L. 1960, p. 89, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 323, 324.

C.J.S. — 81A C.J.S., States, § 451.

12-3-265. Revenue bonds — Remedies of bondholders, coupon holders, and trustees.

(a) Any holder of revenue bonds or interest coupons issued under this part, any receiver for such holders, or any indenture trustee, if there are any, except to the extent the rights given in this Code section may be restricted by resolution passed before the issuance of the bonds or by the trust indenture, may either at law or in equity, by action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the State of Georgia or granted by this Code section or under such resolution or trust indenture and may enforce and compel performance of all duties required by this part or by resolution or trust indenture to be performed by the authority, or any officer thereof, including the fixing, charging, and collecting of revenues, rents, and other charges for the use of the project or projects.

(b) In the event of default of the authority upon the principal and interest obligations of any revenue bond issue, any such bondholder, receiver, or trustee shall be subrogated to each and every right, specifically including the contract rights of collecting rental, which the authority may possess against the state or any department, agency, or institution of the state; and in the pursuit of its remedies as subrogee, any such bondholder, receiver, or trustee may proceed either at law or in equity by action, mandamus, or other proceedings to collect any sums

by such proceedings due and owing to the authority and pledged or partially pledged directly or indirectly to the benefit of the revenue bond issue of which the individual, receiver, or trustee is representative.

(c) No bondholder, receiver, or trustee shall have the right to compel any exercise of the taxing power of the state to pay any such bond or the interest thereon, or to enforce the payment thereof against any property of the state, nor shall any such bond constitute a charge, lien, or encumbrance, legal or equitable, upon the property of the state.

(d) Any provision of this part or any other Code section to the contrary notwithstanding, any such bondholder or receiver or indenture trustee shall have the right by appropriate legal or equitable proceedings, including, without being limited to, mandamus, to enforce compliance by the appropriate public officials of the provisions of Article VII, Section IV of the Constitution of Georgia, and permission is given for the institution of any such proceedings to compel the payment of lease obligations.

History. — Ga. L. 1950, p. 152, § 20; Ga. L. 1960, p. 89, § 1; Ga. L. 1964, p. 100, § 2; Ga. L. 1983, p. 3, § 49.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 377 et seq, 393 et seq.

C.J.S. — 81A C.J.S., States, § 452.

12-3-266. Revenue bonds — Revenue refunding bonds.

The authority is authorized to provide by resolution for the issuance of revenue refunding bonds of the authority for the purpose of refunding any revenue bonds issued under this part and then outstanding, together with accrued interest thereon. The issuance of such revenue refunding bonds, the maturities and all other details thereof, the rights of the holders thereof, and the duties of the authority in respect to the same shall be governed by the foregoing provisions of this part insofar as the same may be applicable.

History. — Ga. L. 1950, p. 152, § 15; Ga. L. 1960, p. 89, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 198 et seq.

C.J.S. — 81A C.J.S., States, § 466 et seq.

12-3-267. Revenue bonds — Status as legal investment and as securities for deposits.

The bonds authorized by this part are made securities in which all public officers and bodies of this state; all municipalities and all municipal subdivisions; all insurance companies and associations and other persons carrying on an insurance business; all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business; all administrators, guardians, executors, trustees, and other fiduciaries; and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state may properly and legally invest funds, including capital in their control or belonging to them. The bonds are also made securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of the bonds or other obligations of this state is now or may hereafter be authorized.

History. — Ga. L. 1960, p. 89, § 1.

12-3-268. Revenue bonds — Protection of bondholders; part as constituting a contract with bondholders.

While any of the bonds issued by the authority remain outstanding, the powers, duties, or existence of the authority, or of its officers, employees, or agents, or of any department, board, commission, or agency of the state, shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of such bonds. No other entity, department, agency, or authority will be created which will compete with the authority to such an extent as to affect adversely the interests and rights of the holders of such bonds, nor will the state itself so compete with the authority. This part shall be for the benefit of the state, the authority, and the holders of any such bonds and, upon the issuance of bonds under the provisions of this part, shall constitute a contract with the holders of such bonds.

History. — Ga. L. 1950, p. 152, § 22; Ga. L. 1960, p. 89, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 27.

12-3-269. Revenue bonds — Validation.

Bonds of the authority shall be confirmed and validated in accordance with the procedure provided by Article 3 of Chapter 82 of Title 36. The petition for validation shall also make party defendant to such action any authority, subdivision, instrumentality, or agency of the State of Georgia which has contracted with the Jekyll Island—State Park Authority for the use of any building, structure, or facilities for which bonds have been issued and sought to be validated. Such authority, subdivision, instrumentality, or agency shall be required to show cause, if any, why such contract or contracts and the terms and conditions thereof should not be inquired into by the court, the validity of the terms thereof determined, and the contract adjudicated as security for the payment of any such bonds of the authority. The bonds when validated and the judgment of validation shall be final and conclusive with respect to such bonds and against the authority issuing the same and any authority, subdivision, instrumentality, department, or agency contracting with the authority.

History. — Ga. L. 1950, p. 152, § 18; Ga. L. 1960, p. 89, § 1.

12-3-270. Use of rentals and other charges collected from leases and contracts for projects; obligations under lease contracts with authority; failure or refusal of lessee to perform; assignment of rentals due.

(a) The authority is authorized to fix rentals and other charges which any department, board, commission, authority, or agency of the State of Georgia shall pay to the authority for the use of each project, or part thereof, or combination of projects. The authority is also authorized to charge and collect rentals and other charges and to lease and make contracts with any department, board, commission, authority, or agency of the State of Georgia with respect to the use by any institution or unit under its control of any project or part thereof. Such rentals and other charges shall be so fixed and adjusted in respect to the aggregate thereof from the project or projects for which a single issue of revenue bonds is issued as to provide a fund sufficient with other revenues of such project or projects, if any, to pay:

(1) The cost of maintaining, repairing, and operating the project or projects, including reserves for extraordinary repairs and insurance and other reserves required by the resolution of trust indentures, unless such cost shall be otherwise provided for, which cost shall be deemed to include the expenses incurred by the authority on account of the project or projects for water, light, sewerage, and other services furnished by other facilities at such institution; and

(2) The principal of the revenue bonds and the interest thereon as the same shall become due.

(b) The rentals contracted to be paid by the state or any department, agency, or institution of the state to the authority under leases entered upon pursuant to this part shall constitute obligations of the state for the payment of which the good faith of the state is pledged. Such rentals shall be paid as provided in the lease contracts from funds appropriated for such purposes by the terms of the Constitution of Georgia. It shall be the duty of the state or any department, agency, or institution of the state to see to the punctual payment of all such rentals.

(c) In the event of any failure or refusal on the part of the lessees punctually to perform any covenant or obligation contained in any lease entered upon pursuant to this part, the authority may enforce performance by any legal or equitable process against lessees, and consent is given for the institution of any such action.

(d) The authority shall be permitted to assign any rental due it by the lessees to a trustee or paying agent as may be required by the terms of any trust indenture entered into by the authority.

History. — Ga. L. 1960, p. 89, § 1; Ga. L. 1964, p. 100, § 3.

12-3-271. Utilization of income and revenues.

All income and revenues arising out of the operation of Jekyll Island State Park, and all gifts, grants, appropriations, or bond or loan proceeds made specifically for Jekyll Island State Park, shall be used by the authority for the sole purpose of beautifying, improving, developing, enlarging, maintaining, administering, managing, and promoting Jekyll Island State Park at the lowest rates reasonable and possible for the benefit of the people of the State of Georgia.

History. — Ga. L. 1950, p. 152, § 7; Ga. L. 1963, p. 391, § 5.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 256, 340.

12-3-272. Acceptance by authority of grants and contributions.

The authority, in addition to the moneys which may be received from the sale of revenue bonds and from the collection of revenues, rents, and earnings derived under this part, is authorized to accept from any federal agency grants for or in aid of the construction of any project or

for the payment of bonds and to receive and accept contributions from any source of either money or property or other things of value to be held, used, and applied only for the purposes for which such grants or contributions may be made.

History. — Ga. L. 1950, p. 152, § 15; Ga. L. 1960, p. 89, § 1.

12-3-273. Moneys received by authority as constituting trust funds.

All moneys received pursuant to the authority of this part, whether as proceeds from the sale of revenue bonds, as grants or other contributions, or as revenues, rents, and earnings, shall be deemed to be trust funds to be held and applied solely as provided in this part.

History. — Ga. L. 1960, p. 89, § 1.

12-3-274. Authority property, activities, income, and bonds exempt from taxation and assessment.

It is found, determined, and declared that the creation of the authority and the carrying out of its corporate purpose are in all respects for the benefit of the people of this state and constitute a public purpose and that the authority will be performing an essential governmental function in the exercise of the power conferred upon it by this part. This state covenants with the holders of the bonds that the authority shall be required to pay no taxes or assessments upon any of the property acquired or leased by it, or under its jurisdiction, control, possession, or supervision, or upon its activities in the operation or maintenance of the buildings erected or acquired by it, or upon any fees, rentals, or other charges received by the authority for the use of such buildings, or upon other income received by the authority and that the authority shall be exempt from all sales and use taxes. Further, this state covenants that the bonds of the authority, their transfer, and the income therefrom shall at all times be exempt from all taxation within the state.

History. — Ga. L. 1950, p. 152, § 16; Ga. L. 1960, p. 89, § 1; Ga. L. 2007, p. 309, § 14/HB 219; Ga. L. 2007, p. 711, § 10/HB 214.

Code Commission notes. — The amendment of this Code section by Ga. L. 2007, p. 309, § 14, irreconcilably conflicted with and was treated as superseded by Ga. L. 2007, p. 711, § 10. See County of Butts v. Strahan, 151 Ga. 417 (1921).

JUDICIAL DECISIONS

Cited in Fouche v. Jekyll Island-State Park Auth., 713 F.2d 1518 (11th Cir. 1983).

OPINIONS OF THE ATTORNEY GENERAL

Sales of tangible personal property subject to limited exemption. — Since the purchase of tangible personal property is an activity necessary to the operation and maintenance of the authority's buildings, sales of such property to the authority are exempt to the extent that the sales are made for the purposes of carrying on the operation and maintenance of the authority's buildings. 1963-65 Op. Att'y Gen. p. 287.

RESEARCH REFERENCES

Am. Jur. 2d. — 71 Am. Jur. 2d, State and Local Taxation, §§ 247, 253 et seq.

C.J.S. — 84 C.J.S., Taxation, §§ 234, 250, 251.

ALR. — Bond or warrant of governmental subdivision as subject of taxation or exemption, 44 A.L.R. 510.

12-3-275. Venue and jurisdiction for actions under part.

Any action to protect or enforce any rights under this part shall be brought in the Superior Court of Fulton County, Georgia, and any action pertaining to validation of any bonds issued under this part shall likewise be brought in such court, which shall have exclusive, original jurisdiction of such actions.

History. — Ga. L. 1950, p. 152, § 21; Ga. L. 1960, p. 89, § 1.

Law reviews. — For note discussing problems with venue in Georgia, and proposing statutory revisions to improve the resolution of venue questions, see 9 Ga. St. B.J. 254 (1972).

JUDICIAL DECISIONS

Waiver of immunity to state court actions. — O.C.G.A. §§ 12-3-275 and 12-3-232 waived a state park authority's immunity to suits in state court but not in federal court. Fouche v. Jekyll Island-State Park Auth., 713 F.2d 1518 (11th Cir. 1983).

Cited in M.A.R.T.A. v. McCain, 135 Ga. App. 460, 218 S.E.2d 122 (1975).

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, § 356.

12-3-276. Supplemental nature of part.

This part shall be deemed to provide an additional and alternative method for the doing of the things authorized thereby and shall be

regarded as supplemental and additional to powers conferred by other laws and shall not be regarded as in derogation of any powers now existing.

History. — Ga. L. 1960, p. 89, § 1.

12-3-277. Construction of part.

This part, being necessary for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes hereof.

History. — Ga. L. 1950, p. 152, § 23.

Part 2

North Georgia Mountains Authority

12-3-290. Creation of authority as constituting instrumentality of state and public corporation; delegation of powers and duties; duration of authority's existence.

(a) There is created a body corporate and politic to be known as the North Georgia Mountains Authority, which shall be deemed an instrumentality of the State of Georgia and a public corporation, and by that name, style, and title such body may contract and be contracted with, sue and be sued, implead and be impleaded, and complain and defend in all courts.

(b) The authority may delegate to one or more of its members, or to its agents and employees, such powers and duties as it may deem proper.

(c) The authority shall exist for 99 years.

(d) The authority is assigned to the Department of Natural Resources for administrative purposes only.

History. — Ga. L. 1968, p. 297, § 1; Ga. L. 1972, p. 1015, § 1522.

Cross references. — Effect of assignment for administrative purposes, § 50-4-3.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 8, 42 et seq.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 17 et seq., 73.

12-3-291. Definitions.

As used in this part, the term:

(1) "Authority" means the North Georgia Mountains Authority created by this part.

(2) "Cost of project" means the cost of acquisition of properties or the use thereof, both real and personal, and the cost of construction, remodeling, erection, establishment, maintenance, repair, and equipping of classrooms, laboratories, housing, accommodations, tourist and recreational facilities, experimental facilities, and other facilities necessary to the operation and maintenance of the Georgia Recreation Experiment Station, and the cost of financing charges, interest incurred on construction and one year after completion of construction, as well as the cost of engineering, architectural, administrative, fiscal, and legal expenses and services as well as the cost of plans and specifications, as well as expenses incurred for feasibility or practicability studies.

(2.1) "Master plan" means that document to be created under the auspices of and adopted by the authority of one of its projects and as that master plan may be amended from time to time pursuant to Code Section 12-3-294.1.

(3) "Project" means the acquisition, construction, equipping, maintaining, operating, managing, and promotion of recreation and accommodation and tourist facilities and services, including, but not limited to, recreation centers, outdoor recreation experiment stations, playgrounds, parks, swimming and wading pools, lakes, golf courses, tennis courts, athletic fields and courts, club houses, gymnasiums, museums, convention halls, pageants, auditoriums, stables, restaurants, hotels, motels, hunting and fishing preserves, historic sites and attractions, and any other facilities or services that the authority may desire to undertake, including the related buildings and the usual and convenient facilities appertaining to any undertakings and any extensions or improvements of any facilities, and the acquisition of necessary property therefor, all as may be related to the development of recreational and tourist accommodations and facilities as the authority may deem necessary, convenient, or desirable. The term also means the acquisition, construction, equipping, and maintenance of housing accommodations, classrooms, laboratories, experimental facilities, and other facilities to be utilized in the establishment, operation, and maintenance of the Georgia Recreation Experiment Station, which shall be located in White County, Georgia, and which shall have as its principal purposes experimentation and research in the recreational uses and the preservation of the natural resources of the state, and which shall also develop and implement programs of instruction as to such uses and preservation for the public, for persons employed in the management of public parks or recreation areas and for persons employed in or seeking employment in the outdoor recreation-tourist industry.

History. — Ga. L. 1968, p. 297, § 2; Ga. L. 1969, p. 828, §§ 1, 2; Ga. L. 1995, p. 105, § 14.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, "plan" was substituted for "Plan" near the beginning of paragraph (2.1).

12-3-292. Membership of authority; officers; bylaws; quorum; action by majority vote; vacancies; reimbursement for expenses; compensation of employees.

(a) The authority shall consist of nine members who shall serve terms of four years from the date of their appointment and shall be appointed by the Governor from the same persons who comprise the Board of Natural Resources.

(b) The Governor shall appoint the chairperson of the authority for a term of one year from among the members of the authority. A member may serve no more than two consecutive terms as chairperson nor more than two terms as chairperson in any one four-year term as a member of the authority. The authority shall elect one of its members as vice chairperson. It shall also elect a secretary and a treasurer who need not be members. The office of secretary and treasurer may be combined in one person.

(c) The authority may make such bylaws for its government as is deemed necessary but is under no duty to do so.

(d) Any five members of the authority shall constitute a quorum necessary for the transaction of business; and a majority vote of those present at any meeting at which there is a quorum shall be sufficient to do and perform any action permitted by this part. No vacancy on the authority shall impair the right of a quorum to transact any and all business as aforesaid.

(e) The unexpired term of any member who ceases to serve from any cause shall be filled in the same manner that such member was originally appointed to the authority.

(f) The members shall receive no compensation for their services, but all members shall be entitled to be reimbursed for actual expenses, including travel and any other expenses, incurred while in the performance of their duties. Employees of the authority shall receive reasonable compensation, to be determined by the members of the authority, for their services.

History. — Ga. L. 1968, p. 297, § 3; Ga. L. 1973, p. 319, § 1; Ga. L. 1993, p. 1683, § 1; Ga. L. 1995, p. 105, § 15.

Cross references. — Legal mileage allowance, § 50-19-7.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, in subsection (b), "four-year" was hyphenated in the second sentence and a hyphen was removed from "vice chairperson" in the third sentence.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 8.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 70.

12-3-293. Accountability of members as trustees; maintenance of financial records and books; submitting records, books, and statement of financial position to state auditor.

The members of the authority shall be accountable in all respects as trustees. The authority shall keep suitable and proper books and records of all receipts, income, and expenditures of every kind and shall submit for inspection all of the books together with the proper statement of the authority's financial position at the close of its fiscal year each year to the state auditor. The books and records shall be inspected and audited by the state auditor at least once in each year.

History. — Ga. L. 1968, p. 297, § 4; Ga. L. 1995, p. 105, § 16.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 242 et seq.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 26 et seq.

12-3-294. Powers of authority generally.

The authority shall have power:

(1) To have a seal and alter it at pleasure;

(2) To acquire real and personal property of every kind and character by purchase or otherwise and to hold such property; to mortgage, hypothecate, or otherwise encumber its real and personal property for its corporate purposes; to grant a security interest by deed, financing statement, or bill of sale; and to construct a project on lands held by the state;

(3) To exercise the power of eminent domain;

(4) To appoint and select officers, agents, and employees, including engineering, architectural, and construction experts, and to fix their compensation;

(5) To make contracts, and to execute all instruments necessary or convenient, including contracts to borrow money; contracts for mortgages, security deeds, or other security interests; contracts for the construction of projects; and contracts with respect to the leasing or use of projects which it caused to be subdivided, erected, or acquired

or which it constructs or manages pursuant to an agreement with the state;

(6) To plan, survey, subdivide, improve, administer, construct, erect, acquire, own, repair, remodel, maintain, add to, extend, improve, equip, operate, and manage projects as defined in Code Section 12-3-291, to be located on property owned or leased by the authority or the state. The cost of any such project may be paid in whole or in part from funds of or available to the authority including but not limited to borrowed money, income, the proceeds of revenue bonds of the authority, and any grant from the United States or any agency or instrumentality thereof or from the State of Georgia; provided, however, that the authority shall not undertake any such activity having a projected cost of over $1 million unless it has first evaluated the feasibility of involving private persons or entities in the development, construction, operation, and management of the authority's existing projects and such proposed activities and has filed a copy of such evaluation with the Office of Planning and Budget and the Recreational Authorities Overview Committee;

(7) To accept loans and grants, either or both, of money or materials or property of any kind from the United States or any agency or instrumentality thereof, upon such terms and conditions as the United States or such agency or instrumentality may impose;

(8) To borrow money for any of its corporate purposes, to issue negotiable revenue bonds from earnings of projects, and to provide for the payment of the same and for the rights of the holders thereof;

(9) To exercise any power usually possessed by private corporations performing similar functions, which is not in conflict with the Constitution and laws of this state;

(10) To act as agent for the United States, or any agency, department, corporation, or instrumentality thereof, in any manner within the purposes or powers of the authority;

(11) To adopt, alter, or repeal its own bylaws, rules, and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed as the authority may deem necessary or expedient in facilitating its business;

(12) To do any and all other acts and things in this part authorized or required to be done, whether or not included in the general powers mentioned in this Code section;

(13) To receive gifts, donations, or contributions from any person, firm, or corporation;

(14) To hold, use, administer, and expend such sum or sums as may hereafter be received from any source, including income or gifts, for any of the purposes of this authority;

(14.1) To do any other things necessary or proper to foster and promote the involvement of private persons, firms, corporations, and partnerships in the development, construction, operation, and management of the authority's projects or projects which it manages pursuant to an agreement with the state, including but not limited to the entering into of contracts with such private entities for the development, construction, operation, and management of said projects for and on behalf of the authority;

(15) To do any other things necessary or proper to beautify, improve, and render projects self-supporting, including the establishment and modification of all reasonable fees, rentals, and other charges of whatever kind it deems necessary;

(16) To construct, maintain, and operate a project in White County, Georgia, to be known and designated as the "Georgia Recreation Experiment Station." In connection with such project, the Governor is authorized to execute for and on behalf of the state a lease upon any and all lands owned and held by the state in such county to the authority for a period not to exceed 50 years, such land so leased to be used by the authority only in connection with such project;

(17) To do all things necessary or convenient to carry out the powers expressly given in this part; and

(18) Upon obtaining a license from the Department of Revenue, to sell or dispense or to permit others to sell or dispense alcoholic beverages within or upon property or facilities owned, operated, managed, used, or controlled by the authority for consumption on the premises; provided, however, that the authority shall not sell or dispense alcoholic beverages in unbroken containers to be carried off of the premises. The sales authorized by this paragraph shall be limited to hotels, motels, lodges, and convention halls and those auditoriums, club houses, meeting rooms, and restaurants related thereto. The authority shall determine and regulate by resolution, as it may amend from time to time, the conditions under which such sales or dispensing of alcoholic beverages for consumption on the premises shall be made or shall be permitted. The authority shall give at least 30 days' public notice by publication in the county organ of the county in which the property or facility is located of its intent to adopt such a resolution or to amend a previously adopted resolution. The authority shall hold a public hearing at a convenient time and location in such county at least 15 days prior to adopting such a resolution to hear public comments. Any such resolution or amendment to a previously adopted resolution shall be adopted only at an open and public meeting of the authority after the required public notice has been given and the required public hearing has been held.

History. — Ga. L. 1964, p. 369, § 1; Ga. L. 1968, p. 297, § 5; Ga. L. 1973, p. 319, § 2; Ga. L. 1993, p. 1683, §§ 2, 3; Ga. L. 1993, p. 1781, § 3; Ga. L. 1995, p. 105, § 17.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, in paragraph (6), "$1 million" was substituted for "$1,000,000.00" and a semicolon was substituted for a period at the end.

OPINIONS OF THE ATTORNEY GENERAL

Restriction from facility for violation of rules authorized. — Authority can restrict or ban users of the Georgia Recreation Experiment Station from the facility should the users violate reasonable and definite rules and regulations of the authority. 1970 Op. Att'y Gen. No. U70-145.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 237 et seq., 256, 340 et seq.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 17 et seq., 73, 80, 147, 190, 207, 212 et seq.

12-3-294.1. Master plan; creations; contents; notice and hearing on preliminary plan; adherence to plan; amendment.

(a) The authority shall, on or before July 1, 1996, cause to be created a master plan for the management, preservation, protection, and development of each of its projects as defined in Code Section 12-3-291. The master plans for adjacent or contiguous projects may be combined into one document. The master plan for a project shall delineate, based upon aerial or other appropriate means of survey, the present and presently anticipated future uses of the land area of each project and shall also designate areas to be managed as environmentally sensitive, historically sensitive, and active use areas.

(b) In the creation of a master plan for a project, the authority shall, after preparation of a preliminary plan, give notice of the existence of the preliminary plan in the legal organ of the county in which the project is located and in at least two newspapers of state-wide general circulation not less than 60 days prior to the meeting of the authority at which the preliminary plan is to be considered for final adoption. After giving this notice, the authority shall hold a public hearing at a convenient location and receive and consider such oral and written comments on the preliminary plan as may be presented.

(c) The authority, in the exercise of its authority to develop, manage, preserve, and protect its projects, shall be guided by and shall adhere to the master plan for a project, as the same may from time to time be amended as provided in subsection (d) of this Code section.

(d) The authority may from time to time amend the master plan for a project, but only in compliance with the following procedure:

(1) Any proposed amendment to a master plan shall be described in written form and, if capable of such description, in visual form and presented publicly at a regular meeting of the authority;

(2) After the proposed amendment is presented publicly at a regular meeting of the authority, a brief summary of the proposed amendment shall be advertised in the legal organ of the county where the project is located, distributed to the media by news release, and published in appropriate publications of the authority. Each such advertisement, news release, and publication shall also contain:

(A) The time and place of the public hearing on the proposed amendment, which public hearing shall be held no earlier than 15 days after the latest publication of the advertisement in the legal organ as required by this paragraph;

(B) Directions as to the manner of receiving comments from the public regarding the proposed amendment; and

(C) The date on which the meeting of the authority at which the proposed amendment will be considered for approval or rejection, which meeting shall not be held any sooner than 30 days after the meeting of the authority at which the proposed change was announced pursuant to paragraph (1) of this subsection;

(3) The authority shall transmit three copies of the information required by paragraph (2) of this subsection to the Office of Legislative Counsel at least 30 days prior to the date of the meeting at which the proposed amendment will be considered. The Office of Legislative Counsel shall immediately furnish the presiding officers of each house of the General Assembly with a copy of the information received. The presiding officers, or the Office of Legislative Counsel if a presiding officer is unavailable, shall then assign the information to the chairperson of the appropriate standing committee in each house for review and provide copies to any member of that house who makes, or has made, a written request;

(4) In the event a standing committee to which the information has been assigned as provided in paragraph (3) of this subsection files an objection to a proposed amendment to the master plan with the chairperson of the authority prior to the authority's taking action on the proposed amendment and the authority adopts the proposed amendment over the objection, the authority shall notify the presiding officers of the Senate and House of Representatives, the chairpersons of the standing committees to which the information was referred, and the Office of Legislative Counsel within ten days after the adoption of the amendment to the master plan. Thereafter, by introduction of a resolution to override the amendment within the first 30 days of the next regular session of the General Assembly, the

amendment may be considered by the branch of the General Assembly whose committee objected to its adoption. In the event the resolution is adopted by the members of the branch of the General Assembly in which it is introduced, it shall be immediately transferred to the other branch of the General Assembly, which branch shall consider the resolution within five days of its being received. In the event the resolution to override the amendment to the master plan is adopted by a vote of two-thirds of the members of each branch, the amendment to the master plan shall be void on the day after the adoption of the resolution by the second branch of the General Assembly. In the event the resolution is ratified by a vote of less than two-thirds of the members of either house, the resolution shall be submitted to the Governor for approval or veto. In the event the resolution fails to pass both houses or is vetoed by the Governor, the amendment to the master plan shall remain in effect. In the event of the Governor's approval of the resolution, the amendment to the master plan shall be void on the day after the date of the Governor's approval of the resolution;

(5) Any proposed changes to the boundaries of any area or areas delineated on a master plan as a part of an area designated to be managed as environmentally or historically sensitive shall, at least seven days prior to the public hearing required by paragraph (2) of this subsection, be surveyed and marked in such a fashion as to be readily discernible on the ground by members of the public; and

(6) At the meeting of the authority which has been identified in the advertisement required by paragraph (2) of this subsection as the meeting to consider the approval or rejection of the proposed amendment, the authority shall consider in an open and public meeting the proposed amendment to the master plan, which, if approved, shall become a part of the master plan for that project, subject, however, to the provisions of paragraph (4) of this subsection.

History. — Code 1981, § 12-3-294.1, enacted by Ga. L. 1995, p. 105, § 18.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, "authority" was substituted for "Authority" twice in the first sentence of subsection (b) and, in subsection (d), near the beginning of paragraph (d)(2) and near the beginning of paragraph (d)(6); in subsection (c), "develop" was substituted for "development" and a comma was added after "preserve"; and, in subsection (d), "the" was deleted preceding "Legislative Counsel" in the last sentence of paragraph (d)(3) and near the end of the first sentence of paragraph (d)(4).

12-3-295. Security officers.

The North Georgia Mountains Authority is authorized to appoint security officers to safeguard the property of the authority and the safety of the general public. The duly appointed security officers of the authority are authorized, while on the premises over which the author-

ity exercises dominion and control, to carry weapons, to make arrests, and to exercise such of the police power of the state as may be necessary to maintain peace and order and to enforce any and all lawful zoning, user, and personal conduct regulations.

History. — Ga. L. 1971, p. 315, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Security officers not required to become certified as peace officers. — Security officers of the authority are neither required nor authorized to become certified as peace officers. 1972 Op. Att'y Gen. No. 72-27 (See also 1990 Op. Att'y Gen. 90-11).

RESEARCH REFERENCES

Am. Jur. 2d. — 59 Am. Jur. 2d, Parks, Squares, and Playgrounds, § 12.

12-3-296. Provision of legal services by Attorney General.

The Attorney General shall provide legal services for the authority, and in connection therewith Code Sections 45-15-13 through 45-15-16 shall be fully applicable.

History. — Ga. L. 1973, p. 319, § 3.

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, § 5.

12-3-297. Lease of state lands to authority.

The Governor is authorized to execute for and on behalf of the state a lease of lands owned by the state, or any part or parcel thereof, to the authority for a period not to exceed 50 years.

History. — Ga. L. 1964, p. 369, § 1; Ga. L. 1968, p. 297, § 6; Ga. L. 1993, p. 1683, § 4.

Cross references. — Revenue bonds generally, § 36-82-60 et seq.

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 207, 212 et seq.

12-3-298. Revenue bonds — Issuance for purpose of paying for cost of projects.

(a) The authority shall have the power and is authorized to provide by resolution for the issuance of negotiable revenue bonds for the purpose of paying all or any part of the cost, as defined in Code Section 12-3-291, of any one project or a combination of projects. The principal and interest of such revenue bonds shall be payable solely from a special fund provided for in this Code section. The bonds of each issue shall be dated, shall bear interest at the lowest attainable rate, payable in such medium of payment as to both principal and interest as may be determined by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority in the resolution in providing for the issuance of the bonds.

(b) The authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or the denominations of the bonds and the place or places of payment of principal and interest thereof, which may be at any bank or trust company within or outside the state. The bonds may be issued in coupon or registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bond as to principal alone and also as to both principal and interest.

(c) All bonds shall be signed by the chairman of the authority, and the official seal of the authority shall be affixed thereto and attested by the secretary of the authority, and any coupons attached thereto shall bear the signature or facsimile signature of the chairman of the authority. In case any officer whose signature shall appear on any bonds or whose facsimile signature shall appear on any coupon shall cease to be an officer before delivery of such bonds, such signature shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery.

(d) Such bonds and the income thereof shall be exempt from taxation in the State of Georgia.

(e) The authority may sell such bonds in such manner and for such price as it may determine to be for the best interest of the authority.

(f) Any resolution providing for the issuance of revenue bonds under this part shall become effective immediately upon its passage and need not be published or posted, and any such resolution may be passed at any regular or special or adjourned meeting of the authority by a majority of its members.

(g) Revenue bonds issued under this part shall not be deemed to constitute a debt of the State of Georgia or a pledge of the faith and

credit of the state, but such bonds shall be payable solely from the fund provided for in this Code section. The issuance of such revenue bonds shall not directly, indirectly, or contingently obligate the state to levy or to pledge any form of taxation whatever therefor or to make any appropriation for the payment thereof. All such bonds shall contain recitals on their faces covering substantially the foregoing provisions of this subsection.

(h) In the discretion of the authority, any issue of revenue bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside the state. Such trust indenture may pledge or assign rents, revenues, and earnings to be received by the authority. Either the resolution providing for the issuance of revenue bonds or the trust indenture itself may contain such provisions for perfecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the acquisition of property; the construction of the project; the maintenance, operation, repair, and insurance of the project or projects; and the custody, safeguarding, and application of all moneys and revenues. The resolution or trust indenture may also provide that any project shall be constructed and paid for under the supervision and approval of consulting engineers or architects employed or designated by the authority and satisfactory to the original purchasers of the bonds issued therefor. Such indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations. In addition to the foregoing, such trust indenture may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders.

(i) All revenues, rents, and earnings derived from any project or projects and all funds from any source whatsoever received by the authority may be pledged and allocated by the authority to the payment of principal and interest on revenue bonds of the authority as the resolution authorizing the issuance of the bonds or the trust instrument may provide; and such funds so pledged from whatever source received shall be set aside at regular intervals as may be provided in the resolution or trust indenture into a sinking fund which shall be pledged to and charged with the payment of:

(1) Interest upon such revenue bonds as such interest shall fall due;

(2) The principal of the bonds as the same shall fall due;

(3) The necessary charges of paying agents for paying principal and interest; and

(4) Any premium upon bonds retired by call or purchase.

(j) The use and disposition of such sinking fund shall be subject to such regulations as may be provided in the resolution authorizing the issuance of the revenue bonds or in the trust indenture, but, except as may otherwise be provided in such resolution or trust indenture, such sinking fund shall be affirmed for the benefit of all revenue bonds without distinction or priority of one over the other.

(k) Any holder of revenue bonds issued under this part or any of the coupons appertaining thereto, and the trustee under the trust indenture, if any, except to the extent the rights given by this Code section may be restricted by resolution passed before the issuance of the bonds or by the trust indenture, may, either at law or in equity, by action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the State of Georgia which are granted by this part or by such resolution or trust indenture and may enforce and compel performance of all duties required by this part or by such resolution or trust indenture, to be performed by the authority, or any officer thereof, including the fixing, charging, and collection of revenues, rents, and other charges for the use of the project or projects. No holder of such bonds shall have the right to compel any exercise of the taxing power of the state to pay any such bond or the interest thereon, or to enforce the payment thereof against the property of the state, nor shall any such bond constitute a charge, lien, or encumbrance, legal or equitable, upon any property of the state.

(l) It is found, determined, and declared that the creation of the authority and the carrying out of its purposes as defined in this part are in all respects for the benefit of the people of this state and are public purposes, and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this part. The state covenants with the holders of the bonds that the authority shall be required to pay no taxes or assessments upon any of the property acquired or leased by it, or under its jurisdiction, control, possession, or supervision, or upon its activities in the operation or maintenance of the buildings and facilities erected or acquired by it, or any fees, rentals, or other charges, for the use of such buildings, or any other income received by the authority. Further, the state covenants that the bonds of the authority, their transfer, and the income therefrom shall at all times be exempt from taxation within this state. Any exemption from taxation provided by this subsection shall not include exemption from sales and use taxes.

(m) Any action to protect or enforce any rights under this part shall be brought in the Superior Court of Fulton County, Georgia, and any action pertaining to validation of any bonds issued under this part shall likewise be brought in such court, which shall have exclusive, original jurisdiction of such actions.

(n) Bonds of the authority shall be confirmed and validated in accordance with the procedure of Article 3 of Chapter 82 of Title 36. The petition for validation shall also make party defendant to such action any authority, subdivision, instrumentality, or agency of the State of Georgia which has contracted with the authority for the use of any building or facility for which bonds have been issued and sought to be validated; and such authority, subdivision, instrumentality, or agency shall be required to show cause, if any, why such contract or contracts and the terms and conditions thereof should not be inquired into by the court, the validity of the terms thereof determined, and the contract adjudicated as security for the payment of any such bonds of the authority. The bonds, when validated, and the judgment of validation shall be final and conclusive with respect to such bonds and against the authority issuing the same and against any authority, subdivision, instrumentality, department, or agency contracting with the authority.

(o) The authority shall prescribe the rules and regulations for the operation of all projects, and it shall be the duty of the authority to fix rentals and other charges for the use of such projects so as to provide a fund sufficient with other revenues, if any, to pay the cost of maintaining, repairing, and operating the projects and to pay the principal of the revenue bonds and the interest thereon as the same shall become due.

(p) The offer, sale, or issuance of bonds, notes, or obligations by the authority shall not be subject to the provisions of Chapter 5 of Title 10, the "Georgia Uniform Securities Act of 2008."

History. — Ga. L. 1964, p. 369, § 1; Ga. L. 1968, p. 297, § 6B; Ga. L. 1984, p. 22, § 12; Ga. L. 1992, p. 6, § 12; Ga. L. 1993, p. 1683, § 5; Ga. L. 2008, p. 381, § 10/SB 358.

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Securities and Obligations, §§ 40, 102, 133, 135 et seq., 140, 142, 144, 156, 294, 322, 321 et seq., 327, 347 et seq. 71 Am. Jur. 2d, State and Local Taxation, §§ 247, 253 et seq.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 207, 212 et seq. 81A C.J.S., States, §§ 449 et seq., 443 et seq., 448 et seq. 84 C.J.S., Taxation, §§ 223, 241, 242.

12-3-299. Jurisdiction of authority.

The North Georgia Mountains Authority shall exercise all of its powers and engage in the business of its projects within the territorial boundaries and jurisdiction of Banks, Catoosa, Chattooga, Cherokee, Dade, Dawson, Fannin, Forsyth, Franklin, Gilmer, Gwinnett, Habersham, Hall, Lumpkin, Murray, Pickens, Rabun, Stephens, Towns, Union, Walker, White, and Whitfield counties and such other counties as may from time to time be admitted by resolution of the authority.

History. — Ga. L. 1968, p. 297, § 7.

12-3-300. Approval of indebtedness by Georgia State Financing and Investment Commission.

Any other provision of this part to the contrary notwithstanding, the authority shall not incur any debt of any kind, whether through contract, mortgage, or otherwise, or encumber any real or personal property in any manner unless such action has been approved in advance, in writing, by the Georgia State Financing and Investment Commission as defined by Article VII, Section IV, Paragraph VII of the Constitution and Article 2 of Chapter 17 of Title 50, the "Georgia State Financing and Investment Commission Act."

History. — Code 1981, § 12-3-300, enacted by Ga. L. 1993, p. 1683, § 6.

Part 3

Lake Lanier Islands Development Authority

Cross references. — Powers of department and Board of Natural Resources as to development of Lake Lanier Islands, § 12-3-4.

12-3-310. Definitions.

As used in this part, the term:

(1) "Authority" means the Lake Lanier Islands Development Authority.

(2) "Cost of project" means the cost of construction; the cost of all lands, properties, rights, easements, and franchises acquired; the cost of all machinery and equipment; financing charges; interest prior to and during construction, and for one year after completion of construction; cost of engineering; architectural and legal expenses, cost of plans and specifications, and other expenses necessary or incident to determining the feasibility or practicability of the project; administrative expense; and such other expenses as may be necessary or incident to the financing authorized by this part. The term also means the construction of any project, the placing of the same in operation, and the condemnation of property necessary for such construction and operation. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of the proceeds of revenue bonds issued under this part for such project.

(3) "Islands" means such islands in Lake Lanier as were held by the state under a license from the U.S. Army Corps of Engineers on March 9, 1962.

(3.1) "Master plan" means that document to be created under the auspices of and adopted by the authority of one of its projects and as that master plan may be amended from time to time pursuant to Code Section 12-3-314.1.

(4) "Project" means and includes one or a combination of two or more of the following: buildings, facilities, and all structures; electric, gas, steam, water, and sewerage utilities; and improvements of every kind and character deemed by the authority necessary or convenient for its purposes.

History. — Ga. L. 1968, p. 1132, § 1; Ga. L. 1969, p. 397, § 1; Ga. L. 1995, p. 105, § 19.

12-3-311. Creation of authority; delegation of powers and duties; duration of authority's existence.

(a) There is created a body corporate and politic to be known as the Lake Lanier Islands Development Authority, which shall be deemed an instrumentality of the State of Georgia and a public corporation and by that name, style, and title such body may contract and be contracted with, sue and be sued, implead and be impleaded, and complain and defend in all courts.

(b) The authority may delegate to one or more of its members, or to its agents and employees, such powers and duties as it may deem proper.

(c) The authority shall exist for 99 years and, upon the expiration thereof, shall exist for an additional 40 years.

(d) The authority is assigned to the Department of Natural Resources for administrative purposes only.

History. — Ga. L. 1962, p. 736, § 1; Ga. L. 1972, p. 1015, § 1523; Ga. L. 2020, p. 827, § 1-1/HB 998.

The 2020 amendment, effective August 5, 2020, added "and, upon the expiration thereof, shall exist for an additional 40 years" at the end of subsection (c).

Cross references. — Effect of assignment for administrative purposes, § 50-4-3.

12-3-312. Membership of authority; election of officers; bylaws; quorum; action by majority vote; voting by proxy; effect of vacancy; reimbursement for expenses; compensation of employees.

(a) The authority shall consist of nine members as follows: the commissioner of natural resources or his or her designee and eight additional members appointed by the Governor as follows:

(1) Five members from the state at large;

(2) One member from Forsyth County;

(3) One member from Hall County; and

(4) One member from Gwinnett County.

Each member appointed by the Governor under this Code section shall serve for a term of four years, with the beginning and ending dates of terms to be specified by the Governor, and until his or her successor is appointed and has qualified.

(b) The Governor shall appoint the chairperson of the authority for a term of one year from among the members of the authority. A member may serve no more than two consecutive terms as chairperson nor more than two terms as chairperson in any one four-year term as a member of the authority. The members of the authority shall elect one of their members as vice chairperson. They shall also elect a secretary and a treasurer who need not be members. The office of secretary and treasurer may be combined in one person.

(c) The authority may make such bylaws for its government as is deemed necessary, but it is under no obligation to do so.

(d) Any five members of the authority shall constitute a quorum necessary for the transaction of business; and a majority vote of those present at any meeting at which there is a quorum shall be sufficient to do and perform any action permitted to the authority by this part. However, no person shall be entitled to exercise or cast a proxy vote for any member. No vacancy on the authority shall impair the right of a quorum to transact any and all business as aforesaid.

(e) The members shall receive no compensation for their services, but all members shall be entitled to be reimbursed for actual expenses, including travel and any other expenses, incurred while in the performance of their duties. Employees of the authority shall receive reasonable compensation, to be determined by the members of the authority, for their services.

(f) All members of the authority shall immediately enter upon their duties without further act or formality.

History. — Ga. L. 1962, p. 736, § 2; Ga. L. 1964, p. 731, § 1; Ga. L. 1980, p. 765, § 1; Ga. L. 1982, p. 3, § 12; Ga. L. 1990, p. 872, § 4; Ga. L. 1991, p. 1692, § 1; Ga. L. 1995, p. 105, § 20.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, in subsection (b), "four-year" was hyphenated in the second sentence and the hyphen was deleted from "vice chairperson" in the third sentence.

12-3-313. Accountability of members as trustees; maintenance of financial records and books; submitting records, books, and statement of financial position to state auditor.

The members of the authority shall be accountable in all respects as trustees. The authority shall keep suitable and proper books and records of all receipts, income, and expenditures of every kind and shall submit for inspection all the books together with the proper statement of the authority's financial position once a year on or about December 31 to the state auditor. The books and records shall be inspected and audited by the state auditor at least once in each year.

History. — Ga. L. 1962, p. 736, § 3; Ga. L. 1995, p. 105, § 21.

12-3-314. Powers of authority generally.

The authority shall have power:

(1) To have a seal and alter it at pleasure;

(2) To acquire, hold, and dispose of personal property for its corporate purposes;

(3) To appoint, select, and employ officers, agents, and employees, including engineering, architectural, and construction experts, fiscal agents, and attorneys; to contract for the services of individuals or organizations not employed full time by the authority who or which are engaged primarily in the rendition of personal services rather than the sale of goods or merchandise, such as, but not limited to, the services of attorneys, accountants, engineers, architects, consultants, and advisers, and to allow suitable compensation for such services; and to make provisions for group insurance, retirement, or other employee benefit arrangements, provided that no part-time or contract employees shall participate in group insurance or retirement benefits;

(4) To make contracts and to execute all instruments necessary or convenient, including contracts for construction of projects or contracts with respect to the leasing or use of projects which the authority causes to be subdivided, erected, or acquired;

(5) To plan, survey, subdivide, administer, construct, erect, acquire, own, repair, remodel, maintain, add to, extend, improve, equip, operate, and manage projects as defined in this part, such projects to be located on property owned or leased by the authority. The cost of any such project shall be paid from its income, from the proceeds of revenue anticipation certificates of the authority, or from such

proceeds and any loan, gift, or grant from the United States or any agency or instrumentality thereof, or the State of Georgia, any county, municipal, or local government or governing body; provided, however, that the authority shall not undertake any such activity having a projected cost of over $1 million unless it has first evaluated the feasibility of involving private persons or entities in the development, construction, operation, and management of the authority's existing projects and such proposed activities and has filed a copy of such evaluation with the Office of Planning and Budget and the Recreational Authorities Overview Committee;

(6) To accept loans or grants, or both, of money, materials, or property of any kind from the United States or any agency or instrumentality thereof, including the Department of Housing and Urban Development, upon such terms and conditions as the United States or such agency or instrumentality, including the Department of Housing and Urban Development, may impose;

(7) To borrow money for any of its corporate purposes, to issue negotiable revenue anticipation certificates from earnings of such projects, and to provide for the payment of the same and for the rights of the holders thereof;

(8) To exercise any power which is usually possessed by private corporations performing similar functions and which is not in conflict with the Constitution and laws of this state;

(9) To act as agent for the United States, or any agency, department, corporation, or instrumentality thereof, in any manner within the purposes or powers of the authority;

(10) To adopt, alter, or repeal its own bylaws, rules, and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed, as the authority may deem necessary or expedient in facilitating its business;

(11) To receive and accept loans, gifts, grants, donations, or contributions of property, facilities, or services, with or without consideration, from any person, firm, or corporation or from the State of Georgia, or any agency or instrumentality thereof, or from any county, municipal, or local government or governing body;

(12) To hold, use, administer, and expend such sum or sums as may hereafter be received as income, gifts, or appropriations by authority of the General Assembly for any of the purposes of this authority;

(13) To do any other things necessary or proper to beautify, improve, and render self-supporting the island park, to make its facilities available to people of average income, and to advertise its beauties to the world;

(14) To acquire, lease (as lessee), purchase, hold, own, and use any franchise or any property, real or personal, tangible or intangible, or any interest therein; and to sell, lease (as lessor), transfer, or dispose thereof whenever the same is no longer required for purposes of the authority, or exchange the same for other property or rights which are useful for the purposes of the authority;

(15) To fix, alter, charge, and collect fares, rates, rentals, and other charges for its facilities and for admission to the islands at reasonable rates to be determined exclusively by the authority;

(16) To operate for hire boats, taxicabs, trains, trolleys, and other vehicles, systems, and facilities and other activities designed for the transportation of persons and property on the islands; to provide concessions, off-street parking, and other facilities for the comfort, safety, and convenience of visitors and other persons on the islands;

(17) To invest and reinvest any or all idle funds or moneys, including, but not limited to, funds held in reserve or debt retirement or received through the issuance of revenue certificates or from contributions, gifts, or grants, which cannot be immediately used for the purpose for which received, such investment to be made in any security or securities which are legal investments for executors or trustees; provided, however, that investments in such securities will at all times be held for and, when sold, used for the purposes for which the money was originally received;

(18) To grant, on an exclusive or nonexclusive basis, the right to use and occupy streets, roads, sidewalks, and other public places for the purpose of rendering utility services, upon such conditions and for such time as the authority may deem wise;

(19) To do all things necessary or convenient to carry out the powers expressly given in this part; and to do any and all other acts and things which this part authorizes or requires to be done, whether or not included in the general powers mentioned in this Code section; or

(20) To sell or authorize others to sell, upon obtaining a license from the Department of Revenue, alcoholic beverages for consumption on the premises only:

(A) Upon property owned or controlled by the authority and located within the territorial limits of property controlled by the authority; and

(B) Upon watercraft owned or controlled by the authority operating on Lake Sidney Lanier from such property.

The authority shall determine by resolution, as it may amend from time to time, the conditions, including hours and days of sale, under which such sales shall be permitted.

History. — Ga. L. 1962, p. 736, § 4; Ga. L. 1968, p. 1132, §§ 2, 3; Ga. L. 1972, p. 3509, § 1; Ga. L. 1987, p. 445, § 2; Ga. L. 1993, p. 1781, § 4; Ga. L. 1995, p. 105, § 22.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, a comma was deleted following "contracts" in paragraph (4).

Pursuant to Code Section 28-9-5, in 1993, "$1 million" was substituted for "$1,000,000.00" in the second sentence of paragraph (5).

12-3-314.1. Master plan; creation; contents; notice and hearing on preliminary plan; adherence to plan; amendment.

(a) The authority shall, on or before July 1, 1996, cause to be created a master plan for the management, preservation, protection, and development of each of its projects as defined in Code Section 12-3-310. The master plans for adjacent or contiguous projects may be combined into one document. The master plan for a project shall delineate, based upon aerial or other appropriate means of survey, the present and presently anticipated future uses of the land area of each project and shall also designate areas to be managed as environmentally sensitive and active use areas.

(b) In the creation of a master plan for a project, the authority shall, after preparation of a preliminary plan, give notice of the existence of the preliminary plan in the legal organ of the county in which the project is located and in at least two newspapers of state-wide general circulation not less than 60 days prior to the meeting of the authority at which the preliminary plan is to be considered for final adoption. After giving this notice, the authority shall hold a public hearing at a convenient location and receive and consider such oral and written comments on the preliminary plan as may be presented.

(c) The authority, in the exercise of its authority to develop, manage, preserve, and protect its projects, shall be guided by and shall adhere to the master plan for a project, as the same may from time to time be amended as provided in subsection (d) of this Code section.

(d) The authority may from time to time amend the master plan for a project, but only in compliance with the following procedure:

(1) Any proposed amendment to a master plan shall be described in written form and, if capable of such description, in visual form and presented publicly at a regular meeting of the authority;

(2) After the proposed amendment is presented publicly at a regular meeting of the authority, a brief summary of the proposed amendment shall be advertised in the legal organ of the county where the project is located, distributed to the media by news release, and published in appropriate publications of the authority. Each such advertisement, news release, and publication shall also contain:

(A) The time and place of the public hearing on the proposed amendment, which public hearing shall be held no earlier than 15 days after the latest publication of the advertisement in the legal organ as required by this paragraph;

(B) Directions as to the manner of receiving comments from the public regarding the proposed amendment; and

(C) The date on which the meeting of the authority at which the proposed amendment will be considered for approval or rejection, which meeting shall not be held any sooner than 30 days after the meeting of the authority at which the proposed change was announced pursuant to paragraph (1) of this subsection;

(3) The authority shall transmit three copies of the information required by paragraph (2) of this subsection to the Office of Legislative Counsel at least 30 days prior to the date of the meeting at which the proposed amendment will be considered. The Office of Legislative Counsel shall immediately furnish the presiding officers of each house of the General Assembly with a copy of the information received. The presiding officers, or the Office of Legislative Counsel if a presiding officer is unavailable, shall then assign the information to the chairperson of the appropriate standing committee in each house for review and provide copies to any member of that house who makes or has made a written request;

(4) In the event a standing committee to which the information has been assigned as provided in paragraph (3) of this subsection files an objection to a proposed amendment to the master plan with the chairperson of the authority prior to the authority's taking action on the proposed amendment and the authority adopts the proposed amendment over the objection, the authority shall notify the presiding officers of the Senate and House of Representatives, the chairpersons of the standing committees to which the information was referred, and the Office of Legislative Counsel within ten days after the adoption of the amendment to the master plan. Thereafter, by introduction of a resolution to override the amendment within the first 30 days of the next regular session of the General Assembly, the amendment may be considered by the branch of the General Assembly whose committee objected to its adoption. In the event the resolution is adopted by the members of the branch of the General Assembly in which it is introduced, it shall be immediately transferred to the other branch of the General Assembly, which branch shall consider the resolution within five days of its being received. In the event the resolution to override the amendment to the master plan is adopted by a vote of two-thirds of the members of each branch, the amendment to the master plan shall be void on the day after the adoption of the resolution by the second branch of the General

Assembly. In the event the resolution is ratified by a vote of less than two-thirds of the members of either house, the resolution shall be submitted to the Governor for approval or veto. In the event the resolution fails to pass both houses or is vetoed by the Governor, the amendment to the master plan shall remain in effect. In the event of the Governor's approval of the resolution, the amendment to the master plan shall be void on the day after the date of the Governor's approval of the resolution;

(5) Any proposed changes to the boundaries of any area or areas delineated on a master plan as a part of an area designated to be managed as environmentally sensitive shall, at least seven days prior to the public hearing required by paragraph (2) of this subsection, be surveyed and marked in such a fashion as to be readily discernible on the ground by members of the public; and

(6) At the meeting of the authority which has been identified in the advertisement required by paragraph (2) of this subsection as the meeting to consider the approval or rejection of the proposed amendment, the authority shall consider in an open and public meeting the proposed amendment to the master plan, which, if approved, shall become a part of the master plan for that project, subject, however, to the provisions of paragraph (4) of this subsection.

History. — Code 1981, § 12-3-314.1, enacted by Ga. L. 1995, p. 105, § 23; Ga. L. 1996, p. 6, § 12.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, "develop" was substituted for "development" in subsection (c); and, in subsection (d), a comma was added following "news release" in the introductory language in paragraph (d)(2) and "the" was deleted preceding "Legislative Counsel" in the third sentence in paragraph (d)(3) and from near the end of the first sentence in paragraph (d)(4).

12-3-315. Exercise of police powers by authority; delegation of powers.

(a) The authority is empowered to exercise such of the police powers of the state as may be necessary to maintain peace and order and to enforce any and all zoning, use, and personal conduct restrictions upon the properties, facilities, and persons under its jurisdiction to the extent that such is lawful under the laws of the nation and the state. In addition, and upon the adoption by the authority of a resolution so stating, the authority is empowered to exercise the police powers of the state in areas up to within 300 yards of the shoreline of the islands, as such areas are specified in the resolution. The authority may delegate all or any part of the performance of these functions temporarily or permanently to the state or to the county in which the park is located.

(b) The authority shall have legislative power to adopt reasonable ordinances relating to the property, affairs, and administration of Lake

Lanier Islands for which no provision has been made by general law and which are not inconsistent with the general laws and Constitution of the State of Georgia. The authority is further authorized to adopt ordinances adopting by reference any or all of the provisions of Chapter 6 of Title 40 in the same manner as a local authority under Code Section 40-6-372. Within the limits of the Lake Lanier Islands, the authority is authorized to appoint security officers who are authorized and empowered to serve and execute warrants and to make arrests for violation of ordinances adopted by the authority. Within the limits of Lake Lanier Islands, such security officers shall have the same authority, powers, and privileges regarding enforcement of laws as sheriffs of this state. Prosecutions for violations of the ordinances of the authority shall be in the magistrate court as provided in Article 4 of Chapter 10 of Title 15. The authority may provide that ordinance violations may be tried upon citations with or without a prosecuting attorney as well as upon accusations in the manner prescribed in Code Section 15-10-63.

(c) The maximum punishment for violation of such an ordinance shall be stated in the ordinance and shall not exceed a fine of $500.00 or imprisonment for 60 days, or both, except that an ordinance adopting the provisions of Code Section 40-6-391 shall provide the same punishment as provided by Code Section 40-6-391 for violations of that Code section.

(d) All of the provisions of any ordinances and resolutions adopted by the authority which are in force and effect as of April 2, 1987, and which are not inconsistent with nor repugnant to this Code section and not in conflict with the Constitution or the general laws of the State of Georgia or the Constitution of the United States shall remain in full force and effect, provided that the authority may at any time repeal, alter, or amend any of the provisions of said ordinances and resolutions.

History. — Ga. L. 1962, p. 736, § 10; Ga. L. 1980, p. 765, § 2; Ga. L. 1987, p. 445, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1987, "April 2, 1987," was substituted for "the effective date of this Code section" in subsection (d).

12-3-316. Security force.

The authority shall have the power to contract for or to provide for and maintain a security force with respect to the facilities and property owned, leased, operated, or under the control of the authority, and within the territory thereof. The security force shall have the duty to protect persons and property, dispense unlawful or dangerous assemblages, control pedestrian and vehicular traffic, and otherwise preserve and protect the public peace, health, and safety. For these purposes, a member of such force shall be a peace officer and, as such, shall have

authority equivalent to the authority of a policeman or law enforcement officer of the county in which he is discharging his duties.

History. — Ga. L. 1968, p. 1132, § 5.

12-3-317. Lease payments by authority as constituting good, valuable, and sufficient consideration.

It is found, determined, and declared that the consideration paid and given and to be paid and given to the State of Georgia by the authority for its leasehold, and privileges thereunder, is good and valuable and sufficient consideration therefor and that this action on the part of the authority and the state is in the interest of the public welfare of the State of Georgia and its citizens.

History. — Ga. L. 1962, p. 736, § 6.

12-3-318. Purposes for which income, gifts, grants, appropriations, bonds, or loans may be used; consultation with others; projects for Lake Lanier Watershed area.

(a) All income, revenues, gifts, grants, appropriations, bond or loan proceeds, and rights and privileges of value of every nature accruing to the authority shall be used:

(1) Primarily for the purpose of beautifying, improving, developing, maintaining, administering, managing, and promoting the islands in Lake Lanier; and

(2) Secondarily for the purpose of beautifying, improving, developing, maintaining, administering, managing, and promoting any other real property which is:

(A) Under the management and control of the department or the North Georgia Mountains Authority whether held in fee simple or under or through a contract, license, lease, or other similar agreement with an agency of the federal government; and

(B) Adjacent to any lake or reservoir in this state that is under the management and control of the United States Army Corps of Engineers.

(b) The authority shall accomplish the purposes provided in subsection (a) of this Code section at the lowest rates reasonable and possible for the benefit of the people of the State of Georgia for recreational purposes.

(c) Prior to authorizing the expenditure of funds for any of the secondary purposes set forth in subsection (a) of this Code section, the authority shall consult with the Senate Economic Development Com-

mittee, the House Committee on Game, Fish, and Parks, and the Governor for the purpose of assistance in establishing the priority of needs among the real properties eligible to receive the benefit of such expenditure.

(d) Notwithstanding any provision of law to the contrary, with regard to revenues received by the authority from property management contracts or agreements or leases of real property by the authority, 75 percent of all such revenues shall be retained by the authority for use in projects in the Lake Lanier Watershed area.

History. — Ga. L. 1962, p. 736, § 5; Ga. L. 1999, p. 835, § 1; Ga. L. 2003, p. 222, § 1; Ga. L. 2009, p. 303, § 5/HB 117.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2003, subsection (c), as enacted by Ga. L. 2003, p. 222, § 1, was redesignated as subsection (d).

Editor's notes. — Ga. L. 2009, p. 303, § 20/HB 117, not codified by the General Assembly, provides that: "This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act."

12-3-319. Location, construction, improvement, and maintenance of highways, streets, roads, and rights of way.

(a) The State Transportation Board, or its successors, and the Department of Transportation are authorized to make such studies and estimates in connection with the location and relocation of highways, roads, streets, and rights of way in connection with the islands, whether within or without the islands, as may be necessary to the location or relocation of any roads, streets, or highways within or without the islands. The board and the department may, at the expense of the department, locate or relocate such roads, streets, and highways so as to conform to the plan of the authority for the development and improvement of the islands.

(b) The authority may grant rights of way and easements for highways and roads within the islands to the Department of Transportation, and the department is authorized and empowered to lay out, construct, improve, and maintain any such roads and rights of way. The cost of any such undertaking shall be deemed to be a proper and legitimate expense of the department.

(c) The State Transportation Board, or its successors, and the Department of Transportation are empowered to acquire, in any manner now permitted by law, real property, any interest therein, or rights of way for the location and relocation of highways and roads located in proximity to the islands and are authorized and empowered to expend any funds available to such board or such department for the purpose of such locating and relocating, and for constructing, improving, and

maintaining any such highways and roads. The cost of any such undertaking shall be deemed a proper and legitimate expense of such board or such department.

History. — Ga. L. 1969, p. 397, § 3.

12-3-320. Power of authority to survey, subdivide, improve, and lease island property.

The authority is empowered to survey, subdivide, improve, and lease as subdivided any of the property of the islands in Lake Lanier.

History. — Ga. L. 1962, p. 736, § 7.

12-3-321. Restrictions under lease; restrictions on subleasing.

The leasing of the property shall be for not more than 50 years under stringent restrictive limitations as to use, the style and character of the structures allowable thereon, and such other limitations as the authority may deem wise; and all such restrictions shall be incorporated in the leases as covenants providing for forfeiture upon breach. No sublease by any tenant of the authority shall be legal without the approval of the authority.

History. — Ga. L. 1962, p. 736, § 8.

12-3-322. Leasing of property by competitive bidding.

Only after notice is published once a week for four weeks in the official organs of all the counties bordering Lake Lanier and in the official organ of Fulton County, the property described in this part shall be leased as deemed appropriate by the authority at public auction or by sealed competitive bids. The authority shall have the privilege of setting minimum prices below which no bid for lease shall be accepted. When in the opinion of the authority the public welfare demands it, the authority may conclude any authorized lease by private negotiation after first giving notice to the Attorney General of the particulars.

History. — Ga. L. 1962, p. 736, § 9.

12-3-323. Revenue bonds — Power of authority to issue bonds; payment of principal and interest; dating of bonds; determination of maturity dates, interest rates, and medium of payments; redemption before maturity.

The authority, or any authority or body which has succeeded or which may in the future succeed to the powers, duties, and liabilities vested in the authority, shall have power and is authorized at one time, or from

time to time, to provide by resolution for the issuance of negotiable revenue bonds for the purpose of paying all or any part of the cost, as defined in this part, of any one project or a combination of projects. The principal and interest of such revenue bonds shall be payable solely from the special fund provided in Code Section 12-3-334 for such payment. The bonds of each issue shall be dated and shall mature at such times and bear interest at such rates as may be determined by the authority, payable in such medium of payment as to both principal and interest as may be determined by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority in the resolution providing for the issuance of the bonds.

History. — Ga. L. 1962, p. 736, §§ 11, 13; Ga. L. 1969, p. 397, § 2.

Cross references. — Revenue bonds generally, § 36-82-60 et seq.

12-3-324. Revenue bonds — Form of bonds; interest coupons; denominations; place of payment; issuance in coupon or registered form; registration of coupon bonds.

The authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereof, which may be at any bank or trust company within or without the state. The bonds may be issued in coupon or registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bond as to principal alone and also as to both principal and interest.

History. — Ga. L. 1962, p. 736, § 13; Ga. L. 1969, p. 397, § 2.

12-3-325. Revenue bonds — Signatures; seal.

In case any officer whose signature appears on any bonds or whose facsimile signature appears on any coupon ceases to be such officer before the delivery of such bonds, such signature shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All such bonds shall be signed by the chairman or vice-chairman of the authority, and the official seal of the authority shall be affixed thereto and attested by the secretary or assistant secretary of the authority; and any coupons attached thereto shall bear the signature or facsimile signature of the chairman or vice-chairman of the authority. Any coupon may bear the facsimile signature of such person, and any bond may be signed, sealed, and attested on behalf of the authority by such persons as at the actual time of the execution of such bonds shall be duly authorized or hold the proper office, although

at the date of such bonds such persons may not have been so authorized or shall not have held such office.

History. — Ga. L. 1962, p. 736, § 13; Ga. L. 1969, p. 397, § 2.

12-3-326. Revenue bonds — Status as negotiable instruments; tax exemption for bonds and income therefrom.

All revenue bonds issued under this part shall have and are declared to have all the qualities and incidents of negotiable instruments. Such bonds and the income therefrom shall be exempt from all taxation within the state.

History. — Ga. L. 1962, p. 736, § 12; Ga. L. 1969, p. 397, § 2.

12-3-327. Revenue bonds — Manner of sale; determination of price; use and manner of disbursement of proceeds.

(a) The authority may sell bonds in such manner and for such price as it may determine to be for the best interests of the authority.

(b) The proceeds of bonds shall be used solely for the payment of the cost of project and shall be disbursed upon requisition or order of the chairman or vice-chairman of the authority under such restrictions, if any, as provided by the resolution authorizing the issuance of the bonds or by the trust indenture mentioned in Code Section 12-3-332.

History. — Ga. L. 1969, p. 397, § 2.

12-3-328. Revenue bonds — Issuance of interim receipts, interim certificates, and temporary bonds.

Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts, interim certificates, or temporary bonds, with or without coupons, exchangeable for definitive bonds upon the issuance of the latter.

History. — Ga. L. 1969, p. 397, § 2.

12-3-329. Revenue bonds — Replacement of mutilated, destroyed, or lost bonds.

The authority may provide for the replacement of any bond which becomes mutilated or is destroyed or lost.

History. — Ga. L. 1969, p. 397, § 2.

12-3-330. Revenue bonds — Bonds; application of bonds of a single issue as payment for one or more projects; immediate effectiveness of resolutions providing for issuance of bonds; time and manner of passage of resolutions.

Revenue bonds may be issued without the conducting of any proceedings, the existence of any conditions, or the happening of any events other than those proceedings, conditions, and events which are specified or required by this part. In the discretion of the authority, revenue bonds of a single issue may be issued for the purpose of paying the cost of any one or more, including a combination of, projects at any one institution or any number of institutions. Any resolution providing for the issuance of revenue bonds under this part shall become effective immediately upon its passage and need not be published or posted. Any such resolution may be passed at any regular, special, or adjourned meeting of the authority by a majority of its members.

History. — Ga. L. 1969, p. 397, § 2.

12-3-331. Revenue bonds — Status as constituting debt or pledge of faith or credit of state; effect of issuance on obligation of state to tax or make appropriations; recitals on face of bonds.

Revenue bonds issued under this part shall not be deemed to constitute a debt of the State of Georgia or a pledge of the faith and credit of the state. Such bonds shall be payable solely from the fund provided for in Code Section 12-3-334, and the issuance of such revenue bonds shall not directly, indirectly, or contingently obligate the state to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. All such bonds shall contain recitals on their faces covering substantially the foregoing provisions of this Code section. Anything in this Code section to the contrary notwithstanding, such funds as may be received from state appropriations or from any other source are declared to be available and may be used by any department, board, commission, or agency of the State of Georgia for the performance of any lease contract entered into by such department, board, commission, or agency.

History. — Ga. L. 1962, p. 736, § 12;
Ga. L. 1969, p. 397, § 2.

12-3-332. Revenue bonds — Securing by trust indenture.

(a) In the discretion of the authority, any issue of revenue bonds may be secured by a trust indenture by and between the authority and a

corporate trustee, which may be any trust company or bank having the powers of a trust company within or outside of the state. Such trust indenture may pledge or assign rents, revenues, and earnings to be received by the authority.

(b) Either the resolution providing for the issuance of revenue bonds or the trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the acquisition of property, the construction of the project, the maintenance, operation, repair, and insurance of the project, and the custody, safeguarding, and application of all moneys. The resolution or indenture may also provide that any project shall be constructed and paid for under the supervision and approval of consulting engineers or architects employed or designated by the authority and satisfactory to the original purchasers of the bonds issued therefor. The resolution or indenture may also require that the security given by contractors and by any depository of the proceeds of the bonds or revenues or other moneys be satisfactory to such purchasers and may also contain provisions concerning the conditions, if any, upon which additional revenue bonds may be issued.

(c) The indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations. In addition to the foregoing provisions of this Code section, the trust indenture may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders.

(d) It shall be lawful for any bank or trust company incorporated under the laws of this state to act as such depository and to furnish such indemnifying bonds or pledge such securities as may be required by the authority.

(e) All expenses incurred in carrying out the trust indenture may be treated as a part of the cost of maintenance, operation, and repair of the project and of the cost of project affected by such indenture.

History. — Ga. L. 1962, p. 736, §§ 15, 16; Ga. L. 1969, p. 397, § 2.

12-3-333. Revenue bonds — Designation of recipient of bond proceeds.

The authority shall, in the resolution providing for issuance of revenue bonds or in the trust indenture, provide for the payment of the proceeds of the sale of the bonds to any officer or person who, or any agency, bank, or trust company which, shall act as trustee of such funds

and shall hold and apply the same to the purposes expressed in this part, subject to such regulations as this part and such resolution or trust indenture may provide.

History. — Ga. L. 1962, p. 736, § 16; Ga. L. 1969, p. 397, § 2.

12-3-334. Revenue bonds — Establishment of sinking fund for payment of principal, interest, and other costs.

(a) The revenues, rents, and earnings derived from any particular project or combined project; any and all funds from any source received by any department, board, commission, or agency of the State of Georgia, and pledged and allocated by it to the authority as security for the performance of any lease or leases; or, unless otherwise pledged and allocated, any and all revenues, rents, and earnings received by the authority, regardless of whether or not such rents, earnings, and revenues were produced by a particular project for which bonds have been issued, may be pledged and allocated by the authority to the payment of the principal and interest on revenue bonds of the authority as the trust indenture or the resolution authorizing the issuance of the bonds may provide.

(b) Such funds so pledged from whatever source received, which pledge may include funds received from one or more or all sources, shall be set aside at regular intervals, as may be provided in the resolution or trust indenture, into a sinking fund which shall be pledged to and charged with the payment of:

(1) The interest upon such revenue bonds as such interest shall fall due;

(2) The principal of the bonds as the same shall fall due;

(3) The necessary charges of paying agents for paying principal and interest; and

(4) Any premium upon bonds retired by call or purchase.

(c) The use and disposition of such sinking fund shall be subject to such regulations as may be provided in the resolution authorizing the issuance of the revenue bonds or in the trust indenture, but, except as may otherwise be provided in such resolution or trust indenture, such sinking fund shall be a fund for the benefit of all revenue bonds without distinction or priority of one over another.

(d) Subject to the provisions of the resolution authorizing the issuance of the bonds, or subject to the trust indenture, surplus moneys in the sinking fund may be applied to the purchasing or redemption of bonds, and any such bonds so purchased or redeemed shall forthwith be canceled and shall not again be issued.

History. — Ga. L. 1969, p. 397, § 2.

12-3-335. Revenue bonds — Remedies of bondholders, coupon holders, and trustees.

Except to the extent the rights given in this Code section may be restricted by resolution passed before the issuance of bonds or by a trust indenture, any holder of revenue bonds or interest coupons issued under this part, any receiver for such holders, or any indenture trustee, if any, may either at law or in equity, by action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the State of Georgia or granted by this part or under such resolution or trust indenture. Such holder, receiver, or trustee may enforce and compel performance of all duties required by this part, or by resolution or trust indenture, to be performed by the authority or any officer thereof, including the fixing, charging, and collecting of revenues, rents, and other charges for the use of the project or projects. In the event of default of the authority upon the principal and interest obligations of any revenue bond issue, such holder, receiver, or trustee shall be subrogated to each and every right, specifically including the contract rights of collecting rental, which the authority may possess against the state or any department, agency, or institution of the state and, in the pursuit of his or its remedies as subrogee, may proceed either at law or in equity, by action, mandamus, or other proceedings, to collect any sums by such proceedings due and owing to the authority and pledged or partially pledged directly or indirectly to the benefit of the revenue bond issue of which such holder, receiver, or trustee is representative. No holder, receiver, or trustee shall have the right to compel any exercise of the taxing power of the state to pay any such bond or the interest thereon, or to enforce the payment thereof against any property of the state, nor shall any such bond constitute a charge, lien, or encumbrance, legal or equitable, upon the property of the state.

History. — Ga. L. 1969, p. 397, § 2.

12-3-336. Revenue bonds — Revenue refunding bonds.

The authority is authorized to provide by resolution for the issuance of revenue refunding bonds of the authority for the purpose of refunding any revenue bonds issued under this part and then outstanding, together with accrued interest thereon. The issuance of such revenue refunding bonds, the maturities, and all other details thereof, the rights of the holders thereof, and the duties of the authority in respect to the same shall be governed by the foregoing provisions of this part insofar as the same may be applicable.

History. — Ga. L. 1969, p. 397, § 2.

12-3-337. Revenue bonds — Protection of bondholders; part as constituting a contract with bondholders.

While any of the bonds issued by the authority remain outstanding, the powers, duties, or existence of the authority, or of its officers, employees, or agents, or of any department, board, commission, or agency of the state, shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of such bonds, and no other entity, department, division, agency, or authority will be created which will compete with the authority to such an extent as to affect adversely the interests and rights of the holders of such bonds, nor will the state itself so compete with the authority. This part shall be for the benefit of the state, the authority, and the holders of any such bonds and, upon the issuance of bonds under this part, shall constitute a contract with the holders of such bonds.

History. — Ga. L. 1962, p. 736, § 18;
Ga. L. 1969, p. 397, § 2.

12-3-338. Revenue bonds — Validation.

Bonds of the authority shall be confirmed and validated in accordance with the procedure of Article 3 of Chapter 82 of Title 36. The petition for validation shall also make party defendant to such action any authority, division, subdivision, instrumentality, or agency of the State of Georgia which, or any person who, has contracted with the Lake Lanier Islands Development Authority for the use of any building, structure, or facilities for which bonds have been issued and sought to be validated. Such authority, division, subdivision, instrumentality, agency, or person shall be required to show cause, if any, why such contract or contracts and the terms and conditions thereof should not be inquired into by the court, the validity of the terms thereof determined, and the contract adjudicated as security for the payment of any such bonds of the authority. The bonds when validated and the judgment of validation shall be final and conclusive with respect to such bonds and against the authority issuing the same and against any authority, division, subdivision, instrumentality, department, agency, or person contracting with the authority.

History. — Ga. L. 1962, p. 736, § 14;
Ga. L. 1969, p. 397, § 2.

12-3-339. Authority property, activities, income, and bonds exempt from taxation and assessment.

It is found, determined, and declared that the creation of the authority and the carrying out of its corporate purposes are in all

respects for the benefit of the people of this state and constitute a public purpose and that the authority will be performing an essential governmental function in the exercise of the power conferred upon it by this part. This state covenants with the holders of the bonds that the authority shall be required to pay no taxes or assessments upon any of the property acquired or leased by it or under its jurisdiction, control, possession, or supervision, or upon its activities in the operation or maintenance of the buildings erected or acquired by it, or upon any fees, rentals, or other charges for the use of such buildings, or upon other income received by the authority. Further, this state covenants that the bonds of the authority, their transfer, and the income therefrom shall at all times be exempt from taxation within the state. The exemption provided in this Code section shall include an exemption from state and local sales and use tax on property purchased by the authority for use exclusively by the authority.

History. — Ga. L. 1969, p. 397, § 2; Ga. L. 1984, p. 841, § 1.

12-3-340. Conflicts of interest; applicability of other laws regulating conduct; contracts voidable by authority.

(a) Every member of the authority and every employee of the authority who knowingly has any interest, direct or indirect, in any contract to which the authority is or is about to become a party, or in any other business of the authority, or in any firm or corporation doing business with the authority, shall make full disclosure of such interest to the authority. Failure to disclose such an interest shall constitute cause for which an authority member may be removed or an employee discharged or otherwise disciplined at the discretion of the authority.

(b) Provisions of Article 1 of Chapter 10 of Title 16, Code Sections 16-10-21, 16-10-22, and Code Sections 16-10-92 and 16-10-93, regulating the conduct of officers, employees, and agents of political subdivisions, municipal and other public corporations, and other public organizations, shall be applicable to the conduct of members, officers, employees, and agents of the authority.

(c) Any contract or transaction of the authority involving a conflict of interest not disclosed under subsection (a) of this Code section, or involving a violation of Article 1 of Chapter 10 of Title 16, Code Sections 16-10-21, 16-10-22, and Code Sections 16-10-92 and 16-10-93, or involving a violation of any other provision of law regulating conflicts of interest which is applicable to the authority or its members, officers, or employees shall be voidable by the authority.

History. — Ga. L. 1964, p. 731, § 2; Ga. L. 1968, p. 1132, § 4.

12-3-341. Venue and jurisdiction of actions under part.

Any action to protect or enforce any rights under this part shall be brought in the Superior Court of Hall County, Georgia, and any action pertaining to validation of any bonds issued under this part shall likewise be brought in such court, which shall have exclusive original jurisdiction of such actions.

History. — Ga. L. 1962, p. 736, §§ 14, 17; Ga. L. 1969, p. 397, § 2; Ga. L. 1986, p. 377, § 1.

Editor's notes. — Ga. L. 1986, p. 377, § 2, not codified by the General Assembly, provided: "This Act shall become effective upon its approval by the Governor [approved March 26, 1986] or upon its becoming law without such approval and shall be applicable to any suit or action filed on or after that date. The provisions of this Act shall not affect any suit or action filed prior to the effective date of this Act in the Superior Court of Fulton County."

Part 4

Kinchafoonee Lake Authority

12-3-360 through 12-3-378.

Reserved. Repealed by Ga. L. 2008, p. 1015, § 3/SB 344, effective May 14, 2008.

Editor's notes. — This part was based on Ga. L. 1970, p. 3379, §§ 1-8; Ga. L. 1972, p. 1015, § 1524; Ga. L. 1982, p. 3, § 12; Ga. L. 1984, p. 22, § 12.

Part 5

The Great Park Authority

12-3-390 through 12-3-397.

Reserved. Repealed by Ga. L. 1980, p. 328, § 8, effective July 1, 1983.

Editor's notes. — Part 5 of Chapter 3 of Title 12 was based on Ga. L. 1980, p. 328.

Ga. L. 2013, p. 141, § 12/HB 79, reserved the designation of this part, effective April 24, 2013.

Part 6

Oconee River Greenway Authority

12-3-400. Short title.

This part shall be known and may be cited as the "Oconee River Greenway Authority Act."

History. — Code 1981, § 12-3-400, enacted by Ga. L. 2002, p. 820, § 1.

12-3-401. Definitions.

As used in this part, the term:

(1) "Authority" means the Oconee River Greenway Authority.

(2) "Cost of the project" means the cost of construction; the cost of all lands, properties, rights, easements, and franchises acquired; the cost of all machinery and equipment; financing charges; interest prior to and during construction and for one year after completion of construction; the cost of engineering, architectural, and legal expenses and of plans and specifications and other expenses necessary or incident to determining the feasibility or practicability of the project; administrative expenses; and such other expenses as may be necessary or incident to the financing authorized in this part, the construction of any project, and the placing of the same in operation. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of such bonds or obligations as may be issued by any authority, department, commission, or agency of the State of Georgia.

(3) "Geographic jurisdiction of the authority" means Baldwin County and, subject to approval and upon such terms as agreed to by the authority and the governing authority of any county to be added, any other county bordered by or through which flows the Oconee River or any impounded waters thereof.

(4) "Project" means real property which borders, or is contiguous to real property which borders, the Oconee River or any impounded waters thereof in any county or counties within the geographic jurisdiction of the authority and improvements thereto of every kind and character deemed by the authority necessary or convenient for its corporate purpose.

History. — Code 1981, § 12-3-401, enacted by Ga. L. 2002, p. 820, § 1; Ga. L. 2003, p. 448, § 1.

12-3-402. Creation; membership; compensation; qualifications; accountabilities; assignment.

(a) There is created a body corporate and politic to be known as the Oconee River Greenway Authority which shall be deemed to be an instrumentality of the State of Georgia and a public corporation; and by that name, style, and title such body may contract and be contracted with, sue and be sued, implead and be impleaded, and complain and defend in all courts of this state.

(b) The authority shall consist of the commissioner of natural resources or the designee thereof, the director of the State Forestry Commission or the designee thereof, the mayor of Milledgeville, the president of Georgia Military College, the chairperson of the governing authority of each county which is in the geographic jurisdiction of the authority or the designee thereof, and no more than four residents of each county which is in the geographic jurisdiction of the authority who have training or experience in biology, botany, or environmental science and who shall be appointed by the chairperson of the governing authority of such county.

(c) The authority shall elect its own officers. No vacancy on the authority shall impair the right of the quorum to exercise all rights and perform all duties of the authority.

(d) The members of the authority shall receive no compensation for their services on the authority but shall be reimbursed for actual expenses incurred while discharging the duties imposed upon them by this part.

(e) The authority shall have perpetual existence. Any change in name or composition of the authority shall in no way affect the vested rights of any person under this part or impair the obligations of any contracts existing under this part.

(f) The members of the authority shall be accountable in all respects as trustees. The authority shall keep suitable and proper books and records of all receipts, income, and expenditures of every kind and shall submit for inspection all the books, together with the proper statement of the authority's financial position, to the state auditor.

(g) The authority is assigned to the Department of Natural Resources for administrative purposes only in accordance with Code Section 50-4-3.

History. — Code 1981, § 12-3-402, enacted by Ga. L. 2002, p. 820, § 1; Ga. L. 2003, p. 448, § 2; Ga. L. 2013, p. 777, § 1/HB 177.

12-3-403. Purpose and nature of authority.

The corporate purpose and the general nature of the business of the authority shall be the acquisition or establishment of projects consistent with but not limited to one or more of the goals specified in paragraph (5) of Code Section 12-6A-2; their maintenance and protection; and their development or restoration. The authority's purpose also shall be to engage in such other activities as it deems appropriate to promote use of any project by means of promoting tourism and educational, entertainment, recreational, athletic, or other events within the state and to promote the use of the educational, historical,

cultural, recreational, and natural resources of the state by persons using or visiting any project.

History. — Code 1981, § 12-3-403, enacted by Ga. L. 2002, p. 820, § 1; Ga. L. 2003, p. 448, § 3; Ga. L. 2008, p. 90, § 2-1/HB 1176.

12-3-404. General powers.

The authority is authorized:

(1) To have a seal and alter it at pleasure;

(2) To acquire, hold, and dispose of real and personal property for its corporate purposes;

(3) To appoint, select, and employ officers, agents, and employees, including but not limited to conservation, management, engineering, architectural, and construction experts and fiscal agents; to contract for the services of individuals or organizations not employed full time by the authority who or which are engaged primarily in the rendition of personal services rather than the sale of goods or merchandise, such as, but not limited to, the services of conservationists, managers, accountants, engineers, architects, consultants, and advisors, and to allow suitable compensation for such services; and to make provisions for group insurance, retirement, or other employee benefit arrangements, provided that no part-time or contract employees shall participate in group insurance or retirement benefits;

(4) To make contracts and to execute all instruments necessary or convenient, including contracts for construction of projects or contracts with respect to the leasing or use of projects which the authority causes to be subdivided, erected, or acquired;

(5) To plan, survey, subdivide, administer, construct, erect, acquire, own, repair, remodel, maintain, add to, extend, improve, equip, operate to ensure maximum use of, and manage projects as defined in this part, such projects to be located on property owned or leased by the authority or the State of Georgia or under the control and management of the authority and to engage in such other activities as it deems appropriate to promote use of any project by means of promoting tourism and educational, entertainment, recreational, athletic, or other events within the state and to promote the use of the educational, historical, cultural, recreational, and natural resources of the state by persons using or visiting any project. The cost of any such project shall be paid from its income, from the proceeds of revenue anticipation certificates of the authority, or from such proceeds and any loan, gift, or grant from the United States of America or any agency or instrumentality thereof, or the State of Georgia, or any county, municipal corporation, authority, or local government or governing body;

(6) To accept loans or grants, or both, of money, materials, or property of any kind from the United States of America or any agency or instrumentality thereof upon such terms and conditions as the United States of America or such agency or instrumentality may impose;

(7) To borrow money for any of its corporate purposes, to issue negotiable revenue anticipation certificates from earnings of such projects, and to provide for the payment of the same and for the rights of the holders thereof;

(8) To exercise any power which is usually possessed by private corporations performing similar functions and which is not in conflict with the Constitution and laws of this state;

(8.1) To organize a nonprofit corporation the purpose of which is to benefit and assist the authority in fulfilling the corporate purpose of the authority, pursuant to the provisions of Chapter 3 of Title 14, the "Georgia Nonprofit Corporation Code";

(9) To act as agent for the United States of America or any agency, department, corporation, or instrumentality thereof, in any manner within the purposes or powers of the authority;

(10) To adopt, alter, or repeal its own bylaws, rules, and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed as the authority may deem necessary or expedient in facilitating its business;

(11) To receive and accept loans, gifts, grants, donations, or contributions of property, facilities, or services, with or without consideration, from any person, firm, or corporation or from the State of Georgia, or any agency or instrumentality thereof, or from any county, municipal corporation, or local government or governing body;

(12) To hold, use, administer, and expend such sum or sums as may hereafter be received as income or gifts for any of the purposes of this authority;

(13) To do all things necessary or convenient to carry out the powers and purposes of the authority;

(14) To acquire, lease (as lessee), purchase, hold, own, and use any franchise or any property, real or personal, tangible or intangible, or any interest therein; and to sell, lease (as lessor), transfer, or dispose thereof whenever the same is no longer required for purposes of the authority or exchange the same for other property or rights which are useful for the purposes of the authority;

(15) To fix, alter, charge, and collect fares, rates, rentals, and other charges for its facilities and for admission to its grounds at reasonable rates to be determined by the authority;

(16) To contract with other authorities, departments, or agencies of the State of Georgia for the corporate purpose of the authority;

(17) To invest and reinvest any or all idle funds or moneys, including, but not limited to, funds held in reserve or debt retirement or received through the issuance of revenue certificates or from contributions, gifts, or grants, which cannot be immediately used for the purpose for which received, such investment to be made in any security or securities which are legal investments for executors or trustees; provided, however, that investments in such securities will at all times be held for and, when sold, used for the purposes for which the money was originally received;

(18) To grant, on an exclusive or nonexclusive basis, the right to use and occupy streets, roads, sidewalks, and other public places for the purpose of rendering utility services, upon such conditions and for such time as the authority may deem wise; and

(19) To appoint special advisory committees and panels of citizens to advise the authority of certain issues and to reimburse the individuals appointed for actual expenses incurred in performing their tasks.

History. — Code 1981, § 12-3-404, enacted by Ga. L. 2002, p. 820, § 1; Ga. L. 2003, p. 448, §§ 4, 5.

12-3-405. Exemption from taxation.

It is found, determined, and declared that the creation of the authority and the carrying out of its corporate purposes are in all respects for the benefit of the people of this state and constitute a public purpose and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this part. The State of Georgia covenants that the authority shall be required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession, or supervision or upon its activities in the operation or maintenance of the facilities erected, maintained, or acquired by it or any fees, rentals, or other charges for the use of such facilities or other income received by the authority; provided, however, that in no event shall the exemptions granted in this Code section extend to any lessee or other private person or entity.

History. — Code 1981, § 12-3-405, enacted by Ga. L. 2002, p. 820, § 1.

12-3-406. Police powers.

The authority is authorized to exercise such of the police powers of the state as may be necessary to maintain peace and order and to enforce any and all zoning, use, and personal conduct restrictions upon the properties, facilities, and persons under its jurisdiction to the extent that such is lawful under the laws of the United States and this state. The authority may delegate all or any part of the performance of these functions temporarily or permanently to the state or to any county within the geographic jurisdiction of the authority.

History. — Code 1981, § 12-3-406, enacted by Ga. L. 2002, p. 820, § 1.

12-3-407. Security force.

The authority is authorized to contract for or to provide for and maintain a security force with respect to the facilities and property owned, leased, operated, or under the control of the authority and within the territory thereof. The security force shall have the duty to protect persons and property, disperse unlawful or dangerous assemblages, control pedestrian and vehicular traffic, and otherwise preserve and protect the public peace, health, and safety. For these purposes, a member of such force shall be a peace officer and, as such, shall have authority equivalent to the authority of a police officer or law enforcement officer of the county in which he or she is discharging his or her duties.

History. — Code 1981, § 12-3-407, enacted by Ga. L. 2002, p. 820, § 1.

12-3-408. Receipt of moneys deemed to be trust funds.

All moneys received pursuant to the authority of this part, whether as grants or other contributions or as revenues, rents, and earnings, shall be deemed to be trust funds to be held and applied solely as provided in this part.

History. — Code 1981, § 12-3-408, enacted by Ga. L. 2002, p. 820, § 1.

12-3-409. Authority to fix rentals and other charges for use of project.

The authority is authorized to fix rentals and other charges which any user, exhibitor, concessionaire, franchisee, or vendor shall pay to the authority for the use of the project or part thereof or combination thereof, and to charge and collect the same, and to lease and make contracts with political subdivisions and agencies with respect to use of any part of the project. The rentals and other charges shall be so fixed and adjusted in respect to the aggregate thereof from the project or any part thereof so as to provide a fund sufficient with other revenues of such project, if any, to pay the cost of maintaining, repairing, and operating the project, including the reserves for extraordinary repairs and insurance, unless such cost shall be otherwise provided for, which cost shall be deemed to include the expenses incurred by the authority on account of the project for water, light, sewer, and other services furnished by other facilities at the site of the project.

History. — Code 1981, § 12-3-409, enacted by Ga. L. 2002, p. 820, § 1.

12-3-410. Attorney General providing legal services.

The Attorney General shall provide legal services for the authority, and in connection therewith the provisions of Code Sections 45-15-13 through 45-15-16 shall be fully applicable the same as if the authority were identified therein as a state authority.

History. — Code 1981, § 12-3-410, enacted by Ga. L. 2002, p. 820, § 1.

12-3-411. Jurisdiction of actions under this part.

Any action to protect or enforce any rights under this part or pertaining to validation of any bonds issued under this part shall be brought in the Superior Court of Baldwin County, Georgia; and such court shall have exclusive, original jurisdiction of such actions. Nothing contained in this part shall be construed to impair any rights afforded the state under the Constitution of the United States.

History. — Code 1981, § 12-3-411, enacted by Ga. L. 2002, p. 820, § 1.

12-3-412. Applicability of Chapter 10 of Title 45.

Members and employees of the authority shall be subject to the applicable provisions of Chapter 10 of Title 45.

History. — Code 1981, § 12-3-412, enacted by Ga. L. 2002, p. 820, § 1.

12-3-413. Issuance of bonds.

(a) The authority or any authority or body which may succeed to the powers, duties, and liabilities vested in the authority is authorized at one time, or from time to time, to provide by resolution for the issuance of revenue bonds for the purpose of paying all or any part of the cost, as defined in this part, of any one project or a combination of projects. The principal and interest of such revenue bonds shall be payable solely from the special fund provided in subsection (n) of this Code section for such payment. The bonds of each issue shall be dated and shall mature at such times and bear interest at such rates as may be determined by the authority, payable in such medium of payment as to both principal and interest as may be determined by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority in the resolution providing for the issuance of the bonds.

(b) The authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereof, which may be at any bank or trust company inside or outside the state. The bonds may be issued in coupon or registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bond as to principal alone and also as to both principal and interest.

(c) In case any officer whose signature appears on any bonds or whose facsimile signature appears on any coupon ceases to be such officer before the delivery of such bonds, such signature shall nevertheless be valid and sufficient for all purposes the same as if such person had remained in office until such delivery. All such bonds shall be signed by the chairperson or vice chairperson of the authority, and the official seal of the authority shall be affixed thereto and attested by the secretary or assistant secretary of the authority; and any coupons attached thereto shall bear the signature or facsimile signature of the chairperson or vice chairperson of the authority. Any coupon may bear the facsimile signature of such person, and any bond may be signed, sealed, and attested on behalf of the authority by such persons as at the actual time of the execution of such bonds shall be duly authorized or hold the proper office, although at the date of such bonds such persons may not have been so authorized or shall not have held such office.

(d) All revenue bonds issued under this part shall have and are declared to have all the qualities and incidents of negotiable instruments. Such bonds and the income therefrom shall be exempt from all taxation within the state.

(e) The authority may sell bonds in such manner and for such price as it may determine to be for the best interests of the authority.

(f) The proceeds of bonds shall be used solely for the payment of the cost of the project and shall be disbursed upon requisition or order of the chairperson or vice chairperson of the authority under such restrictions, if any, as provided by the resolution authorizing the issuance of the bonds or by the trust indenture mentioned in subsection (k) of this Code section.

(g) Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts, interim certificates, or temporary bonds, with or without coupons, exchangeable for definitive bonds upon the issuance of the latter.

(h) The authority may provide for the replacement of any bond which becomes mutilated or is destroyed or lost.

(i) Revenue bonds may be issued without the conducting of any proceedings, the existence of any conditions, or the happening of any events other than those proceedings, conditions, and events which are specified or required by this part. In the discretion of the authority, revenue bonds of a single issue may be issued for the purpose of paying the cost of any one or more, including a combination of, projects at any one institution or any number of institutions. Any resolution providing for the issuance of revenue bonds under this part shall become effective immediately upon its passage and need not be published or posted. Any such resolution may be passed at any regular, special, or adjourned meeting of the authority by a majority of its members.

(j) Revenue bonds issued under this part shall not be deemed to constitute a debt of the State of Georgia or a pledge of the faith and credit of the state. Such bonds shall be payable solely from the fund provided for in subsections (m) through (p) of this Code section, and the issuance of such revenue bonds shall not directly, indirectly, or contingently obligate the state to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. All such bonds shall contain recitals on their faces covering substantially the foregoing provisions of this Code section. Anything in this Code section to the contrary notwithstanding, such funds as may be received from state appropriations or from any other source are declared to be available and may be used by any department, board, commission, or agency of the State of Georgia for the performance of any lease contract entered into by such department, board, commission, or agency with the authority.

(k)(1) In the discretion of the authority, any issue of revenue bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any trust company or bank

having the powers of a trust company inside or outside of the state. Such trust indenture may pledge or assign rents, revenues, and earnings to be received by the authority.

(2) Either the resolution providing for the issuance of revenue bonds or the trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the acquisition of property, the construction of the project, the maintenance, operation, repair, and insurance of the project, and the custody, safeguarding, and application of all moneys. The resolution or indenture may also provide that any project shall be constructed and paid for under the supervision and approval of consulting engineers or architects employed or designated by the authority and satisfactory to the original purchasers of the bonds issued therefor. The resolution or indenture may also require that the security given by contractors and by any depository of the proceeds of the bonds or revenues or other moneys be satisfactory to such purchasers and may also contain provisions concerning the conditions, if any, upon which additional revenue bonds may be issued.

(3) The indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations. In addition to the foregoing provisions of this Code section, the trust indenture may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders.

(4) It shall be lawful for any bank or trust company incorporated under the laws of this state to act as such depository and to furnish such indemnifying bonds or pledge such securities as may be required by the authority.

(5) All expenses incurred in carrying out the trust indenture may be treated as a part of the cost of maintenance, operation, and repair of the project and of the cost of the project affected by such indenture.

(l) The authority shall, in the resolution providing for issuance of revenue bonds or in the trust indenture, provide for the payment of the proceeds of the sale of the bonds to any officer or person who, or any agency, bank, or trust company which, shall act as trustee of such funds and shall hold and apply the same to the purposes expressed in this part, subject to such regulations as this part and such resolution or trust indenture may provide.

(m) Unless otherwise pledged and allocated, any and all revenues, rents, and earnings received by the authority, regardless of whether or

not such revenues, rents, and earnings were produced by a particular project for which bonds have been issued, may be pledged and allocated by the authority to the payment of the principal and interest on revenue bonds of the authority as the trust indenture or the resolution authorizing the issuance of the bonds may provide.

(n) Such funds so pledged from whatever source received, which pledge may include funds received from one or more or all sources, shall be set aside at regular intervals, as may be provided in the resolution or trust indenture, into a sinking fund which shall be pledged to and charged with the payment of:

(1) The interest upon such revenue bonds as such interest shall fall due;

(2) The principal of the bonds as the same shall fall due;

(3) The necessary charges of paying agents for paying principal and interest; and

(4) Any premium upon bonds retired by call or purchase.

(o) The use and disposition of such sinking fund shall be subject to such regulations as may be provided in the resolution authorizing the issuance of the revenue bonds or in the trust indenture, but, except as may otherwise be provided in such resolution or trust indenture, such sinking fund shall be a fund for the benefit of all revenue bonds without distinction or priority of one over another.

(p) Subject to the provisions of the resolution authorizing the issuance of the bonds, or subject to the trust indenture, surplus moneys in the sinking fund may be applied to the purchasing or redemption of bonds, and any such bonds so purchased or redeemed shall forthwith be canceled and shall not again be issued.

(q) Except to the extent the rights given in this Code section may be restricted by resolution passed before the issuance of bonds or by a trust indenture, any holder of revenue bonds or interest coupons issued under this part, any receiver for such holders, or any indenture trustee, if any, may either at law or in equity, by action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the State of Georgia or granted by this part or under such resolution or trust indenture. Such holder, receiver, or trustee may enforce and compel performance of all duties required by this part, or by resolution or trust indenture, to be performed by the authority or any officer thereof, including the fixing, charging, and collecting of revenues, rents, and other charges for the use of the project or projects. In the event of default of the authority upon the principal and interest obligations of any revenue bond issue, such holder, receiver, or trustee shall be subrogated to each and every right which the authority may possess

and, in the pursuit of remedies as subrogee, may proceed either at law or in equity, by action, mandamus, or other proceedings to collect any sums by such proceedings due and owing to the authority and pledged or partially pledged directly or indirectly to the benefit of the revenue bond issue of which such holder, receiver, or trustee is representative. No holder, receiver, or trustee shall have the right to compel any exercise of the taxing power of the state to pay any such bond or the interest thereon, or to enforce the payment thereof against any property of the state, nor shall any such bond constitute a charge, lien, or encumbrance, legal or equitable, upon the property of the state.

(r) The authority is authorized to provide by resolution for the issuance of revenue refunding bonds of the authority for the purpose of refunding any revenue bonds issued under this part and then outstanding, together with accrued interest thereon. The issuance of such revenue refunding bonds, the maturities, and all other details thereof, the rights of the holders thereof, and the duties of the authority in respect to the same shall be governed by the foregoing provisions of this part insofar as the same may be applicable.

(s) While any of the bonds issued by the authority remain outstanding, the powers, duties, or existence of the authority, or of its officers, employees, or agents, or of any department, board, commission, or agency of the state shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of such bonds. This part shall be for the benefit of the state, the authority, and the holders of any such bonds and, upon the issuance of bonds under this part, shall constitute a contract with the holders of such bonds.

(t) Bonds of the authority shall be confirmed and validated in accordance with the procedure of Article 3 of Chapter 82 of Title 36. The petition for validation shall also make party defendant to such action any authority, division, subdivision, instrumentality, or agency of the State of Georgia which, or any person who, has contracted with the Oconee River Greenway Authority for the use of any building, structure, or facilities for which bonds have been issued and sought to be validated. Such authority, division, subdivision, instrumentality, agency, or person shall be required to show cause, if any, why such contract or contracts and the terms and conditions thereof should not be inquired into by the court, the validity of the terms thereof determined, and the contract adjudicated as security for the payment of any such bonds of the authority. The bonds when validated and the judgment of validation shall be final and conclusive with respect to such bonds and against the authority issuing the same and against any authority, division, subdivision, instrumentality, department, agency, or person contracting with the authority.

(u) No bonds shall be issued by the authority under this part unless the issuance of such bonds has been reviewed and approved by the Georgia State Financing and Investment Commission.

(v) The bonds authorized by this part are made securities in which all public officers and bodies of this state; all municipalities and all municipal subdivisions; all insurance companies and associations and other persons carrying on an insurance business; all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business; all administrators, guardians, executors, trustees, and other fiduciaries; and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state may properly and legally invest funds, including capital in their control or belonging to them. The bonds are also made securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of the bonds or other obligations of this state is now or may hereafter be authorized.

History. — Code 1981, § 12-3-413, enacted by Ga. L. 2002, p. 820, § 1.

12-3-414. Authorization of Governor.

The Governor is authorized to convey to the authority on behalf of the state any real or personal property or interest therein owned by the state in furtherance of this part. The consideration for such conveyance shall be determined by the Governor and expressed in the conveyance, provided that such consideration shall be nominal, the benefits going to the state and its citizens constituting full and adequate consideration.

History. — Code 1981, § 12-3-414, enacted by Ga. L. 2002, p. 820, § 1.

Part 7

Sapelo Island Heritage Authority

12-3-440. Short title.

This part shall be known and may be cited as the "Sapelo Island Heritage Authority Act."

History. — Code 1981, § 12-3-440, enacted by Ga. L. 1983, p. 623, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "shall be known and" was inserted in this Code section.

RESEARCH REFERENCES

Am. Jur. 2d. — 59 Am. Jur. 2d, Parks, Squares, and Playgrounds, § 4. 63C Am. Jur. 2d, Public Lands, § 38 et seq.

C.J.S. — 73A C.J.S., Public Lands, § 294. 81A C.J.S., States, §§ 269, 270.

12-3-441. Legislative findings.

(a) It is found, determined, and declared that:

(1) There is an urgent public need to preserve important and endangered historical areas in Georgia for the benefit of present and future generations;

(2) Many historical areas, because of Georgia's rapid progress over the past decade, have been altered and their value as a part of our heritage lost, and the few such remaining areas are in danger of being irreparably altered;

(3) Black culture is an important component of the history of Georgia;

(4) The State of Georgia possesses a rich heritage of black culture in its architectural, historical, and archeological resources associated with the life and culture of black Georgians;

(5) There exists on Greater Sapelo Island in McIntosh County, Georgia, a black community known as Hog Hammock which is composed primarily of the direct descendants of the slaves of Thomas Spalding, a prior landowner on Greater Sapelo Island, and the community rests on the grounds of the former Spalding Plantation;

(6) This community is the last community of its kind in the State of Georgia;

(7) The Hog Hammock community and many of the buildings and structures located therein date back to the mid-nineteenth century;

(8) It is important to the citizens of the State of Georgia that this community, which reflects the past culture of this state, be preserved for the benefit of present and future generations;

(9) The best and most important use of this area of Greater Sapelo Island is for said community to remain, as it currently exists, a historic community, occupied by the direct descendants of the slaves of Thomas Spalding; and

(10) In order to further the preservation of the cultural and historic values of the said community, the establishment and performance of the Sapelo Island Heritage Authority under this part is in the best interest of all Georgians.

(b) In accordance with the findings, determinations, and declarations of subsection (a) of this Code section, it is declared that the creation of the Sapelo Island Heritage Authority and the carrying out of its corporate purposes are in all respects valid charitable and public purposes within the provisions of the Constitution of Georgia in that the preservation of the culture in this endangered historical area, as it currently exists, is important to present and future generations of Georgians.

History. — Code 1981, § 12-3-441, enacted by Ga. L. 1983, p. 623, § 1; Ga. L. 1986, p. 453, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, a misspelling of "archeological" was corrected in paragraph (a)(4).

12-3-442. Definitions.

As used in this part, the term:

(1) "Agency" means any agency, board, commission, or department within the executive branch of the state government of Georgia.

(2) "Authority" means the Sapelo Island Heritage Authority.

History. — Code 1981, § 12-3-442, enacted by Ga. L. 1983, p. 623, § 1.

12-3-443. Creation; power to contract and sue; assignment to Department of Natural Resources.

(a) There is created a body corporate and politic to be known as the Sapelo Island Heritage Authority, which shall be deemed to be an instrumentality of the state, a public corporation, and a public authority, and by that name, style, and title may contract and be contracted with, sue in all courts and be sued in the Superior Court of Fulton County, Georgia, as provided in Code Section 12-3-451 of this part. The authority shall have all the rights afforded the state by virtue of the Constitution of the United States and nothing in this part shall constitute a waiver of any such rights. The authority shall have perpetual existence.

(b) The authority shall not be deemed to be the State of Georgia or an agency thereof.

(c) The authority is assigned to the Department of Natural Resources for administrative purposes only.

History. — Code 1981, § 12-3-443, enacted by Ga. L. 1983, p. 623, § 1.

12-3-444. Membership; officers; compensation; quorum; meetings.

(a) The authority shall be composed of five members as follows:

(1) The Governor;

(2) The commissioner of natural resources;

(3) The executive director of the State Properties Commission;

(4) A resident of the community of Hog Hammock described in paragraph (5) of subsection (a) of Code Section 12-3-441 to be appointed by the Governor for a term of four years; and

(5) The Commissioner of Human Relations in the office of the Governor; provided, however, that if a vacancy exists in such office for longer than 60 consecutive days, the Governor shall appoint instead a second resident of the community of Hog Hammock for a term of four years, after which the Commissioner of Human Relations, if such office is then occupied, shall become a member.

Vacancies in the appointed positions shall be filled for the remainder of the term by appointment of the Governor.

(b) The Governor shall be the chairperson of the authority, the commissioner of natural resources shall be its vice chairperson, and the executive director of the State Properties Commission shall be its secretary-treasurer.

(c) The members of the authority who are officers of the state shall not be entitled to any additional compensation for the rendering of their services to the authority. The members of the authority who are not public officers shall be entitled to reimbursement for their actual travel expenses necessarily incurred in the performance of their duties and, for each day actually spent in performance of their duties, shall receive the same per diem as do members of the General Assembly.

(d) Three members shall constitute a quorum of the membership of the authority. The powers and duties of the authority shall be transacted, exercised, and performed only pursuant to an affirmative vote of a majority of those members of the authority present at a meeting at which a quorum is present. An abstention in voting shall be considered as that member voting in the negative on the matter before the authority.

(e) Meetings of the authority shall be held on the written notice of the chairperson. The notice of a meeting shall set forth therein the date, time, and place of the meeting. Minutes shall be kept of all meetings of the authority, and in the minutes there shall be kept a record of the vote

of each member of the authority on all questions, acquisitions, transactions, and all other matters coming before the authority.

History. — Code 1981, § 12-3-444, enacted by Ga. L. 1983, p. 623, § 1; Ga. L. 2002, p. 1412, § 1; Ga. L. 2012, p. 775, § 12/HB 942.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, "natural resources" was substituted for "the Department of Natural Resources" in subsections (a) (now paragraph (a)(2)) and (b).

12-3-445. Powers and duties.

The authority shall have the following powers and duties, in addition to other powers and duties set forth in this part:

(1) To have a seal and alter the same at its pleasure;

(2) To acquire, hold, and dispose of in its own name by purchase, gift, lease, or exchange, on such terms and conditions and in such manner and by such instrument as it may deem proper, real and personal property of every kind, character, and description, including tenancies in common, located both inside the Hog Hammock community and elsewhere on Greater Sapelo Island, McIntosh County, Georgia. Upon such acquisition by the authority, the said real and personal property shall become public property and shall be entitled to all the rights, privileges, and protection afforded like situated state owned or claimed property. The Governor is empowered and authorized, for and on behalf of the state, to convey to the authority, by deed, title to any real property owned or claimed by the state on Greater Sapelo Island. The authority may not acquire real or personal property by condemnation, eminent domain, but any real or personal property owned or claimed by the authority may be condemned, through the exercise of the power of eminent domain, by the State of Georgia, acting by and through its State Properties Commission;

(3) To procure insurance against any loss in connection with its property and other assets;

(4) To make contracts and to execute all instruments necessary or convenient, including leases and rental agreements, and other contracts with respect to the use of such real or personal property;

(5) To adopt, alter, or repeal its own bylaws, rules, and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed, as the authority may deem necessary or expedient in facilitating its business;

(6) To receive, accept, and utilize gifts, grants, donations, or contributions of money, property, facilities, or services, with or without consideration, from any person, firm, corporation, founda-

tion, or other entity, or from the State of Georgia or any agency, instrumentality, or political subdivision thereof, or from the United States, or any agency or instrumentality thereof;

(7) To act as agent for the United States, or any agency or instrumentality thereof, in any matter coming within the purposes or powers of the authority; and

(8) To do all things necessary or convenient to carry out the powers expressly given in this part.

History. — Code 1981, § 12-3-445, enacted by Ga. L. 1983, p. 623, § 1; Ga. L. 1986, p. 453, § 2.

12-3-446. Authority's property subject to inventory requirements; conveyances not subject to filing requirements.

The definition of real property in paragraph (1) of Code Section 50-16-120 shall include the real property of the authority. However, the definition of real property in paragraph (1) of subsection (a) of Code Section 50-16-122 shall exclude the real property of the authority.

History. — Code 1981, § 12-3-446, enacted by Ga. L. 1983, p. 623, § 1.

12-3-447. Authority's property not subject to adverse possession or prescription.

In that the real and personal property of the authority is public property, title by adverse possession or prescription shall not run against the authority or the real and personal property of the authority, and there shall be no application of or ripening or perfection of title by the doctrine of adverse possession or prescription against the authority or against the real and personal property of the authority.

History. — Code 1981, § 12-3-447, enacted by Ga. L. 1983, p. 623, § 1; Ga. L. 1984, p. 22, § 12.

12-3-448. Authority members accountable as trustees; financial records required.

The members of the authority shall be accountable in all respects as trustees. The authority shall keep suitable and proper books and records of all receipts, income, and expenditures of every kind and shall submit each year to the state auditor for inspection all the authority's books, together with the proper statement of the authority's financial

position, at the close of its fiscal year, which shall be the same as the fiscal year of the State of Georgia.

History. — Code 1981, § 12-3-448, enacted by Ga. L. 1983, p. 623, § 1.

12-3-449. Authority and property exempt from taxation, levy and sale, garnishment, and attachment.

As the authority will be performing valuable charitable and public functions and purposes in the exercise of the powers conferred upon it, the authority shall be required to pay no taxes or assessments by the state or by any county, municipality, authority, or political subdivision of this state upon any of the real or personal property acquired by it, or upon its activities in the operation or maintenance of any facility maintained or acquired by it, or upon any fees, rentals, or other charges for the use of such property or facilities, or upon any other income received by the authority. The said property, facilities, fees, rentals, charges, and income of the authority is exempt from levy and sale, garnishment, and attachment.

History. — Code 1981, § 12-3-449, enacted by Ga. L. 1983, p. 623, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, a comma was inserted following "garnishment" in the second sentence.

12-3-450. Attorney General to provide legal services.

The Attorney General shall provide legal services to the authority, and in connection therewith the provisions of Code Sections 45-15-13 through 45-15-16 and 45-15-36 shall be fully applicable.

History. — Code 1981, § 12-3-450, enacted by Ga. L. 1983, p. 623, § 1; Ga. L. 1984, p. 22, § 12.

12-3-451. Jurisdiction of actions against authority.

Any action brought against the authority shall be brought in the Superior Court of Fulton County, Georgia, and such court shall have exclusive, original jurisdiction of such actions.

History. — Code 1981, § 12-3-451, enacted by Ga. L. 1983, p. 623, § 1.

12-3-452. Liberal construction.

This part, being for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes of this part.

History. — Code 1981, § 12-3-452, enacted by Ga. L. 1983, p. 623, § 1.

Part 8

Georgia Agricultural Exposition Authority

12-3-470 through 12-3-484. Reserved.

Editor's notes. — Ga. L. 2011, p. 261, § 4/HB 125, effective July 1, 2011, redesignated former Code Sections 12-3-470 through 12-3-484 as present Code Sections 2-3-1 through 2-3-15 and reserved the former Code section designations.

Part 9

Georgia Agricultural Exposition Authority Overview Committee

12-3-500. Creation of committee; membership; vacancies; review of Georgia Agricultural Exposition Authority.

There is created as a joint committee of the General Assembly the Georgia Agricultural Exposition Authority Overview Committee to be composed of five members of the House of Representatives appointed by the Speaker of the House and five members of the Senate appointed by the President of the Senate. The members of the committee shall serve two-year terms concurrent with their terms as members of the General Assembly. The chairman of the committee shall be appointed by the Speaker of the House of Representatives from the membership of the committee, and the vice chairman of the committee shall be appointed by the President of the Senate from the membership of the committee. The chairman and vice chairman shall serve terms of two years concurrent with their terms as members of the General Assembly. Vacancies in an appointed member's position or in the offices of chairman or vice chairman of the committee shall be filled for the unexpired term in the same manner as the original appointment. The committee shall periodically inquire into and review the operations of the Georgia Agricultural Exposition Authority, as well as periodically review and evaluate the success with which the authority is accomplishing its statutory duties and functions as provided in this article.

History. — Code 1981, § 12-3-500, enacted by Ga. L. 1985, p. 1110, § 1.

RESEARCH REFERENCES

C.J.S. — 3 C.J.S., Agriculture, § 156.

12-3-501. Assistance to committee in discharging duties; employees; securing professional services.

The state auditor, the Attorney General, and all other agencies of state government, upon request by the committee, shall assist the committee in the discharge of its duties as set forth in this part. The committee may employ not more than two staff members and may secure the services of independent accountants, engineers, and consultants.

History. — Code 1981, § 12-3-501, enacted by Ga. L. 1985, p. 1110, § 1.

12-3-502. Cooperation of Georgia Agricultural Exposition Authority.

The Georgia Agricultural Exposition Authority shall cooperate with the committee, its authorized personnel, the Attorney General, the state auditor, the state accounting officer, and other state agencies in order that the charges of the committee, set forth in this part, may be timely and efficiently discharged. The authority shall submit to the committee such reports and data as the committee shall reasonably require of the authority in order that the committee may adequately perform its functions. The Attorney General is authorized to bring appropriate legal actions to enforce any laws specifically or generally relating to the Georgia Agricultural Exposition Authority. The committee shall, on or before the first day of January of each year, and at such other times as it deems necessary, submit to the General Assembly a report of its findings and recommendations based upon the review of the Georgia Agricultural Exposition Authority, as set forth in this part.

History. — Code 1981, § 12-3-502, enacted by Ga. L. 1985, p. 1110, § 1; Ga. L. 1990, p. 8, § 12; Ga. L. 2005, p. 694, § 22/HB 293.

12-3-503. Committee to evaluate performance of authority.

In the discharge of its duties, the committee shall evaluate the performance of the Georgia Agricultural Exposition Authority consistent with the following criteria:

(1) Prudent, legal, and accountable expenditure of public funds;

(2) Efficient operation; and

(3) Performance of its statutory responsibilities.

History. — Code 1981, § 12-3-503, enacted by Ga. L. 1985, p. 1110, § 1.

12-3-504. Expenditure of state funds by committee; compensation, expenses, and allowances for members.

(a) The committee is authorized to expend state funds available to the committee for the discharge of its duties. Said funds may be used for the purposes of compensating staff personnel, paying for services of independent accountants, engineers, and consultants, and paying all other necessary expenses incurred by the committee in performing its duties.

(b) The members of the committee shall receive the same compensation, per diem, expenses, and allowances for their service on the committee as is authorized by law for members of interim legislative study committees.

(c) The funds necessary for the purposes of the committee shall come from the funds appropriated to and available to the legislative branch of government.

History. — Code 1981, § 12-3-504, enacted by Ga. L. 1985, p. 1110, § 1.

Part 10

Georgia Music Hall of Fame Authority

Cross references. — Department of Community Affairs, T. 50, C. 8.

Law reviews. — For article, "Intellectual Property Checklist for Marketing the Recording Artist Online," see 18 J. Intell. Prop. L. 541 (2011). For article, "Clearing the Way: Acquiring Rights and Approvals for Music Use in Media Applications," see 18 J. Intell. Prop. L. 561 (2011).

OPINIONS OF THE ATTORNEY GENERAL

Trademarks. — Georgia Music Hall of Fame Authority is the owner of the "Georgia Music Hall of Fame" and "Georgy" trademarks. 1999 Op. Att'y Gen. No. 99-4.

Selection of inductees into Music Hall of Fame. — Georgia Constitution may prohibit the Georgia Music Hall of Fame Authority from delegating to a private entity the exclusive right to select inductees into the Georgia Music Hall of Fame. 1999 Op. Att'y Gen. No. 99-4.

RESEARCH REFERENCES

Am. Jur. 2d. — 27A Am. Jur. 2d, Entertainment and Sports Law, § 3.

12-3-520. Short title.

This part shall be known and may be cited as the "Georgia Music Hall of Fame Authority Act."

History. — Code 1981, § 12-3-520, enacted by Ga. L. 1990, p. 1062, § 1.

12-3-521. Definitions.

As used in this part, the term:

(1) "Authority" means the Georgia Music Hall of Fame Authority.

(2) "Cost of the project" means the cost of construction; the cost of all lands, properties, rights, easements, and franchises acquired; the cost of all machinery and equipment; financing charges; interest prior to and during construction and for one year after completion of construction; the cost of engineering, architectural, and legal expenses and of plans and specifications and other expenses necessary or incident to determining the feasibility or practicability of the project; administrative expenses; and such other expenses as may be necessary or incident to the financing authorized in this part, the construction of any project, the placing of the same in operation, and the condemnation of property necessary for such construction and operation. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of such bonds or obligations as may be issued by any authority, department, commission, or agency of the State of Georgia.

(3) "Project" means and includes one or a combination of two or more of the following: buildings, facilities, and all structures; electric, gas, steam, water, and sewerage utilities; and improvements of every kind and character deemed by the authority necessary or convenient for its purposes.

History. — Code 1981, § 12-3-521, enacted by Ga. L. 1990, p. 1062, § 1.

12-3-522. Creation; membership; meetings; expense allowance; perpetual existence; records.

(a) There is created a body corporate and politic to be known as the Georgia Music Hall of Fame Authority which shall be deemed to be an instrumentality of the State of Georgia and a public corporation; and by that name, style, and title such body may contract and be contracted with, bring and defend actions, implead and be impleaded, and complain and defend in all courts of this state.

(b) The authority shall consist of nine members. Initially, members shall serve staggered terms of office as follows: two members for one year, two members for two years, two members for three years, and three members for four years. Thereafter, each member shall serve for

a term of four years. All members shall be appointed by the Governor and confirmed by the Senate and shall serve until the appointment and qualification of their successors. The members appointed by the Governor shall be selected from the state at large but shall be representative of all of the geographic areas of the state. Such members also shall represent the state's music industry. The Governor is authorized to appoint any elected or appointed state, county, municipal, or school board official or employee, except officials and employees of the legislative or judicial branches of state government, as members of the authority, and any person so appointed is authorized to serve as a member of the authority. All successors shall be appointed in the same manner as original appointments. Vacancies in office shall be filled in the same manner as original appointments. An appointment to fill a vacancy shall be for the unexpired term.

(c)(1) The authority shall hold a meeting each year in July, and, at each July meeting, the authority shall elect its own officers. Officers shall serve for terms of one year each beginning with their election and qualification and ending with the election and qualification of their respective successors. No person shall hold the same office for more than one consecutive term, and no member of the authority shall hold more than any one office of the authority. No vacancy on the authority shall impair the right of the quorum to exercise all rights and perform all duties of the authority.

(2) The authority is assigned to the Department of Economic Development for administrative purposes only, as specified in Code Section 50-4-3.

(d) Each member of the authority who is not otherwise a state officer or employee shall receive for each day that such member is in attendance at a meeting of the authority a daily expense allowance and reimbursement for transportation costs as provided for in Code Section 45-7-21. Each member of the authority who is otherwise an officer or employee of a state agency or authority may be reimbursed by that agency or authority for meals, transportation, and lodging in the usual manner authorized by law for such officers and employees. The members of the authority shall not receive any duplicate or other compensation for their services as such.

(e) The authority shall have perpetual existence. Any change in name or composition of the authority shall in no way affect the vested rights of any person under this part or impair the obligations of any contracts existing under this part.

(f) The members of the authority shall be accountable in all respects as trustees. The authority shall keep suitable and proper books and records of all receipts, income, and expenditures of every kind and shall

submit for inspection all the books, together with the proper statement of the authority's financial position, to the state auditor.

(g) Except for the authorization of the issuance of bonds, the authority may delegate to the executive director such powers and duties as it may deem proper.

(h) The commissioner of economic development shall be the executive director of the authority. The executive director shall appoint such directors, deputies, assistants, and other staff members as may be necessary to manage the operations of the authority and may organize the authority into such divisions, sections, or offices as may be deemed necessary or convenient.

History. — Code 1981, § 12-3-522, enacted by Ga. L. 1990, p. 1062, § 1; Ga. L. 1993, p. 809, § 1; Ga. L. 1998, p. 1386, § 1; Ga. L. 2005, p. 306, §§ 8, 9/SB 125.

12-3-522.1. Joint operation between Georgia Music Hall of Fame and Georgia Sports Hall of Fame; proposals for accomplishing objectives.

The Georgia Music Hall of Fame Authority and the Georgia Sports Hall of Fame Authority shall to the maximum extent possible work jointly to realize efficiencies and economies in the operation of their adjacent facilities. The two authorities shall make all possible efforts to consolidate and coordinate marketing, operational, maintenance, property management, and other activities so as to achieve such efficiencies and economies. Not later than September 30, 2010, each such hall of fame authority shall issue a request for proposals for a new location or alternative ownership, management, and operation at the same location for the respective hall of fame facility. Such requests for proposals shall be disseminated to each county and municipal governing authority in the state and shall require that any proposal be submitted not later than December 31, 2010. Any county or municipality wherein such a hall of fame authority is located shall be eligible to submit a proposal; and it is the intention of the General Assembly that such a proposal shall be required as a condition for continued state funding support in a current location. Upon receipt of one or more proposals, the hall of fame authority shall conduct a staff review of each proposal received. A primary consideration in the review of the proposals shall be the effect of each proposal on the current and future operating budgets of the authority and self-sustainability of the authority, including a determination of whether cost savings and operational efficiencies can be effected through moving to a new location or alternative ownership, management, and operation at the same location as proposed. Upon completion of the staff review, the findings shall be submitted to the governing body of the hall of fame authority. Each hall of fame authority shall not later than April 30, 2011, submit to the Governor,

the Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons of the Senate and House appropriations committees a report detailing the activities of the authority with respect to issuance of the request for proposals, receipt and evaluation of proposals, and the decision of the authority with respect to acceptance of proposals.

History. — Code 1981, § 12-3-522.1, enacted by Ga. L. 2010, p. 331, § 2/SB 523; Ga. L. 2011, p. 752, § 12/HB 142.

12-3-523. Corporate purpose and general nature of business.

The corporate purpose and general nature of the business of the authority shall be:

(1) Constructing and maintaining a facility to house the Georgia Music Hall of Fame;

(2) Operating, advertising, and promoting the Georgia Music Hall of Fame; and

(3) Promoting music events at the facility and throughout the state.

History. — Code 1981, § 12-3-523, enacted by Ga. L. 1990, p. 1062, § 1.

12-3-524. General powers.

The authority is authorized:

(1) To have a seal and alter it at pleasure;

(2) To acquire, hold, and dispose of personal property for its corporate purposes;

(3) To appoint, select, and employ officers, agents, and employees, including engineering, architectural, and construction experts and fiscal agents; to contract for the services of individuals or organizations not employed full time by the authority who or which are engaged primarily in the rendition of personal services rather than the sale of goods or merchandise, such as, but not limited to, the services of accountants, engineers, architects, consultants, and advisers, and to allow suitable compensation for such services; including the power to contract with the Department of Economic Development or any other department for professional, technical, clerical, and administrative support as may be required and to make provisions for group insurance, retirement, or other employee benefit arrangements, provided that no part-time or contract employees shall participate in group insurance or retirement benefits;

(4) To make contracts and to execute all instruments necessary or convenient, including contracts for construction of projects or contracts with respect to the leasing or use of projects which the authority causes to be subdivided, erected, or acquired;

(5) To plan, survey, subdivide, administer, construct, erect, acquire, own, repair, remodel, maintain, add to, extend, improve, equip, operate, and manage projects as defined in this part, such projects to be located on property owned or leased by the authority or the State of Georgia or under the control and management of the authority. The cost of any such project shall be paid from its income, from the proceeds of revenue anticipation certificates of the authority, or from such proceeds and any loan, gift, or grant from the United States of America or any agency or instrumentality thereof, or the State of Georgia, or any county, municipal corporation, authority, or local government or governing body;

(6) To accept loans or grants, or both, of money, materials, or property of any kind from the United States of America or any agency or instrumentality thereof upon such terms and conditions as the United States of America or such agency or instrumentality may impose;

(7) To borrow money for any of its corporate purposes, to issue negotiable revenue anticipation certificates from earnings of such projects, and to provide for the payment of the same and for the rights of the holders thereof;

(8) To exercise any power which is usually possessed by private corporations performing similar functions and which is not in conflict with the Constitution and laws of this state;

(9) To act as agent for the United States of America or any agency, department, corporation, or instrumentality thereof in any manner within the purposes or powers of the authority;

(10) To adopt, alter, or repeal its own bylaws, rules, and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed as the authority may deem necessary or expedient in facilitating its business;

(11) To receive and accept loans, gifts, grants, donations, or contributions of property, facilities, or services, with or without consideration, from any person, firm, or corporation or from the State of Georgia or any agency or instrumentality thereof or from any county, municipal corporation, or local government or governing body;

(12) To hold, use, administer, and expend such sum or sums as may hereafter be received as income, as gifts, or as appropriations by

authority of the General Assembly for any of the purposes of this authority;

(13) To do all things necessary or convenient to carry out the powers and purposes of the authority;

(14) To acquire, lease (as lessee), purchase, hold, own, and use any franchise or any property, real or personal, tangible or intangible, or any interest therein; and to sell, lease (as lessor), transfer, or dispose thereof whenever the same is no longer required for purposes of the authority or exchange the same for other property or rights which are useful for the purposes of the authority;

(15) To fix, alter, charge, and collect fares, rates, rentals, and other charges for its facilities and for admission to its grounds at reasonable rates to be determined by the authority;

(16) To contract with the Georgia State Financing and Investment Commission for the construction of the project as provided for in Article 2 of Chapter 17 of Title 50; or to contract with other authorities, departments, or agencies of the State of Georgia for the construction of the project;

(17) To invest and reinvest any or all idle funds or moneys, including, but not limited to, funds held in reserve or debt retirement or received through the issuance of revenue certificates or from contributions, gifts, or grants, which cannot be immediately used for the purpose for which received, such investment to be made in any security or securities which are legal investments for executors or trustees; provided, however, that investments in such securities will at all times be held for and, when sold, used for the purposes for which the money was originally received;

(18) To grant, on an exclusive or nonexclusive basis, the right to use and occupy streets, roads, sidewalks, and other public places for the purpose of rendering utility services, upon such conditions and for such time as the authority may deem wise;

(19) To appoint special advisory committees and panels of citizens to advise the authority of certain issues and to reimburse the individuals appointed for actual expenses incurred in performing their tasks;

(20) To select a site for the building of a state music hall of fame;

(21) To sell, upon obtaining a license from the Department of Revenue, alcoholic beverages for consumption on the premises only upon property operated and controlled by the authority;

(22) To incorporate one or more nonprofit corporations as subsidiary corporations of the authority for the purpose of carrying out any

of the powers of the authority and to accomplish any of the purposes of the authority. Any subsidiary corporations created pursuant to this power shall be created pursuant to Chapter 3 of Title 14, the "Georgia Nonprofit Corporation Code," and the Secretary of State shall be authorized to accept such filings. Upon dissolution of any subsidiary corporation of the authority, any assets shall revert to the authority or to any successor to the authority or, failing such succession, to the State of Georgia. The authority shall not be liable for the debts or obligations or bonds of any subsidiary corporation or for the actions or omissions to act of any subsidiary corporation unless the authority expressly so consents; and

(23) The authority shall have the power to contract with the Department of Economic Development or any other department for any purpose necessary or incidental to carrying out or performing the duties, responsibilities, or functions of the authority in exercising the power and management of the authority; provided, however, that such contracts shall not delegate the authorization of the issuance of any bonds or other indebtedness of the authority. No part of the funds or assets of the authority shall be distributed to the Department of Economic Development or any other department, authority, or agency of the state unless otherwise provided by law, except that the authority shall be authorized and empowered to pay reasonable compensation for services rendered and to reimburse expenses incurred and except as may be deemed necessary or desirable by the authority to fulfill the purposes of the authority as set forth in this part. Nothing in this paragraph shall be construed as precluding the provision, by the Department of Economic Development, any other department, authority, or agency of the state, or the authority, of joint or complementary services or programs within the scope of their respective powers.

History. — Code 1981, § 12-3-524, enacted by Ga. L. 1990, p. 1062, § 1; Ga. L. 1994, p. 493, § 1; Ga. L. 1998, p. 1386, § 2; Ga. L. 2005, p. 306, §§ 10, 11/SB 125.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, "advisers" was substituted for "advisors" following "consultants, and" near the middle of paragraph (3).

12-3-524.1. Expenditure of funds to aid in securing gifts, grants, donations, and contributions.

The authority, in order to make the Georgia Music Hall of Fame competitive with other nonprofit cultural institutions in securing gifts, grants, donations, and contributions and in the promotion and marketing of the Georgia Music Hall of Fame, is authorized to expend available funds for the meals, entertainment, and incidental expenses of bona fide prospects, contributors, and other persons who attend any function at the request of the authority or its staff to discuss the securing of, to

provide services in the securing of, or to make gifts, grants, donations, and contributions to the Georgia Music Hall of Fame or to promote and market Georgia Music Hall of Fame programs and facilities. All such expenditures shall be verified by vouchers showing the date, place, purpose, and persons for whom such expenditures were made. The authority shall make available to the state auditor such vouchers or other collateral materials requested for the purposes of conducting an audit of the authority's books, accounts, and records as required by state law.

History. — Code 1981, § 12-3-524.1, enacted by Ga. L. 1996, p. 1084, § 1.

12-3-525. Exemption from taxation.

It is found, determined, and declared that the creation of the authority and the carrying out of its corporate purposes are in all respects for the benefit of the people of this state and constitute a public purpose and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this part. The State of Georgia covenants that the authority shall be required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession, or supervision or upon its activities in the operation or maintenance of the facilities erected, maintained, or acquired by it or any fees, rentals, or other charges for the use of such facilities or other income received by the authority; provided, however, in no event shall the exemptions granted in this Code section extend to any lessee or other private person or entity.

History. — Code 1981, § 12-3-525, enacted by Ga. L. 1990, p. 1062, § 1.

12-3-526. Police powers.

The authority is authorized to exercise such of the police powers of the state as may be necessary to maintain peace and order and to enforce any and all zoning, use, and personal conduct restrictions upon the properties, facilities, and persons under its jurisdiction to the extent that such is lawful under the laws of the United States and this state. The authority may delegate all or any part of the performance of these functions temporarily or permanently to the state or to the county in which its facilities are located.

History. — Code 1981, § 12-3-526, enacted by Ga. L. 1990, p. 1062, § 1.

12-3-527. Security force.

The authority is authorized to contract for or to provide for and maintain a security force with respect to the facilities and property owned, leased, operated, or under the control of the authority and within the territory thereof. The security force shall have the duty to protect persons and property, disperse unlawful or dangerous assemblages, control pedestrian and vehicular traffic, and otherwise preserve and protect the public peace, health, and safety. For these purposes, a member of such force shall be a peace officer and, as such, shall have authority equivalent to the authority of a policeman or law enforcement officer of the county in which he is discharging his duties.

History. — Code 1981, § 12-3-527, enacted by Ga. L. 1990, p. 1062, § 1.

12-3-528. Moneys received by authority deemed to be trust funds.

All moneys received pursuant to the authority of this part, whether as grants or other contributions or as revenues, rents, and earnings, shall be deemed to be trust funds to be held and applied solely as provided in this part.

History. — Code 1981, § 12-3-528, enacted by Ga. L. 1990, p. 1062, § 1.

12-3-529. Authority to fix rentals and other charges for users and exhibitors.

The authority is authorized to fix rentals and other charges which any user, exhibitor, concessionaire, franchisee, or vendor shall pay to the authority for the use of the project or part thereof or combination thereof, and to charge and collect the same, and to lease and make contracts with political subdivisions and agencies with respect to use of any part of the project. The rentals and other charges shall be so fixed and adjusted in respect to the aggregate thereof from the project or any part thereof so as to provide a fund sufficient with other revenues of such project, if any, to pay the cost of maintaining, repairing, and operating the project, including the reserves for extraordinary repairs and insurance, unless such cost shall be otherwise provided for, which cost shall be deemed to include the expenses incurred by the authority on account of the project for water, light, sewer, and other services furnished by other facilities at the project.

History. — Code 1981, § 12-3-529, enacted by Ga. L. 1990, p. 1062, § 1.

12-3-530. Attorney General to provide legal services for authority.

The Attorney General shall provide legal services for the authority and in connection therewith the provisions of Code Sections 45-15-13 through 45-15-16 shall be fully applicable.

History. — Code 1981, § 12-3-530, enacted by Ga. L. 1990, p. 1062, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, § 6 et seq.

12-3-531. Jurisdiction of actions brought under this part.

Any action to protect or enforce any rights under this part shall be brought in the Superior Court of Fulton County, Georgia; and such court shall have exclusive, original jurisdiction of such actions. Nothing contained in this part shall be construed to impair any rights afforded the state under the Constitution of the United States.

History. — Code 1981, § 12-3-531, enacted by Ga. L. 1990, p. 1062, § 1.

12-3-532. Contracts or transactions of authority involving conflict of interest.

(a) Every member of the authority and every employee of the authority who knowingly has any interest, direct or indirect, in any contract to which the authority is or is about to become a party, or in any other business of the authority, or in any firm or corporation doing business with the authority shall make full disclosure of such interest to the authority. Failure to disclose such an interest shall constitute cause for which a member of the authority may be removed or an employee discharged or otherwise disciplined at the discretion of the authority.

(b) The provisions of Article 1 of Chapter 10 of Title 16 and Code Sections 16-10-21, 16-10-22, 16-10-92, and 16-10-93, regulating the conduct of officers, employees, and agents of political subdivisions, municipal and other public corporations, and other public organizations, shall be applicable to the conduct of members, officers, employees, and agents of the authority.

(c) Any contract or transaction of the authority involving a conflict of interest which is not disclosed under subsection (a) of this Code section, or involving a violation of Article 1 of Chapter 10 of Title 16 or Code

Section 16-10-21, 16-10-22, 16-10-92, or 16-10-93, or involving a violation of any other provision of law regulating conflicts of interest which is applicable to the authority or its members, officers, or employees shall be voidable by the authority.

History. — Code 1981, § 12-3-532, enacted by Ga. L. 1990, p. 1062, § 1.

12-3-533. Issuance of bonds by authority.

(a) The authority or any authority or body which may succeed to the powers, duties, and liabilities vested in the authority is authorized at one time, or from time to time, to provide by resolution for the issuance of revenue bonds for the purpose of paying all or any part of the cost, as defined in this part, of any one project or a combination of projects. The principal and interest of such revenue bonds shall be payable solely from the special fund provided in subsection (n) of this Code section for such payment. The bonds of each issue shall be dated and shall mature at such times and bear interest at such rates as may be determined by the authority, payable in such medium of payment as to both principal and interest as may be determined by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority in the resolution providing for the issuance of the bonds.

(b) The authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereof, which may be at any bank or trust company within or without the state. The bonds may be issued in coupon or registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bond as to principal alone and also as to both principal and interest.

(c) In case any officer whose signature appears on any bonds or whose facsimile signature appears on any coupon ceases to be such officer before the delivery of such bonds, such signature shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All such bonds shall be signed by the chairman or vice chairman of the authority, and the official seal of the authority shall be affixed thereto and attested by the secretary or assistant secretary of the authority; and any coupons attached thereto shall bear the signature or facsimile signature of the chairman or vice chairman of the authority. Any coupon may bear the facsimile signature of such person, and any bond may be signed, sealed, and attested on behalf of the authority by such persons as at the actual time of the execution of such bonds shall be duly authorized or hold the proper

office, although at the date of such bonds such persons may not have been so authorized or shall not have held such office.

(d) All revenue bonds issued under this part shall have and are declared to have all the qualities and incidents of negotiable instruments. Such bonds and the income therefrom shall be exempt from all taxation within the state.

(e) The authority may sell bonds in such manner and for such price as it may determine to be for the best interests of the authority.

(f) The proceeds of bonds shall be used solely for the payment of the cost of the project and shall be disbursed upon requisition or order of the chairman or vice chairman of the authority under such restrictions, if any, as provided by the resolution authorizing the issuance of the bonds or by the trust indenture mentioned in subsection (k) of this Code section.

(g) Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts, interim certificates, or temporary bonds, with or without coupons, exchangeable for definitive bonds upon the issuance of the latter.

(h) The authority may provide for the replacement of any bond which becomes mutilated or is destroyed or lost.

(i) Revenue bonds may be issued without the conducting of any proceedings, the existence of any conditions, or the happening of any events other than those proceedings, conditions, and events which are specified or required by this part. In the discretion of the authority, revenue bonds of a single issue may be issued for the purpose of paying the cost of any one or more, including a combination of, projects at any one institution or any number of institutions. Any resolution providing for the issuance of revenue bonds under this part shall become effective immediately upon its passage and need not be published or posted. Any such resolution may be passed at any regular, special, or adjourned meeting of the authority by a majority of its members.

(j) Revenue bonds issued under this part shall not be deemed to constitute a debt of the State of Georgia or a pledge of the faith and credit of the state. Such bonds shall be payable solely from the fund provided for in subsections (m) through (p) of this Code section, and the issuance of such revenue bonds shall not directly, indirectly, or contingently obligate the state to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. All such bonds shall contain recitals on their faces covering substantially the foregoing provisions of this Code section. Anything in this Code section to the contrary notwithstanding, such funds as may be received from state appropriations or from any other source are declared to be

available and may be used by any department, board, commission, or agency of the State of Georgia for the performance of any lease contract entered into by such department, board, commission, or agency with the authority.

(k)(1) In the discretion of the authority, any issue of revenue bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any trust company or bank having the powers of a trust company inside or outside of the state. Such trust indenture may pledge or assign rents, revenues, and earnings to be received by the authority.

(2) Either the resolution providing for the issuance of revenue bonds or the trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the acquisition of property; the construction of the project; the maintenance, operation, repair, and insurance of the project; and the custody, safeguarding, and application of all moneys. The resolution or indenture may also provide that any project shall be constructed and paid for under the supervision and approval of consulting engineers or architects employed or designated by the authority and satisfactory to the original purchasers of the bonds issued therefor. The resolution or indenture may also require that the security given by contractors and by any depository of the proceeds of the bonds or revenues or other moneys be satisfactory to such purchasers and may also contain provisions concerning the conditions, if any, upon which additional revenue bonds may be issued.

(3) The indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations. In addition to the foregoing provisions of this Code section, the trust indenture may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders.

(4) It shall be lawful for any bank or trust company incorporated under the laws of this state to act as such depository and to furnish such indemnifying bonds or pledge such securities as may be required by the authority.

(5) All expenses incurred in carrying out the trust indenture may be treated as a part of the cost of maintenance, operation, and repair of the project and of the cost of the project affected by such indenture.

(l) The authority shall, in the resolution providing for issuance of revenue bonds or in the trust indenture, provide for the payment of the

proceeds of the sale of the bonds to any officer or person who, or any agency, bank, or trust company which, shall act as trustee of such funds and shall hold and apply the same to the purposes expressed in this part, subject to such regulations as this part and such resolution or trust indenture may provide.

(m) Unless otherwise pledged and allocated, any and all revenues, rents, and earnings received by the authority, regardless of whether or not such revenues, rents, and earnings were produced by a particular project for which bonds have been issued, may be pledged and allocated by the authority to the payment of the principal and interest on revenue bonds of the authority as the trust indenture or the resolution authorizing the issuance of the bonds may provide.

(n) Such funds so pledged from whatever source received, which pledge may include funds received from one or more or all sources, shall be set aside at regular intervals, as may be provided in the resolution or trust indenture, into a sinking fund which shall be pledged to and charged with the payment of:

(1) The interest upon such revenue bonds as such interest shall fall due;

(2) The principal of the bonds as the same shall fall due;

(3) The necessary charges of paying agents for paying principal and interest; and

(4) Any premium upon bonds retired by call or purchase.

(o) The use and disposition of such sinking fund shall be subject to such regulations as may be provided in the resolution authorizing the issuance of the revenue bonds or in the trust indenture, but, except as may otherwise be provided in such resolution or trust indenture, such sinking fund shall be a fund for the benefit of all revenue bonds without distinction or priority of one over another.

(p) Subject to the provisions of the resolution authorizing the issuance of the bonds or to the trust indenture, surplus moneys in the sinking fund may be applied to the purchasing or redemption of bonds, and any such bonds so purchased or redeemed shall forthwith be canceled and shall not again be issued.

(q) Except to the extent the rights given in this Code section may be restricted by resolution passed before the issuance of bonds or by a trust indenture, any holder of revenue bonds or interest coupons issued under this part, any receiver for such holders, or any indenture trustee, if any, may either at law or in equity, by action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the State of Georgia or granted by this part or under such resolution or

trust indenture. Such holder, receiver, or trustee may enforce and compel performance of all duties required by this part, or by resolution or trust indenture, to be performed by the authority or any officer thereof, including the fixing, charging, and collecting of revenues, rents, and other charges for the use of the project or projects. In the event of default of the authority upon the principal and interest obligations of any revenue bond issue, such holder, receiver, or trustee shall be subrogated to each and every right which the authority may possess and, in the pursuit of his or its remedies as subrogee, may proceed either at law or in equity, by action, mandamus, or other proceedings, to collect any sums by such proceedings due and owing to the authority and pledged or partially pledged directly or indirectly to the benefit of the revenue bond issue of which such holder, receiver, or trustee is representative. No holder, receiver, or trustee shall have the right to compel any exercise of the taxing power of the state to pay any such bond or the interest thereon, or to enforce the payment thereof against any property of the state, nor shall any such bond constitute a charge, lien, or encumbrance, legal or equitable, upon the property of the state.

(r) The authority is authorized to provide by resolution for the issuance of revenue refunding bonds of the authority for the purpose of refunding any revenue bonds issued under this part and then outstanding, together with accrued interest thereon. The issuance of such revenue refunding bonds, the maturities, and all other details thereof; the rights of the holders thereof; and the duties of the authority in respect to the same shall be governed by the foregoing provisions of this part insofar as the same may be applicable.

(s) While any of the bonds issued by the authority remain outstanding, the powers, duties, or existence of the authority, or of its officers, employees, or agents, or of any department, board, commission, or agency of the state shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of such bonds. This part shall be for the benefit of the state, the authority, and the holders of any such bonds and, upon the issuance of bonds under this part, shall constitute a contract with the holders of such bonds.

(t) Bonds of the authority shall be confirmed and validated in accordance with the procedure of Article 3 of Chapter 82 of Title 36. The petition for validation shall also make party defendant to such action any authority, division, subdivision, instrumentality, or agency of the State of Georgia which, or any person who, has contracted with the Georgia Music Hall of Fame Authority for the use of any building, structure, or facilities for which bonds have been issued and sought to be validated. Such authority, division, subdivision, instrumentality, agency, or person shall be required to show cause, if any, why such contract or contracts and the terms and conditions thereof should not be

inquired into by the court, the validity of the terms thereof determined, and the contract adjudicated as security for the payment of any such bonds of the authority. The bonds when validated and the judgment of validation shall be final and conclusive with respect to such bonds and against the authority issuing the same and against any authority, division, subdivision, instrumentality, department, agency, or person contracting with the authority.

(u) No bonds shall be issued by the authority under this part unless the issuance of such bonds has been reviewed and approved by the Georgia State Financing and Investment Commission.

(v) The bonds authorized by this part are made securities in which all public officers and bodies of this state; all municipalities and all municipal subdivisions; all insurance companies and associations and other persons carrying on an insurance business; all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business; all administrators, guardians, executors, trustees, and other fiduciaries; and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state may properly and legally invest funds, including capital in their control or belonging to them. The bonds are also made securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of the bonds or other obligations of this state is now or may hereafter be authorized.

History. — Code 1981, § 12-3-533, enacted by Ga. L. 1990, p. 1062, § 1.

12-3-534. Department of Economic Development authorized to construct, erect, acquire, and exercise custodial responsibility over projects.

The Department of Economic Development is authorized to construct, erect, acquire, and exercise custodial responsibility over the project, as defined in this part, the ownership of which shall be in the state. The costs of any such project may be paid from the proceeds of state general obligation or guaranteed revenue debt. The department is authorized to contract with the authority, the State Properties Commission, the Georgia State Financing and Investment Commission, or with any other department, agency, commission, board, official, or person for the construction, operation, maintenance, funding, design, or use of such project.

History. — Code 1981, § 12-3-534, enacted by Ga. L. 1990, p. 1062, § 1; Ga. L. 2005, p. 306, § 12/SB 125.

12-3-535. Creation of Georgia Music Hall of Fame Advisory Committee.

(a) There is created the Georgia Music Hall of Fame Advisory Committee.

(b) The number and identity of the advisory committee members shall be recommended by the executive director and confirmed by the Georgia Music Hall of Fame Authority. Members of the advisory committee shall consist of individuals who have an interest or expertise in the music industry. At its initial meeting, the advisory committee shall elect a chairperson, a vice chairperson, and such officers as it deems necessary to enable it to carry out its duties and functions. Officers shall serve for terms of one year each. No person shall hold the same office on the advisory committee for more than one term consecutively. Advisory committee members shall receive no compensation for their services but shall receive for each day that such members are in attendance at a meeting of the advisory committee a daily expense allowance and reimbursement for transportation costs as provided for in Code Section 45-7-21. The advisory committee shall meet at such time as the advisory committee deems necessary. A majority of the members shall constitute a quorum for the transaction of business.

History. — Code 1981, § 12-3-535, enacted by Ga. L. 1998, p. 1386, § 3.

12-3-536. Transferring powers of authority to the Department of Economic Development.

(a) Effective July 1, 1998, without diminishing the powers of the authority pursuant to Code Section 12-3-524, all personnel positions authorized by the authority in fiscal year 1998 shall be transferred to the Department of Community Affairs. All employees of the authority on June 30, 1998, whose positions are transferred by the authority to the Department of Community Affairs shall become employees of the Department of Community Affairs and shall become employees in the unclassified service as defined in Code Section 45-20-2.

(b) On April 26, 2005, the functions of the Board of Community Affairs, Department of Community Affairs, and commissioner of community affairs respecting the Music Hall of Fame Authority are transferred to the Department of Economic Development. The commissioner of economic development and the commissioner of community affairs shall arrange administratively for the transfer of records,

equipment, and facilities for such transferred functions. The personnel positions authorized by the Department of Community Affairs shall be transferred to the Department of Economic Development, and all employees of the Department of Community Affairs whose positions are transferred shall become employees of the Department of Economic Development with no break in service and in the classified or unclassified service as they were at the Department of Community Affairs.

History. — Code 1981, § 12-3-536, enacted by Ga. L. 1998, p. 1386, § 3; Ga. L. 2005, p. 306, § 13/SB 125; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2012, p. 446, § 2-5/HB 642.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2005, "On April 26, 2005" was substituted for "Upon the effective date of this subsection" at the beginning of the first sentence in subsection (b).

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

Part 11

Georgia Halls of Fame Authority Overview Committee

12-3-550. Establishment of Georgia Halls of Fame Authority Overview Committee; membership.

There is created as a joint committee of the General Assembly the Georgia Halls of Fame Authority Overview Committee to be composed of five members of the House of Representatives appointed by the Speaker of the House and five members of the Senate appointed by the President of the Senate. The members of the committee shall serve two-year terms concurrent with their terms as members of the General Assembly. The chairman of the committee shall be appointed by the President of the Senate from the membership of the committee, and the vice chairman of the committee shall be appointed by the Speaker of the House of Representatives from the membership of the committee. The chairman and vice chairman shall serve terms of two years concurrent with their terms as members of the General Assembly. Vacancies in an appointed member's position or in the offices of chairman or vice chairman of the committee shall be filled for the unexpired term in the same manner as the original appointment. The committee shall periodically inquire into and review the operations of the Georgia Music Hall of Fame Authority and the Georgia Sports Hall of Fame Authority, as well as periodically review and evaluate the success with which each authority is accomplishing its statutory duties and functions as provided in this article.

History. — Code 1981, § 12-3-550, enacted by Ga. L. 1990, p. 1079, § 1; Ga. L. 2010, p. 331, § 3/SB 523.

12-3-551. Assistance to committee by other state agencies.

The state auditor, the Attorney General, and all other agencies of state government, upon request by the committee, shall assist the committee in the discharge of its duties as set forth in this part. The committee may employ not more than two staff members and may secure the services of independent accountants, engineers, and consultants.

History. — Code 1981, § 12-3-551, enacted by Ga. L. 1990, p. 1079, § 1; Ga. L. 2010, p. 331, § 3/SB 523.

12-3-552. Georgia Music Hall of Fame Authority and Georgia Sports Hall of Fame Authority to cooperate with state agencies.

The Georgia Music Hall of Fame Authority and the Georgia Sports Hall of Fame Authority shall cooperate with the committee, its authorized personnel, the Attorney General, the state auditor, the state accounting officer, and other state agencies in order that the charges of the committee, set forth in this part, may be timely and efficiently discharged. Each authority shall submit to the committee such reports and data as the committee shall reasonably require of each authority in order that the committee may adequately perform its functions. The Attorney General is authorized to bring appropriate legal actions to enforce any laws specifically or generally relating to the two authorities. The committee shall, on or before the first day of January of each year, and at such other times as it deems necessary, submit to the General Assembly a report of its findings and recommendations based upon the review of the two authorities, as set forth in this part.

History. — Code 1981, § 12-3-552, enacted by Ga. L. 1990, p. 1079, § 1; Ga. L. 2005, p. 694, § 23/HB 293; Ga. L. 2010, p. 331, § 3/SB 523.

Cross references. — Contracts with public and private entities or individuals, § 50-8-9.

12-3-553. Standards for evaluation of performance of authority.

In the discharge of its duties, the committee shall evaluate the performance of the Georgia Music Hall of Fame Authority and the Georgia Sports Hall of Fame Authority consistent with the following criteria:

(1) Prudent, legal, and accountable expenditure of public funds;

(2) Efficient operation; and

(3) Performance of its statutory responsibilities.

History. — Code 1981, § 12-3-553, enacted by Ga. L. 1990, p. 1079, § 1; Ga. L. 2010, p. 331, § 3/SB 523.

12-3-554. Expenditure of state funds; per diem and expenses; appropriations.

(a) The committee is authorized to expend state funds available to the committee for the discharge of its duties. Said funds may be used for the purposes of compensating staff personnel, paying for services of independent accountants, engineers, and consultants, and paying all other necessary expenses incurred by the committee in performing its duties.

(b) The members of the committee shall receive the same compensation, per diem, expenses, and allowances for their service on the committee as is authorized by law for members of interim legislative study committees.

(c) The funds necessary for the purposes of the committee shall come from the funds appropriated to and available to the legislative branch of government.

History. — Code 1981, § 12-3-554, enacted by Ga. L. 1990, p. 1079, § 1; Ga. L. 2010, p. 331, § 3/SB 523.

Part 12

Georgia Sports Hall of Fame Authority

RESEARCH REFERENCES

Am. Jur. 2d. — 27A Am. Jur. 2d, Entertainment and Sports Law, § 3.

12-3-560. Short title.

This part shall be known and may be cited as the "Georgia Sports Hall of Fame Authority Act."

History. — Code 1981, § 12-3-560, enacted by Ga. L. 1994, p. 1251, § 1.

12-3-561. Definitions.

As used in this part, the term:

(1) "Authority" means the Georgia Sports Hall of Fame Authority.

(2) "Cost of the project" means the cost of construction; the cost of all lands, properties, rights, easements, and franchises acquired; the cost of all machinery and equipment; financing charges; interest prior to and during construction and for one year after completion of construction; the cost of engineering, architectural, and legal expenses and of plans and specifications and other expenses necessary or incident to determining the feasibility or practicability of the project; administrative expenses; and such other expenses as may be necessary or incident to the financing authorized in this part, the construction of any project, the placing of the same in operation, and the condemnation of property necessary for such construction and operation. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the cost of the project and may be paid or reimbursed as such out of such bonds or obligations as may be issued by any authority, department, commission, or agency of the State of Georgia.

(3) "Project" means and includes one or a combination of two or more of the following: buildings, facilities, and all structures; electric, gas, steam, water, and sewerage utilities; and improvements of every kind and character deemed by the authority necessary or convenient for its purposes.

History. — Code 1981, § 12-3-561, enacted by Ga. L. 1994, p. 1251, § 1.

12-3-562. Creation; membership; terms; vacancies; expense allowance; perpetual existence; books and records; assignment to Department of Economic Development; staffing; cooperative agreements.

(a) There is created a body corporate and politic to be known as the Georgia Sports Hall of Fame Authority which shall be deemed to be an instrumentality of the State of Georgia and a public corporation; and by that name, style, and title such body may contract and be contracted with, bring and defend actions, implead and be impleaded, and complain and defend in all courts of this state.

(b)(1) The terms of all members of the authority who are in office on April 30, 2010, shall terminate on such date. Effective July 1, 2010, the authority shall be under the governance of new members appointed as provided in paragraph (2) of this subsection.

(2) Members shall be appointed as follows:

(A) Five members shall be appointed by the Governor;

(B) Two members shall be appointed by the President of the Senate; and

(C) Two members shall be appointed by the Speaker of the House of Representatives.

(3) The members appointed to take office on July 1, 2010, shall serve until December 31, 2011, and until their respective successors are appointed and qualified. Successors to such members shall be appointed to serve four-year terms of office and until their respective successors are appointed and qualified. A member may be appointed to succeed himself or herself.

(4) Any elected or appointed state, county, municipal, or school board official or employee, except officials and employees of the legislative or judicial branches of state government, may be appointed and serve as a member of the authority.

(c) Vacancies in office shall be filled in the same manner as original appointments. An appointment to fill a vacancy shall be for the unexpired term. The authority shall elect its own officers. No vacancy on the authority shall impair the right of the quorum to exercise all rights and perform all duties of the authority.

(d) The members of the authority shall receive for each day that such members are in attendance at a meeting of the authority the same daily expense allowance and reimbursement for transportation costs as provided for members of the General Assembly, as provided for in Code Section 45-7-21; and the members of the authority may be reimbursed from funds of the authority for reasonable mileage expenses incurred in furtherance of official business of the authority. Otherwise, they shall not receive any other compensation for their services as such.

(e) The authority shall have perpetual existence. Any change in name or composition of the authority shall in no way affect the vested rights of any person under this part or impair the obligations of any contracts existing under this part.

(f) The members of the authority shall be accountable in all respects as trustees. The authority shall keep suitable and proper books and records of all receipts, income, and expenditures of every kind and shall submit for inspection all the books, together with the proper statement of the authority's financial position, to the state auditor.

(g) The authority is assigned to the Department of Economic Development for administrative purposes only.

(h) The authority shall appoint, with the prior consent of the commissioner of economic development, appropriate staff as needed

who shall be experienced and competent in such areas as management, fund raising, and marketing. The staff shall serve at the pleasure of the authority and shall be compensated from funds of the authority in such amount as shall be fixed by the authority.

(i) The authority may create and may enter into cooperative agreements with a nonprofit corporation to serve as a foundation to assist with the raising of funds and the generation of revenues for the purposes of the authority.

History. — Code 1981, § 12-3-562, enacted by Ga. L. 1994, p. 1251, § 1; Ga. L. 1998, p. 214, §§ 2, 2.1; Ga. L. 2000, p. 848, § 1; Ga. L. 2004, p. 306, § 14; Ga. L. 2010, p. 331, § 1/SB 523.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, a period was inserted at the end of the first sentence in paragraph (b)(1).

12-3-562.1. Joint operation between Georgia Sports Hall of Fame and Georgia Music Hall of Fame; proposals for accomplishing objectives.

The Georgia Sports Hall of Fame Authority and the Georgia Music Hall of Fame Authority shall to the maximum extent possible work jointly to realize efficiencies and economies in the operation of their adjacent facilities. The two authorities shall make all possible efforts to consolidate and coordinate marketing, operational, maintenance, property management, and other activities so as to achieve such efficiencies and economies. Not later than September 30, 2010, each such hall of fame authority shall issue a request for proposals for a new location or alternative ownership, management, and operation at the same location for the respective hall of fame facility. Such requests for proposals shall be disseminated to each county and municipal governing authority in the state and shall require that any proposal be submitted not later than December 31, 2010. Any county or municipality wherein such a hall of fame authority is located shall be eligible to submit a proposal; and it is the intention of the General Assembly that such a proposal shall be required as a condition for continued state funding support in a current location. Upon receipt of one or more proposals, the hall of fame authority shall conduct a staff review of each proposal received. A primary consideration in the review of the proposals shall be the effect of each proposal on the current and future operating budgets of the authority and self-sustainability of the authority, including a determination of whether cost savings and operational efficiencies can be effected through moving to a new location or alternative ownership, management, and operation at the same location as proposed. Upon completion of the staff review, the findings shall be submitted to the governing body of the hall of fame authority. Each hall of fame authority shall not later than April 30, 2011, submit to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives,

and the chairpersons of the Senate and House appropriations committees a report detailing the activities of the authority with respect to issuance of the request for proposals, receipt and evaluation of proposals, and the decision of the authority with respect to acceptance of proposals.

History. — Code 1981, § 12-3-562.1, enacted by Ga. L. 2010, p. 331, § 1/SB 523; Ga. L. 2011, p. 752, § 12/HB 142.

12-3-563. Purpose.

The corporate purpose and general nature of the business of the authority shall be:

(1) Constructing and maintaining a facility to house the Georgia Sports Hall of Fame to honor those, living or dead, who by achievement or service have made outstanding and lasting contributions to sports and athletics in this state or elsewhere; honoring those previously selected and inducted by the Georgia Sports Hall of Fame Board; and selecting, appropriately honoring, and inducting future members of the Georgia Sports Hall of Fame. The authority shall establish and include in its bylaws criteria for eligibility for selection and induction into the Georgia Sports Hall of Fame; and

(2) Operating, advertising, and promoting the Georgia Sports Hall of Fame.

History. — Code 1981, § 12-3-563, enacted by Ga. L. 1994, p. 1251, § 1; Ga. L. 1998, p. 214, § 3.

12-3-564. Powers and duties.

The authority is authorized:

(1) To have a seal and alter it at pleasure;

(2) To acquire, hold, and dispose of personal property for its corporate purposes;

(3) To appoint, select, and employ officers, agents, and employees, including engineering, architectural, and construction experts and fiscal agents; to contract for the services of individuals or organizations not employed full time by the authority who or which are engaged primarily in the rendition of personal services rather than the sale of goods or merchandise, such as, but not limited to, the services of accountants, engineers, architects, consultants, and advisers, and to allow suitable compensation for such services; and to make provisions for group insurance, retirement, or other employee

benefit arrangements, provided that no part-time or contract employees shall participate in group insurance or retirement benefits;

(4) To make contracts and to execute all instruments necessary or convenient, including contracts for construction of projects or contracts with respect to the leasing or use of projects which the authority causes to be subdivided, erected, or acquired;

(5) To plan, survey, subdivide, administer, construct, erect, acquire, own, repair, remodel, maintain, add to, extend, improve, equip, operate, and manage projects as defined in this part, such projects to be located on property owned or leased by the authority or the State of Georgia or under the control and management of the authority. The cost of any such project shall be paid from its income, from the proceeds of revenue anticipation certificates of the authority, or from such proceeds and any loan, gift, or grant from the United States of America or any agency or instrumentality thereof, or the State of Georgia, or any county, municipal corporation, authority, or local government or governing body;

(6) To accept loans or grants, or both, of money, materials, or property of any kind from the United States of America or any agency or instrumentality thereof upon such terms and conditions as the United States of America or such agency or instrumentality may impose;

(7) To borrow money for any of its corporate purposes, to issue negotiable revenue anticipation certificates from earnings of such projects, and to provide for the payment of the same and for the rights of the holders thereof;

(8) To exercise any power which is usually possessed by private corporations performing similar functions and which is not in conflict with the Constitution and laws of this state;

(9) To act as agent for the United States of America or any agency, department, corporation, or instrumentality thereof in any manner within the purposes or powers of the authority;

(10) To adopt, alter, or repeal its own bylaws, rules, and regulations governing the manner in which its business may be transacted and in which the power granted to it may be enjoyed as the authority may deem necessary or expedient in facilitating its business;

(11) To solicit, receive, and accept loans, gifts, grants, donations, or contributions of property, facilities, or services, with or without consideration, from any person, firm, or corporation or from the State of Georgia or any agency or instrumentality thereof or from any county, municipal corporation, or local government or governing body;

(11.1) To receive from the Georgia Sports Hall of Fame Board all of its property and assets required to be transferred to the authority and to pay therefrom any obligations incurred by said board prior to the transfer;

(12) To hold, use, administer, and expend such sum or sums as may hereafter be received as income, as gifts, or as appropriations by authority of the General Assembly for any of the purposes of this authority;

(13) To do all things necessary or convenient to carry out the powers and purposes of the authority;

(14) To acquire, lease (as lessee), purchase, hold, own, and use any franchise or any property, real or personal, tangible or intangible, or any interest therein; and to sell, lease (as lessor), transfer, or dispose thereof whenever the same is no longer required for purposes of the authority or exchange the same for other property or rights which are useful for the purposes of the authority;

(15) To fix, alter, charge, and collect fares, rates, rentals, and other charges for its facilities and for admission to its grounds at reasonable rates to be determined by the authority;

(16) To contract with the Georgia State Financing and Investment Commission for the construction of the project as provided for in Article 2 of Chapter 17 of Title 50; or to contract with other authorities, departments, or agencies of the State of Georgia for the construction of the project;

(17) To invest and reinvest any or all idle funds or moneys, including, but not limited to, funds held in reserve or debt retirement or received through the issuance of revenue certificates or from contributions, gifts, or grants, which cannot be immediately used for the purpose for which received, such investment to be made in any security or securities which are legal investments for executors or trustees; provided, however, that investments in such securities will at all times be held for and, when sold, used for the purposes for which the money was originally received;

(18) To grant, on an exclusive or nonexclusive basis, the right to use and occupy streets, roads, sidewalks, and other public places for the purpose of rendering utility services, upon such conditions and for such time as the authority may deem wise;

(19) To appoint special advisory committees and panels of citizens to advise the authority of certain issues and to reimburse the individuals appointed for actual expenses incurred in performing their tasks;

(20) To select a site for the building of a state sports hall of fame; provided, however, that the initial site of such facility shall be located in Macon, Georgia, if the City of Macon, prior to January 1, 1995, donates land therefor in the general area of the location of the Georgia Music Hall of Fame; and

(21) To sell, upon obtaining a license from the Department of Revenue, alcoholic beverages for consumption on the premises only upon property operated and controlled by the authority.

History. — Code 1981, § 12-3-564, enacted by Ga. L. 1994, p. 1251, § 1; Ga. L. 1995, p. 10, § 12; Ga. L. 1998, p. 214, § 4.

12-3-565. Tax exemption.

It is found, determined, and declared that the creation of the authority and the carrying out of its corporate purposes are in all respects for the benefit of the people of this state and constitute a public purpose and that the authority will be performing an essential governmental function in the exercise of the powers conferred upon it by this part. The State of Georgia covenants that the authority shall be required to pay no taxes or assessments upon any of the property acquired by it or under its jurisdiction, control, possession, or supervision or upon its activities in the operation or maintenance of the facilities erected, maintained, or acquired by it or any fees, rentals, or other charges for the use of such facilities or other income received by the authority; provided, however, in no event shall the exemptions granted in this Code section extend to any lessee or other private person or entity.

History. — Code 1981, § 12-3-565, enacted by Ga. L. 1994, p. 1251, § 1.

12-3-566. Police powers.

The authority is authorized to exercise such of the police powers of the state as may be necessary to maintain peace and order and to enforce any and all zoning, use, and personal conduct restrictions upon the properties, facilities, and persons under its jurisdiction to the extent that such is lawful under the laws of the United States and this state. The authority may delegate all or any part of the performance of these functions temporarily or permanently to the state or to the county in which its facilities are located.

History. — Code 1981, § 12-3-566, enacted by Ga. L. 1994, p. 1251, § 1.

12-3-567. Security force.

The authority is authorized to contract for or to provide for and maintain a security force with respect to the facilities and property owned, leased, operated, or under the control of the authority and within the territory thereof. The security force shall have the duty to protect persons and property, disperse unlawful or dangerous assemblages, control pedestrian and vehicular traffic, and otherwise preserve and protect the public peace, health, and safety. For these purposes, a member of such force shall be a peace officer and, as such, shall have authority equivalent to the authority of a law enforcement officer of the county in which he or she is discharging his or her duties.

History. — Code 1981, § 12-3-567, enacted by Ga. L. 1994, p. 1251, § 1.

12-3-568. Trust fund.

All moneys received pursuant to the authority of this part, whether as grants or other contributions or as revenues, rents, and earnings, shall be deemed to be trust funds to be held and applied solely as provided in this part.

History. — Code 1981, § 12-3-568, enacted by Ga. L. 1994, p. 1251, § 1.

12-3-569. Rentals and other charges.

The authority is authorized to fix rentals and other charges which any user, exhibitor, concessionaire, franchisee, or vendor shall pay to the authority for the use of the project or part thereof or combination thereof, and to charge and collect the same, and to lease and make contracts with political subdivisions and agencies with respect to use of any part of the project. The rentals and other charges shall be so fixed and adjusted in respect to the aggregate thereof from the project or any part thereof so as to provide a fund sufficient with other revenues of such project, if any, to pay the cost of maintaining, repairing, and operating the project, including the reserves for extraordinary repairs and insurance, unless such cost shall be otherwise provided for, which cost shall be deemed to include the expenses incurred by the authority on account of the project for water, light, sewer, and other services furnished by other facilities at the project.

History. — Code 1981, § 12-3-569, enacted by Ga. L. 1994, p. 1251, § 1.

12-3-570. Legal services.

The Attorney General shall provide legal services for the authority and in connection therewith the provisions of Code Sections 45-15-13 through 45-15-16 shall be fully applicable.

History. — Code 1981, § 12-3-570, enacted by Ga. L. 1994, p. 1251, § 1.

12-3-571. Venue and jurisdiction of actions.

Any action to protect or enforce any rights under this part shall be brought in the Superior Court of Bibb County, Georgia; and such court shall have exclusive, original jurisdiction of such actions. Nothing contained in this part shall be construed to impair any rights afforded the state under the Constitution of the United States.

History. — Code 1981, § 12-3-571, enacted by Ga. L. 1994, p. 1251, § 1.

12-3-572. Conflicts of interest.

(a) Every member of the authority and every employee of the authority who knowingly has any interest, direct or indirect, in any contract to which the authority is or is about to become a party, or in any other business of the authority, or in any firm or corporation doing business with the authority shall make full disclosure of such interest to the authority. Failure to disclose such an interest shall constitute cause for which a member of the authority may be removed or an employee discharged or otherwise disciplined at the discretion of the authority.

(b) The provisions of Article 1 of Chapter 10 of Title 16 and Code Sections 16-10-21, 16-10-22, 16-10-92, and 16-10-93, regulating the conduct of officers, employees, and agents of political subdivisions, municipal and other public corporations, and other public organizations, shall be applicable to the conduct of members, officers, employees, and agents of the authority.

(c) Any contract or transaction of the authority involving a conflict of interest which is not disclosed under subsection (a) of this Code section, or involving a violation of Article 1 of Chapter 10 of Title 16 or Code Section 16-10-21, 16-10-22, 16-10-92, or 16-10-93, or involving a violation of any other provision of law regulating conflicts of interest which is applicable to the authority or its members, officers, or employees shall be voidable by the authority.

History. — Code 1981, § 12-3-572, enacted by Ga. L. 1994, p. 1251, § 1.

12-3-573. Revenue bonds.

(a) The authority or any authority or body which may succeed to the powers, duties, and liabilities vested in the authority is authorized at one time, or from time to time, to provide by resolution for the issuance of revenue bonds for the purpose of paying all or any part of the cost, as defined in this part, of any one project or a combination of projects. The principal and interest of such revenue bonds shall be payable solely from the special fund provided in subsection (n) of this Code section for such payment. The bonds of each issue shall be dated and shall mature at such times and bear interest at such rates as may be determined by the authority, payable in such medium of payment as to both principal and interest as may be determined by the authority, and may be made redeemable before maturity, at the option of the authority, at such price or prices and under such terms and conditions as may be fixed by the authority in the resolution providing for the issuance of the bonds.

(b) The authority shall determine the form of the bonds, including any interest coupons to be attached thereto, and shall fix the denomination or denominations of the bonds and the place or places of payment of principal and interest thereof, which may be at any bank or trust company within or outside the state. The bonds may be issued in coupon or registered form, or both, as the authority may determine, and provision may be made for the registration of any coupon bond as to principal alone and also as to both principal and interest.

(c) In case any officer whose signature appears on any bonds or whose facsimile signature appears on any coupon ceases to be such officer before the delivery of such bonds, such signature shall nevertheless be valid and sufficient for all purposes the same as if he or she had remained in office until such delivery. All such bonds shall be signed by the chairperson or vice chairperson of the authority, and the official seal of the authority shall be affixed thereto and attested by the secretary or assistant secretary of the authority; and any coupons attached thereto shall bear the signature or facsimile signature of the chairperson or vice chairperson of the authority. Any coupon may bear the facsimile signature of such person, and any bond may be signed, sealed, and attested on behalf of the authority by such persons as at the actual time of the execution of such bonds shall be duly authorized or hold the proper office, although at the date of such bonds such persons may not have been so authorized or shall not have held such office.

(d) All revenue bonds issued under this part shall have and are declared to have all the qualities and incidents of negotiable instruments. Such bonds and the income therefrom shall be exempt from all taxation within the state.

(e) The authority may sell bonds in such manner and for such price as it may determine to be for the best interests of the authority.

(f) The proceeds of bonds shall be used solely for the payment of the cost of the project and shall be disbursed upon requisition or order of the chairperson or vice chairperson of the authority under such restrictions, if any, as provided by the resolution authorizing the issuance of the bonds or by the trust indenture mentioned in subsection (k) of this Code section.

(g) Prior to the preparation of definitive bonds, the authority may, under like restrictions, issue interim receipts, interim certificates, or temporary bonds, with or without coupons, exchangeable for definitive bonds upon the issuance of the latter.

(h) The authority may provide for the replacement of any bond which becomes mutilated or is destroyed or lost.

(i) Revenue bonds may be issued without the conducting of any proceedings, the existence of any conditions, or the happening of any events other than those proceedings, conditions, and events which are specified or required by this part. In the discretion of the authority, revenue bonds of a single issue may be issued for the purpose of paying the cost of any one or more, including a combination of, projects at any one institution or any number of institutions. Any resolution providing for the issuance of revenue bonds under this part shall become effective immediately upon its passage and need not be published or posted. Any such resolution may be passed at any regular, special, or adjourned meeting of the authority by a majority of its members.

(j) Revenue bonds issued under this part shall not be deemed to constitute a debt of the State of Georgia or a pledge of the faith and credit of the state. Such bonds shall be payable solely from the fund provided for in subsections (m) through (p) of this Code section, and the issuance of such revenue bonds shall not directly, indirectly, or contingently obligate the state to levy or to pledge any form of taxation whatever therefor or to make any appropriation for their payment. All such bonds shall contain recitals on their faces covering substantially the foregoing provisions of this Code section. Anything in this Code section to the contrary notwithstanding, such funds as may be received from state appropriations or from any other source are declared to be available and may be used by any department, board, commission, or agency of the State of Georgia for the performance of any lease contract entered into by such department, board, commission, or agency with the authority.

(k)(1) In the discretion of the authority, any issue of revenue bonds may be secured by a trust indenture by and between the authority and a corporate trustee, which may be any trust company or bank

having the powers of a trust company inside or outside of the state. Such trust indenture may pledge or assign rents, revenues, and earnings to be received by the authority.

(2) Either the resolution providing for the issuance of revenue bonds or the trust indenture may contain such provisions for protecting and enforcing the rights and remedies of the bondholders as may be reasonable and proper and not in violation of law, including covenants setting forth the duties of the authority in relation to the acquisition of property; the construction of the project; the maintenance, operation, repair, and insurance of the project; and the custody, safeguarding, and application of all moneys. The resolution or indenture may also provide that any project shall be constructed and paid for under the supervision and approval of consulting engineers or architects employed or designated by the authority and satisfactory to the original purchasers of the bonds issued therefor. The resolution or indenture may also require that the security given by contractors and by any depository of the proceeds of the bonds or revenues or other moneys be satisfactory to such purchasers and may also contain provisions concerning the conditions, if any, upon which additional revenue bonds may be issued.

(3) The indenture may set forth the rights and remedies of the bondholders and of the trustee and may restrict the individual right of action of bondholders as is customary in trust indentures securing bonds and debentures of corporations. In addition to the foregoing provisions of this Code section, the trust indenture may contain such other provisions as the authority may deem reasonable and proper for the security of the bondholders.

(4) It shall be lawful for any bank or trust company incorporated under the laws of this state to act as such depository and to furnish such indemnifying bonds or pledge such securities as may be required by the authority.

(5) All expenses incurred in carrying out the trust indenture may be treated as a part of the cost of maintenance, operation, and repair of the project and of the cost of the project affected by such indenture.

(l) The authority shall, in the resolution providing for issuance of revenue bonds or in the trust indenture, provide for the payment of the proceeds of the sale of the bonds to any officer or person who, or any agency, bank, or trust company which, shall act as trustee of such funds and shall hold and apply the same to the purposes expressed in this part, subject to such regulations as this part and such resolution or trust indenture may provide.

(m) Unless otherwise pledged and allocated, any and all revenues, rents, and earnings received by the authority, regardless of whether or

not such revenues, rents, and earnings were produced by a particular project for which bonds have been issued, may be pledged and allocated by the authority to the payment of the principal and interest on revenue bonds of the authority as the trust indenture or the resolution authorizing the issuance of the bonds may provide.

(n) Such funds so pledged from whatever source received, which pledge may include funds received from one or more or all sources, shall be set aside at regular intervals, as may be provided in the resolution or trust indenture, into a sinking fund which shall be pledged to and charged with the payment of:

(1) The interest upon such revenue bonds as such interest shall fall due;

(2) The principal of the bonds as the same shall fall due;

(3) The necessary charges of paying agents for paying principal and interest; and

(4) Any premium upon bonds retired by call or purchase.

(o) The use and disposition of such sinking fund shall be subject to such regulations as may be provided in the resolution authorizing the issuance of the revenue bonds or in the trust indenture, but, except as may otherwise be provided in such resolution or trust indenture, such sinking fund shall be a fund for the benefit of all revenue bonds without distinction or priority of one over another.

(p) Subject to the provisions of the resolution authorizing the issuance of the bonds or to the trust indenture, surplus moneys in the sinking fund may be applied to the purchasing or redemption of bonds, and any such bonds so purchased or redeemed shall forthwith be canceled and shall not again be issued.

(q) Except to the extent the rights given in this Code section may be restricted by resolution passed before the issuance of bonds or by a trust indenture, any holder of revenue bonds or interest coupons issued under this part, any receiver for such holders, or any indenture trustee, if any, may either at law or in equity, by action, mandamus, or other proceedings, protect and enforce any and all rights under the laws of the State of Georgia or granted by this part or under such resolution or trust indenture. Such holder, receiver, or trustee may enforce and compel performance of all duties required by this part, or by resolution or trust indenture, to be performed by the authority or any officer thereof, including the fixing, charging, and collecting of revenues, rents, and other charges for the use of the project or projects. In the event of default of the authority upon the principal and interest obligations of any revenue bond issue, such holder, receiver, or trustee shall be subrogated to each and every right which the authority may possess

and, in the pursuit of his or her or its remedies as subrogee, may proceed either at law or in equity, by action, mandamus, or other proceedings, to collect any sums by such proceedings due and owing to the authority and pledged or partially pledged directly or indirectly to the benefit of the revenue bond issue of which such holder, receiver, or trustee is representative. No holder, receiver, or trustee shall have the right to compel any exercise of the taxing power of the state to pay any such bond or the interest thereon, or to enforce the payment thereof against any property of the state, nor shall any such bond constitute a charge, lien, or encumbrance, legal or equitable, upon the property of the state.

(r) The authority is authorized to provide by resolution for the issuance of revenue refunding bonds of the authority for the purpose of refunding any revenue bonds issued under this part and then outstanding, together with accrued interest thereon. The issuance of such revenue refunding bonds, the maturities, and all other details thereof; the rights of the holders thereof; and the duties of the authority in respect to the same shall be governed by the foregoing provisions of this part insofar as the same may be applicable.

(s) While any of the bonds issued by the authority remain outstanding, the powers, duties, or existence of the authority, or of its officers, employees, or agents, or of any department, board, commission, or agency of the state shall not be diminished or impaired in any manner that will affect adversely the interests and rights of the holders of such bonds. This part shall be for the benefit of the state, the authority, and the holders of any such bonds and, upon the issuance of bonds under this part, shall constitute a contract with the holders of such bonds.

(t) Bonds of the authority shall be confirmed and validated in accordance with the procedure of Article 3 of Chapter 82 of Title 36. The petition for validation shall also make party defendant to such action any authority, division, subdivision, instrumentality, or agency of the State of Georgia which, or any person who, has contracted with the Georgia Sports Hall of Fame Authority for the use of any building, structure, or facilities for which bonds have been issued and sought to be validated. Such authority, division, subdivision, instrumentality, agency, or person shall be required to show cause, if any, why such contract or contracts and the terms and conditions thereof should not be inquired into by the court, the validity of the terms thereof determined, and the contract adjudicated as security for the payment of any such bonds of the authority. The bonds when validated and the judgment of validation shall be final and conclusive with respect to such bonds and against the authority issuing the same and against any authority, division, subdivision, instrumentality, department, agency, or person contracting with the authority.

(u) No bonds shall be issued by the authority under this part unless the issuance of such bonds has been reviewed and approved by the Georgia State Financing and Investment Commission.

(v) The bonds authorized by this part are made securities in which all public officers and bodies of this state; all municipalities and all municipal subdivisions; all insurance companies and associations and other persons carrying on an insurance business; all banks, bankers, trust companies, savings banks, and savings associations, including savings and loan associations, building and loan associations, investment companies, and other persons carrying on a banking business; all administrators, guardians, executors, trustees, and other fiduciaries; and all other persons whatsoever who are now or may hereafter be authorized to invest in bonds or other obligations of the state may properly and legally invest funds, including capital in their control or belonging to them. The bonds are also made securities which may be deposited with and shall be received by all public officers and bodies of this state and all municipalities and municipal subdivisions for any purpose for which the deposit of the bonds or other obligations of this state is now or may hereafter be authorized.

History. — Code 1981, § 12-3-573, enacted by Ga. L. 1994, p. 1251, § 1; Ga. L. 2001, p. 4, § 12.

12-3-574. Construction and responsibility over project by Department of Economic Development.

The Department of Economic Development is authorized to construct, erect, acquire, and exercise custodial responsibility over the project, as defined in this part, the ownership of which shall be in the state. The costs of any such project may be paid from the proceeds of state general obligation or guaranteed revenue debt. The department is authorized to contract with the authority, the State Properties Commission, the Georgia State Financing and Investment Commission, or with any other department, agency, commission, board, official, or person for the construction, operation, maintenance, funding, design, or use of such project.

History. — Code 1981, § 12-3-574, enacted by Ga. L. 1994, p. 1251, § 1; Ga. L. 2005, p. 306, § 15/SB 125.

Part 13

Georgia Golf Hall of Fame Authority

RESEARCH REFERENCES

Am. Jur. 2d. — 27A Am. Jur. 2d, Entertainment and Sports Law, § 3.

12-3-580 through 12-3-592.

Repealed by Ga. L. 2010, p. 753, § 1/SB 449, effective June 2, 2010.

Editor's notes. — This part consisted of Code Sections 12-3-580 through 12-3-592, relating to the Georgia Golf Hall of Fame Authority, and was based on Ga. L. 1998, p. 1563, § 1; Ga. L. 2005, p. 306, § 16/SB 125.

Ga. L. 2010, p. 753, § 4/SB 449, not codified by the General Assembly, provides: "The state, acting by and through its State Properties Commission, shall be authorized to sell by competitive bid all real property owned or controlled by the Georgia Golf Hall of Fame or its authority or board for a consideration of not less than the fair market value as determined by the State Properties Commission and not less than the amount of the outstanding bond indebtedness associated with the Georgia Golf Hall of Fame. Such sale shall be as provided in Code Section 50-16-39. Such authorization shall expire three years after the effective date of this Act." This Act became effective June 2, 2010.

ARTICLE 8

NONGAME WILDLIFE CONSERVATION AND WILDLIFE HABITAT ACQUISITION PROGRAMS

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, the Code sections in this article, which were enacted as Code Sections 12-3-500 through 12-3-502 by Ga. L. 1985, p. 700, § 1, were redesignated as Code Sections 12-3-600 through 12-3-602 to avoid conflict with the Code sections enacted as Part 9 of Article 7 of this chapter by Ga. L. 1985, p. 1110, § 1.

12-3-600. Legislative findings; policy of state.

The General Assembly finds that it is in the best interest of the state to provide for the conservation of nongame species of wildlife for the benefit and nonconsumptive use of the citizens of Georgia. Historically, wildlife conservation programs have been focused on the more recreationally and commercially important game species. As a consequence, such programs have been largely financed by hunting and fishing license revenues and by federal assistance based on excise taxes on certain hunting and fishing equipment. These traditional financing mechanisms are neither adequate nor fully appropriate to meet the needs of nongame wildlife conservation programs and wildlife habitat acquisition programs which enhance the protection of nongame species. It is the policy of this state to enable and encourage citizens voluntarily to support nongame wildlife conservation programs and wildlife habitat acquisition programs.

History. — Code 1981, § 12-3-600, enacted by Ga. L. 1985, p. 700, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Fish, Game, and Wildlife Conservation, § 30 et seq. 59 Am. Jur. 2d, Parks, Squares, and Playgrounds, § 4. 63C Am. Jur. 2d, Public Lands, § 38 et seq.

C.J.S. — 38 C.J.S., Game; Conservation and Preservation of Wildlife, §§ 10, 52 et seq. 73A C.J.S., Public Lands, § 294. 81A C.J.S., States, §§ 269, 270.

12-3-601. Definitions.

As used in this article, the term:

(1) "Department" means the Department of Natural Resources.

(2) "Nongame wildlife" means all species of flora and fauna indigenous to Georgia which are not legally taken through hunting, fishing, trapping, or otherwise.

(3) "Wildlife" means all species of flora and fauna indigenous to Georgia.

History. — Code 1981, § 12-3-601, enacted by Ga. L. 1985, p. 700, § 1.

12-3-602. Establishment of programs and activities; Nongame Wildlife Conservation and Wildlife Habitat Acquisitions Fund; income tax return form contribution option; administrative costs of voluntary contribution program.

(a) The department shall establish nongame wildlife conservation programs and wildlife habitat acquisition programs and educational and promotional activities in support thereof to enhance the protection of nongame wildlife and the nonconsumptive use thereof by the citizens of Georgia. To support such programs, the department may, without limitation, promote and solicit voluntary contributions through the income tax return contribution mechanism established in subsection (c) of this Code section, through offers to match contributions by any person with moneys appropriated or contributed to the department for such programs, or through any fund raising or other promotional techniques deemed appropriate by the department.

(b) There is established a special fund to be known as the "Nongame Wildlife Conservation and Wildlife Habitat Acquisition Fund." This fund shall consist of all moneys contributed under subsection (a) of this Code section, all moneys transferred to the department under subsection (c) of this Code section, and any other moneys contributed to this

fund or to the nongame wildlife conservation and wildlife habitat acquisition programs of the department and all interest thereon. All balances in the fund shall be deposited in an interest-bearing account identifying the fund and shall be carried forward each year so that no part thereof may be deposited in the general treasury. The department shall administer the fund and may expend moneys held in the fund in furtherance of its nongame wildlife conservation programs and its wildlife habitat acquisition programs and related educational and promotional projects. Contributions to the fund shall be deemed supplemental to and shall in no way supplant funding that would otherwise be appropriated for these purposes. The department shall prepare, by February 1 of each year, an accounting of the funds received and expended from the fund. The report shall be made available to the members of the Board of Natural Resources and to members of the public on request.

(c)(1) Unless an earlier date is deemed feasible and established by the Governor, each Georgia income tax return form for taxable years beginning on or after January 1, 1989, shall contain appropriate language, to be determined by the state revenue commissioner, offering the taxpayer the opportunity to contribute to the Nongame Wildlife Conservation and Wildlife Habitat Acquisition Fund established in subsection (b) of this Code section by either donating all or any part of any tax refund due, by authorizing a reduction in the refund check otherwise payable, or by contributing any amount over and above any amount of tax owed by adding that amount to the taxpayer's payment. The instructions accompanying the income tax return form shall contain a description of the purposes for which this fund was established and the intended use of moneys received from the contributions. Each taxpayer required to file a state income tax return who desires to contribute to the Nongame Wildlife Conservation and Wildlife Habitat Acquisition Fund may designate such contribution as provided in this Code section on the appropriate income tax return form.

(2) The Department of Revenue shall determine annually the total amount so contributed, shall withhold therefrom a reasonable amount for administering this voluntary contribution program, and shall transmit the balance to the department for deposit in the Nongame Wildlife Conservation and Wildlife Habitat Acquisition Fund established in subsection (b) of this Code section; provided, however, the amount retained for administrative costs shall not exceed $50,000.00 per year. If, in any tax year, the administrative costs of the Department of Revenue for collecting contributions pursuant to this Code section exceed the sum of such contributions, the administrative costs which the Department of Revenue is authorized to withhold from such contributions shall not exceed the sum of such contributions.

History. — Code 1981, § 12-3-602, enacted by Ga. L. 1985, p. 700, § 1.

ARTICLE 9

PROTECTION OF ARCHEOLOGICAL, ABORIGINAL, PREHISTORIC, AND HISTORIC SITES

Cross references. — Protection of American Indian human remains and burial objects, § 44-12-260 et seq.

Administrative rules and regulations. — State parks and historic sites systems, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-5-1 et seq.

12-3-620. Definitions.

As used in this article, the term:

(1) "American Indian" means an individual who is a member of a nation, tribe, band, group, or community that was indigenous to Georgia; is a descendant of persons named as American Indians in the Georgia Senate Bill 89, enacted during the legislative session of 1839 (Ga. L. 1839, p. 374); or is a descendant of persons included in the United States Indian Claims Commission, Docket 21, 1962, and those sequel dockets pertaining to the Creek Nation east of the Mississippi.

(2) "Burial object" means an object that, as a part of the death rite or ceremony of a culture, is reasonably believed to have been placed with individual human remains either at the time of death or later. Such term includes any item defined in paragraph (4) of Code Section 36-72-2 and may also include but not be limited to urns; whole or broken ceramic, metal, or glass vessels; chipped stone tools; ground stone tools; worked bone and shell items; clothing; medals; buttons; jewelry; firearms; edged weapons; and the caskets or containers for the human remains.

(3) "Council" means the Council on American Indian Concerns established by Code Section 44-12-280.

(4) "Human remains" means the bodies of deceased human beings in any stage of decomposition, including cremated remains.

(5) "Object of cultural patrimony" means an object having ongoing historical, traditional, or cultural importance central to a group or culture itself, rather than property owned by an individual, and which, therefore, cannot be alienated, appropriated, or conveyed by any individual regardless of whether or not the individual is a member of a tribe or an organization.

(6) "Sacred object" means a specific ceremonial object which is used by a religious leader for the practice of a religion by the present day adherents of such religion.

History. — Code 1981, § 12-3-620, enacted by Ga. L. 1992, p. 1790, § 2.

12-3-621. Prohibited acts as to archeological, aboriginal, prehistoric, or historic sites; notification of state archeologist before beginning investigation or disturbance of site; penalty.

(a) It shall be unlawful for any person or entity not operating under the provisions of Section 106 of the National Historic Preservation Act, as amended, or the express written permission of the owner willfully or knowingly to:

(1) Dig, probe, break, crack, carve upon, write upon, burn, or otherwise mark upon, remove, or in any manner destroy, disturb, deface, mar, or harm the structures, features, surfaces, or contents of archeological, aboriginal, prehistoric, or historic sites; provided, however, that except for human remains and burial objects, this paragraph shall not apply to the collecting of artifacts exposed on the surface of dry land;

(2) Disturb or alter in any manner the prevailing condition of any archeological, aboriginal, prehistoric, or historic site; provided, however, that except for human remains and burial objects, this paragraph shall not apply to the collecting of artifacts exposed on the surface of dry land;

(3) Break, force, tamper with, or otherwise disturb a lock, gate, door, or other obstruction designed to control or prevent access to any area containing an archeological, aboriginal, prehistoric, or historic site or artifacts, even though entrance thereto may not be gained; or

(4) Enter an archeological, aboriginal, prehistoric, or historic site posted against trespassing or a site with a lock, gate, door, or other obstruction designed to control or prevent access to the site.

(b) When the surface of any archeological, aboriginal, prehistoric, or historic site is disturbed by a person not documented as operating under the provisions of Section 106 of the National Historic Preservation Act, as amended, for the purpose of investigating the site or discovering artifacts with the written permission of the landowner, such person shall notify the state archeologist before beginning any such investigation or disturbance. The state archeologist shall maintain a web site and telephone hot line, available at all times, for the purpose of receiving notice in such form as shall be specified by policy

of the department. The state archeologist shall immediately notify the Council on American Indian Concerns created by Code Section 44-12-280 of any such investigation that might involve American Indian human remains or burial objects. The state archeologist shall make available to the council any information pertaining to investigations conducted pursuant to Section 106 of the National Historic Preservation Act, as amended.

(c) Possession of any archeological artifact collected on or after July 1, 2001, without the written permission of the owner of the land from which the artifact was removed shall be prima-facie evidence that the archeological artifact was taken in violation of this chapter. As to archeological artifacts unlawfully in the possession of any person or entity, same shall be confiscated and held by the appropriate law enforcement official(s) and shall be returned by said official(s) to the property owner from whose property the artifacts were improperly removed.

(d) Any person who violates any provision of subsection (a) or (b) of this Code section shall be guilty of a misdemeanor.

History. — Code 1981, § 12-3-621, enacted by Ga. L. 1992, p. 1790, § 2; Ga. L. 2001, p. 313, § 1; Ga. L. 2007, p. 166, § 1/HB 177.

Cross references. — State archeologist, § 12-3-53. Council on American Indian Concerns, § 44-12-280.

U.S. Code. — Section 106 of the National Historic Preservation Act, referred to in subsection (b), is codified at 16 U.S.C. § 470f.

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting. — Georgia Crime Information Center is authorized to collect and file fingerprints of persons charged with a violation of O.C.G.A. § 12-3-621. 2001 Op. Att'y Gen. No. 2001-11.

12-3-622. Buying, selling, trading, importing, or exporting American Indian burial, sacred, or cultural objects.

(a) After December 1, 1992, it shall be unlawful for any person to buy, sell, trade, import, or export for purposes of buying, selling, or trading for profit any American Indian burial object, sacred object, or object of cultural patrimony, with knowledge that the object is an American Indian burial or sacred object or an object of cultural patrimony.

(b) Any person who violates the provisions of subsection (a) of this Code section is guilty of a misdemeanor and, upon conviction thereof, may be punished by a fine not to exceed $500.00 for each burial object, sacred object, or object of cultural patrimony involved in such violation.

History. — Code 1981, § 12-3-622, enacted by Ga. L. 1992, p. 1790, § 2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, a comma was inserted following "selling" in subsection (a).

ARTICLE 10

OFFICIAL GARDENS AND NATURE CENTERS

Cross references. — Department of Industry, Trade, and Tourism, T. 50, C. 7.

Editor's notes. — Former Code Sections 12-3-630 through 12-3-641, enacted by Ga. L. 1998, p. 1007, § 1, were automatically repealed upon the defeat of the proposed enabling constitutional amendment at the 1998 general election.

12-3-640. Designation.

In recognition of the many beautiful and outstanding gardens and nature centers of the State of Georgia, the following gardens and nature centers and such others as may hereafter be designated by resolution of the General Assembly are designated as the official gardens and nature centers of Georgia: Atlanta Botanical Gardens in Fulton County, Barnsley Garden in Bartow County, Bullock Hall in Fulton County, Brumby Hall and Gardens in Cobb County, Callaway Gardens in Harris County, Chateau Elan in Barrow County, Chattahoochee Nature Center in Fulton County, Fernbank Forest in DeKalb County, Governor's Mansion in Fulton County, Lanier Museum of Natural History in Gwinnett County, Massee Lane Gardens of the American Camellia Society in Peach County, Rock City Gardens in Walker County, Rosalyn Carter Rose Garden at the Carter Center in Fulton County, Stone Mountain Park in Gwinnett and DeKalb counties, Vines Botanical Gardens in Gwinnett County, William H. Reynolds Memorial Nature Reserve in Clayton County, Thomasville Rose Garden in Thomasville, Birdsong Nature Center in Thomasville, Providence Canyon State Conservation Park in Lumpkin, Florence Marina State Park in Omaha, Oxbow Meadows Environmental Learning Center in Columbus, Columbus Riverwalk in Columbus, Founder's Park in Columbus, Columbus Museum Gardens in Columbus, LaGrange Square in LaGrange, Oak Grove Plantation and Gardens in Newnan, Pine Mountain Trail and FDR State Park nature trail in Pine Mountain, Grandmother's Garden and Pathways of Gold Park in Sharpsburg, Sprewell Bluff State Park in Thomaston, Georgia Veterans Memorial State Park in Cordele, Chatham County Garden Center and Botanical Gardens in Savannah, Bamboo Farm & Coastal Gardens in Savannah, LeConte Woodmanston National Historic Place in Midway, Athens-Area Gardens in Athens, Athens Welcome Center Garden in Athens, Founder's Memorial Garden in Athens, State Botanical Garden of Georgia in Athens, Fred Hamilton Rhododendron Garden in Hiawassee, Cecil B. Day Butterfly Center in Harris County, and Elachee Nature Science Center in Gainesville. The Department of Economic Development and other public agencies and

leaders in this state are encouraged to work together to maximize advertising and other programs which will permit the citizens of this state and other states and nations to learn of the beautiful gardens and nature centers of Georgia.

History. — Code 1981, § 12-3-640, enacted by Ga. L. 2000, p. 945, § 1; Ga. L. 2004, p. 690, § 8.

ARTICLE 11

GEORGIA AGRIRAMA DEVELOPMENT AUTHORITY

Cross references. — Agriculture, T. 2.

12-3-650. Definitions.

Repealed by Ga. L. 2011, p. 99, § 12/HB 142, effective May 13, 2011.

Editor's notes. — This Code section was based on Code 1981, § 12-3-650, enacted by Ga. L. 2001, p. 894, § 2.

12-3-651. Redesignated.

Editor's notes. — Ga. L. 2011, p. 99, § 12/HB 142, effective May 13, 2011, redesignated former Code Section 12-3-651 as present Code Section 20-3-73.1.

12-3-652 through 12-3-661.

Repealed by Ga. L. 2011, p. 99, § 12/HB 142, effective May 13, 2011.

Editor's notes. — These Code sections were based on Code 1981, §§ 12-3-652—12-3-661, enacted by Ga. L. 2001, p. 894, § 2; Ga. L. 2002, p. 415, § 12; Ga. L. 2004, p. 690, § 9.

12-3-662. Redesignated.

Editor's notes. — Ga. L. 2011, p. 99, § 12/HB 142, effective May 13, 2011, redesignated former Code Section 12-3-662 as present Code Section 20-3-73.2.

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Repealed by Ga. L. 2008, p. 1015, § 4/SB 344, effective May 14, 2008.

Editor's notes. — This article was based on Code 1981, §§ 12-3-680 through 12-3-708, enacted by Ga. L. 2002, p. 1198, § 1.

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ARTICLE 1

GENERAL PROVISIONS

Cross references. — Registration of geologists, T. 43, C. 19.

12-4-1. Powers and duties of Environmental Protection Division as to mineral and geological resources.

(a) The Environmental Protection Division of the Department of Natural Resources shall:

(1) Conduct studies in the field for the purposes expressed in this subsection;

(2) Map and prepare reports of the geological and mineral resources of the state;

(3) Prepare, or cooperate in preparing, topography maps for use as base maps in the geological field study and in mining development,

and for use in planning power developments, agriculture and reclamation work, and highways;

(4) Make hydrographic surveys which are deemed by the division to be advantageous to the mining and milling of mineral deposits, to the utilization of waterpower, or to reclamation, or which are deemed to constitute proper cooperative investigations with other departments of the state or federal governments in aid of laboratory research relating to mining and to metallurgical problems of the state's mining and mineral industry; and

(5) Publish in print or electronically bulletins embodying reports provided by the division.

(b) It shall be the duty of the division to conduct cooperative work relating to mines, mining, and geology with the departments and bureaus of the United States government, provided that the federal expenditure for such work shall at least equal that of the state.

(c) The director of the Environmental Protection Division of the Department of Natural Resources may appoint technical assistants who shall be in the classified service as defined by Code Section 45-20-2.

(d) The functions, duties, and powers of the former Department of Mines, Mining, and Geology are transferred to and vested in the Environmental Protection Division of the Department of Natural Resources.

(e) The Environmental Protection Division of the Department of Natural Resources shall have charge of the work of mines, mining, and geology.

History. — Ga. L. 1894, p. 111, § 3; Civil Code 1895, §§ 1715, 1716; Civil Code 1910, §§ 1966, 1967; Code 1933, §§ 43-302, 43-304; Ga. L. 1937, p. 264, § 9; Ga. L. 1943, p. 180, §§ 1, 3, 4, 7; Ga. L. 1972, p. 1015, § 1502; Ga. L. 1981, p. 838, § 1; Ga. L. 1982, p. 3, § 12; Ga. L. 1984, p. 22, § 12; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2012, p. 446, § 2-6/HB 642.

Cross references. — Powers and duties of department generally, § 12-2-4. Duty of department to keep records of findings as to geological formations encountered in underground water drilling operations, § 12-5-71. Professional engineers and land surveyors generally, T. 43, C. 15. Registration of geologists, T. 43, C. 19. Penalty for removal or destruction of survey monuments, § 44-1-15.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 38.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 106, 107. 81A C.J.S., States, §§ 174, 346 et seq.

ALR. — Constitutionality of statute limiting or controlling exploitation or waste of natural resources, 24 A.L.R. 307; 78 A.L.R. 834.

ARTICLE 2

MINING AND DRILLING

Cross references. — Powers of department and Board of Natural Resources regarding underground storage of gas, § 46-4-60. Powers of State Properties Commission regarding contracts and leases for exploration, drilling, and mining, of mineral resources, § 50-16-43.

Administrative rules and regulations. — Oil and gas and deep drilling, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-13.

RESEARCH REFERENCES

ALR. — Production on one tract as extending term on other tract where one mineral lease conveys oil or gas rights in separate tracts for as long as oil or gas is produced, 35 A.L.R.4th 1167.

Duty of oil or gas lessee to restore surface of leased premises upon termination of operations, 62 A.L.R.4th 1153.

PART 1

OIL WELL REWARD

RESEARCH REFERENCES

ALR. — Construction of oil and gas lease as to the lessee's right and duty of geophysical or seismograph exploration or survey, 28 A.L.R.3d 1426.

12-4-20. Amount of reward; eligibility for reward.

There shall be paid the sum of $250,000.00 to the first person, firm, or corporation, or combination thereof, which puts down and brings in the first commercial oil well in this state, provided that such well must produce at least 100 barrels of oil per day. The determination as to whether such well is producing this amount is vested in the commissioner of natural resources.

History. — Ga. L. 1958, p. 265, § 1; Ga. L. 1983, p. 514, § 2.

Cross references. — Gratuities prohibited, Ga. Const. 1983, Art. III, Sec. VI, Para. VI.

Editor's notes. — Ga. L. 1983, p. 514, § 1, not codified by the General Assembly, provides as follows: "It is the intent of this Act to implement the provisions of Article III, Section VI, Paragraph VI of the Constitution of the State of Georgia."

RESEARCH REFERENCES

Am. Jur. 2d. — 12 Am. Jur. 2d, Bounties, § 5.

12-4-21. Manner of distribution of reward.

Such amount shall be distributed as follows:

(1) The sum of $50,000.00 to the owner or owners of the minerals or the property, or both, where the well is drilled, to be divided, where there are multiple owners of the minerals, among them in the proportion of their respective interest therein; provided, however, that the owner or owners of any mineral interest which does not include oil shall not share in such payment;

(2) The sum of $100,000.00 to the company or individual, or combination of persons, firms, and corporations, which drills or causes to be drilled such oil well, being those persons, firms, or corporations which own the working interest in the well as "working interest" is known and defined in the oil industry;

(3) The sum of $87,500.00 to the contractor who furnishes the equipment for the drilling of such well, and who performs the job of drilling and completion of the well, provided that if there is more than one contractor, such sum shall be divided only between or among those who engage in drilling the well and in completing same for production and who carry out and complete their contracts;

(4) The sum of $12,500.00 to be equally divided among the workmen and employees actually engaged in the job of drilling and completing the well, being those persons certified to the Governor by the contractor or contractors, or owners of the working interest, or both, as being his or their bona fide employees who were working on the job when the drilling, or completion of the well for production, or the contractor's contract, was completed, or who otherwise carried out and completed their employment.

History. — Ga. L. 1958, p. 265, § 2.

RESEARCH REFERENCES

Am. Jur. 2d. — 12 Am. Jur. 2d, Bounties, §§ 1 et seq.

12-4-22. Authorization for Governor to make payments from surplus or contingent funds.

The Governor is authorized to make the payments provided for in this part from the surplus or the contingent funds, or both, of the state.

History. — Ga. L. 1958, p. 265, § 3.

RESEARCH REFERENCES

Am. Jur. 2d. — 12 Am. Jur. 2d, Bounties, § 10.

Part 2

Deep Drilling for Oil, Gas, and Other Minerals

Cross references. — Obtaining rights of way for mining, quarrying, and other purposes, § 44-9-70 et seq.

RESEARCH REFERENCES

ALR. — Liability for damage to oil well by one employed to "shoot" it, 46 A.L.R. 341.

Acceptance of rents or royalties under oil and gas lease as waiver of forfeiture for breach of covenant or condition regarding drills of wells, 80 A.L.R. 461.

Constitutionality of statute regulating petroleum production, 86 A.L.R. 418.

Construction, application, and effect of statutes regulating production of oil or gas in a manner or under conditions constituting waste, 86 A.L.R. 431.

Duty of lessee or assignee of oil or gas lease as regards marketing or delivery for marketing of oil or gas discovered, 86 A.L.R. 725; 71 A.L.R.2d 1219.

Royalty interest reserved by conveyance or lease of oil and gas rights as real or personal property, 90 A.L.R. 770; 101 A.L.R. 884; 131 A.L.R. 1371.

Extent of development necessary to comply with express or implied covenant of oil and gas lease as to development, 93 A.L.R. 460.

Constitutionality of statute, ordinance, or regulation limiting right of surface owner in respect of oil or gas, 99 A.L.R. 1119.

Instrument conveying land, minerals, or mineral rights as raised implied obligation to drill and develop for oil and gas, 137 A.L.R. 415.

Estoppel to assert termination of oil and gas lease because of cessation of operations, 137 A.L.R. 1037.

Right to partition in kind of mineral or oil and gas land, 143 A.L.R. 1092.

Severance of tile or rights to oil and gas in place from title to surface, 146 A.L.R. 880.

Mistake as to existence, practicability of removal, or amount of minerals as ground for relief from mineral lease, 163 A.L.R. 878.

Construction of deed of undivided interest in land, as to fractional interest in oil, gas, or other minerals, or in royalty, reserved or excepted, 163 A.L.R. 1132.

What constitutes oil or gas "royalty," or "royalties," within language of conveyance, exception, reservation, devise, or assignment, 4 A.L.R.2d 492.

Mistake, accident, inadvertence as ground for relief from termination or forfeiture of oil or gas lease for failure to complete well, commence drilling, or pay rental, strictly on time, 5 A.L.R.2d 993.

Abandonment of oil or gas lease by parol declaration, 13 A.L.R.2d 951.

Perpetual nonparticipating royalty interest in oil and gas as violating rule against perpetuities, 46 A.L.R.2d 1268.

Rights of parties to oil and gas lease or royalty deed after expiration of fixed term where production temporarily ceases, 100 A.L.R.2d 885.

Construction of oil and gas lease as to the lessee's right and duty of geophysical or seismograph exploration or survey, 28 A.L.R.3d 1426.

Liability of oil and gas lessee or operator for injuries to or death of livestock, 51 A.L.R.3d 304.

What constitutes reasonably necessary

use of the surface of the leasehold by a mineral owner, lessee, or driller under an oil and gas lease or drilling contract, 53 A.L.R.3d 16.

Oil and gas royalty as real or personal property, 56 A.L.R.4th 539.

Mine tailings as real or personal property, 75 A.L.R.4th 965.

Oil and gas; rights of royalty owners to take-or-pay settlements, 57 A.L.R.5th 753.

Admiralty jurisdiction over contracts for services in connection with off-shore drilling operations, 114 A.L.R. Fed. 623.

12-4-40. Short title.

This part shall be known and may be cited as the "Oil and Gas and Deep Drilling Act of 1975."

History. — Ga. L. 1975, p. 966, § 2; Ga. L. 2018, p. 953, § 1/HB 205.

12-4-41. Legislative findings and declaration of policy.

The General Assembly finds and declares that its duty to protect the health, safety, and welfare of the citizens of this state requires that adequate protection of underground fresh water supplies be assured in any drilling operation which may penetrate through any stratum which contains fresh water. This duty further requires that adequate protection be assured in any drilling or the use of such drilled wells in certain other environmentally sensitive areas or in other circumstances where the result of such drilling and use may endanger the health, safety, and welfare of the citizens of this state. It is not the policy of the General Assembly to regulate the drilling of shallow exploration or engineering holes except in such environmentally sensitive areas as defined in this part. The General Assembly further finds and declares that oil and gas exploration to identify new sources of energy should not occur at the expense of our important natural resources such as residential, municipal, and industrial supplies of fresh water. The General Assembly further finds and declares that it should continue to encourage oil and gas exploration. The General Assembly further finds and declares that with an increase in oil exploration, it must provide assurances to persons engaging in such exploration that adequate safeguards regarding results of exploration will remain privileged information for a specified time. The General Assembly further finds and declares that it is in the public interest to obtain, protect, and disseminate all possible geologic information associated with drilling operations in order to further the purposes of future energy related research.

History. — Ga. L. 1975, p. 966, § 1; Ga. L. 2018, p. 953, § 1/HB 205.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, a hyphen was deleted from "energy related" in the last sentence of this Code section.

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Gas and Oil, § 144.

C.J.S. — 58 C.J.S., Mines and Minerals, § 407 et seq.

12-4-42. Definitions.

As used in this part, the term:

(1) "Board" means the Board of Natural Resources.

(1.1) "Director" means the director of the Environmental Protection Division of the Department of Natural Resources.

(2) "Drilling" means the boring of a hole in the earth by remote mechanical means and all associated activities, including but not limited to casing, perforating, plugging, cementing, and capping.

(3) "Environmentally sensitive area of the coastal zone" means that area of the coastal zone where salt-water-bearing strata overlie the fresh-water aquifer system.

(4) "Field" means the general area which is underlaid or appears to be underlaid by at least one pool. This term shall include the underground reservoir or reservoirs containing crude petroleum oil or natural gas, or both. The words "field" and "pool" mean the same thing when only one underground reservoir is involved; however, "field," unlike "pool," may relate to two or more pools.

(5) "Gas" means all natural gas, including casing-head gas, and all other hydrocarbons not defined as oil in paragraph (10) of this Code section.

(5.1) "Hydraulic fracturing" means those operations conducted in an individual well bore designed to increase the flow of hydrocarbons from the rock formation to such well bore through modification of the permeability of reservoir rock by fracturing it through application of fluids under pressure.

(6) "Illegal mineral" means any mineral, including oil or gas, which has been produced within the State of Georgia in violation of this part, any rule or regulation adopted and promulgated pursuant to this part, or any order issued under this part.

(7) "Illegal product" means any product of oil, gas, or other mineral, any part of which was processed or derived, in whole or in part, from an illegal mineral.

(8) "Mineral" means any naturally occurring substance found in the earth which has commercial value. This term shall include oil and gas, as defined in this Code section, but shall not include fresh water.

(9) "Mineral product" means any commodity made from any mineral.

(10) "Oil" means crude petroleum oil and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the reservoir.

(11) "Owner" means the person who has the right to drill into and produce from any pool and to appropriate the production either for himself or herself and another, or himself or herself and others.

(12) "Person" means any natural person, corporation, joint venture, association, partnership, receiver, trustee, guardian, executor, administrator, fiduciary or representative of any kind, all agencies or instrumentalities of the state, and all county or municipal governments or any authority.

(13) "Pool" means an underground reservoir containing a common accumulation of crude petroleum oil or natural gas, or both. Each zone of a general structure which is completely separated from any other zone in the structure is covered by the term "pool" as used in this part.

(14) "Producer" means the owner of a well or wells capable of producing oil or gas, or both.

(15) "Tender" means a permit or certificate of clearance for the transportation of minerals, including oil and gas, or mineral products produced under this part, approved and issued or registered under the authority of the board.

(16) "Unitization agreement" means a voluntary agreement between operators to create operation units.

(17) "Waste," in addition to its ordinary meaning, means "physical waste" as that term is generally understood in the oil and gas industry. The term shall also include, but not be limited to:

(A) The inefficient, excessive, or improper use or dissipation of reservoir energy and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner which results, or tends to result, in a reduction in the quantity of oil or gas ultimately to be recovered from any pool in this state;

(B) The inefficient storing of oil and the locating, spacing, drilling, equipping, operating, or producing of any oil or gas well or wells in a manner causing, or tending to cause, unnecessary or excessive surface loss or destruction of oil or gas;

(C) Abuse of the correlative rights and opportunities of each owner of gas or oil in a common reservoir due to nonuniform,

disproportionate, and unratable withdrawals causing undue drainage between tracts of lands;

(D) The production of oil or gas in such a manner as to cause unnecessary water channeling or zoning;

(E) The operation of any oil well or wells with an inefficient gas-oil ratio;

(F) The drowning with water of any stratum or part thereof capable of producing gas or oil, except where approval for such a project has been granted by the department;

(G) Underground waste, however caused and whether or not defined, as the same relates to any activity regulated by this part;

(H) The creation of unnecessary fire hazards as the same relates to any activity regulated by this part;

(I) The escape into the open air, from a well producing both oil and gas, of gas in excess of the amount which is necessary in the efficient drilling or operation of the well; and

(J) Permitting gas produced from a gas well to escape into the air, except for testing purposes.

(18) "Well" means any boring drilled in the search for or the production of oil, gas, or other minerals or water.

History. — Ga. L. 1945, p. 366, § 8; Ga. L. 1975, p. 966, § 3; Ga. L. 1976, p. 544, §§ 1-3; Ga. L. 1984, p. 398, § 1; Ga. L. 2018, p. 953, § 1/HB 205.

RESEARCH REFERENCES

ALR. — Rights as to oil escaping from well, tank, or pipeline, 42 A.L.R. 577.

Implied duty of oil and gas lessee to protect against drainage, 18 A.L.R.4th 14.

Remedy for breach of implied duty of oil and gas lessee to protect against drainage, 18 A.L.R.4th 147.

12-4-43. Powers of board as to deep drilling.

For the purpose of this part:

(1) The board shall have the authority to make such inquiries as it may deem necessary into any matter over which it has jurisdiction;

(2) The board shall have the jurisdiction of and authority over the drilling of and subsequent use of any well for the exploration or production of oil and gas; any well for the exploration or production of any other mineral drilled to a depth greater than 1,800 feet; any well for the exploration or production of any mineral located in the environmentally sensitive area of the coastal zone and which is drilled to a depth sufficient to penetrate the fresh-water aquifer

system; any underground storage well with the exception of those wells covered by Article 3 of Chapter 4 of Title 46; any well for the underground disposal of waste materials; any well for the production of fresh water drilled to a depth greater than 1,800 feet; and any well for the exploration or production of brine or salt water;

(3) The board shall have the authority to regulate the spacing of wells and the production of all oil and gas and the production of any other minerals produced through a well or bore hole in liquid or slurry form to a depth greater than 1,800 feet or located in the environmentally sensitive area; provided, however, that this authority does not extend to the drilling of wells for the production of fresh water used for drinking, residential, industrial, or agricultural purposes, except as provided for in paragraph (2) of this Code section;

(4) The board shall have the power to adopt and promulgate rules and regulations necessary to effectuate the purposes of this part;

(5) The board may delegate to the director the administrative duties and powers, including, without limitation, the power to consider and issue permits to drill wells and to establish drilling and operation units, created under the authority of this part; and

(6) Upon receipt of at least 12 applications during a calendar year for any permit to drill any well for the exploration or production of oil or gas, the board may delegate to the director the authority to create an Oil and Gas Board to review and issue permits and regulate drilling activity. Any such Oil and Gas Board shall consist of the state geologist and three other members appointed by the Governor.

History. — Ga. L. 1975, p. 966, § 4; Ga. L. 1976, p. 544, § 4; Ga. L. 1984, p. 398, § 2; Ga. L. 2018, p. 953, § 1/HB 205.

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Gas and Oil, §§ 135, 136.

C.J.S. — 58 C.J.S., Mines and Minerals, § 407 et seq.

ALR. — Prohibiting or regulating removal or exploitation of oil and gas, minerals, soil, or other natural products within municipal limits, 10 A.L.R.3d 1226.

Meaning of "paying quantities" in oil and gas lease, 43 A.L.R.3d 8.

12-4-44. Authority to adopt and promulgate rules and regulations.

(a) The board shall have the authority to adopt and promulgate rules and regulations dealing with the control of matters over which it has jurisdiction under this part. Such rules and regulations shall include,

but shall not be limited to, rules and regulations for the following purposes:

(1) To require the drilling, casing, and plugging of wells regulated under this part to be done in such a manner as to prevent the escape of oil or gas out of one stratum into another stratum; to prevent the pollution of fresh surface-water and ground-water supplies by oil, gas, salt water, or other contaminants; and to require reasonable bonds;

(2) To require the making of reports showing the location of all wells regulated under this part, including the filing of drill cutting samples, cores, and copies of all logs, and to further require that the operator submit the name classification used for each of the subsurface formations penetrated and the depth at which each such formation was penetrated;

(3) To prevent the drowning by water of any stratum or part thereof capable of producing oil or gas in paying quantities and to prevent the premature and irregular encroachment of water which reduces the total ultimate recovery of oil or gas from any pool;

(4) To require the operation of wells regulated under this part with efficient gas-oil ratios and to fix such ratios;

(5) To prevent "blowouts," "caving," and "seepage" in the sense that conditions indicated by such terms are generally understood in the oil and gas business;

(6) To prevent fires, waste, and spillage as same relates to any activity regulated by the provisions of this part;

(7) To identify the ownership of all oil or gas wells, producing leases, refineries, tanks, plants, structures, and all storage and transportation equipment and facilities;

(8) To regulate the "shooting," perforating, fracturing, hydraulic fracturing, and chemical treatment of wells;

(9) To regulate secondary recovery methods, including, but not limited to, the introduction of gas, oil, water, or other substances into producing formations;

(10) To limit and prorate the production of oil or gas, or both, from any pool or field for the prevention of waste as defined in Code Section 12-4-42;

(11) To require, either generally or in or from particular areas, certificates of clearance or tenders in connection with the transportation of oil or gas produced in Georgia;

(12) To regulate the spacing of wells and to establish drilling units;

(13) To prevent, insofar as is practical, avoidable drainage from each developed unit which is not equalized by counterdrainage;

(14) To establish procedures for the plugging and abandonment of wells regulated under this part and to establish procedures for the restoration and reclamation of well sites;

(15) To require that accurate records be kept on forms to be prescribed by the director, which records shall be reported to the director within the time specified in such rules and regulations; reports shall include such information as the director may prescribe, including, but not limited to, information concerning cuttings, subsurface samples, and lithologic and geophysical logs;

(16) To require that geologic and testing information obtained from a well regulated under this part be held in confidence by the director for a period of at least six months from the time of drilling to total depth, or, if the director approves, a longer period, if the operator makes a written request for the same stating the length of the extension desired and the reasons therefor; provided, however, that the guarantee of confidentiality provided for in this paragraph shall in no way impair the ability of the board or the director to enforce this part;

(17) To regulate the issuance, denial, and revocation of permits and to regulate bonds required under this part, except as to persons provided for in paragraph (18) of this subsection;

(18) To regulate the issuance of permits to persons who have been found to have violated any provision of this part, any rule or regulation adopted and promulgated pursuant to this part, or any order or permit issued under this part, and to establish the amount of bond for such persons;

(19) To regulate the cooperative development or operation of all or part of an oil or gas pool as a unit;

(20) To require that certain geophysical logging and other tests be conducted to ensure that the requirements of paragraphs (1), (8), and (14) of this subsection are met; and

(21) To regulate the underground storage or disposal of substances other than those substances covered by the provisions of Article 3 of Chapter 4 of Title 46.

(b) On or before July 1, 2019, the board shall adopt regulations governing hydraulic fracturing operations. Such regulations shall include, at a minimum:

(1) Provisions for public notice of any application for any permit for any hydraulic fracturing well, such notice to be given before any

decision on the permit application. The contents of such public notice shall include, at a minimum:

(A) The name, address, and telephone number of the division contact where further information can be obtained;

(B) The name and address of the applicant;

(C) The location of the well proposed to be fractured and the route of any directional borehole to the end point of such borehole;

(D) A brief description of the project, including information regarding the sources of water to be used as base fluid and estimated amounts and methods of waste-water disposal; and

(E) A brief description of the public comment period and procedures the director will follow to determine whether to issue the permit;

(2) Provisions for the identification of ground-water sources within one-half mile of any proposed wellhead and within one-half mile along the route of any directional borehole to the end point of such borehole, and for ground-water quality monitoring before, during, and after drilling operations;

(3) Provisions providing for the mandatory disclosure of the chemicals in the fluids used in hydraulic fracturing projects to the director and to the commissioner of public health, and a fair process for the disclosure of fracturing fluids to facilitate transparency, while protecting valuable trade secrets and allowing well owners, operators, and service companies to protect their right to obtain an advantage over competitors;

(4) Provisions for the safe disposal of all hydraulic fracturing fluids; and

(5) Provisions for the restoration and reclamation of abandoned well sites, storage facility sites, pits, and access roads.

History. — Ga. L. 1945, p. 366, § 11; Ga. L. 1975, p. 966, § 7; Ga. L. 1976, p. 544, §§ 6, 7; Ga. L. 1984, p. 398, § 3; Ga. L. 1996, p. 6, § 12; Ga. L. 2018, p. 953, § 1/HB 205.

Administrative rules and regulations. — Oil and gas and deep drilling, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-13.

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Gas and Oil, § 131 et seq.

C.J.S. — 58 C.J.S., Mines and Minerals, §§ 417 et seq., 443 et seq., 465.

ALR. — Rights as to oil escaping from well, tank, or pipeline, 42 A.L.R. 577.

Operator's or lessee's responsibility for production of oil or gas in excess of allow-

ance as affected by his ignorance of excess production, or his failure to profit thereby, 150 A.L.R. 1149.

Right of lessor to cancel oil or gas lease for breach of implied obligation to explore and develop further after initial discovery of oil or gas, in absence of showing reasonable expectation of profit to lessee from further drilling, 79 A.L.R.2d 792.

Construction of oil and gas lease as to the lessee's right and duty of geophysical or seismograph exploration or survey, 28 A.L.R.3d 1426.

Meaning of "paying quantities" in oil and gas lease, 43 A.L.R.3d 8.

Implied duty of oil and gas lessee to protect against drainage, 18 A.L.R.4th 14.

Remedy for breach of implied duty of oil and gas lessee to protect against drainage, 18 A.L.R.4th 147.

Rights and obligations, with respect to adjoining landowners, arising out of secondary recovery of gas, oil and other fluid minerals, 19 A.L.R.4th 1182.

Duty of oil or gas lessee to restore surface of leased premises upon termination of operations, 62 A.L.R.4th 1153.

12-4-45. Powers of board as to establishment of drilling and operation units; applicability of state antitrust laws to private agreements approved by board.

(a) In regard to the establishment of drilling units and operation units, the allocation of production, the integration of separately owned tracts of land, and agreements in the interest of conservation, the board, in addition to the jurisdiction, authority, or powers granted elsewhere in this part, shall have the specific powers with respect to the exploration or production of oil or gas enumerated below.

(1) **Drilling units.** For the prevention of waste and to avoid the augmenting and accumulation of risk arising from the drilling of an excessive number of wells, the board shall, after due investigation and a hearing, have full power and authority to establish such drilling unit or units as may, in its discretion, seem most reasonable and practicable. The board shall have control of the allocation of production over such units and shall, after investigation and hearing, set up, establish, and allocate to each unit its just and equitable share of production, and shall make such orders, rules, and regulations as will give to each producer the opportunity to use his or her just and equitable share of the reservoir energy of any pool. The board shall have power after notice and hearing to review and approve, or disapprove, agreements made among owners or operators, or among owners and operators in the interest of conservation of oil or gas or both or for the prevention of waste. When two or more separately owned tracts of land are embraced within an established drilling unit, the owners thereof may validly agree to integrate their interests and to develop their lands as a drilling unit. Where, however, such owners have not agreed to integrate their interests, the board may, for the prevention of waste or to avoid the drilling of unnecessary wells, after notice and hearing, require such owners to do so and to develop their lands as a drilling unit. Should the owners of separate

tracts embraced within a drilling unit fail to agree upon the integration of the tracts and the drilling of a well on the unit, and should it be established that the board is without authority to require integration as provided for above, then subject to all other applicable provisions of this part, the owner of each tract embraced within the drilling unit may drill on his or her tract, but the allowable production from said tract shall be such proportion of the allowable production for the full drilling unit as the area of such separately owned tracts bears to the full drilling unit.

(2) **Operation units.**

(A) For the prevention of waste and to assure the ultimate recovery of gas or oil, the board may hold a hearing to consider the need for the operation as a unit of an entire field, or of any pool or any portion thereof, or combination of pools, within a field, for the production of oil or gas or both and other minerals which may be associated and produced therewith by additional recovery methods.

(B) At the conclusion of the hearing the board shall issue an order requiring unit operation if it finds that:

(i) Unit operation of the field, or of any pool or of any portion or combinations thereof within the field, is reasonably necessary to prevent waste as defined in Code Section 12-4-42 or to increase the ultimate recovery of oil or gas by additional recovery methods; and

(ii) The estimated additional cost incident to the conduct of such operation will not exceed the value of the estimated additional recovery of oil or gas; provided, however, that the board shall be authorized to prohibit the production of gas or oil by any recovery method if it has determined that such recovery method will result in waste or reduce the ultimate recovery of gas or oil from any field or pool or portion or combination thereof.

(C) The phrase "additional recovery methods" as used in this subsection shall include, but shall not be limited to, the maintenance or partial maintenance of reservoir pressures by any method recognized by the industry and approved by the board; recycling; flooding a pool or pools, or parts thereof, with air, gas, water, liquid hydrocarbons or any other substance, or any combination or combinations thereof; or any other secondary method of producing hydrocarbons recognized by the industry and approved by the board.

(D) The order provided for in subparagraph (B) of this paragraph shall be fair and reasonable under all the circumstances, shall protect the rights of interested parties, and shall include:

(i) A description of the area embraced, termed the unit area, and a description of the affected pool or pools, or portions thereof, which lie within the unit area;

(ii) A statement of the nature of the operations contemplated;

(iii) A method of allocation among the separately owned tracts in the unit area of all the oil or gas or both produced from the unit pool within the unit area and not required in the conduct of such operation or unavoidably lost, such method of allocation to be on a formula that is fair and equitable and will protect the correlative rights of all interested parties;

(iv) A provision for adjustment among the owners of the unit area (not including royalty owners) of their respective investments in wells, tanks, pumps, machinery, materials, equipment, and other things and services of value attributable to the unit operations. The amount to be charged unit operations for any such item shall be determined by the owners of the unit area (not including royalty owners); provided, however, that if such owners of the unit area are unable to agree upon the amount of such charges, or to agree upon the correctness thereof, the board shall determine the amount after due notice and hearing thereon. The net amount charged against the owners of a separately owned tract shall be considered expense of unit operation chargeable against such tract. The adjustment provided for in this division may be treated separately and handled by agreements separate from the unitization agreement;

(v) A provision that the costs and expenses of unit operations, including investment, past and prospective, be charged to the separately owned tracts in the same proportions that such tracts share in unit productions. The expenses chargeable to a tract shall be paid by the person or persons not entitled to share in production free of operating costs, and who, in the absence of unit operation, would be responsible for the expense of developing and operating such tracts, and such person's or persons' interest in the separately owned tract shall be primarily responsible therefor. The obligation or liability of such persons in the several, separately owned tracts for the payment of unit expense shall at all times be several and not joint or collective. The unit operator shall have a first and prior lien upon the leasehold estate exclusive of the royalty interest provided thereby and unleased oil and gas rights, exclusive of one-eighth interest therein, in and to each separately owned tract, and the interest of the owners thereof in and to the unit production and all equipment in possession of the unit, to secure the payment of the amount of the unit expense charged to and assessed against such separately owned tract;

(vi) The designation of, or a provision for the selection of, a unit operator. The conduct of all unit operations by the unit operator and the selection of a successor to the unit operator shall be governed by the terms and provisions of the unitization agreements;

(vii) A provision that when the full amount of any charge made against any interest in a separately owned tract is not paid when due by the person or persons primarily responsible therefor, then all of the oil and gas production allocated to the interest in default in such separately owned tract, upon which production the unit operator has a lien, may be appropriated by the unit operator and marketed and sold for the payment of such charge, together with interest at a fair and equitable rate as determined by the board thereon. The remaining portion of the unit production or the proceeds derived therefrom allocated to each separately owned tract shall in all events be regarded as royalty to be paid to the owners, free and clear of all unit expense and free and clear of any lien therefor. The owner of any overriding royalty, oil and gas payment, or other interest, who is not primarily responsible for the unpaid obligation, shall, to the extent of any payment or deduction from his or her share, be subrogated to all the rights of the unit operator with respect to the interest or interests primarily responsible for such payment. Any surplus received by the operator from any such sale of production shall be credited to the person or persons from whom it was deducted in the proportion of their respective interest; and

(viii) The time the unit operation shall become effective, and the manner in which, and the circumstances under which, the unit operation shall terminate.

(E) An order requiring unit operation shall not become effective unless and until a contract incorporating the unitization agreement has been signed or in writing ratified or approved by the owners of at least 85 percent in interest as costs are shared under the terms of the order and by 85 percent in interest, as production is to be allocated, of the royalty owners in the unit area, and unless and until a contract incorporating the required arrangements for operations has been signed or in writing ratified or approved by the owners of at least 85 percent in interest as costs are shared, and unless and until the board has made a finding, either in the order or in a supplemental order, that those contracts have been signed, ratified, or approved. Both contracts may be encompassed in a single document. In the event the required percentage interests have not signed, ratified, or approved such agreements within six months from and after the date of such order, or within such

extended period as the board may prescribe, the order shall be automatically revoked.

(F)(i) The board, by entry of new or amending orders, may from time to time add to unit operations portions of pools not theretofore included, and may add to unit operations new pools or portions thereof, and may extend the unit area as required. Any such order, in providing for allocation of production from a unitized zone of the unit area, shall first allocate to such pool or pools, or portion thereof so added, a portion of the total production of oil or gas, or both, from all pools affected within the unit area, as enlarged and not required in the conduct of unit operations or unavoidably lost. Such allocation shall be based on a formula for sharing that is considered to treat each tract and each owner fairly and equitably during the remaining course of unit operations. The production so allocated to such added pool or pools or portions thereof shall be allocated to the separately owned tracts which participate in such production on a fair and equitable basis. The remaining portion of unit production shall be allocated among the separately owned tracts within the previously established unit area in the same proportions as those specified prior to the enlargement unless such proportions are shown to be erroneous by data developed subsequent to the former determination, in which event the errors shall be corrected. Orders promulgated under this Code section shall become operative at 7:00 A.M. on the first day of the month next following the day on which the order becomes effective.

(ii) An order promulgated by the board under this subparagraph shall not become effective unless and until:

(I) All of the terms and provisions of the unitization agreement relating to the extension or enlargement of the unit area or to the addition of pools or portions thereof to unit operations have been fulfilled and satisfied, and evidence thereof has been submitted to the board; and

(II) The extension or addition effected by such order has been agreed to in writing by the owners of at least 85 percent in interest as costs are shared in the area or pools or portions thereof to be added to the unit operation by such order and by 85 percent in interest, as production is to be allocated, of the royalty owners in the area or pools or portions thereof to be added to the unit operations by such order, and evidence thereof has been submitted to the board.

(iii) In the event both of the requirements specified in subdivisions (I) and (II) of division (ii) of this subparagraph are not

fulfilled within six months from and after the date of such order or within such extended period as the board may prescribe, the order shall be automatically revoked.

(G) When the contribution of a separately owned tract with respect to any unit pool has been established, such contribution shall not be subsequently altered except to correct a mathematical or clerical error that caused the tract contribution to be erroneous, unless an enlargement of the unit is effected. No change or correction of the contribution of any separately owned tract shall be given retroactive effect, but appropriate adjustment shall be made for the investment charges as provided in this Code section.

(H) The portion of unit production allocated to a separately owned tract within the unit area shall be deemed, for all purposes, to have been actually produced from such tract, and operations with respect to any unit pool within the unit area shall be deemed, for all purposes, to be the conduct of operations for the production of oil or gas, or both, from each separately owned tract in the unit area.

(b) Owners, operators, and royalty owners who have separate holdings in the same oil or gas pool or in any area that appears from geological or other data to be underlaid by a common accumulation of oil or gas or both are authorized to make agreements among themselves for establishing and carrying out a plan for the cooperative development and operation of the pool or area, provided that such agreements must be approved by the board; provided, further, that such agreements must be for the purpose of conserving gas or oil or both, or for the prevention of waste, or to assure the ultimate recovery of gas or oil or both. Such agreements shall not be held or construed to violate any of the laws of this state relating to trusts, monopolies, or contracts and combinations in restraint of trade.

History. — Ga. L. 1945, p. 366, §§ 14, 14A; Ga. L. 1975, p. 966, § 6; Ga. L. 1976, p. 544, § 55; Ga. L. 2018, p. 953, § 1/HB 205; Ga. L. 2019, p. 1056, § 12/SB 52.

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, revised punctuation near the beginning of division (a)(2)(D)(i).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, a period was substituted for a semicolon at the end of subparagraphs (a)(2)(A), (a)(2)(C), (a)(2)(E), and (a)(2)(G).

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Gas and Oil, §§ 131 et seq., 150, 158 et seq.

C.J.S. — 58 C.J.S., Mines and Minerals, §§ 417 et seq., 443 et seq., 460, 462 et seq.

ALR. — Construction of oil or gas lease covering more than one tract of land by the same owner, 11 A.L.R. 138.

Respective rights of owners of different parcels into which land subject to an oil and gas lease has been subdivided, 16 A.L.R. 588; 64 A.L.R. 634.

Operator's and lessee's responsibility for production of oil or gas in excess of allowance as affected by his ignorance of excess production, or his failure to profit thereby, 150 A.L.R. 1149.

Rights and remedies of owner or lessee of oil or gas land or mineral or royalty interest therein, in respect of waste of oil or gas through operations on other lands, 4 A.L.R.2d 198.

Validity of compulsory pooling or unitization statute or ordinance requiring owners or lessees of oil and gas lands to develop their holdings as a single drilling unit and the like, 37 A.L.R.2d 434.

Construction of oil and gas lease as to the lessee's right and duty of geophysical or seismograph exploration or survey, 28 A.L.R.3d 1426.

Meaning of "paying quantities" in oil and gas lease, 43 A.L.R.3d 8.

Production on one tract as extending term on other tract, where one mineral deed conveys oil or gas in separate tracts for as long as oil or gas is produced, 9 A.L.R.4th 1121.

Implied duty of oil and gas lessee to protect against drainage, 18 A.L.R.4th 14.

Remedy for breach of implied duty of oil and gas lessee to protect against drainage, 18 A.L.R.4th 147.

12-4-46. Drilling permits.

(a) Before any well covered by this part, other than wells for the production of fresh water, may be drilled, the person desiring to drill the well shall apply to the director for a drilling permit, using such forms as the director may prescribe, and shall pay a fee of $500.00 for each permit.

(b) The director shall, within 30 days after the receipt of a properly completed application from any person desiring to drill a well covered by this part, issue a public notice for the permit application by posting such notice to the division website and by sending such notice via mail or email to any persons who have requested notification of permit applications from the division. The director shall allow for a 30 day public comment period to begin running from the date the public notice is posted on the division website and as outlined in subsection (c) of this Code section. The director shall review and consider the public comments received during the public comment period.

(c) The permit applicant shall provide the director's public notice of the proposed well directly to property owners and residents who may be impacted by the issuance of the permit within ten days of the date of the public notice by, at a minimum:

(1) Posting the public notice along the road nearest to the proposed well;

(2) Providing the public notice to all persons owning real property within one-half mile of the proposed wellhead and within one-half mile along the route of any directional borehole and any residence that has any drinking water wells within one-half mile of the proposed wellhead and within one-half mile along the route of any directional borehole; and

(3) Publishing the public notice in at least one legal organ in the county where the well will be located.

(d) After considering the permit application, the director shall either issue or deny a permit for the well. The director shall notify the public of the final permit decision by posting the decision to the division website and by sending notice of the decision via mail or email to any persons who have requested notification of permit applications from the division.

(e) In issuing or denying a permit for the drilling of a well covered by this part, the director shall consider the extent to which the proposed well complies with this part, all rules and regulations adopted and promulgated pursuant to this part, or any order under this part.

(f) In issuing a permit for the drilling of any well covered by this part, the director shall specify therein such terms and conditions as he or she deems necessary to receive the permit and to lawfully operate thereunder. Permits shall include the following requirements:

(1) Requirements for testing the integrity of well casings;

(2) Requirements for maintenance and repair of roadways significantly impacted by drilling operations, including hydraulic fracturing activities; and

(3) Requirements for buffers around wells and property line setbacks that are sufficient to protect affected property owners from any noise, light, water, or air pollution resulting from any drilling operations.

(g) Any permit issued under this Code section shall become final unless any person named therein requests in writing a hearing before an administrative law judge appointed by the board no later than 30 days after the issuance of such permit.

(h) The director shall have the power and the authority to revoke a permit for noncompliance with any of the provisions of this part, any rules and regulations promulgated under this part, or the special conditions contained in any permit.

(i) The issuance of a permit under this part in no way indicates a determination by the director as to property or contractual rights of the applicant to drill such a well at the designated location.

History. — Ga. L. 1945, p. 366, § 23; Ga. L. 1975, p. 966, § 9; Ga. L. 1984, p. 398, § 4; Ga. L. 1996, p. 6, § 12; Ga. L. 2018, p. 953, § 1/HB 205; Ga. L. 2021, p. 922, § 12/HB 497.

The 2021 amendment, effective May 10, 2021, part of an Act to revise, modernize, and correct the Code, substituted "email" for "e-mail" in the middle of the first sentence of subsection (b) and in the second sentence of subsection (d).

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Gas and Oil, §§ 148, 149.

C.J.S. — 58 C.J.S., Mines and Minerals, § 432 et seq.

ALR. — Assignment of oil and gas lease, or contract of assignment, as raising implied obligation to drill well, 111 A.L.R. 514.

12-4-47. Bonds or undertaking by persons conducting drilling operations.

(a) Prior to the issuance of a permit to drill any well covered by this part, the owner, operator, contractor, driller, or other person responsible for the conduct of the drilling operation shall furnish the state a bond or undertaking in the form prescribed by the board and in an amount set by the board, executed by a bonding, surety, or insurance company authorized to do business in this state in the favor of the state. Alternatively, the board in its discretion may require a similar undertaking executed only by such person to ensure a faithful performance of the requirements of this part, of any rules or regulations adopted pursuant thereto, or of any condition of a permit. Such bond or undertaking is intended to protect the state or any citizen thereof from any injury which may result from improper drilling.

(b) Any bond required under this part shall be released two years from the date of receipt by the director of all geological information required under this part or any rule or regulation adopted pursuant to this part; provided, however, that the director shall have examined and approved the abandoned well for which the bond was furnished.

(c) No bond required under this part shall exceed $100,000.00.

History. — Ga. L. 1945, p. 366, § 24; Ga. L. 1975, p. 966, § 13; Ga. L. 1984, p. 398, § 5; Ga. L. 2018, p. 953, § 1/HB 205.

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Gas and Oil, § 148.

C.J.S. — 58 C.J.S., Mines and Minerals, § 432 et seq.

ALR. — Validity of statute or ordinance which requires liability or indemnity insurance or bond as condition of license for conducting business or profession, 120 A.L.R. 950.

Operator's or lessee's responsibility for production of oil and gas in excess of allowance as affected by his ignorance of excess production, or his failure to profit thereby, 150 A.L.R. 1149.

12-4-48. Actions by director to enforce part; civil penalties; effect of Code section on cause of action by royalty owners, lienholders, or other claimants.

(a) Whenever the director has reason to believe that any person is violating the provisions of this part or any rule or regulation adopted pursuant to this part, the director may issue an administrative order to that person. The order shall specify the provisions of this part alleged to have been violated and shall order that corrective action be taken within a reasonable period of time prescribed in the order. Any such order shall become final and enforceable unless the person or persons named therein request in writing a hearing before an administrative law judge appointed by the board no later than 30 days after the issuance of the order.

(b) Whenever the director finds that an emergency exists requiring immediate action to protect the public interest, the director may issue a provisional order reciting the existence of such an emergency and requiring that such action be taken as is reasonably necessary to meet the emergency under the circumstances, provided that such an emergency order shall be issued only after an affidavit has been filed with the director showing specific facts of such an emergency condition. Such order shall be effective immediately. Any person against whom such order is directed shall upon appropriate notice comply therewith immediately but on application to the director shall be afforded a hearing before an administrative law judge appointed by the board within ten days of receipt of such application by the director or, if the party applying so requests, within 48 hours of receipt of such application by the director. Prior to such hearing, the director shall be authorized to modify or revoke such order. After the hearing, the administrative law judge shall be authorized to make such order as is just and reasonable, including an order continuing, revoking, or modifying such provisional order.

(c) Whenever the director has reason to believe that any person is violating any provision of this part or any rule or regulation adopted pursuant to this part, the director may bring an action against such person in the proper superior court to restrain such person or persons from continuing such violations. In such action, the director may seek injunctions, including temporary restraining orders and temporary injunctions, without the necessity for showing lack of an adequate remedy at law.

(d) Any person who willfully or negligently violates any provision of this part, any rule or regulation adopted under this part, or any permit or final or emergency order of the director shall be subject to a civil penalty of not less than $50.00, but in any event not to exceed

$10,000.00 for each act of violation. Each day of continued violation shall subject such person to a separate civil penalty. An administrative law judge appointed by the board, after a hearing shall determine whether or not any person has violated any provision of this part or any rule or regulation adopted under this part or any permit or final or emergency order of the director, and shall upon proper finding issue an order imposing such civil penalties as provided in this Code section. Any person so penalized under this Code section is entitled to judicial review. In this connection, all hearings and proceedings for judicial review under this Code section shall be in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." All civil penalties recovered by the director as provided by this chapter shall be paid into the state treasury to the credit of the general fund.

(e) In addition to any other enforcement remedy available to the director under this part, all illegal minerals and illegal products are declared to be contraband and forfeited to the state in accordance with the procedures set forth in Chapter 16 of Title 9, except that:

(1) Any seizure of contraband shall be delivered to the director or his or her duly authorized agent;

(2) Illegal minerals shall only be forfeited as provided for in Code Section 9-16-12; and

(3) Property seized pursuant to this subsection shall not be required to be stored in an area within the jurisdiction of the court if such storage is not possible.

(f) Nothing in this Code section shall deny or abridge any cause of action a royalty owner, lienholder, or other claimant may have against any persons whose acts result in the forfeiture of the illegal oil, illegal gas, or illegal product.

History. — Ga. L. 1945, p. 366, §§ 17, 19, 21, 22; Ga. L. 1975, p. 966, § 10; Ga. L. 1976, p. 544, § 8; Ga. L. 1984, p. 398, § 6; Ga. L. 1992, p. 6, § 12; Ga. L. 2001, p. 4, § 12; Ga. L. 2015, p. 693, § 3-9/HB 233; Ga. L. 2018, p. 953, § 1/HB 205.

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Gas and Oil, §§ 135, 136.

C.J.S. — 58 C.J.S., Mines and Minerals, §§ 417 et seq., 424 et seq.

ALR. — Operator's or lessee's responsibility for production of oil or gas in excess of allowance as affected by his ignorance of excess production, or his failure to profit thereby, 150 A.L.R. 1149.

12-4-49. Applicability of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

In the administration and enforcement of this part, all hearings before an administrative law judge shall be subject to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Any party to said hearings (including the director) shall have the right of judicial review in accordance with Chapter 13 of Title 50.

History. — Ga. L. 1975, p. 966, § 11; Ga. L. 1984, p. 398, § 7; Ga. L. 2018, p. 953, § 1/HB 205.

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Gas and Oil, §§ 135, 136.

C.J.S. — 58 C.J.S., Mines and Minerals, §§ 417 et seq., 424 et seq.

12-4-50. Obedience to subpoena required; self-incrimination not a defense; use of evidence in criminal prosecutions.

In any contested administrative hearing under this part, no person shall be excused from attending and testifying, or from producing books, papers, and records before the administrative law judge, or from obedience to the subpoena of the administrative law judge, on the ground or for the reason that the testimony or evidence, documentary or otherwise, required by him or her may tend to incriminate him or her or subject him or her to a penalty or forfeiture, provided that nothing contained in this Code section shall be construed as requiring any person to produce any books, papers, or records, or to testify in response to any inquiry, not pertinent to a question lawfully before the administrative law judge for determination. No evidence given by or required of any natural person shall be used or admitted against such a person in any criminal prosecution for any transaction, matter, or thing concerning which he or she may be required to testify or produce evidence, documentary or otherwise, before the administrative law judge in obedience to the subpoena; provided, however, that no person testifying shall be exempt from prosecution and punishment for perjury committed in so testifying.

History. — Ga. L. 1945, p. 366, § 13; Ga. L. 1975, p. 966, § 12; Ga. L. 1976, p. 544, § 9; Ga. L. 1984, p. 398, § 8; Ga. L. 2018, p. 953, § 1/HB 205; Ga. L. 2019, p. 1056, § 12/SB 52.

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, substituted "obedience to the subpoena" for "obedience to its subpoena" in the last sentence.

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Gas and Oil, §§ 135, 135 et seq.

C.J.S. — 58 C.J.S., Mines and Minerals, §§ 417 et seq., 424 et seq.

12-4-51. Effect of part on other laws.

Any provision of Part 2 of Article 3 of Chapter 5 of this title which is inconsistent with this part shall not be repealed by this part and shall govern over this part.

History. — Ga. L. 1975, p. 966, § 5; Ga. L. 1984, p. 398, § 9; Ga. L. 1989, p. 14, § 12; Ga. L. 2018, p. 953, § 1/HB 205.

12-4-52. Effect of part on authority and functions of other state officers and agencies.

This part shall not be construed as limiting the authority or functions of any officer or agency of this state under any other law or regulation not inconsistent with this part.

History. — Ga. L. 1975, p. 966, § 14; Ga. L. 2018, p. 953, § 1/HB 205.

12-4-52.1. Local authority.

This part shall not be construed as limiting the authority of local governments to adopt local zoning or land use ordinances limiting the location or timing of activities defined herein for the purposes of protecting natural resources or human health and welfare.

History. — Code 1981, § 12-4-52.1, enacted by Ga. L. 2018, p. 953, § 1/HB 205.

12-4-53. Prohibited acts.

The following activities are prohibited:

(1) The waste of oil or gas as defined in this part;

(2) The sale, purchase, or acquisition or the transportation, refining, processing, or handling of illegal minerals or illegal products;

(3) The sale, purchase, or acquisition or the transportation, refining, processing, or handling in any other way of any mineral, including oil and gas, or any mineral product without complying with this part or any rule or regulation of the board promulgated pursuant to this part;

(4) Intentionally or negligently permitting any gas or oil well to get out of control;

(5) The drilling of any well covered by the provisions of this part by any person without a permit for such drilling; and

(6) Any other violation of any provision of this part or any rule or regulation promulgated under this part.

History. — Ga. L. 1945, p. 366, §§ 9, 20, 25; Ga. L. 1975, p. 966, § 8; Ga. L. 2001, p. 4, § 12; Ga. L. 2018, p. 953, § 1/HB 205.

RESEARCH REFERENCES

Am. Jur. 2d. — 38 Am. Jur. 2d, Gas and Oil, §§ 131, 139 et seq.

C.J.S. — 58 C.J.S., Mines and Minerals, §§ 417 et seq., 424 et seq., 451 et seq.

ALR. — Construction, application, and effect of statutes regulating production of oil or gas in a manner or under conditions constituting waste, 86 A.L.R. 431.

Operator's or lessee's responsibility for production of oil or gas in excess of allowance as affected by his ignorance of excess production, or his failure to profit thereby, 150 A.L.R. 1149.

Rights and remedies of owner or lessee of oil or gas land or mineral or royalty interest therein, in respect of waste of oil or gas through operations on other lands, 4 A.L.R.2d 198.

Construction of oil and gas lease as to the lessee's right and duty of geophysical or seismograph exploration or survey, 28 A.L.R.3d 1426.

Implied duty of oil and gas lessee to protect against drainage, 18 A.L.R.4th 14.

Remedy for breach of implied duty of oil and gas lessee to protect against drainage, 18 A.L.R.4th 147.

12-4-54. Levying of severance tax.

(a) As used in this Code section, the term "extractor" means any person removing oil or gas from the ground pursuant to this part.

(b)(1) A severance tax shall be levied on oil or gas removed from the ground in this state by an extractor as follows:

(A) Three cents per barrel of oil; and

(B) One cent per thousand cubic feet of gas.

(2) The Department of Revenue shall promulgate rules and regulations as necessary to implement and administer the provisions of this subsection and shall promulgate and make available forms for the use of extractors to assist in compliance with this subsection.

(c)(1) In addition to the tax provided for in subsection (b) of this Code section, the governing authority of each county and each municipal corporation is authorized to provide by local ordinance or resolution for the levy, assessment, and collection of a severance tax on oil or gas removed from the ground by an extractor within the jurisdiction of such county or municipality as follows:

(A) An amount not to exceed nine cents per barrel of oil; and

(B) An amount not to exceed two cents per thousand cubic feet of gas.

(2) The severance tax provided for in paragraph (1) of this subsection shall be collected by the Department of Revenue in the same manner and under the same procedures as provided for pursuant to subsection (b) of this Code section on behalf of each county and municipality electing to exercise the powers conferred herein and shall be remitted to each such county and municipality accordingly.

History. — Code 1981, § 12-4-54, enacted by Ga. L. 2018, p. 953, § 1/HB 205.

Part 3

Surface Mining

Cross references. — Manner in which laws pertaining to permitting of dams and artificial barriers apply to barriers constructed in connection with or incidental to surface mining activities, § 12-5-376. Obtaining rights of way for mining and quarrying purposes, § 44-9-70 et seq.

Law reviews. — For article, "Georgia's Environmental Law: A Survey," see 23 Mercer L. Rev. 633 (1972). For article discussing regulation of selected activities to effect environmental planning, see 10 Ga. L. Rev. 53 (1975). For article surveying Georgia cases dealing with environment, natural resources, and land use from June 1977 through May 1978, see 30 Mercer L. Rev. 75 (1978).

JUDICIAL DECISIONS

Compliance with chapter required. — This chapter establishes minimum regulations for surface mining that must be complied with throughout the state. Georgia Marble Co. v. Walker, 236 Ga. 545, 224 S.E.2d 394 (1976) (see O.C.G.A. § 12-4-1 et seq.).

Chapter does not prohibit different or more restrictive requirements by a political subdivision than those called for by this part and rules promulgated thereunder by the department. Georgia Marble Co. v. Walker, 236 Ga. 545, 224 S.E.2d 394 (1976) (see O.C.G.A. § 12-4-1 et seq.).

Name in which suits by Environmental Protection Division to be brought. — Although Ga. L. 1968, p. 9 (see O.C.G.A. § 12-4-70 et seq.) and the regulations issued thereunder give the Environmental Protection Division a limited power to bring lawsuits, the director is not authorized to sue in the director's own name. Moreover, former Code 1933, § 43-1406 (see O.C.G.A. § 12-4-75) provides that bonds be made payable to the Governor, and that the Governor must sue to enforce the bonds. Thus, the division is merely the alter ego of the state. Busbee v. Continental Ins. Co., 526 F. Supp. 1243 (N.D. Ga. 1981).

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Legislative intent. — This part does not indicate with clarity a legislative purpose to impose criminal liability on a corporation. 1970 Op. Att'y Gen. No. 70-155 (see O.C.G.A. § 12-4-70 et seq.).

"Affected land" includes lands used as a spoil area beyond an actual mining pit location and lands previously affected by surface mining operations and subjected to additional excavation of minerals or deposition of spoilage. 1969 Op. Att'y Gen. No. 69-291.

Surface mining exists where a landowner sells topsoil, fill dirt, or sand to the public in the regular operation of business. 1969 Op. Att'y Gen. No. 69-196.

Landowner who retains continuous possession of a borrow area and sells minerals loaded therefrom by the vendee is engaged in surface mining. 1969 Op. Att'y Gen. No. 69-197.

Attachment of prejudice to employee's record. — Commissioner of conservation (now commissioner of natural resources) decides who has the specific authority to attach prejudice to the record of an employee separated from a division of the Department of Mines, Mining, and Geology (now Department of Natural Resources). 1971 Op. Att'y Gen. No. 71-62.

Applicability of this part. — Provisions of this part do not apply to counties and municipalities of the state but this exemption attaches only when the particular political subdivision of the state is itself the "operator" of a surface mine within the definition of this part. 1969 Op. Att'y Gen. No. 69-242 (see O.C.G.A. § 12-4-70 et seq.).

Operator who contracts with the State Highway Department (now Department of Transportation) to construct, repair, or maintain public roads is relieved of the other provisions of Ga. L. 1968, p. 9 (see O.C.G.A. § 12-4-70 et seq.) by Ga. L. 1968, p. 9, § 12 (see O.C.G.A. § 12-4-82), but this exemption is limited strictly to those operations which are carried out in performance of that particular contract. 1968 Op. Att'y Gen. No. 68-406.

Part has very limited applicability to mining of materials normally covered by natural surface waters including any normal type dredging operation. 1970 Op. Att'y Gen. No. 70-33 (see O.C.G.A. § 12-4-70 et seq.).

Exemptions for disabled veterans inapplicable to licensing requirements of this part. — Exemptions of former Code 1933, § 84-2011 (see O.C.G.A. § 43-12-1), authorizing disabled veterans to engage in business activities without licenses, did not apply to licenses issued by the Surface Mined Land Use Board (now Environmental Protection Division) as provided for in Ga. L. 1968, p. 9, § 6 (see O.C.G.A. § 12-4-75). 1970 Op. Att'y Gen. No. 70-136.

Mining operator cannot circumvent licensing provisions of this part by conducting all or a portion of mining operations through a number of independent contractors. 1968 Op. Att'y Gen. No. 68-390 (see O.C.G.A. § 12-4-70 et seq.).

Liability for violation of this part. — Corporations will be criminally responsible for acts or omissions constituting violations of this part if, but only if, the activities constituting the crime were authorized, requested, commanded, performed, or recklessly tolerated by either the board of directors or by an officer or other agent of comparable authority acting within the scope of the corporate officer's or board member's authority on behalf of the corporation. 1970 Op. Att'y Gen. No. 70-155.

RESEARCH REFERENCES

ALR. — Statutory or contractual obligation to restore surface after strip or other surface mining, 1 A.L.R.2d 575.

Grant, reservation, or lease of minerals and mining rights as including, without expressly so providing, the right to remove the minerals by surface mining, 70 A.L.R.3d 383.

Validity and construction of statutes regulating strip mining, 86 A.L.R.3d 27.

12-4-70. Short title.

This part shall be known and may be cited as the "Georgia Surface Mining Act of 1968."

History. — Ga. L. 1968, p. 9, § 1.

JUDICIAL DECISIONS

Punitive damages. — Punitive damages are, as a general rule, improper when a defendant has complied with environmental and safety regulations. Accordingly, the award of punitive damages against a quarry operator who had adhered to the applicable laws was not supported by the evidence and warranted reversal. Stone Man, Inc. v. Green, 263 Ga. 470, 435 S.E.2d 205 (1993).

Cited in General Refractories Co. v. Rogers, 240 Ga. 228, 239 S.E.2d 795 (1977).

12-4-71. Legislative purpose; duty of Environmental Protection Division to administer part.

(a) The purposes of this part are:

(1) To assist in achieving and maintaining an efficient and productive mining industry and to assist in increasing economic and other benefits attributable to mining;

(2) To advance the protection of fish and wildlife and the protection and restoration of land, water, and other resources affected by mining;

(3) To assist in the reduction, elimination, or counteracting of pollution or deterioration of land, water, and air attributable to mining;

(4) To encourage programs which will achieve comparable results in protecting, conserving, and improving the usefulness of natural resources to the end that the most desirable conduct of mining and related operations may be universally facilitated;

(5) To assist in efforts to facilitate the use of land and other resources affected by mining so that such use may be consistent with sound land use, public health, and public safety, and to this end to study and recommend, wherever desirable, techniques for the improvement, restoration, or protection of such land and other resources.

(b) The Environmental Protection Division of the department shall administer this part consistent with the above-stated purposes.

History. — Ga. L. 1968, p. 9, § 2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, a hyphen was inserted in "above stated" near the end of subsection (b).

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Environmental Protection Division has authority to regulate mining as well as the reclamation of land after mining. 1973 Op. Att'y Gen. No. U73-55.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Mines and Minerals, § 243 et seq.

C.J.S. — 58 C.J.S., Mines and Minerals, § 417 et seq.

12-4-72. Definitions.

As used in this part, the term:

(1) "Affected land" means the area of land which has been subjected to surface mining, or upon which overburden has been deposited, or both; provided, however, "affected land" shall not be construed to include land upon which overburden is deposited if, in the opinion of the division, the disposition of such overburden amounts to reclamation of a previously mined area.

(1.1) "Borrow pit" means an excavated area where naturally occurring earthen materials are to be removed for use as ordinary fill at another location. Such term shall not include excavated areas of fewer than five acres which are incidental to forestry land management and from which no earthen material is removed for sale.

(2) "Division" means the Environmental Protection Division of the Department of Natural Resources.

(3) "Government securities" means obligations of the United States or of the State of Georgia, or any bureau, agency, or authority thereof, which are fully guaranteed as to the principal and interest by the United States or the State of Georgia.

(4) "Inspector" means any authorized employee of the Environmental Protection Division who is responsible for the administration or enforcement of this part.

(5) "Mineral" means clay, stone, gravel, sand, phosphate, rock, metallic ore, and any other solid material or substance of commercial value found in natural deposits on or in the earth.

(6) "Mining land use plan" means an operator's written proposal for accomplishing land use objectives on the affected land. The term shall include, but not be limited to, an operator's plans prior to, during, and following active mining for erosion and sedimentation control, protection of properties on the National Register of Historic Places, grading, disposal of refuse, reclamation and revegetation, and the time of completion of the plan.

(7) "Mining operator" means any person, firm, partnership, joint venture, association, corporation, municipality, or county engaged in or controlling one or more surface mining operations.

(8) "Overburden" means all of the earth and other materials which lie above natural deposits of ores or minerals, and includes all earth

and other materials disturbed from their natural state in the process of surface mining.

(9) "Peak" means a projecting point of overburden removed from its natural position and deposited elsewhere in the process of surface mining.

(10) "Pit" means a tract of land from which overburden has been or is being removed for the purpose of surface mining.

(11) "Reclamation" means the reconditioning or rehabilitation of affected land under an approved mining land use plan.

(12) "Refuse" means all waste material exclusive of overburden directly connected with the mining, cleaning, and preparation of substances mined by surface mining.

(13) "Ridge" means a lengthened elevation of overburden removed from its natural position and deposited elsewhere in the process of surface mining.

(14) "Spoil bank" means overburden removed from its natural position and deposited elsewhere in the process of surface mining.

(15) "Surface mining" means any activity constituting all or part of a process for the removal of minerals, ores, and other solid matter for sale or for processing or for consumption in the regular operation of a business. Tunnels, shafts, borrow pits of less than 1.1 disturbed acres, and dimension stone quarries shall not be considered to be surface mining.

History. — Ga. L. 1968, p. 9, § 3; Ga. L. 1971, p. 200, §§ 1, 2; Ga. L. 1972, p. 996, §§ 1, 2; Ga. L. 1992, p. 1098, § 1; Ga. L. 1998, p. 168, §§ 1, 2; Ga. L. 2013, p. 593, § 1/SB 156.

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"Affected land" construed. — Term "affected land" as utilized in paragraph (1) of this section is a technical concept; land which might be commonly termed affected in the everyday sense of the word only falls within the technical concept if the affecting operations take place after the effective date of this section. 1970 Op. Att'y Gen. No. 70-30 (see O.C.G.A. § 12-4-72).

"Affected land" is to be defined to include each clause separately within the definition. 1970 Op. Att'y Gen. No. 70-30.

"Affected land" includes lands used as a spoil area beyond an actual mining pit location and lands previously affected by surface mining operations and subjected to additional excavation of minerals or deposition of spoilage. 1969 Op. Att'y Gen. No. 69-291.

What constitutes "overburden". — Surface waters of an area that is diked and pumped so as to permit mining directly from exposed deposits can constitute overburden subject to coverage of paragraph (8) of this section. 1970 Op. Att'y Gen. No. 70-25 (see O.C.G.A. § 12-4-72).

Scope of "pit". — "Pit" as defined in paragraph (10) of this section is limited to

dry land borrow pits, not dredging operations. 1970 Op. Att'y Gen. No. 70-35 (see O.C.G.A. § 12-4-72).

Single-site operations involving merely a rearrangement of on-site minerals are not covered by paragraph (10) of this section. 1970 Op. Att'y Gen. No. 70-35 (see O.C.G.A. § 12-4-72).

When "surface mining" occurs. — Surface mining, as defined in paragraph (15), occurs when mining involves the removal of the earth and other materials lying above natural deposits so as to mine directly from the natural deposits thereby exposed; the mining must be directly from exposed natural deposits and not indirectly through another medium. 1970 Op. Att'y Gen. No. 70-25 (see O.C.G.A. § 12-4-72).

Landowner who sells topsoil, fill dirt, or sand to the public in the regular operation of business is engaged in surface mining. 1969 Op. Att'y Gen. No. 69-196.

"Surface mining" does not occur when there is dredging or ocean mining of materials normally covered by natural surface water without diking and pumping so as to expose the natural deposits to direct removal. 1970 Op. Att'y Gen. No. 70-25.

On-site grading and excavation preparatory to construction is excluded from the definition of "surface mining" because such excavation and on-site preparation do not involve mining for sale, processing, or consumption in the regular operation of a business. 1970 Op. Att'y Gen. No. 70-33.

Periodic maintenance of impoundments constructed of dredged fill materials does not constitute "consumption" in the regular operation of a business within the meaning of paragraph (15) of this section. 1970 Op. Att'y Gen. No. 70-33 (see O.C.G.A. § 12-4-72).

Judicial enforcement of this part. — No order to an unlicensed surface miner need be issued as a prerequisite to judicial enforcement of this part. 1969 Op. Att'y Gen. No. 69-493 (see O.C.G.A. § 12-4-70 et seq.).

RESEARCH REFERENCES

ALR. — Grant, lease, exception, or reservation of "oil, gas, and other minerals," or the like, as including coal or metallic ores, 59 A.L.R.3d 1146.

12-4-73. Powers and duties of division as to surface mining generally; division may decline to assert jurisdiction.

(a) The division shall have the following powers and duties:

(1) To administer and enforce this part and all reasonable rules and regulations promulgated under this part to issue such orders as may be necessary to enforce compliance therewith;

(2) To examine and pass upon permit applications of operators;

(3) To examine and pass upon surface mining land use plans submitted by operators;

(4) To make investigations and inspections;

(5) To revoke permits, deny renewals, and forfeit bonds or cash of mine operators who refuse to carry out their plans of mining land use;

(6) To collect information on surface mining and mining land use plans;

(7) To collect, publish in print or electronically, and distribute information on mining land uses;

(8) To accept moneys that are available from government units and private organizations;

(9) To conduct research studies of mining land uses;

(10) To carry out land use projects on land where bonds or cash have been forfeited, using funds available for such purposes;

(11) To institute and prosecute all such court actions as may be necessary to obtain the enforcement of any order issued by the division in carrying out this part; and

(12) To exercise all incidental powers necessary to carry out the purposes of this part.

(b) The powers and duties described in this Code section may be exercised and performed by the division through such duly authorized agents and employees as it deems necessary and proper.

(c) The division may decline to assert jurisdiction under this part over any class or category of mines where, in the opinion of the division, the effect of the operations of such mines is not sufficiently substantial to warrant the exercise of jurisdiction under this part.

History. — Ga. L. 1968, p. 9, § 5; Ga. L. 1971, p. 200, § 3; Ga. L. 1972, p. 1015, §§ 1509, 1534; Ga. L. 1972, p. 1266, § 1; Ga. L. 1976, p. 527, §§ 1, 2; Ga. L. 1992, p. 1098, § 2; Ga. L. 1996, p. 6, § 12; Ga. L. 2010, p. 838, § 10/SB 388.

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Issuance of order not prerequisite to enforcement of part. — No order to an unlicensed surface miner need be issued as a prerequisite to judicial enforcement of this part. 1969 Op. Att'y Gen. No. 69-493 (see O.C.G.A. § 12-4-70 et seq.).

Payment of research funds into general fund of state treasury not required. — Funds made available to the Surface Mined Land Use Board (now Environmental Protection Division of Department of Natural Resources) by a mining company for specific research need not be paid into the general fund of the state treasury since the moneys involved do not constitute money collected from taxes, fees, and assessments under the authority of revenue statutes of this state. 1970 Op. Att'y Gen. No. 70-29.

Equitable remedies not authorized. — Department is not authorized to invoke aid of equity in restraint of unlicensed surface mining. 1970 Op. Att'y Gen. No. 70-103.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Mines and Minerals, § 246.

C.J.S. — 58 C.J.S., Mines and Minerals, § 417 et seq.

12-4-74. Promulgation of rules and regulations by Board of Natural Resources.

The Board of Natural Resources shall promulgate such rules and regulations as may be necessary to effectuate this part in accordance

with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History. — Ga. L. 1968, p. 9, § 9.

Administrative rules and regulations. — Surface mining, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-3.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Mines and Minerals, § 246.

C.J.S. — 58 C.J.S., Mines and Minerals, § 417 et seq.

12-4-75. Permits for surface mining operations; submission of mining land use plan and amendment to plan; bonding of applicants.

Operators of surface mining firms shall be required:

(1) To obtain from the director of the division a permit to conduct surface mining operations in the specified area to be mined prior to commencing the operation of same, provided that where a change in ownership of a mining operation occurs, the new owners may continue such operation on condition that a valid application, mining land use plan, and bond sufficient as to form and content for final approval are placed on file with the director within 60 days from date of consummation of the ownership change. In the event the new owners fail to place on file with the director the necessary documents for permitting within said 60 day period, all activities associated with removal of minerals or ores from the premises shall cease. It is further provided that a mining operator who continues to conduct a surface mining operation under a previous owner's permit in accordance with this paragraph shall be subject to having said permit revoked in the same manner and under the same conditions as a mining operator conducting a surface mining operation under his own permit. The application for a permit shall be made on a form provided by the director. The permit shall be issued on evidence satisfactory to the director of compliance with this part and the rules and regulations promulgated pursuant to this part, and the permit shall be conditioned upon the permittee's compliance with the approved mining land use plan;

(2) To submit, with the application for a permit, a mining land use plan which shall be consistent with the land use in the area of the mine and shall provide for reclamation of the affected land. Once approved, the operator will be responsible for completion of the plan. However, any change affecting a new area or any other change in an approved plan must be submitted to the division for approval as an amendment to an operator's mining land use plan;

(3) To file a bond with the director within 60 days after the date of being furnished approved surety bond forms by the division; provided, however, that any mining operator who desires to be exempted from the bonding requirement shall request an exemption from such bonding requirement from the director, whereupon a mining operator may be exempted from such bonding requirement at the discretion of the director. Any mining operator who has been granted an exemption from the bonding requirement and who subsequently violates any of the provisions of this part or the rules and regulations promulgated under this part, or who defaults on his obligations under any mining land use plan, may be required by the director to post a bond in accordance with this paragraph. Any bond filed with the director shall be written by a surety approved by the director and authorized to transact business in this state. Such bond shall be fixed by the director in an amount not more than $2,500.00 per acre, or fraction thereof, of the area of affected land. Such bond shall further be payable to the Governor and conditioned upon the faithful performance of the requirements set forth in this part and the rules and regulations promulgated pursuant to this part. Mining operators shall have the option of posting bond, government securities, cash, or any combination thereof on each mined area. In determining the amount of bond, government securities, or cash within the above limits, the director shall take into consideration the character and nature of the land reclamation requirements as approved in the operator's mining land use plan. For each permit, the director shall review and reevaluate at least every five years the site operation, objectives of the land use plan, and estimated cost factors for completion of the plan and shall require adjustments to bonding amounts as may be necessary to ensure adequate funding for site reclamation. The bond, government securities, or cash shall be held by the division until the affected land or any portion thereof is satisfactorily reclaimed, in the opinion of the director, at which time the bond, government securities, or cash or portion thereof shall be terminated or returned to the mining operator, provided that where a mining operator fails or refuses to complete any of his responsibilities under a mining land use plan and the bond, government securities, or cash are consequently recovered upon or forfeited, the director may expend as he deems appropriate that portion of such recovered or forfeited funds as is necessary to complete such mining operator's responsibilities under the mining land use plan. A mining operator, upon approval of an amended mining land use plan, shall file with the director the appropriate bond, government securities, or cash to cover the plan as amended, unless otherwise exempted from the bonding requirement.

History. — Ga. L. 1968, p. 9, § 6; Ga. L. 1971, p. 200, § 4; Ga. L. 1976, p. 527, §§ 3, 4; Ga. L. 1985, p. 879, § 1; Ga. L. 1992, p. 1098, § 3; Ga. L. 1996, p. 6, § 12.

JUDICIAL DECISIONS

No conflict with 30 U.S.C. § 1259. — Secretary of the Interior has never designated O.C.G.A. § 12-4-75 as inconsistent with 30 U.S.C. § 1259, and, therefore, the statute has not yet been superseded by the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. § 1201 et seq. Busbee v. Continental Ins. Co., 526 F. Supp. 1243 (N.D. Ga. 1981).

Removal of action on surety bond. — Detailed examination of the powers of the division reveals that the division is merely the alter ego of the state. Thus, because the State of Georgia, the real party, is not a Georgia citizen for purposes of diversity, a federal district court has no jurisdiction under 28 U.S.C. § 1332(a), such that an action by the Governor on a surety bond cannot be removed from state court. Busbee v. Continental Ins. Co., 526 F. Supp. 1243 (N.D. Ga. 1981).

Cited in Georgia Marble Co. v. Walker, 236 Ga. 545, 224 S.E.2d 394 (1976).

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Scope of section. — This section does not give a landowner, whether an operator or operator's lessor, the right to exempt affected land from the reclamation requirement. 1970 Op. Att'y Gen. No. 70-31 (see O.C.G.A. § 12-4-75).

Coupon bond deemed government security within meaning of paragraph (3). — Coupon bond, issued over the signature of the Secretary of the Treasury of the United States and representing an obligation of the United States, is a government security within the meaning of paragraph (3) of this section. 1970 Op. Att'y Gen. No. 70-18 (see O.C.G.A. § 12-4-75).

Blanket bond not prohibited. — Blanket bond, which is satisfactory to the Surface Mined Land Use Board (now environmental protection division of Department of Natural Resources), adequate to reclaim affected lands and fencing within the limitations of this section is not prohibited by this section. 1970 Op. Att'y Gen. No. 70-18 (see O.C.G.A. § 12-4-75).

Detaching unmatured coupons represents impairment of maturity redemption value of security since, if any coupons are missing, the security will not be redeemed unless accompanied by a remittance in an amount equal to the face value of the missing coupons; any coupons returned prior to maturity date would have to be deducted from the face value before discounting the value of the bond for the purpose of determining bonding coverage. 1970 Op. Att'y Gen. No. 70-18.

Time certificates not acceptable alternative under bonding requirement of paragraph (3). — Time certificates, issued by a national bank doing business in Georgia, do not constitute an acceptable alternative under the bonding requirement of paragraph (3) of this section since, as obligations of a banking corporation, the certificates are neither cash nor government securities. 1970 Op. Att'y Gen. No. 70-18 (see O.C.G.A. § 12-4-75).

Cashier's check does not satisfy requirements of this section in that a cashier's check is a primary obligation of the bank upon which the cashier's check is drawn and, as such, it does not fall within the definition of "cash." 1970 Op. Att'y Gen. No. 70-18 (see O.C.G.A. § 12-4-75).

Unused forfeited bond funds. — Should portion of moneys involved be unused at particular reclamation site, following authorization by the director of the division for the expenditure of forfeited bond funds, the remainder of the unused forfeited bond funds should not be allowed to accumulate in a forfeited bond escrow account for the purpose of completing reclamation on another site when bond funds are forfeited and are insufficient to properly complete reclamation; any such unused portions should be deposited into the

state treasury. 1976 Op. Att'y Gen. No. 76-98.

Irrevocable letter of credit satisfies requirement. — Requirement of posting a surety bond pursuant to O.C.G.A. § 12-4-75 may be met through the use of an irrevocable letter of credit issued by a commercial bank domiciled in this state. 1984 Op. Att'y Gen. No. 84-23.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Mines and Minerals, § 243 et seq.

C.J.S. — 58 C.J.S., Mines and Minerals, §§ 417 et seq., 443 et seq., 460, 462 et seq.

ALR. — Validity of statute or ordinance which requires liability or indemnity insurance or bond as condition of license for conducting business or profession, 120 A.L.R. 950.

Right of one who acquires title to, or other interest in, real property to benefit of a license previously issued by the public, permitting use of property for a specified purpose, 131 A.L.R. 1339.

Prohibiting or regulating removal or exploitation of oil and gas, minerals, soil, or other natural products within municipal limits, 10 A.L.R.3d 1226.

12-4-76. Substitution of mined areas.

An operator shall have the right to substitute an area mined in the past for an area presently being mined on an acre-for-acre basis with the approval of the division.

History. — Ga. L. 1968, p. 9, § 7.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Mines and Minerals, § 249.

12-4-77. Renewal or replacement of revoked permit; mining on unauthorized site.

An operator whose permit has been revoked pursuant to this part shall be denied a new permit or a renewal of the old permit to engage in surface mining until he gives assurance satisfactory to the director of the division of his ability and intent to comply fully with this part with respect to the affected land under the revoked permit and the new or renewed permit. Mining by a permitted operator on an unauthorized site while holding other valid surface mining permits shall constitute prima-facie evidence of violation of approved mining land use plans, and any and all surface mining permits which an operator may hold may be suspended or revoked by the director or his authorized representative.

History. — Ga. L. 1968, p. 9, § 8; Ga. L. 1972, p. 996, § 3; Ga. L. 1976, p. 527, § 5; Ga. L. 1992, p. 1098, § 4.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Mines and Minerals, § 249.

C.J.S. — 58 C.J.S., Mines and Minerals, §§ 418, 443 et seq., 462 et seq., 464.

12-4-78. Appeal to superior court.

Any person who is a party to a proceeding and who is aggrieved or adversely affected by any final order or action of the division shall have the right to appeal to the superior court of the county of the residence of such party. Such appeal shall be by petition which shall be filed in the office of the clerk of such court within 30 days after the final order or action of the division. The enforcement of the order or action appealed from shall not be stayed unless so ordered and directed by the reviewing court. No bond or cash shall be forfeited during an appeal. Upon the filing of such petition, the petitioner shall serve a copy thereof on the director of the division in the manner prescribed by law for the service of process.

History. — Ga. L. 1968, p. 9, § 10; Ga. L. 1971, p. 200, § 5.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 236.

C.J.S. — 73A C.J.S., Public Administrative Law and Procedure, §§ 374 et seq.

12-4-79. Injunctive relief.

Whenever it shall appear to the division that any person, firm, or corporation or any agent, officer, or director of any person, firm, or corporation has violated any of the provisions of this part, the division, on its own motion or on the verified complaint in writing of any person, may file an equitable petition in its own name in the superior court of any county in this state having jurisdiction of the parties, alleging the facts and praying for a temporary restraining order and temporary injunction or permanent injunction against such person, firm, or corporation, or their agents, officers, and directors, restraining them from violating the provisions of this part. Upon proof of a violation, the court shall issue such restraining order, temporary injunction, or permanent injunction without requiring allegation or proof that the petitioner has no adequate remedy at law.

History. — Ga. L. 1971, p. 200, § 6.

RESEARCH REFERENCES

C.J.S. — 58 C.J.S., Mines and Minerals, § 424.

12-4-80. Removal of minerals, ores, and other solid matter as prima-facie evidence of surface mining.

In any contested case under this part, whether administrative, civil, or criminal in nature, a showing of the removal of minerals, ores, and other solid matter from the premises in question shall constitute prima-facie evidence of surface mining.

History. — Ga. L. 1972, p. 996, § 4.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Mines and Minerals, § 421.

12-4-81. Judgment pursuant to order.

The director of the division may file in the superior court of the county wherein the mining operator under order resides, or if such mining operator is a corporation, in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred or in which jurisdiction is appropriate, a certified copy of a final order issued pursuant to this part which is unappealed from, or of a final order issued pursuant to this part which is affirmed upon appeal, whereupon such court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though such judgment had been rendered in an action duly heard and determined by such court.

History. — Ga. L. 1976, p. 527, § 7.

JUDICIAL DECISIONS

Name in which suits by the division to be brought. — Although Ga. L. 1968, p. 9 (see O.C.G.A. § 12-4-70 et seq.) and the regulations issued thereunder give the Environmental Protection Division a limited power to bring lawsuits, the director is not authorized to sue in the director's own name. Moreover, former Code 1933, § 43-1406 (see O.C.G.A. § 12-4-75) provides that bonds be made payable to the Governor, and that the Governor must sue to enforce the bonds. Thus, the division is merely the alter ego of the state. Busbee v. Continental Ins. Co., 526 F. Supp. 1243 (N.D. Ga. 1981).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 359.

C.J.S. — 73A C.J.S., Public Administrative Law and Procedure, § 304 et seq.

12-4-82. Applicability of part.

This part shall not apply to surface mining activities of the Department of Transportation incident to its activities in constructing, repairing, and maintaining the public road system in Georgia. The provisions of this Code section shall also extend to any person, firm, or corporation contracting with the Department of Transportation to construct, repair, or maintain public roads, provided that such contracts contain standards for the reclamation of the affected surface mining area; provided, further, that such standards have been approved by the division.

History. — Ga. L. 1968, p. 9, § 12.

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Exemption granted by this section extends only to those operators who contract directly with the State Highway Department (now Department of Transportation) and not to parties who are subcontractors of such operators. 1968 Op. Att'y Gen. No. 68-406 (see O.C.G.A. § 12-4-82).

12-4-83. Civil penalty; procedure for imposing penalties; hearing; judicial review; disposition of recovered penalties.

(a) Except as provided in subsection (c) of this Code section, any mining operator violating any provision of this part or any of the rules and regulations promulgated pursuant to this part, or who negligently or intentionally fails or refuses to comply with any final order of the director of the division, shall be liable for a civil penalty not to exceed $1,000.00 for such violation and an additional civil penalty not to exceed $500.00 for each day during which such violation continues.

(b) Except as provided in subsection (c) of this Code section, whenever the director of the division has reason to believe that any mining operator has violated any provision of this part or any of the rules and regulations promulgated pursuant to this part, or has negligently or intentionally failed or refused to comply with any final order of the director, the director may request and shall receive a hearing before a hearing officer appointed by the Board of Natural Resources. Upon a finding that such mining operator has violated any provision of this part or any of the rules and regulations promulgated pursuant to this part, or has negligently or intentionally failed or refused to comply with a final order of the director, the hearing officer shall issue his initial decision imposing such civil penalties as are provided in this Code section. Such hearing and any judicial review thereof shall be con-

ducted in accordance with subsection (c) of Code Section 12-2-2. All civil penalties recovered by the director shall be paid into the state treasury to the credit of the general fund; provided, however, that where civil penalties are recovered by the director from a mining operator for his failing or refusing to obtain a permit in accordance with Code Section 12-4-75 or for his failing or refusing to complete any of his responsibilities under a mining land use plan after having been issued a permit, the director may expend as he deems appropriate that portion of such recovered civil penalties as is necessary to provide for reclamation, reconditioning, or rehabilitation of the affected land not otherwise reclaimed, reconditioned, or rehabilitated by such mining operator.

(c) This Code section shall not apply to a mining operator who has a valid permit and who is bonded in accordance with this part.

History. — Ga. L. 1976, p. 527, § 6; Ga. L. 1992, p. 1098, § 5; Ga. L. 1996, p. 6, § 12.

JUDICIAL DECISIONS

Effect of accrual of recovery to benefit of director. — That any recovery in a case against a surety on a bond issued in favor of the Governor to insure the reclamation of mined lands would accrue to the benefit of the director rather than the state does not affect the status of the division as the alter ego of the state. Busbee v. Continental Ins. Co., 526 F. Supp. 1243 (N.D. Ga. 1981).

RESEARCH REFERENCES

C.J.S. — 58 C.J.S., Mines and Minerals, § 424 et seq.

12-4-84. Criminal penalty.

Any person who engages in surface mining in violation of this part or who willfully misrepresents any fact in any matter required by this part or willfully gives false information in any application or report required by this part shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100.00 nor more than $1,000.00 for each offense. Each day of noncompliance after notification shall be considered a separate offense.

History. — Ga. L. 1968, p. 9, § 11.

OPINIONS OF THE ATTORNEY GENERAL

Legislative purpose. — This part does not indicate with clarity a legislative purpose to impose criminal liability on a corporation. 1970 Op. Att'y Gen. No. 70-155 (see O.C.G.A. § 12-4-70 et seq.).

Corporate agent punishable for

commission of offense. — When a corporate agent has either committed the offense in all the offense's elements and particulars or has intentionally aided or abetted the corporate principal in the commission of the crime in all the crime's particulars and elements, the agent is a party to the offense and punishable as such. 1970 Op. Att'y Gen. No. 70-155.

Corporations will be criminally responsible for acts or omissions constituting violations of this part if, but only if, the activities constituting the crime were authorized, requested, commanded, performed, or recklessly tolerated by either the board of directors or by an officer or other agent of comparable authority acting within the scope of authority on behalf of the corporation. 1970 Op. Att'y Gen. No. 70-155.

Only feasible method for charging corporations with crimes is through the return of an indictment by a grand jury. 1970 Op. Att'y Gen. No. 70-155.

Department is not authorized to invoke aid of equity in restraint of unlicensed surface mining. 1970 Op. Att'y Gen. No. 70-103.

RESEARCH REFERENCES

C.J.S. — 58 C.J.S., Mines and Minerals, § 424 et seq.

ARTICLE 3

PHOSPHATES AND GOLD

PART 1

PHOSPHATES

12-4-100. Licenses to dig, mine, and remove phosphate deposits; restrictions on license holders.

Whenever any person discovers phosphate rock or phosphatic deposits in the navigable streams or waters of this state or in any public land on their banks or margins and files with the Secretary of State notice of such discovery and a description of the location thereof, he shall be entitled to receive from the Secretary of State a license giving him or his assigns the exclusive right, for ten years from the date of the license, of digging, mining, and removing from such location and from an area for a distance of five miles in any or all directions therefrom the phosphate rock and phosphatic deposits that may be found therein, provided that persons receiving or holding such licenses shall in no way interfere with the free navigation of the streams and waters or the private rights of any citizen residing on or owning the lands upon the banks of such navigable rivers and waters; provided, further, that as long as the license remains in effect, no person, natural or artificial, shall have the privilege of locating a claim within 20 miles of any other claim for which he has received a license.

History. — Ga. L. 1884-85, p. 125, § 1; Civil Code 1895, § 1726; Civil Code 1910, § 1977; Code 1933, § 43-401.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Mines and Minerals, §§ 31 et seq., 42, 43.

C.J.S. — 58 C.J.S., Mines and Minerals, §§ 37, 52 et seq., 174.

ALR. — Right of one who acquires title to, or other interest in, real property to benefit of a license previously issued by the public, permitting use of property for a specified purpose, 131 A.L.R. 1339.

12-4-101. Annual mining fee; license fee; affidavit and bond.

(a) Licenses shall be granted upon the express condition that the grantees shall pay to the Office of the State Treasurer the sum of $1.00 per ton for every ton of phosphate rock and phosphatic deposit mined and removed from the navigable rivers and waters of this state and the banks and margins thereof. This sum shall be paid on October 1 of every year and shall cover the amount of phosphate rock and phosphatic deposit mined and removed during the preceding year.

(b) An applicant shall pay to the Office of the State Treasurer the sum of $100.00 as a license fee before commencing business.

(c) Before commencing operations, a license holder shall file or cause to be filed with the Office of the State Treasurer an affidavit and bond in the penal sum of $20,000.00. The affidavit and bond shall be approved by the Attorney General and shall be conditioned on the holder's making true and faithful reports to the Office of the State Treasurer annually on or before October 1, or more frequently if required by the Office of the State Treasurer, of the number of tons of phosphate rock and phosphatic deposits mined and removed by the holder from the beds of the navigable streams and waters and the banks or margins thereof and also conditioned on the holder's punctually paying to the Office of the State Treasurer the sum required by subsection (a) of this Code section.

History. — Ga. L. 1884-85, p. 125, §§ 2, 3; Civil Code 1895, §§ 1727, 1728; Civil Code 1910, §§ 1978, 1979; Code 1933, §§ 43-402, 43-403; Ga. L. 1993, p. 1402, § 18; Ga. L. 2010, p. 863, § 2/SB 296.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Mines and Minerals, § 249.

C.J.S. — 58 C.J.S., Mines and Minerals, § 452 et seq.

12-4-102. Lapse of license.

Any license granted under this part shall lapse and become void unless within three years from the date of the granting of the license the privileges granted shall be utilized and work in good faith shall be commenced.

History. — Ga. L. 1884-85, p. 125, § 5; Civil Code 1895, § 1729; Civil Code 1910, § 1980; Code 1933, § 43-404.

RESEARCH REFERENCES

C.J.S. — 58 C.J.S., Mines and Minerals, § 109 et seq.

12-4-103. Penalty.

Any person who is not engaged in the prosecution of lawfully authorized searches and who digs, mines, removes, or cleanses phosphate rock or phosphatic deposits from the beds of the navigable streams of this state or from any public lands on the banks and margins thereof without having first obtained a license as required by Code Section 12-4-100 shall be guilty of a misdemeanor.

History. — Ga. L. 1884-85, p. 125, § 4; Penal Code 1895, § 203; Penal Code 1910, § 201; Code 1933, § 43-9902.

RESEARCH REFERENCES

Am. Jur. 2d. — 53A Am. Jur. 2d, Mines and Minerals, § 249.

C.J.S. — 58 C.J.S., Mines and Minerals, §§ 424 et seq., 452 et seq.

Part 2

Gold

Cross references. — Persons engaged in business of dealing in gold, silver, or platinum, T. 43, C. 37.

12-4-120. Duties of purchasers of gold bullion, dust, nuggets, or amalgam.

Every person purchasing within this state native gold, gold bullion, gold dust, gold nuggets, or gold amalgam shall keep in a book a register of the date of purchase, amount purchased, name of seller, and lands from which the gold was obtained. On or by the first day of January, April, July, and October of each year, every such purchaser shall file

with the judge of the probate court of the county of his residence a copy of the register kept for the previous quarter.

History. — Ga. L. 1899, p. 66, § 1; Civil Code 1910, § 1981; Code 1933, § 43-405.

12-4-121. Annual reports by judges of probate court.

No later than January 15 of each year, each judge of the probate court with whom a register has been filed pursuant to Code Section 12-4-120 shall, by certified copy, make a report to the state geologist of the registers received by that judge during the preceding year. The state geologist shall keep a record of the report open for public inspection.

History. — Ga. L. 1899, p. 66, § 1; Civil Code 1910, § 1982; Code 1933, § 43-406.

12-4-122. Penalty.

Any person who purchases native gold, gold bullion, gold dust, gold nuggets, or gold amalgam and who fails to comply with Code Section 12-4-120 relating to such purchases shall be guilty of a misdemeanor.

History. — Ga. L. 1899, p. 66, § 2; Penal Code 1910, § 699; Code 1933, § 43-9903.

ARTICLE 4

CAVE PROTECTION

12-4-140. Short title.

This article shall be known and may be cited as the "Cave Protection Act of 1977."

History. — Ga. L. 1977, p. 833, § 1.

12-4-141. Legislative purpose.

The State of Georgia finds that caves are uncommon geologic phenomena and that the minerals deposited therein may be rare and occur in unique forms of great beauty which are irreplaceable if destroyed. It is also found that the wildlife which have evolved to live in caves are unusual and of limited numbers, and many are rare and endangered species, and that caves are a natural conduit for ground-water flow and are highly subject to water pollution, which has far-reaching effects transcending man's property boundaries. It is therefore declared to be

the policy of this state and the intent of this article to protect these unique natural resources.

History. — Ga. L. 1977, p. 833, § 2; Ga. L. 1986, p. 10, § 12; Ga. L. 1992, p. 6, § 12.

12-4-142. Definitions.

As used in this article, the term:

(1) "Cave" means any naturally occurring subterranean cavity, including, but not restricted to, a cavern, pit, pothole, natural well, sinkhole, and grotto.

(2) "Commercial cave" means any cave with improved trails and lighting utilized by the owner for the purpose of exhibition to the general public as a profit or nonprofit enterprise, wherein a fee is collected for entry.

(3) "Gate" means any structure or device located so as to limit or prohibit access or entry to a cave.

(4) "Owner" means a person who owns title to land where a cave is located, including a person who owns title to a leasehold estate in such land, and specifically includes the state and any of its agencies, departments, boards, bureaus, commissions, or authorities, as well as counties, municipalities, and other political subdivisions of the state.

(5) "Sinkhole" means a closed topographic depression or basin, generally draining underground, including, but not restricted to, a doline, limesink, or sink.

(6) "Speleothem" means a natural mineral formation or deposit occurring in a cave, including, but not restricted to, stalagmites, stalactites, helectites, anthodites, gypsum flowers, gypsum needles, angel's hair, soda straws, draperies, bacon, cave pearls, popcorn (coral), rimstone dams, columns, palettes, and flowstone. Speleothems are commonly composed of calcite, epsomite, gypsum, aragonite, celestite, and other similar minerals.

(7) "Wildlife" means any vertebrate or invertebrate animal life indigenous to this state or any species introduced or specified by the Board of Natural Resources and includes, but is not restricted to, quadrupeds, mammals, birds, fish, amphibians, reptiles, crustaceans, and mollusks, or any part thereof.

History. — Ga. L. 1977, p. 833, § 3.

12-4-143. Defacing or disturbing natural condition of cave; breaking or tampering with gates, doors, or other device controlling or preventing access to caves; trespass.

(a) It shall be unlawful for any person, without the express written permission of the owner, willfully or knowingly to:

(1) Break, break off, crack, carve upon, write upon, burn, or otherwise mark upon, remove, or in any manner destroy, disturb, deface, mar, or harm the surfaces of any cave or any natural or archeological material therein, including speleothems;

(2) Disturb or alter in any manner the natural condition of any cave;

(3) Break, force, tamper with, or otherwise disturb a lock, gate, door, or other obstruction designed to control or prevent access to any cave, even though entrance thereto may not be gained; or

(4) Enter a cave posted against trespassing or a cave with a lock, gate, door, or other obstruction designed to control or prevent access to the cave.

(b) Any person who violates any provision of subsection (a) of this Code section shall be guilty of a misdemeanor.

History. — Ga. L. 1977, p. 833, § 4; Ga. L. 1985, p. 1075, § 1.

12-4-144. Sale or offer to sell speleothems.

(a) It shall be unlawful to sell or offer for sale any speleothems in this state or to export them for sale outside this state without the express written permission of the owner of the cave from which such speleothems were obtained.

(b) Any person violating this Code section shall be guilty of a misdemeanor.

History. — Ga. L. 1977, p. 833, § 5.

12-4-145. Storing hazardous or detrimental chemicals or materials in caves or sinkholes; dumping or disposing of garbage, dead animals, or similar materials in caves or sinkholes.

(a) It shall be unlawful to store in caves or sinkholes any chemicals or other materials which may be detrimental or hazardous to caves or sinkholes, to the mineral deposits therein, to the wildlife inhabiting

caves, to the waters of the state, or to the persons using such phenomena for any purposes.

(b) It shall be unlawful to dump, litter, dispose of, or otherwise place any refuse, garbage, dead animals, sewage, trash, or other such similar waste materials in any quantity in any cave or sinkhole.

(c) Any person who violates any provision of this Code section shall be guilty of a misdemeanor.

History. — Ga. L. 1977, p. 833, § 6.

RESEARCH REFERENCES

Am. Jur. 2d. — 61C Am. Jur. 2d, Pollution Control, §§ 2032, 2033.

C.J.S. — 39A C.J.S., Health and Environment, § 151.

12-4-146. Killing, harming, removing, or disturbing wildlife found in a cave.

(a) It shall be unlawful to remove, kill, harm, or disturb any wildlife found within any cave, provided that nothing contained in this Code section shall be construed to repeal Code Section 27-2-12, relating to scientific collectors' permits, or any rules or regulations promulgated pursuant thereto, or any federal or state laws relating to the protection of certain plants or animals.

(b) Any person who violates any provision of this Code section shall be guilty of a misdemeanor.

History. — Ga. L. 1977, p. 833, § 7.

RESEARCH REFERENCES

Am. Jur. 2d. — 61C Am. Jur. 2d, Pollution Control, §§ 1918, 1919.

C.J.S. — 39A C.J.S., Health and Environment, § 151.

12-4-147. Liability of owners of caves for injuries.

(a) Neither the owner of a cave nor his authorized agents, officers, employees, or designated representatives acting within the scope of their authority shall be liable for injuries sustained by any person using such cave for recreational or scientific purposes if the prior consent of the owner has been obtained and if no charge has been made for the use of such features and notwithstanding that an inquiry as to the experience or expertise of the individual seeking consent may have been made.

(b) Neither the owner of a commercial cave nor his authorized agents, officers, employees, or designated representatives acting within

the scope of their authority shall be liable for an injury sustained by a spectator who has paid to view the cave, unless such injury is sustained as a result of such owner's negligence in connection with the providing and maintaining of trails, stairs, electrical wires, or other modifications, and such negligence shall be the proximate cause of the injury.

(c) Nothing in this Code section shall be construed to constitute a waiver of the sovereign immunity of the state or any of its boards, departments, bureaus, or agencies.

History. — Ga. L. 1977, p. 833, § 8.

RESEARCH REFERENCES

Am. Jur. 2d. — 62 Am. Jur. 2d, Premises Liability, § 66. 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 101, 102, 129.

C.J.S. — 81A C.J.S., States, §§ 541 et seq., 553.

CHAPTER 5

WATER RESOURCES

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12-5-584. Water supply and water conservation management plan; interbasin transfers.
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Cross references. — Water rights, T. 44, C. 8. Protection of tidewaters, T. 52, C. 1, A. 1. Right of passage on navigable streams and rivers, T. 52, C. 1, A. 2. Intracoastal waterway, T. 52, C. 3. River and harbor development, T. 52, C. 9.

Law reviews. — For survey article on environment, natural resources, and land use, see 34 Mercer L. Rev. 145 (1982). For article, "From Marshes to Mountains, Wetlands Come Under State Regulation," see 41 Mercer L. Rev. 865 (1990).

RESEARCH REFERENCES

Am. Jur. Trials. — Challenging Wetland Regulation of Land Development, 53 Am. Jur. Trials 511.

ARTICLE 1

GENERAL PROVISIONS

Editor's notes. — This article formerly contained a Code Section 12-5-4, which was repealed by Ga. L. 1981, p. 987, § 5, effective April 9, 1981. The former Code section pertained to declaration of need for regulation of water related recreational events and was based on Ga. L. 1973, p. 1449, §§ 2-5.

RESEARCH REFERENCES

ALR. — Water sports, amusements, or exhibitions as nuisance, 80 A.L.R.2d 1124.

Measure and elements of damages for pollution of well or spring, 76 A.L.R.4th 629.

12-5-1. Water Resources Center — Establishment and operation by Georgia Institute of Technology; purposes.

The Georgia Institute of Technology shall establish and operate a center to be known as the Water Resources Center or such other name as may be approved by the Board of Regents of the University System of Georgia. Such center will be for the purpose of conducting research, investigations, experiments, and training in relation to water and resources which affect water. The center shall publish in print or electronically and otherwise make available its findings, conclusions, and recommendations arising from the research and projects conducted by such center.

History. — Ga. L. 1965, p. 252, § 1; Ga. L. 2010, p. 838, § 10/SB 388.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Colleges and Universities, § 7.

Am. Jur. Pleading and Practice Forms. — 8C Am. Jur. Pleading and Practice Forms, Drains and Drainage Districts, § 28.

C.J.S. — 14A C.J.S., Colleges and Universities, § 2.

12-5-2. Water Resources Center — Receipt of funds and grants.

The center is authorized to make application for and receive from the federal government such funds and grants as shall be made available under the Water Research and Development Act of 1978, 42 U.S.C. Section 7801, et seq., and to utilize and disburse such funds for such purposes and projects as will carry out the purposes of the center. The center is also authorized to utilize such moneys as may be made available to it for this purpose as matching funds to federal moneys for necessary expenses of specific water resources research projects which could not be otherwise undertaken under normal grants from the federal government.

History. — Ga. L. 1965, p. 252, § 2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, a comma was inserted in the United States Code reference in the first sentence.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Colleges and Universities, § 7.

C.J.S. — 14A C.J.S., Colleges and Universities, § 2.

12-5-3. Water Resources Center — Power to enter into contracts, agreements, and participation arrangements.

The center is authorized to enter into contracts, agreements, and arrangements with other colleges and universities for participation in the work of the center. The center shall also be authorized to enter into contracts and agreements with the federal government, with political subdivisions of this state, with private firms, foundations, or institutions, or with individuals for specific research into any aspects of water problems as may be related to the purposes of this article.

History. — Ga. L. 1965, p. 252, § 3.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Colleges and Universities, § 7.
C.J.S. — 14A C.J.S., Colleges and Universities, § 2.
ALR. — Validity, Construction, and Application of Safe Drinking Water Act's Provisions Related to Public Water Supply Enforcement, 42 U.S.C.A. §§ 300g to 300g-5 and Related Regulations, 19 A.L.R. Fed. 3d 6.

12-5-4. Programs for voluntary water conservation and enhancing water supply.

(a) As used in this Code section, the term "agency" or "agencies" means the Department of Natural Resources, including its Environmental Protection Division, the Georgia Environmental Finance Authority, the Department of Community Affairs, the State Forestry Commission, the Department of Community Health, the Department of Public Health, the Department of Agriculture, and the State Soil and Water Conservation Commission individually or collectively as the text requires.

(b) On or before August 1, 2010, the agencies shall examine their practices, programs, policies, rules, and regulations to identify opportunities to provide enhanced programming and incentives for voluntary water conservation. The agencies shall, without limitation, identify and provide for rules, regulations, incentives, or opportunities to:

(1) Include water conservation measures in the comprehensive plans submitted to the Department of Community Affairs by local governments;

(2) Provide technical assistance to local governments and public water systems for water loss abatement activities;

(3) Support state-wide water campaigns and public outreach programs, such as Conserve Georgia and WaterFirst programs;

(4) Encourage residential and commercial retrofits for water efficient fixtures and equipment;

(5) Encourage residential and commercial retrofits for water efficient landscaping irrigation systems;

(6) Encourage the installation of landscapes in commercial and residential settings utilizing landscape best management practices that include soil preparation, plant selection, and water use efficiency;

(7) Encourage the use of rain water and gray water, where appropriate, in lieu of potable water;

(8) Encourage the installation of submeters on existing nonsubmetered multifamily complexes and multiunit commercial and industrial complexes;

(9) Encourage public water systems to develop and improve water loss abatement programs;

(10) Encourage public water systems to implement the industry's best management practices for controlling water loss and achieve the recommended standards;

(11) Provide incentives for residential and commercial water conservation pricing by public water systems;

(12) Provide incentives for public water systems to use full cost accounting;

(13) Encourage voluntary inclusion of water conservation guidelines in applications for new ground-water withdrawal permits and surface-water withdrawal permits; and

(14) Examine the effect that water conservation has on water rates and consider policies to mitigate the financial impact that rate increases or reductions in water use have on water utilities and water users.

(c) On or before August 1, 2010, the agencies shall examine their practices, programs, policies, rules, and regulations to identify opportunities to enhance the state's water supply. The agencies shall, without limitation, identify opportunities to:

(1) Obtain funding; and

(2) Conduct feasibility studies on reservoir dredging and water management measures that could enhance water supply when funding is available.

(d) Each agency shall coordinate with the Department of Natural Resources to:

(1) Establish administrative programs and procedures to encourage water conservation and to enhance the state's water supply

consistent with the results of the reviews required under subsections (b) and (c) of this Code section;

(2) Submit an interim report of the reviews required under subsections (b) and (c) of this Code section to the Governor, Lieutenant Governor, and Speaker of the House on or before July 1, 2010, which shall include, at a minimum, the programmatic changes and proposed changes being implemented to encourage water conservation and to enhance the state's water supply;

(3) Submit a final report of the review required under subsections (b) and (c) of this Code section to the General Assembly by August 1, 2010, which report shall include at a minimum an outline and narrative summary of the rules, regulations, and policies that have been adopted to encourage water conservation and to enhance the state's water supply; and

(4) Submit a report to the General Assembly on or before January 1 of 2011, 2012, 2013, 2014, and 2015 including an outline and narrative summary of the programmatic changes encouraging water conservation and to enhance the state's water supply that were implemented during the immediately preceding calendar year, outlining the agency's goals for the next calendar year, and identifying the rules, regulations, and policies that were adopted to support those programmatic changes.

History. — Code 1981, § 12-5-4, enacted by Ga. L. 2010, p. 732, § 2/SB 370; Ga. L. 2011, p. 705, § 5-1/HB 214; Ga. L. 2011, p. 752, § 12/HB 142.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, "the Georgia Environmental Finance Authority" was substituted for "the Georgia Environmental Facilities Authority" near the middle of subsection (a), and an extra "the" was deleted preceding "programmatic changes" in paragraph (d)(4).

Editor's notes. — Ga. L. 2010, p. 732, § 1/SB 370, not codified by the General Assembly, provides: "The General Assembly recognizes the imminent need to create a culture of water conservation in the State of Georgia. The General Assembly also recognizes the imminent need to plan for water supply enhancement during future extreme drought conditions and other water emergencies. In order to achieve these goals, the General Assembly directs the Georgia Department of Natural Resources to coordinate with its Environmental Protection Division, the Georgia Environmental Facilities Authority [now known as the Georgia Environmental Finance Authority], the Georgia Department of Community Affairs, the Georgia Forestry Commission, the Georgia Department of Community Health, including its Division of Public Health, the Georgia Department of Agriculture, and the Georgia Soil and Water Conservation Commission to work together as appropriate to develop programs for water conservation and water supply."

This Code section formerly pertained to rules and regulations relating to water conservation plans. The former Code section was based on Code 1981, § 12-5-4, enacted by Ga. L. 1994, p. 863, § 1; Ga. L. 1996, p. 6, § 12, and was repealed by Ga. L. 2008, p. 644, § 4-1/SB 342, effective May 13, 2008.

Administrative rules and regulations. — Rules for Public Water Systems to Improve Water Supply Efficiency, Official Compilation of the Rules and Regula-

tions of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-33.

Law reviews. — For article on 2010 amendment of this Code section, "Conservation and Natural Resources," see 27 Ga. St. U.L. Rev. 185 (2010). For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

12-5-4.1. Adoption of minimum standards and best practices for improving efficiency and effectiveness of water use; requirements.

(a) As used in this Code section, the term:

(1) "Division" means the Environmental Protection Division of the Department of Natural Resources.

(2) "Public water system" means a system for the provision to the public of piped water for human consumption, if such system regularly serves at least 3,300 individuals. Such term includes but is not limited to any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

(b) The Board of Natural Resources shall by January 1, 2011, adopt rules for the minimum standards and best practices for monitoring and improving the efficiency and effectiveness of water use by public water systems to improve water conservation. The best practices program shall include without limitation:

(1) The establishment of an infrastructure leakage index;

(2) The establishment of categories of public water systems based on geographical size and service population;

(3) A phased-in approach requiring public water systems to conduct standardized annual water loss audits according to the International Water Association water audit method/standard and to submit those audits to the division;

(4) A phased-in approach requiring public water systems to implement water loss detection programs; and

(5) The development of a technical assistance program to provide guidance to public water systems for water loss detection programs, to include without limitation metering techniques, utilization of portable and permanent water loss detection devices, and funding when available.

By January 1, 2012, public water systems serving at least 10,000 individuals shall have conducted a water loss audit pursuant to the

minimum standards and best practices adopted by the Board of Natural Resources. By January 1, 2013, all other public water systems shall have conducted a water loss audit pursuant to the minimum standards and best practices adopted by the Board of Natural Resources. Audit results shall be submitted to the division within 60 days of completion and shall be posted on the division's website in a timely manner after receipt by the division.

History. — Code 1981, § 12-5-4.1, enacted by Ga. L. 2010, p. 732, § 3/SB 370.

Editor's notes. — Ga. L. 2010, p. 732, § 1/SB 370, not codified by the General Assembly, provides: "The General Assembly recognizes the imminent need to create a culture of water conservation in the State of Georgia. The General Assembly also recognizes the imminent need to plan for water supply enhancement during future extreme drought conditions and other water emergencies. In order to achieve these goals, the General Assembly directs the Georgia Department of Natural Resources to coordinate with its Environmental Protection Division, the Georgia Environmental Facilities Authority [now known as the Georgia Environmental Finance Authority], the Georgia Department of Community Affairs, the Georgia Forestry Commission, the Georgia Department of Community Health, including its Division of Public Health, the Georgia Department of Agriculture, and the Georgia Soil and Water Conservation Commission to work together as appropriate to develop programs for water conservation and water supply."

Administrative rules and regulations. — Rules for Public Water Systems to Improve Water Supply Efficiency, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-33.

Law reviews. — For article on 2010 amendment of this Code section, see 27 Ga. St. U.L. Rev. 185 (2010).

12-5-5. Local water authorities allowed to establish program for voluntary contributions to conservation and environmental projects.

Any local water authority created pursuant to an Act of the General Assembly shall have the authority to solicit and receive from its customers voluntary donations to be used for such programs and projects as the authority may designate designed to protect and improve the quality of the waters of the state. Each such authority shall have the authority to establish and operate one or more such programs or projects.

History. — Code 1981, § 12-5-5, enacted by Ga. L. 2001, p. 892, § 1.

12-5-6. Installation and definition of "rain sensor shut-off switch"; penalty for violations.

(a) As used in this Code section, the term "rain sensor shut-off switch" means an electric device that detects and measures rainfall amounts and overrides the cycle of an irrigation system so as to turn off such system when a predetermined amount of rain has fallen.

(b)(1) On and after January 1, 2005, no person shall install within the Metropolitan North Georgia Water Planning District area created under Article 10 of this chapter any landscape irrigation system equipped with an electronic controller that does not have a rain sensor shut-off switch.

(2) Paragraph (1) of this subsection shall not apply to either landscape irrigation systems installed on golf courses or any system dependent upon a nonpublic water source.

(c)(1) Any person who installs a landscape irrigation system equipped with an electronic controller in violation of this Code section shall be liable for a civil penalty not exceeding $100.00 per violation.

(2) The magistrate and municipal courts shall have jurisdiction in such cases.

History. — Code 1981, § 12-5-6, enacted by Ga. L. 2004, p. 756, § 1; Ga. L. 2006, p. 72, § 12/SB 465.

12-5-7. Local variances from state restrictions on outdoor watering; limitations on outdoor irrigation; exceptions.

(a)(1) Any political subdivision of this state or local government authority may, upon application to and approval by the director of the Environmental Protection Division of the department for good cause shown, impose more stringent restrictions on outdoor water use during nondrought periods or state declared periods of drought than those applicable restrictions, if any, imposed by the state during such periods. For purposes of this subsection, "good cause" means evidence sufficient to support a reasonable conclusion, considering available relevant information, that such additional restrictions are necessary and appropriate to avoid or relieve a local water shortage. A variance granted pursuant to this subsection shall be valid for such period as determined by the director.

(2) Paragraph (1) of this subsection shall not prohibit a political subdivision or local government authority from imposing more stringent restrictions on outdoor water use in case of an emergency which immediately threatens the public health, safety, or welfare; provided, however, that such emergency restrictions shall be valid for a period not exceeding seven days unless a variance is granted by the director pursuant to paragraph (1) of this subsection. If the director determines that a political subdivision or local government authority is exercising emergency powers granted by this paragraph in a manner to circumvent the necessity of obtaining such a variance, he or she may suspend the emergency powers granted by this paragraph to such political subdivision or local government authority.

(3) In the event that a political subdivision of this state or local government authority is unable to satisfy reduced water consumption or other permit requirements under its water withdrawal or operating permit due to its inability under this subsection to impose more stringent restrictions on outdoor water use during periods of drought than those applicable restrictions, if any, imposed by the state, such political subdivision or local government authority shall be exempt from fines, sanctions, or other penalties applicable for such failure upon the approval of the director of the Environmental Protection Division of the department. The director shall consider all measures implemented by such political subdivision or local government authority prior to issuing fines, sanctions, or other penalties applicable, if any, for such failure. The political subdivision or local government authority shall notify the director of the Environmental Protection Division of the department within ten business days following the discovery of such failure. The director may request additional information at any time to substantiate such a claim.

(4) The director of the Environmental Protection Division may revoke, suspend, or modify, upon not less than three days' written notice, a political subdivision's or local government authority's water withdrawal or waste treatment permit issued pursuant to this chapter consistent with the health, safety, and welfare of the citizens of this state for violation of paragraph (1) or (2) of this subsection or any variance granted pursuant thereto.

(a.1)(1) Persons may irrigate outdoors daily for purposes of planting, growing, managing, or maintaining ground cover, trees, shrubs, or other plants only between the hours of 4:00 P.M. and 10:00 A.M.

(2) Paragraph (1) of this subsection shall not create any limitation upon the following outdoor water uses:

(A) Commercial agricultural operations as defined in Code Section 1-3-3;

(B) Capture and reuse of cooling system condensate or storm water in compliance with applicable local ordinances and state guidelines;

(C) Reuse of gray water in compliance with Code Section 31-3-5.2 and applicable local board of health regulations adopted pursuant thereto;

(D) Use of reclaimed waste water by a designated user from a system permitted by the Environmental Protection Division of the department to provide reclaimed waste water;

(E) Irrigation of personal food gardens;

(F) Irrigation of new and replanted plant, seed, or turf in landscapes, golf courses, or sports turf fields during installation and for a period of 30 days immediately following the date of installation;

(G) Drip irrigation or irrigation using soaker hoses;

(H) Handwatering with a hose with automatic cutoff or handheld container;

(I) Use of water withdrawn from private water wells or surface water by an owner or operator of property if such well or surface water is on said property;

(J) Irrigation of horticultural crops held for sale, resale, or installation;

(K) Irrigation of athletic fields, golf courses, or public turf grass recreational areas;

(L) Installation, maintenance, or calibration of irrigation systems; or

(M) Hydroseeding.

(3) Governing authorities of counties and municipalities shall adopt the provisions of paragraphs (1) and (2) of this subsection by ordinance, to become effective not later than January 1, 2011, and violations of such adopted provisions shall be punished as ordinance violations.

(b) Any political subdivision of this state or local government authority may apply for and, upon approval by the director of the Environmental Protection Division of the department for good cause shown, shall be granted an exemption from nonstatutory outdoor watering restrictions or water use reductions imposed by the state. For purposes of this subsection, "good cause" means evidence sufficient to support a reasonable conclusion, considering available relevant information, that such restrictions, reductions, or both are not necessary and appropriate to avoid or relieve a local water shortage. A variance granted pursuant to this subsection shall be valid for such period as determined by the director.

(c) The director shall render a decision on an application made by a political subdivision or local government authority under subsection (a) or (b) of this Code section within five business days after receipt thereof.

(d)(1) Any permittee who is aggrieved or adversely affected by any order or action of the director of the Environmental Protection Division pursuant to this Code section shall have a right to a hearing pursuant to the provisions of Code Section 12-2-2.

(2) Notwithstanding the stay provisions of subparagraph (c)(2)(B) of Code Section 12-2-2, the filing of a petition for a hearing before an administrative law judge from an action taken pursuant to this Code section stays the order of the director of the Environmental Protection Division for not more than five days and such stay shall automatically be lifted without further action by the director if the petition has not been ruled upon by the end of the fifth day following filing of the petition; provided, however, that the petitioner's right to a hearing remains in full force and effect.

History. — Code 1981, § 12-5-7, enacted by Ga. L. 2008, p. 814, § 1/HB 1281; Ga. L. 2010, p. 732, § 4/SB 370; Ga. L. 2011, p. 752, § 12/HB 142.

Editor's notes. — Ga. L. 2008, p. 814, § 1/HB 1281, provided for the repeal of this Code section effective July 1, 2010. Ga. L. 2010, p. 732, § 4/SB 370, amended this Code section to eliminate the repealing provisions.

Ga. L. 2010, p. 732, § 1/SB 370, not codified by the General Assembly, provides: "The General Assembly recognizes the imminent need to create a culture of water conservation in the State of Georgia. The General Assembly also recognizes the imminent need to plan for water supply enhancement during future extreme drought conditions and other water emergencies. In order to achieve these goals, the General Assembly directs the Georgia Department of Natural Resources to coordinate with its Environmental Protection Division, the Georgia Environmental Facilities Authority [now known as the Georgia Environmental Finance Authority], the Georgia Department of Community Affairs, the Georgia Forestry Commission, the Georgia Department of Community Health, including its Division of Public Health, the Georgia Department of Agriculture, and the Georgia Soil and Water Conservation Commission to work together as appropriate to develop programs for water conservation and water supply."

Law reviews. — For article on 2010 amendment of this Code section, see 27 Ga. St. U.L. Rev. 185 (2010).

12-5-8. Rules and regulations relating to drought management.

Not later than June 30, 2009, the board shall adopt new rules and regulations relating to drought management consistent with this chapter and any state-wide water management plan under Article 8 of this chapter. Such rules and regulations shall include but not be limited to provisions for a drought response committee; drought indicators and triggers; a drought declaration process; and state and local predrought mitigation strategies and drought response strategies. Such predrought mitigation strategies shall be designed to minimize the potential effects of drought. Such drought response strategies shall be measures or actions to be implemented during various stages of drought. Such rules and regulations shall replace any previous drought management plan adopted by the board and shall be revised from time to time as the board deems appropriate.

History. — Code 1981, § 12-5-8, enacted by Ga. L. 2008, p. 814, § 1/HB 1281.

12-5-9. Georgia Geospatial Advisory Council.

Repealed by Ga. L. 2014, p. 402, § 1/SB 361, effective June 30, 2017.

Editor's notes. — This Code section was based on Ga. L. 2014, p. 402, § 1/SB 361.

ARTICLE 2

CONTROL OF WATER POLLUTION AND SURFACE-WATER USE

Cross references. — Anti-siphon devices for irrigation systems, § 2-1-4. Regulation of solid waste handling and disposal facilities, § 12-8-20 et seq. Littering waters, § 16-7-43. Authority of municipal corporations and counties to enter into contracts relating to provision of industrial wastewater treatment services, § 36-60-2. Licensing of water and wastewater treatment plant operators and laboratory analysts, T. 43, C. 51.

Administrative rules and regulations. — Water quality control, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-6.

Law reviews. — For article discussing federal liability for pollution abatement in condemnation actions, see 17 Mercer L. Rev. 364 (1966). For article, "Georgia's Environmental Law: A Survey," see 23 Mercer L. Rev. 633 (1972). For article discussing the permit system under the Georgia Water Quality Control Act, requiring authorization for the construction of pollutant discharge facilities, see 11 Ga. St. B.J. 176 (1975). For article, "Hazardous Waste Issues in Real Estate Transactions," see 38 Mercer L. Rev. 581 (1987). For annual survey on environmental law, see 69 Mercer L. Rev. 1133 (2018). For annual survey on environmental law, see 71 Mercer L. Rev. 1005 (2020).

For note comparing 1964 Water Quality Control Act to similar provisions of 1957 Act and suggesting some amendatory legislation, see 16 Mercer L. Rev. 469 (1965). For notes, "Regulation and Ownership of the Marshlands: The Georgia Marshlands Act," see 5 Ga. L. Rev. 563 (1971).

For comment, "Trading Water: Using Tradable Permits to Promote Conservation and Efficient Allocation of an Increasingly Scarce Resource," see 59 Emory L.J. 1001 (2010). For comment, "The Right to Rainwater: An Unlikely Fairy Tale," see 69 Mercer L. Rev. 575 (2018). For comment, "Uncontainable Threat: The Nation's Coal Ash Ponds," see 69 Emory L.J. 163 (2019).

JUDICIAL DECISIONS

Article does not alter general rules of law in regard to private nuisances and will neither aid nor hinder a private individual in an action to enjoin a nuisance. Bell Indus., Inc. v. Jones, 220 Ga. 684, 141 S.E.2d 533 (1965) (see O.C.G.A. § 12-5-20 et seq.).

Cited in Save America's Vital Env't, Inc. v. Butz, 347 F. Supp. 521 (N.D. Ga. 1972); Brown v. Wright, 231 Ga. 686, 203 S.E.2d 487 (1974); Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 986 F. Supp. 1406 (N.D. Ga. 1997).

OPINIONS OF THE ATTORNEY GENERAL

Control of pollution practices authorized. — Water Quality Control Board (now Department of Natural Resources) has the authority under this article to control the pollution practices of corporations who have been granted

dredging permits or leases by the state. 1969 Op. Att'y Gen. No. 69-342 (see O.C.G.A. § 12-5-20 et seq.).

Water Quality Control Board (now Department of Natural Resources) can prohibit a governmental unit which regulates sewage and wastewater systems from increasing the volume or strength of its wastewater discharges without having first secured a permit from the board (now department). 1970 Op. Att'y Gen. No. U70-56.

Sewage treatment and disposal subject to article. — Treatment and disposition of sewage in the ground by means of a sprinkling system is subject to the provisions of Ga. L. 1964, p. 416 (see O.C.G.A. § 12-5-20 et seq.); it is particularly subject to Ga. L. 1964, p. 416, §§ 3, 5, 10, and 24 (see O.C.G.A. §§ 12-5-22(11) and (13), 12-5-23(c)(12), and 12-5-29), although control is not necessarily limited to these sections. 1972 Op. Att'y Gen. No. U72-13.

Purpose of facility determines exemption. — Exemption of certified property, used in any facility, is applicable if the board of tax assessors finds that the facility was installed or constructed for the primary purpose of eliminating or reducing pollution. 1969 Op. Att'y Gen. No. 69-325.

RESEARCH REFERENCES

Am. Jur. Trials. — Proof of Landowner's Unreasonable Interference with Surface Water Drainage, 87 Am. Jur. Trials 423.

ALR. — Injunction against pollution of stream by private persons or corporations, 46 A.L.R. 8.

Validity and construction of anti-water pollution statutes or ordinances, 32 A.L.R.3d 215.

Pollution control: validity and construction of statutes, ordinances, or regulations controlling discharge of industrial wastes into sewer system, 47 A.L.R.3d 1224.

State and local government control of pollution from underground storage tanks, 11 A.L.R.5th 388.

Application of statute of limitations in private tort actions based on injury to persons or property caused by underground flow of contaminants, 11 A.L.R.5th 438.

12-5-20. Short title.

This article shall be known and may be cited as the "Georgia Water Quality Control Act."

History. — Ga. L. 1964, p. 416, § 1; Ga. L. 1996, p. 6, § 12.

Law reviews. — For article examining approach to water pollution control established by the Georgia Water Quality Control Act and other regulations in light of alternative approaches, see 23 Mercer L. Rev. 603 (1972). For article, "Sharing Water Through Interbasin Transfer and Basis of Origin Protection in Georgia: Issues for Evaluation in Comprehensive State Water Planning for Georgia's Surface Water Rivers and Groundwater Aquifers," see 21 Ga. St. U.L. Rev. 339 (2004). For annual survey of zoning and land use law, see 58 Mercer L. Rev. 477 (2006). For annual survey on administrative law, see 70 Mercer L. Rev. 1 (2018). For article, "Integrated Water Resources Management and Effective Intergovernmental Cooperation on Watershed Issues," see 70 Mercer L. Rev. 399 (2019).

For comment, "Trading Water: Using Tradable Permits to Promote Conservation and Efficient Allocation of an Increasingly Scarce Resource," see 59 Emory L.J. 1001 (2010).

JUDICIAL DECISIONS

Punitive damages. — Punitive damages are, as a general rule, improper when a defendant has complied with environmental and safety regulations. Accordingly, the award of punitive damages against a quarry operator who had adhered to the applicable laws was not supported by the evidence and warranted reversal. Stone Man, Inc. v. Green, 263 Ga. 470, 435 S.E.2d 205 (1993).

Violations of the Georgia Water Quality Control Act, O.C.G.A. § 12-5-20 et seq., were found when a city was dumping millions of gallons of inadequately treated sewage into the tributaries of the Chattahoochee River. The presence of other sources of fecal coliform pollution does not create a genuine issue of fact as to whether the facilities were causing violations of Georgia Water Quality Standards with respect to the receiving streams below the facilities. Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 986 F. Supp. 1406 (N.D. Ga. 1997).

Exclusion of evidence relevant to violations. — Trial court did not err in denying the defendant's motion in limine to exclude evidence relating to the defendant's violations of the Georgia Water Quality Control Act, O.C.G.A. § 12-5-20 et seq., and the Sedimentation Control Act, O.C.G.A. §§ 12-7-2 and 12-7-6(a), because the evidence was relevant to the plaintiffs' negligence per se claims. Pulte Home Corp. v. Simerly, 322 Ga. App. 699, 746 S.E.2d 173 (2013).

Interpretation of narrative standard rule as to discharges. — Georgia Department of Natural Resources Environmental Protection Division's (EPD's) interpretation of the narrative standard was entitled to deference as it was proper for the EPD to interpret the narrative standard as not intended to convert the designated use of a water body to a more protected use as the plain language of the narrative standard does not specify the degree of interference with legitimate water uses that would constitute a violation of the rule. Altamaha Riverkeeper, Inc. v. Rayonier Performance Fibers, LLC, 346 Ga. App. 269, 816 S.E.2d 125 (2018), cert. denied, No. S18C1474, 2019 Ga. LEXIS 554 (Ga. 2019).

Cited in Franklin County v. Fieldale Farms Corp., 270 Ga. 272, 507 S.E.2d 460 (1998).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 8C Am. Jur. Pleading and Practice Forms, Drains and Drainage Districts, §§ 3, 15. 24B Am. Jur. Pleading and Practice Forms, Waters, § 126.

ALR. — Actions brought under Federal Water Pollution Control Act Amendments of 1972 (Clean Water Act) (33 USCA § 1251 et seq.) — Supreme Court cases, 163 A.L.R. Fed. 531.

12-5-21. Declaration of policy; legislative intent.

(a) The people of the State of Georgia are dependent upon the rivers, streams, lakes, and subsurface waters of the state for public and private water supply and for agricultural, industrial, and recreational uses. It is therefore declared to be the policy of the State of Georgia that the water resources of the state shall be utilized prudently for the maximum benefit of the people, in order to restore and maintain a reasonable degree of purity in the waters of the state and an adequate supply of such waters, and to require where necessary reasonable usage of the waters of the state and reasonable treatment of sewage, industrial wastes, and other wastes prior to their discharge into such waters. To achieve this end, the government of the state shall assume responsibil-

ity for the quality and quantity of such water resources and the establishment and maintenance of a water quality and water quantity control program adequate for present needs and designed to care for the future needs of the state, provided that nothing contained in this article shall be construed to waive the immunity of the state for any purpose.

(b) The achievement of the purposes described in subsection (a) of this Code section requires that the Environmental Protection Division of the Department of Natural Resources be charged with the duty described in that subsection, and that it have the authority to regulate the withdrawal, diversion, or impoundment of the surface waters of the state, and to require the use of reasonable methods after having considered the technical means available for the reduction of pollution and economic factors involved to prevent and control the pollution of the waters of the state.

(c) Further, it is the intent of this article to establish within the executive branch of the government administrative facilities and procedures for determining improper usage of the surface waters of the state and pollution of the waters of the state, and to confer discretionary administrative authority upon the Environmental Protection Division to take these and related circumstances into consideration in its decisions and actions in determining, under the conditions and specific cases, those procedures which will best protect the public interest.

History. — Ga. L. 1957, p. 629, § 2; Ga. L. 1964, p. 416, § 2; Ga. L. 1977, p. 368, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, the hyphen in "subsurface" was deleted in the first sentence of subsection (a).

Law reviews. — For article examining approach to water pollution control established by the Georgia Water Quality Control Act and other regulations in light of alternative approaches, see 23 Mercer L. Rev. 603 (1972).

For note, "Regulation of Artificial Lakes and Recreational Subdivisions in Georgia," recommending methods for future regulation, see 8 Ga. St. B.J. 580 (1972).

JUDICIAL DECISIONS

Wholesale water quality degradation was held justifiable to provide necessary social or economic development, and a permit to allow the county to discharge 40 million gallons of treated wastewater into a lake on a daily basis did not require the highest and best level of treatment practicable under existing technology because: (1) the projected population growth in the county would require additional wastewater capacity by the year 2005, and continued growth would require the level of capacity provided by the permit sometime between 2010 and 2015; (2) sufficient land was not available for land application of wastewater; and (3) there was a need to return water to the water system from which the county draws the county's water supply, and the cycling of treated wastewater taken from the Chattahoochee River system and returned to that system would aid negotiations concerning an interstate compact regarding these waters. Hughey v. Gwinnett County, 278 Ga. 740, 609 S.E.2d 324 (2004).

Interpretation of narrative standards as to discharges. — Georgia De-

partment of Natural Resources Environmental Protection Division's (EPD's) interpretation of the narrative standard was entitled to deference as it was proper for the EPD to interpret the narrative standard as not intended to convert the designated use of a water body to a more protected use as the plain language of the narrative standard does not specify the degree of interference with legitimate water uses that would constitute a violation of the rule. Altamaha Riverkeeper, Inc. v. Rayonier Performance Fibers, LLC, 346 Ga. App. 269, 816 S.E.2d 125 (2018), cert. denied, No. S18C1474, 2019 Ga. LEXIS 554 (Ga. 2019).

Cited in Franklin County v. Fieldale Farms Corp., 270 Ga. 272, 507 S.E.2d 460 (1998).

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 3, 4, 5.

C.J.S. — 39A C.J.S., Health and Environment, §§ 93, 94, 97, 123, 126, 132, 135, 139, 162.

ALR. — Constitutionality and construction of statutes and ordinances for protection of municipal water supply, 72 A.L.R. 673.

12-5-22. Definitions.

As used in this article, the term:

(1) "Director" means the director of the Environmental Protection Division of the Department of Natural Resources.

(2) "Division" means the Environmental Protection Division of the Department of Natural Resources.

(3) "Effluent limitation" means any restriction or prohibition established under this article on quantities, rates, or concentrations, or a combination thereof, of chemical, physical, biological, or other constituents which are discharged from point sources into the water of the state, including, but not limited to, schedules of compliance.

(4) "Industrial wastes" means any liquid, solid, or gaseous substance, or combination thereof, resulting from a process of industry, manufacture, or business or from the development of any natural resources.

(5) "Nonpoint source" means any source which discharges pollutants into the waters of the state other than a point source.

(6) "Other wastes" means liquid, gaseous, or solid substances, except industrial wastes and sewage, which may cause or tend to cause pollution of any waters of the state.

(7) "Person" means any individual, corporation, partnership, or other unincorporated association. This term may extend and be applied to bodies politic and corporate.

(8) "Point source" means any discernible, confined, or discrete conveyance, including, but not limited to, any pipe, ditch, channel,

tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are or may be discharged.

(9) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, industrial wastes, municipal waste, and agricultural waste discharged into the waters of the state. It does not mean (A) sewage from vessels or (B) water, gas, or other material which is injected into a well to facilitate production of oil or gas, or water derived in association with oil or gas production and disposed of in a well, if the well, used either to facilitate production or for disposal purposes, is approved by the appropriate authorities of this state, and if such authorities determine that such injection or disposal will not result in degradation of ground-water or surface-water resources.

(10) "Pollution" means the manmade or man-induced alteration of the chemical, physical, biological, and radiological integrity of water.

(11) "Sewage" means the water carried waste products or discharges from human beings or from the rendering of animal products, or chemicals or other wastes from residences, public or private buildings, or industrial establishments, together with such ground, surface, or storm water as may be present.

(12) "Sewage system" means sewage treatment works, pipelines or conduits, pumping stations, and force mains, and all other constructions, devices, and appliances appurtenant thereto, used for conducting sewage or industrial wastes or other wastes to the point of ultimate disposal.

(13) "Waters" or "waters of the state" means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and all other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the state which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation.

History. — Ga. L. 1957, p. 629, § 3; Ga. L. 1964, p. 416, § 3; Ga. L. 1974, p. 599, §§ 1-5; Ga. L. 1982, p. 3, § 12.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, a comma was inserted following "partnership" in the first sentence of paragraph (7), former designations (1) and (2) were redesignated as present designations (A) and (B) in paragraph (9), and a hyphen was deleted from "water carried" in paragraph (11).

Law reviews. — For note, "Regulation of Artificial Lakes and Recreational Subdivisions in Georgia," recommending methods for future regulation, see 8 Ga. St. B.J. 580 (1972).

JUDICIAL DECISIONS

Cited in Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 986 F. Supp. 1406 (N.D. Ga. 1997); Coastal Marshlands Prot. Comm. v. Ctr. for a Sustainable Coast, 286 Ga. App. 518, 649 S.E.2d 619 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Control of pollution practices authorized. — State Water Quality Control Board (now Department of Natural Resources) has the authority to control the pollution practices of corporations who have been granted dredging permits or leases by the state. 1969 Op. Att'y Gen. No. 69-342.

Treatment and disposition of sewage in the ground by means of a sprinkling system, and not in the waters of the state, is, nevertheless, subject to the provisions of Ga. L. 1964, p. 416 (see O.C.G.A. § 12-5-20 et seq.); it is particularly subject to Ga. L. 1964, p. 416, §§ 3, 5, 10, and 24 (see O.C.G.A. §§ 12-5-22, 12-5-23, and 12-5-29), although control is not necessarily limited to these sections. 1972 Op. Att'y Gen. No. U72-13.

Second exclusion of paragraph (9) of this section, pertaining to use of oil and gas wells, is legally inapplicable in this state. 1980 Op. Att'y Gen. No. U80-24 (see O.C.G.A. § 12-5-22).

RESEARCH REFERENCES

Am. Jur. Pleading and Practice Forms. — 24B Am. Jur. Pleading and Practice Forms, Waters, § 3.

ALR. — What are "navigable waters" subject to Federal Water Pollution Control Act (33 USCA § 1251 et seq.), 160 A.L.R. Fed. 585.

12-5-23. Powers and duties of board and director as to control of water pollution and surface-water use generally.

(a) In the performance of its duties, the board shall have and may exercise the power to:

(1) Adopt, promulgate, modify, amend, and repeal rules and regulations to implement and enforce the provisions of this article as the board may deem necessary to provide for the control and management of water pollution and surface water use to protect the environment and the health of humans. Such rules and regulations may be applicable to this state as a whole, may vary from area to area, or may vary according to the characteristics of the water pollutants, as may be appropriate, to facilitate the accomplishment of the provisions, purposes, and policies of this article. The rules and regulations may include, but shall not be limited to, the following:

(A) Prescribing the procedure to be followed in applying for permits and requiring the submission of such plans, specifications, verifications, and other pertinent information deemed relevant in connection with the issuance of such permits;

(B) Establishing or revising standards of water purity for any of the waters of the state, specifying the maximum degree of pollution

permissible in accordance with the public interest in water supply; the conservation of fish, game, and aquatic life; and agricultural, industrial, and recreational uses;

(C) Governing water use classifications and water quality standards;

(D) Governing any marine toilet, marine sanitation device, or other disposal unit located on or within a boat operated on waters of the state;

(E) Establishing procedures for dealing with emergency situations and spills which endanger the waters of the state;

(F) Providing minimum standards for treatment of discharges; providing uniform procedures and practices to be followed relating to the application for issuance, modification, revocation and reissuance, and termination of permits for the discharge of any pollutant into the waters of the state;

(G) Providing for permissible limits of surface water usage for both consumptive and nonconsumptive purposes and providing permits to withdraw, divert, or impound surface waters;

(H) Providing minimum standards for waste-water pretreatment required and the uniform procedures and practices to be followed relating to the application for and the issuance or revocation of pretreatment permits for the discharge of any pollutant into a publicly owned treatment works and then into the waters of the state, and providing requirements for approval and implementation of publicly owned treatment works pretreatment programs and for administration of pretreatment programs;

(I) Providing for uniform procedures and practices to be followed for the determination of categorization of industrial users and requests for variances for fundamentally different factors;

(J) Providing minimum standards of pollutant treatment required and uniform procedures and practices to be followed relating to the application for and the issuance, modification, amendment, or revocation of permits for the discharge of pollutants into land disposal or land treatment systems and then into the waters of the state;

(K) Establishing classifications for waste-water treatment plants;

(L) Providing uniform practices and procedures to be followed relating to the application for and the issuance, modification, amendment, or revocation of permits for the discharge of pollutants into underground injection wells;

(M) Providing for the administration and operation of the State Revolving Loan Fund;

(N) Providing standards for treatment of discharges; providing uniform procedures and practices to be followed relating to the application for issuance, modification, revocation and reissuance, and termination of general permits for the discharge of any pollutant to the waters of the state;

(O) Providing for the uniform procedures and practices to be followed relating to the application for issuance, modification, revocation and reissuance, and termination of permits for the discharge of any storm water into the waters of the state;

(P) Establishing requirements for the beneficial use of sewage sludge through land application, including pollutant limits, pathogen and vector attraction reduction requirements, operational standards, management practices, monitoring, recordkeeping, reporting, and permitting requirements;

(Q) Providing for rules and regulations for land disposal;

(R) Providing for matters necessary to carry out the purposes and requirements of this article and relating to the state's participation in the National Pollutant Discharge Elimination System established under the federal Water Pollution Control Act; and

(S) Establishing requirements for units of local government which have waste-water discharge permits that allow a discharge of at least one million gallons per day to submit to the director for approval watershed assessments and watershed protection plans for areas within their political boundaries and for implementation of such plans;

(2) Within one year from April 1, 1996, the board shall by rule establish water quality standards for turbidity applicable to all waters of the state, taking into account the recommendations of the academic panel established under the Interim Report of the Senate Storm-water Study Committee created by Senate Resolution 252 (1993) and interested parties;

(3) Take all necessary steps to ensure the effective enforcement of this article;

(4) By July 1, 2002, the board shall promulgate rules and regulations which:

(A) Establish acceptable sampling methods and analytical standards for water quality samples collected and reported by any person to the division for its use in listing or delisting impaired waters pursuant to the state's responsibilities under Sections

303(d) and 305(b) of the federal Water Pollution Control Act, 33 U.S.C. Sections 1313(d) and 1315(b), respectively, as now or hereafter amended; and

(B) Establish acceptable sampling methods and analytical standards for measuring salinity in coastal waters and defining the zones where salt, fresh, and brackish waters mix; and

(5)(A) By December 31, 2003, the board shall promulgate rules and regulations which establish a fee system designed to offset the costs of the state-wide implementation of the National Pollution Discharge Elimination System general permit or permits for storm-water runoff from construction activities as is now in effect or as may be amended or reissued in the future pursuant to the state's authority to implement the same through federal delegation under the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251, et seq., and subsection (f) of Code Section 12-5-30.

(B) Fees established by the board under this paragraph shall be no less than that which is required to properly administer Chapter 7 of this title, provided that such fees shall not exceed $80.00 per acre of land-disturbing activity as defined in Code Section 12-7-3.

(b) In the performance of his or her duties, the director may:

(1) Conduct or cooperate in research for the purpose of developing economical and practicable methods of preventing and controlling pollution;

(2) Cooperate with agencies of the federal government and with other agencies of the state and political subdivisions thereof;

(3) Enter into agreements and compacts with other states, and with the United States, relative to the prevention and control of pollution in any state waters and on water quality matters, in accordance with the Constitution and statutes of Georgia;

(4) Receive, accept, hold, and use on behalf of the state, and for purposes provided for in this article, gifts, grants, donations, devises, and bequests of real, personal, and mixed property of every kind and description; and

(5) At the discretion of the director, give instruction and training to waste-water treatment plant operators and waste-water laboratory analysts; provide technical assistance for such instruction and training by others; collect fees for such training and assistance in accordance with Code Section 45-12-92; purchase the services of any person to render such instruction and training; and make available to any such person suitable space and facilities for the rendering of such

instruction and training. The division may collect from the participants in any such instructional or training program a pro rata share of any actual out-of-pocket expenses incurred by the division in producing such program including, without limitation, the rental of nonagency facilities and the payment of nonagency instructors.

(c) In the performance of his or her duties, the director shall:

(1) Exercise general supervision over the administration and enforcement of this article and all rules, regulations, and orders promulgated hereunder;

(2) Act in the interest of the people of the state to restore and maintain a reasonable degree of purity in the waters of the state;

(3) Encourage voluntary cooperation by all persons in the state in restoring and maintaining a reasonable degree of purity in the waters of the state;

(4) Survey the waters of the state to determine the extent, character, and effects of existing conditions of pollution;

(5) Prepare and develop a general comprehensive plan for the prevention of any further pollution and reduction of existing pollution after a thorough study of existing practices and available research;

(6) Administer and enforce the laws of the state relating to the prevention and control of pollution;

(7) Hold hearings to determine whether or not an alleged pollution is contrary to the public interest;

(8) Adopt rules and procedures for the conduct of meetings and hearings. In all hearings relative to violations, or for other procedures under this article, the rules of evidence shall be followed;

(9) Establish or revise standards of water purity for any of the waters of this state, which specify the maximum degree of pollution permissible in accordance with the public interest in water supply; the conservation of fish, game, and aquatic life; and agricultural, industrial, and recreational uses. Prior to establishing or revising the standards of water purity, the division shall consider the technical means available for the reduction of pollution and the economic factors involved;

(10) Require any marine toilet or other disposal unit located on or within any boat operated on waters of this state to have securely affixed to the interior discharge toilet or unit a suitable treatment device in operating condition, constructed and fastened in accordance with regulations of the division, or some other treatment or facility or method authorized by regulation of the division. All sewage passing

into or through the marine toilet or units shall pass solely through such device. All boats located upon the waters of this state are subject to inspection by the division or its duly authorized agents at any time for the purpose of determining compliance with this paragraph, provided that this paragraph does not apply to ocean-going vessels of 20 tons displacement or more;

(11) Make investigations and inspections to ensure compliance with this article, the rules and regulations issued pursuant hereto, and any orders that the division may adopt or issue;

(12) Issue an order or orders directing any particular person or persons to secure within the time specified therein such operating results as are reasonable and practicable of attainment toward the control, abatement, and prevention of pollution of the waters of the state and the preservation of the necessary quality for the reasonable use thereof;

(13) Establish or revise through rules and regulations of the Board of Natural Resources or permit conditions, or both, effluent limitations based upon an assessment of technology and processes unrelated to the quality of the receiving waters of this state;

(14) Establish or revise through rules and regulations of the Board of Natural Resources or permit conditions, or both, permissible limits of surface-water usage for both consumptive and nonconsumptive purposes;

(15) Perform any and all acts and exercise all incidental powers necessary to carry out the purposes and requirements of this article and of the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251, et seq., relating to this state's participation in the National Pollutant Discharge Elimination System established under that act and shall administer the fee program established by the board pursuant to paragraph (5) of subsection (a) of this Code section;

(16) Establish the standards for water plans prepared by the Metropolitan North Georgia Planning District and certify such plans as consistent or inconsistent with such standards. Such standards shall include but shall not be limited to the following objectives: maintaining water quality in all streams and public lakes that meet state water quality standards; improving water quality in all streams and public lakes that do not meet state water quality standards; and maintaining appropriate levels of stream flow downstream of new or expanding surface-water withdrawal facilities; and

(17) Provide an annual accounting for all transfers of water exceeding an annualized one million gallons per day from one major

river drainage basin or subsurface supply aquifer to another. To the extent possible, the director shall use information derived from permits issued by the director pursuant to Code Sections 12-5-30 and 12-5-31, together with any supporting documentation, to fulfill the requirements of this paragraph.

(d) If the director has reasonable cause to believe that an applicant for a permit under this article to discharge pollutants who has less than three years of compliance history in this state is not in compliance with laws or permits, then, the director is authorized to require the applicant to submit, at the time of application, a compliance history disclosure form prepared by the department. The form shall include a statement to the effect that neither the applicant nor, in the case of a corporation or partnership, an officer, director, manager, partner, or shareholder of 5 percent or more of the stock or financial interest in such corporation or partnership has been convicted of a felony or been adjudicated in contempt of court as described in this subsection. Such form shall also require a listing of the names, social security numbers, taxpayer identification numbers, and business addresses of the applicant or, in the case of a corporation or partnership, its officers, directors, managers, partners, or shareholders of 5 percent or more of the stock or financial interest in such corporation or partnership, along with a description of any offenses identified by this subsection. The director may refuse to issue permits under this article for the discharge of pollutants to persons with less than three years of compliance history in this state if the director finds by clear and convincing evidence that the applicant for such a permit or, in the case of a corporation or partnership, an officer, director, manager, partner, or shareholder of 5 percent or more of the stock or financial interest in such corporation or partnership:

(1) Has intentionally misrepresented or concealed any material fact in the application submitted to the director;

(2) Has obtained or attempted to obtain another permit from the director by misrepresentation or concealment;

(3) Has pleaded guilty or been convicted by final judgment, and all appeals have been exhausted, in this state or any other state or federal court of any felony involving moral turpitude within the three years preceding the date of the application for such a permit;

(4) Has pleaded guilty or been convicted by final judgment and all appeals have been exhausted to a third or subsequent material violation of any federal environmental law or any environmental law of this state or of any other state that presented a substantial endangerment to human health or the environment within three years preceding the date of the application for such a permit;

(5) Has been adjudicated in contempt of any court order enforcing any federal environmental laws or any environmental laws of this state or of any other state within three years preceding the date of the application for such a permit;

(6) Was the holder of any permit required for the discharge of pollutants, as defined by this article, under the laws of this state, any other state, or the Federal Water Pollution Control Act Amendments of 1972, as amended, which permit has been revoked for reasons of noncompliance within three years preceding the date of the application for a permit under this article; or

(7) Was denied for reasons of noncompliance the issuance of any permit required for the discharge of pollutants, as defined by this article, under the laws of this state, any other state, or the Federal Water Pollution Control Act Amendments of 1972, as amended, within three years preceding the date of the application for a permit under this article.

(e) The director is authorized to refuse to issue permits under this article for the discharge of pollutants to persons with three or more years of compliance history in this state if the director finds by clear and convincing evidence that the applicant for such a permit or, in the case of a corporation or partnership, an officer, director, manager, partner, or shareholder of 5 percent or more of the stock or financial interest in such corporation or partnership:

(1) Has intentionally misrepresented or concealed any material fact in the application submitted to the director;

(2) Has obtained or attempted to obtain another permit from the director by misrepresentation or concealment;

(3) Has pleaded guilty or been convicted by final judgment, and all appeals have been exhausted, in this state of any felony involving moral turpitude within three years preceding the date of the application for such a permit;

(4) Has pleaded guilty or been convicted by final judgment, and all appeals have been exhausted, to a third or subsequent material violation of any environmental law of this state that presented a substantial endangerment to human health or the environment within three years preceding the date of the application for such a permit;

(5) Has been adjudicated in contempt of any court order enforcing any environmental laws of this state within the three years preceding the date of the application for such a permit;

(6) Was the holder of any permit required for the discharge of pollutants under this article and such permit has been revoked for

reasons of noncompliance within three years preceding the date of application for a permit under this article; or

(7) Was denied for reasons of noncompliance the issuance of any permit required for the discharge of pollutants, as defined by this article, under the laws of this state within three years preceding the date of the application for a permit under this article.

(f) The director shall not refuse to issue a permit based upon the information required under subsections (d) and (e) of this Code section if the director finds that affirmative actions taken by the applicant mitigate the impact of any such material misrepresentations, concealment, convictions, or adjudication. Such affirmative actions to be considered by the director as mitigating factors shall include, but not be limited to, information or documentation related to the following:

(1) Implementation by the applicant of formal policies, training programs, or other management controls to minimize the occurrence of future unlawful activities;

(2) Installation by the applicant of environmental auditing or compliance programs; or

(3) The discharge from employment of any individual who was convicted of a crime as described in subsections (d) and (e) of this Code section.

(g) The director shall make separately stated findings of fact to support a written determination made under subsections (d), (e), and (f) of this Code section. The findings of ultimate fact contained in such written determination must be accompanied by a concise statement of the underlying basic facts of record to support the findings.

History. — Ga. L. 1957, p. 629, § 4; Ga. L. 1964, p. 416, §§ 5, 24; Ga. L. 1966, p. 316, § 1; Ga. L. 1972, p. 1015, §§ 1517, 1534; Ga. L. 1972, p. 1266, § 1; Ga. L. 1974, p. 599, §§ 6, 7; Ga. L. 1977, p. 368, § 2; Ga. L. 1993, p. 305, § 1; Ga. L. 1996, p. 255, § 1; Ga. L. 1998, p. 1644, § 1; Ga. L. 2001, p. 115, §§ 2, 3; Ga. L. 2001, p. 892, §§ 2, 3; Ga. L. 2003, p. 224, §§ 2, 3.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1994, "National Pollutant Discharge Elimination System" was substituted for "national pollutant discharge elimination system" in the middle of paragraph (b)(15) (now paragraph (c)(15)).

Pursuant to Code Section 28-9-5, in 1996, in subsection (a), "article" was substituted for "part" twice in paragraph (a)(1) and once in paragraph (a)(3); a comma was deleted following "revocation" in subparagraph (a)(1)(N); "storm water" was substituted for "stormwater" in subparagraph (a)(1)(O); "April 1, 1996" was substituted for "the effective date of this Code section" in paragraph (a)(2); and "ensure" was substituted for "insure" in paragraph (a)(3).

Pursuant to Code Section 28-9-5, in 2001, in subsection (c), paragraph (c)(16) as enacted by Ga. L. 2001, p. 892, § 3, was redesignated as paragraph (c)(17), a semicolon was substituted for the period at the end of paragraph (c)(15) and "; and" was added at the end of paragraph (c)(16).

U.S. Code. — The Federal Water Pollution Control Act, referred to in this Code section, is codified as 33 U.S.C. § 1251 et seq. The National Pollutant Discharge Elimination System, referred to in this

Code section, is established by 33 U.S.C. § 1342.

Administrative rules and regulations. — Water quality control, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-6.

Law reviews. — For article criticizing impressionistic approach to water use classification established by permit system, see 23 Mercer L. Rev. 603 (1972).

For note, "Regulation of Artificial Lakes and Recreational Subdivisions in Georgia," recommending methods for future regulation, see 8 Ga. St. B.J. 580 (1972). For note on the 2001 amendment to O.C.G.A. § 12-5-23, see 18 Ga. St. U.L. Rev. 13 (2001). For note on the 2003 amendment to this Code section, see 20 Ga. St. U.L. Rev. 244 (2003).

JUDICIAL DECISIONS

Interpretation of narrative standard rule as to discharges. — Georgia Department of Natural Resources Environmental Protection Division's (EPD's) interpretation of the narrative standard was entitled to deference as it was proper for the EPD to interpret the narrative standard as not intended to convert the designated use of a water body to a more protected use as the plain language of the narrative standard does not specify the degree of interference with legitimate water uses that would constitute a violation of the rule. Altamaha Riverkeeper, Inc. v. Rayonier Performance Fibers, LLC, 346 Ga. App. 269, 816 S.E.2d 125 (2018), cert. denied, No. S18C1474, 2019 Ga. LEXIS 554 (Ga. 2019).

Antidegradation rule did not apply to nonpoint sources. — Water quality standard in Ga. Comp. R. & Regs. 391-3-6-.03(2)(b)(ii) did not require antidegradation analysis for nonpoint sources of pollution and, therefore, did not apply to a city's permit for a land application system, which involved spraying wastewater treated to remove solids and break down organic waste onto a tract of land. City of Guyton v. Barrow, 305 Ga. 799, 828 S.E.2d 366 (2019).

OPINIONS OF THE ATTORNEY GENERAL

Requirement of liability waivers restricts state's police power. — Requiring the division personnel to sign waivers of liability for injuries to person or property sustained while on premises for the purpose of carrying out their duties of inspection constitutes an unreasonable restriction on the state's police power. 1976 Op. Att'y Gen. No. 76-121.

Waivers of liability signed by division personnel are not binding because of a lack of valid consideration. 1976 Op. Att'y Gen. No. 76-121.

Sewage treatment and disposal subject to article. — Treatment and disposition of sewage in the ground by means of a sprinkling system, and not in the waters of the state, is subject to the provisions of Ga. L. 1964, p. 416 (see O.C.G.A. T. 12, C. 5, A. 2); it is particularly subject to the provisions of Ga. L. 1964, p. 416, §§ 3, 5, 10, and 24 (see O.C.G.A. §§ 12-5-22, 12-5-23, and 12-5-29), although control is not necessarily limited to these sections. 1972 Op. Att'y Gen. No. U72-13.

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 3, 4, 5.

61C Am. Jur. 2d, Pollution Control, § 675 et seq.

C.J.S. — 39A C.J.S., Health and Environment, §§ 120, 123, 126 et seq., 132, 135, 139, 162.

ALR. — Validity of prohibition or regulation of bathing, swimming, boating, fishing, or the like, to protect public water supply, 56 A.L.R.2d 790.

12-5-23.1. Water quality standards for lakes; monitoring; studies and reports; development, approval, and publication of water quality standards.

(a) As used in this Code section, the word "lake" means any publicly owned lake or reservoir located wholly or partially within this state which has a normal pool level surface average of 1,000 or more acres.

(b) The director shall establish water quality standards for each lake which require the lake to be safe and suitable for fishing and swimming and for use as a public water supply, unless a use attainability analysis conducted within requirements of this article demonstrates such standards are unattainable.

(c) For purposes of this subsection, a multiple parameter approach for lake water quality standards shall be adopted. Numerical criteria including, but not limited to, those listed below shall be adopted for each lake:

(1) pH (maximum and minimum);

(2) Fecal coliform bacteria;

(3) Chlorophyll a for designated areas determined as necessary to protect a specific use;

(4) Total nitrogen;

(5) Total phosphorus loading for the lake in pounds per acre feet per year; and

(6) Dissolved oxygen in the epilimnion during periods of thermal stratification.

(d) The standards for water quality of each lake shall take into account the geographic location of the lake within the state and the location of the lake within its watershed as well as horizontal and vertical variations of hydrological conditions within each lake. The director shall also establish nutrient limits for each of the lakes' major tributary streams, including streams with permitted discharges. Such limits shall be consistent with the requirements of subsection (b) of this Code section and shall be established on the basis of accepted limnological techniques and as necessary in accordance with the legal and technical principles for total maximum daily loads. The nutrient limits for tributary streams shall be established at the same time that the lake water quality standards are established.

(e) After water quality standards are established for each lake and its tributary streams, the division shall monitor each lake on a regular basis to ensure that the lake reaches and maintains such standards.

(f) The data from such monitoring shall be public information. The director shall have the authority to close a swimming area if data from samplings indicates, in the opinion of the director, that such action is necessary for public safety.

(g) Provided funds are available from any source, there shall be a comprehensive study of each lake prior to adopting lake water quality standards for the lake. Study components and procedures will be established after consultation with local officials and affected organizations. The comprehensive study for Lake Sidney Lanier, Lake Walter F. George, and West Point Lake shall be initiated during 1990. At least three comprehensive studies for remaining lakes shall be initiated in each subsequent year. The duration of each study shall not exceed two years. A scientific report on each comprehensive study shall be published within 180 days after the completion of the study. Draft recommendations for numerical criteria for each of the water quality parameters will be simultaneously published, taking into account the scientific findings. A public notice of the draft recommendations, including a copy of the recommendations, will be made available to the public. Public notice in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," shall be provided for such recommendations. The notice shall be made available at least 30 days prior to board action in a regional public library or county courthouse. The recommendation will be provided to persons submitting a written request. A comment period of not less than 45 days nor more than 60 days will be provided.

(h) The director or the director's designee shall conduct a public hearing within the above-referenced comment period in the vicinity of the lake before the final adoption of lake water quality standards for the lake. The director shall announce the date, time, place, and purpose of the public hearing at least 30 days prior to the hearing. A ten-day period subsequent to the hearing will be allowed for additional public comment.

(i) The Department of Natural Resources will evaluate the comments received during the comment period and during the public hearing and will then develop recommended final standards and criteria for submission to the Board of Natural Resources for consideration and approval.

(j) The final recommendations of the director for lake water quality standards shall be made to the Board of Natural Resources within 60 days after the close of the comment period subsequent to the public hearing provided for in subsection (h) of this Code section. The standards, with such modifications as the board may determine, shall be considered for adoption by the Board of Natural Resources within 60 days after receiving the recommendations from the director. Such

standards shall be published by the department and made available to all interested local government officials and citizens of the area served by the lake.

(k) At the discretion of the director, comment periods and deadlines set forth above may be extended, but in no circumstance shall more than one year elapse between the completion of the lake study and the adoption of the final recommendations.

History. — Code 1981, § 12-5-23.1, enacted by Ga. L. 1990, p. 1207, § 1; Ga. L. 1996, p. 6, § 12.

Law reviews. — For note on 1990 enactment of this Code section, see 7 Ga. St. U.L. Rev. 221 (1990).

12-5-23.2. Waste-water discharge limitations; schedule of construction milestones; penalties.

(a) Notwithstanding the provisions of Code Section 12-5-23 or any rule, regulation, or order adopted or issued pursuant to this article, no person who has been issued a National Pollutant Discharge Elimination System permit which allows the discharge of 1,000,000 gallons or more per day from a water pollution control plant operated by such person which discharges waste water into the Chattahoochee River between Buford Dam and West Point Reservoir shall discharge waste water from such person's water pollution control plants which contains more than 0.75 milligrams of phosphorus per liter of waste water on a monthly average basis or which fails to comply with any stricter standard adopted pursuant to Code Section 12-5-23.

(b) Notwithstanding the provisions of subsection (a) of this Code section, any person who has been issued a National Pollutant Discharge Elimination System permit and who has entered into a finalized consent order shall conform to the schedule adopted in such order as such order appeared on April 25, 1996. Except as provided in subsection (c) of this Code section, compliance with the discharge limitation provided by this Code section shall not be extended beyond July 4, 1996, and the order shall require that person to make his or her best efforts to achieve compliance with the discharge limitation by December 31, 1993.

(c)(1) Notwithstanding the provisions of subsection (b) of this Code section, any person who entered into a consent order as provided in subsection (b) of this Code section but fails to complete the required phosphorus reduction improvements by July 4, 1996, shall not later than such date submit to the division a schedule stipulating annual construction milestones for the completion of all improvements required to achieve a discharge level of 0.64 milligrams of phosphorus per liter of water at each of such person's individual waste-water plants by not later than January 1, 2001; provided, however, that

such person shall not discharge waste water from such person's water pollution control plants after February 1, 1997, which exceeds 0.64 milligrams of phosphorus per liter of water.

(2) If the director approves the schedule submitted pursuant to paragraph (1) of this subsection, such person shall be bound by that schedule. If the director does not approve said schedule by August 1, 1996, the director shall not later than September 1, 1996, establish an alternative schedule with a final completion date not later than January 1, 2001, and such person shall be bound by the alternative schedule.

(3) Any monetary penalties stipulated in any consent order regarding phosphorus effluent limitations executed by the director and another person prior to April 25, 1996, shall be the only monetary penalties required to be paid by such person as long as such person is in compliance with the construction milestones in the schedule approved or established by the director in paragraph (2) of this subsection; provided, however, that if such order is declared invalid by the courts, then the penalties for noncompliance with subsection (a) or (b) of this Code section shall be as provided for in Code Sections 12-5-51 through 12-5-53.

(4) If such person fails to meet a construction milestone, he or she shall pay a penalty in the amount of $25,000.00 per day until that construction milestone is met. If a particular construction milestone is not met for six months after the date specified, the penalty shall be increased to $100,000.00 per day until that construction milestone has been met. Failure to meet a construction milestone shall not affect the date of any succeeding construction milestones.

(5) If the person fails to complete all required construction by January 1, 2001, he or she shall pay a civil penalty in the amount of $100,000.00 per day until construction is completed. After construction is completed, the suspension of the liabilities and penalties provided for in Code Sections 12-5-51 through 12-5-53 for noncompliance with the provisions of subsection (a) of this Code section shall be ended.

(6) If in any month after July 1, 1996, and before December 31, 1998, a person discharges waste water from such person's water pollution control plants containing more than 0.75 milligrams of phosphorous per liter of water on a monthly average basis; or if in any month after January 1, 1999, and before December 31, 2000, a person discharges waste water from such person's water pollution control plants containing more than 0.64 milligrams of phosphorous per liter of water on a monthly average basis; or if in any month after January 1, 2001, a person discharges waste water from any individual water

pollution control plant containing more than 0.64 milligrams of phosphorous per liter of water on a monthly average basis, such person shall not permit any additional sewer connections within such person's corporate limits until he or she has been in compliance with such provisions for three consecutive months. The provisions of this subsection shall apply without regard to the provisions of paragraphs (1) through (5) of this subsection and shall not be suspended or terminated; provided, however, that nothing in this paragraph shall prohibit additional sewer connections required for any project constructed by or in partnership with a public housing authority, as long as the additional connections for such project do not cause the total quantity of sewage generated to exceed the total quantity of sewage generated by that public housing authority's housing units in existence on January 1, 1995.

History. — Code 1981, § 12-5-23.2, enacted by Ga. L. 1991, p. 1042, § 1; Ga. L. 1996, p. 1618, § 1; Ga. L. 1998, p. 607, § 1; Ga. L. 2001, p. 4, § 12.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, "April 25, 1996" was substituted for "the date this subsection became effective" in subsection (b) and paragraph (c)(3); and "subsection" was substituted for "subsections" in paragraph (c)(3).

Law reviews. — For review of 1996 water resources legislation, see 13 Ga. St. U.L. Rev. 60 (1996).

JUDICIAL DECISIONS

Cited in Upper Chattahoochee Riverkeeper Fund, Inc. v. City of Atlanta, 953 F. Supp. 1541 (N.D. Ga. 1996).

12-5-23.3. Privatization of waste-water treatment facilities.

(a) For purposes of this Code section only, the term:

(1) "LAS permit" means Land Application System permit.

(2) "NPDES permit" means National Pollutant Discharge Elimination System permit.

(3) "Waste-water treatment facilities" means all publicly owned facilities with average monthly flow limits of 20 million gallons per day or more that have been issued NPDES permits or LAS permits.

(b) The director shall provide written notice to owners of all waste-water treatment facilities that the privatization requirements specified in subsection (c) of this Code section are in effect if the owner of such facility has violated its NPDES or LAS permit, or any interim conditions established by a federal court order, as follows:

(1) A violation of the facility's monthly effluent limitation specified in the NPDES permit or conditions of a federal court order for biochemical oxygen demand, total suspended solids, ammonia, or

phosphorus for any eight months during any continuous 12 month period starting on or after January 1, 1999;

(2) A violation of the facility's monthly effluent limitation specified in the NPDES permit or conditions of a federal court order for biochemical oxygen demand, total suspended solids, ammonia, or phosphorus by a factor of 1.4 or greater for any four months during any continuous 12 month period, starting on or after January 1, 1999; or

(3) Three major treatment facility bypasses during any continuous 12 month period starting on or after January 1, 1999. For purposes of this paragraph, the term "major treatment facility bypass" shall mean any diversion of waste water from or bypassing of waste water around the treatment facility, excluding sewer system overflows; provided, however, that this shall not include any bypass which is authorized by any NPDES or LAS permit or any bypass which is necessary to prevent loss of life, bodily injury, or severe property damage.

(c) Within 12 months of receipt of written notification from the director in accordance with subsection (b) of this Code section, the owner shall enter into a binding contract with a private contractor for the operation and maintenance of the waste-water facility as follows:

(1) The contractor shall be selected, and the contract shall be awarded, through competitive bidding, in accordance with the public procurement processes and procedures then in effect for the public owner or, at the option of the owner, through competitive bidding by the Department of Administrative Services in accordance with and as permitted by Part 2 of Article 3 of Chapter 5 of Title 50;

(2) The scope of the contract shall include the operation and maintenance of the entire facility and sewer collection system, including combined sewer overflow treatment facilities, by the selected contractor;

(3) Notwithstanding any provisions of law to the contrary, the term of the contract shall be not less than ten years nor more than 50 years; and

(4) The contract shall meet all applicable state and local laws, rules, and regulations pertinent to the awarding, drafting, enforcement, and administration of such contract and shall contain such other contractual provisions as may be reasonably necessary for the effective enforcement and administration of the contract.

History. — Code 1981, § 12-5-23.3, enacted by Ga. L. 1998, p. 1115, § 1; Ga. L. 1999, p. 81, § 12; Ga. L. 2006, p. 72, § 12/SB 465; Ga. L. 2008, p. 1015, § 5/SB 344.

Law reviews. — For review of 1998

legislation relating to conservation and natural resources, see 15 Ga. St. U.L. Rev. 29 (1998).

RESEARCH REFERENCES

Am. Jur. 2d. — 61C Am. Jur. 2d, Pollution Control, § 1888 et seq.

12-5-24. Power of director to enter into contracts and compacts regarding surface-water management.

The director is authorized to enter into contracts or compacts on behalf of the State of Georgia with the federal government, sister states, political subdivisions of this state, and public utilities of this state for purposes of proper management of the state's surface-water resources, provided that any such contract shall be subject to approval by the Board of Natural Resources; provided, further, that any such contract shall not grant to any person any right to use surface waters except to the extent such person would qualify for such use under the permitting system established pursuant to Code Section 12-5-31.

History. — Ga. L. 1977, p. 368, § 5.

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 3, 4, 5.
61C Am. Jur. 2d, Pollution Control, § 675 et seq.

C.J.S. — 39A C.J.S., Health and Environment, §§ 120, 123, 126 et seq., 135, 139, 162.

12-5-25. Investigations by division; institution of proceedings by division.

The division shall have authority to investigate any apparent violation of any provision of this article and to take any action authorized by this article which it deems necessary and may, after a public hearing has been provided, institute proceedings of mandamus or other proper legal proceedings to enforce this article.

History. — Ga. L. 1964, p. 416, § 14; Ga. L. 1971, p. 87, § 1.

JUDICIAL DECISIONS

Condemnation action. — O.C.G.A. § 12-5-25(b) merely requires that a Georgia Environmental Protection Division permit be obtained prior to construction on a system for the disposal or discharge of sewage or waste. Nothing in the language of the statute requires a permit before the filing of a condemnation pro-

ceeding. Ware v. Henry County Water & Sewerage Auth., 258 Ga. App. 778, 575 S.E.2d 654 (2002).

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 3, 4, 5.

C.J.S. — 39A C.J.S., Health and Environment, §§ 142, 146.

12-5-26. Entry on premises to investigate and inspect conditions and operating records; protection of trade secrets and confidential information.

Any duly appointed agent of the division may enter private or public property at reasonable times to inspect or investigate conditions relating to pollution and to inspect the operating records of any sewage system, waste treatment work, or sewage disposal plant, provided that no person shall be required to disclose any secret formula, process, or methods used in any manufacturing operations carried on by him or under his direction or any confidential information concerning business activities carried on by him or under his supervision.

History. — Ga. L. 1964, p. 416, § 16.

OPINIONS OF THE ATTORNEY GENERAL

Requirement of liability waivers restricts state's police power. — Requiring the division personnel to sign waivers of liability for injuries to person or property sustained while on premises for the purpose of carrying out their duties of inspection constitutes an unreasonable restriction on the state's police power. 1976 Op. Att'y Gen. No. 76-121.

Waivers of liability signed by division personnel are not binding because of a lack of valid consideration. 1976 Op. Att'y Gen. No. 76-121.

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Inspection Laws, §§ 1, 4, 9. 61B Am. Jur. 2d, Pollution Control, §§ 2 et seq.

12-5-27. Authority to require owner or operator of facility to cooperate with division.

Whenever required to carry out the objectives of this article, including but not limited to developing or assisting in the development of any effluent limitation, or other limitation, prohibition, or standard under this article, or any rule or regulation promulgated and adopted pursuant to this article; determining whether any person is in violation of any effluent limitation, or other limitation, prohibition, or standard under this article, or any rule or regulation promulgated and adopted pursu-

ant to this article; or encouraging or ensuring compliance with any effluent limitation or other prohibition or standard under this article or any rule or regulation promulgated and adopted pursuant to this article, the director may, by order, permit, or otherwise in writing, require the owner or operator of a facility of any type which results in the discharge of pollutants into the waters of the state to:

(1) Establish and maintain records;

(2) Make reports;

(3) Install, use, and maintain monitoring equipment or methods, including, where appropriate, biological monitoring methods;

(4) Sample such discharge, in accordance with such methods, at such locations, at such intervals, and in such manner as the director shall prescribe; and

(5) Provide such other information as he may reasonably require.

History. — Ga. L. 1974, p. 599, § 12.

12-5-27.1. Sale or use of cleaning agents containing phosphorus.

(a) The General Assembly seeks, through the enactment of this Code section, to set standards limiting the amount of nutrients in various cleaning agents. The General Assembly realizes that the nutrients contained in many of these products serve a valuable purpose in increasing their overall effectiveness, but the General Assembly is also aware that they overstimulate the growth of aquatic life and are causing, and will eventually lead to, an acceleration of the natural eutrophication process of our state's water resources which can result in a lower quality of life and thereby create an undesirable environment in which the citizens of the state would not want to live and do business. Limitations imposed under this Code section should, however, be made taking the following factors into consideration:

(1) The availability of safe, nonpolluting substitutes; and

(2) The differing needs of industrial, commercial, and household users of cleaning agents.

(b) As used in this Code section, the term:

(1) "Cleaning agent" means a laundry detergent, dishwashing compound, household cleaner, metal cleaner or polish, industrial cleaner, or other substance that is used or intended for use for cleaning purposes.

(2) "Nutrient" means a substance or combination of substances which, if added to waters in sufficient quantities, provides nourishment that promotes growth of aquatic vegetation in densities which:

(A) Interfere with use of the waters by humans or by any animal, fish, or plant useful to humans; or

(B) Contribute to degradation or alteration of the quality of the waters to an extent detrimental to their use by humans or by any animal, fish, or plant that is useful to humans.

(c) On or after January 1, 1991, it shall be unlawful to sell at retail or use in this state any cleaning agent containing phosphorus, except as otherwise provided in this Code section.

(d) This Code section shall not apply to cleaning agents which are used:

(1) In agricultural or dairy production;

(2) To clean commercial food or beverage processing equipment or containers;

(3) As industrial sanitizers, metal brighteners, or acid cleaners, including those containing phosphoric acid or trisodium phosphate;

(4) In industrial processes for metal, fabric, or fiber cleaning and conditioning;

(5) In hospitals, clinics, nursing homes, other health care facilities, or veterinary hospitals or clinics;

(6) By a commercial laundry or textile rental service company or any other commercial entity:

(A) To provide laundry service to hospitals, clinics, nursing homes, other health care facilities, or veterinary hospitals or clinics;

(B) To clean textile products supplied to industrial or commercial users of the products on a rental basis; or

(C) To clean professional, industrial, or commercial work uniforms;

(7) In the manufacture of health care or veterinary supplies;

(8) In any medical, biological, chemical, engineering, or other such laboratory, including those associated with any academic or research facility;

(9) As water softeners, antiscale agents, or corrosion inhibitors, where such use is in a closed system such as a boiler, air conditioner, cooling tower, or hot water heating system; or

(10) To clean hard surfaces including windows, sinks, counters, floors, ovens, food preparation surfaces, and plumbing fixtures.

(e) This Code section shall not apply to cleaning agents which:

(1) Are manufactured, stored, sold, or distributed for uses other than household laundry detergents or household or commercial dishwashing agents;

(2) Contain phosphorus in an amount not exceeding 0.5 percent by weight which is incidental to manufacturing; or

(3) Contain phosphorus in an amount not exceeding 8.7 percent by weight and which are intended for use in a commercial or household dishwashing machine.

(f) This Code section shall not apply to any natural or commercial fertilizers.

(g) Local governments shall be responsible for enforcement of the provisions of this Code section within their jurisdictions.

(h) Any person violating the provisions of this Code section shall be guilty of a misdemeanor.

History. — Code 1981, § 12-5-27.1, enacted by Ga. L. 1989, p. 319, § 1; Ga. L. 1990, p. 8, § 12; Ga. L. 1990, p. 1203, § 1.

Law reviews. — For note on 1989 enactment of this Code section, see 6 Ga. St. U.L. Rev. 160 (1989). For note on 1990 amendment of this Code section, see 7 Ga. St. U.L. Rev. 227 (1990).

12-5-28. Annual reports by division.

Annual reports shall be made and filed by the division with the Governor and members of the General Assembly.

History. — Ga. L. 1964, p. 416, § 15.

12-5-29. Sewage and waste disposal; withdrawal, diversion, or impoundment of surface waters; certificates required for vessels with marine toilets; conditions for transfer of surface water from one river basin to another.

(a) It shall be unlawful to use any waters of the state for the disposal of sewage, industrial wastes, or other wastes, or to withdraw, divert, or impound any surface waters of the state, except in such a manner as to conform to and comply with this article and all rules, regulations, orders, and permits established under this article and applicable to the waters involved.

(b) No person, without first securing from the division a permit, shall:

(1) Construct, install, or modify any system for disposal of sewage, industrial wastes, or other wastes, or any extension or addition

thereto, when the disposal of the sewage, industrial wastes, or other wastes constitutes pollution as defined in this article;

(2) Increase the volume or strength of any sewage, industrial wastes, or other wastes in excess of permissive discharges specified under any existing permit; or

(3) Construct or use any new outlet for the discharge of any sewage, industrial wastes, or other wastes into the waters of the state when such discharge constitutes pollution as defined in this article.

(c) As applied to the waters of Allatoona Lake, Lake Blackshear, Lake Blue Ridge, Clarks Hill Lake, Hartwell Lake, Lake Sidney Lanier, Lake Oconee, Lake Seminole, Lake Sinclair, Richard B. Russell Lake, Walter F. George Reservoir, and West Point Lake, except as otherwise provided in the federal Clean Water Act of 1977, P.L. 95-217, as now or hereafter amended, it shall be unlawful for any person to operate or float a vessel having a marine toilet as the term is defined in Code Section 52-7-3 unless such marine toilet only discharges into a holding tank as the term is defined in Code Section 52-7-3; and it shall further be unlawful to operate or float such a vessel, whether moored or not, unless it has a certificate for such holding tank issued by the department affixed thereto.

(d)(1) The director shall not authorize any new water pollution control discharge permit which if granted would permit water drawn from one river basin to be deposited into another river basin in the discharge of sewerage, industrial waste, treated waste water, or other wastes unless for both the basin of origin and receiving river basin unless:

(A) The director has assessed all waters in order to identify those waters for which applicable effluent limitations are not sufficiently stringent to allow such waters to meet applicable water quality standards and has established total limitations for the pollutants which cause the waters to fail to achieve such water quality standards;

(B) The director has established water quality standards for the nearest downstream lake as provided in Code Section 12-5-23.1; and

(C) All applicable provisions of this article and all rules and regulations promulgated pursuant to this article are met.

(2) All new permits issued after January 1, 2001, discharging in excess of 3 million gallons per day shall be required to meet a minimum standard of 0.30 milligrams of phosphorus per liter of waste water.

(3) The provisions of this subsection shall not apply to the reissuance of existing permits, permits for the expansion of existing facilities, permits for the withdrawal of water for agricultural use, or permits for mining activities which use water for the transportation of materials.

(e) If any treatment plant is not in compliance with permit requirements at any time between July 1, 1996, and July 1, 1997, the division shall be authorized to decrease the permitted capacity of such treatment plant in an amount up to 10 percent of the permitted capacity and may issue a new permit based upon such amount of decrease.

History. — Ga. L. 1957, p. 629, § 6; Ga. L. 1964, p. 416, § 10; Ga. L. 1977, p. 368, § 6; Ga. L. 1988, p. 1343, § 1; Ga. L. 1990, p. 1218, § 1; Ga. L. 1993, p. 459, § 1; Ga. L. 1996, p. 1618, § 2.

Cross references. — Littering waters, § 16-7-43. Discharging into waters of state substances dangerous to navigation or property, T. 52, C. 8.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, a comma was deleted following "day" in paragraph (d)(2).

Law reviews. — For article criticizing impressionistic approach to water use classification established by permit system, see 23 Mercer L. Rev. 603 (1972). For article surveying Georgia cases dealing with environment, natural resources, and land use from June 1977 through May 1978, see 30 Mercer L. Rev. 75 (1978).

For note, "Regulation of Artificial Lakes and Recreational Subdivisions in Georgia," recommending methods for future regulation, see 8 Ga. St. B.J. 580 (1972). For review of 1996 water resources legislation, see 13 Ga. St. U.L. Rev. 60 (1996).

OPINIONS OF THE ATTORNEY GENERAL

Control of pollution practices authorized. — When a local government's waste disposal system is subject to the regulations of this section, the Water Quality Control Board (now Department of Natural Resources) can prohibit the governmental unit from increasing the volume or strength of that government's wastewater discharges without having first secured a permit from the board. 1970 Op. Att'y Gen. No. U70-56 (see O.C.G.A. § 12-5-29).

Treatment and disposition of sewage in the ground by means of a sprinkling system is subject to the provisions of Ga. L. 1964, p. 416 (see O.C.G.A. § 12-5-20 et seq.); it is particularly subject to Ga. L. 1964, p. 416, §§ 3, 5, 10, and 24 (see O.C.G.A. §§ 12-5-22, 12-5-23 and 12-5-29), although control is not necessarily limited to these sections. 1972 Op. Att'y Gen. No. U72-13.

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 3, 4, 5.

C.J.S. — 39A C.J.S., Health and Environment, §§ 121, 162.

ALR. — Liability for pollution of subterranean waters, 38 A.L.R.2d 1265.

Modern status of rules governing interference with drainage of surface waters, 93 A.L.R.3d 1193.

Extinguishment by prescription of natural servitude for drainage of surface waters, 42 A.L.R.4th 462.

12-5-29.1. Combined sewer overflow; plans for elimination or treatment of sewage overflow; penalties.

(a) As used in this Code section, the term:

(1) "Combined sewer overflow" or "CSO" means a sewage system so designed or constructed as to allow surface-water runoff to enter the conduit carrying sewage, industrial waste, or other waste and, when such conduit exceeds its maximum capacity, allows a discharge which bypasses the normal treatment works integral to such sewage system and allows untreated or incompletely treated sewage, industrial waste, or other waste to flow, directly or indirectly, into the waters of this state.

(2) "Sewage overflow" means that untreated sewage, industrial waste, or other waste which is discharged when a CSO exceeds its maximum capacity so that such material bypasses the normal treatment works integral to such sewage system and flows untreated or incompletely treated into the waters of this state.

(b) Any person who owns or operates a CSO in this state on July 1, 1990, shall devise and submit to the director for approval a detailed plan to eliminate sewage overflow or to treat or control sewage overflow so that discharges flowing from such CSO shall not cause a violation of water quality standards in the receiving stream or permit limits for publicly owned waste-water treatment facilities with combined sewer overflows established by the division or by the federal Environmental Protection Agency under the provisions of the Federal Water Pollution Control Act amendments of 1972, 33 U.S.C. Section 1251 and following, as amended by the Clean Water Act of 1977 (P.L. 95-217). Compliance with such standards and permit limits shall be required for all CSO discharges under design conditions, including without limitation storm event frequency, intensity, and duration and treatment technology, as determined by the director based on a site-specific determination of water quality impacts resulting from said discharges.

(c)(1) The plan required by subsection (b) of this Code section shall include, as a minimum, provision for realistic implementation of means to eliminate sewage overflow or effectuate treatment of overflow to meet or exceed such water quality standards in accordance with the following schedules:

(A) Any person who submitted a plan pursuant to subsection (b) of this Code section prior to August 1, 1990, shall implement such plan so that construction is substantially complete and operational to meet the water quality standards in the receiving stream or permit limits as defined by the director not later than December 31, 1993; and

(B) Any person who did not submit a plan pursuant to subsection (b) of this Code section prior to August 1, 1990, shall comply with the following schedule:

(i) The director shall define the design conditions of subsection (b) of this Code section by December 31, 1991, using information provided by CSO owners and information collected by the director;

(ii) The CSO owners shall prepare approvable plans and specifications by October 1, 1992, and, based on the director's approval of plans and specifications by December 31, 1992, the owners shall commence construction of the approved CSO facilities by April 1, 1993; and

(iii) The construction shall be substantially complete and operational to meet the water quality standards in the receiving stream or permit limits as defined by the director by December 31, 1995.

(2) The owner of any combined sewer overflow system which discharges into the Chattahoochee River or its tributaries who failed to implement an approved plan by December 31, 1995, shall, in lieu of the liability and penalties provided in Code Sections 12-5-51 through 12-5-53, pay a civil penalty in the amount of $10,000.00 per day until the construction is completed but not later than October 1, 1997, after which date the penalty shall be increased to $100,000.00 per day until construction is completed; provided, however, that if such person owns or operates two separate combined sewer overflow systems, he or she shall pay a separate penalty on the second such system in the amount of $10,000.00 per day until construction is completed, but not later than July 1, 1998, after which date the penalty shall be increased to $100,000.00 per day for such system. On and after the dates the penalties for each such system increase to $100,000.00 per day, the owner or operator shall be subject to the liabilities and penalties provided in Code Sections 12-5-51 through 12-5-53 with regard to the respective system.

(3) In addition to the penalties provided in paragraph (2) of this subsection, the owner or operator of a combined sewer overflow system shall not permit any additional sewer connections to such system until construction has been completed.

History. — Code 1981, § 12-5-29.1, enacted by Ga. L. 1990, p. 1216, § 1; Ga. L. 1991, p. 1386, § 1; Ga. L. 1993, p. 1775, § 1; Ga. L. 1996, p. 1618, § 3.

Law reviews. — For note on 1993 amendment of this Code section, see 10 Ga. St. U.L. Rev. 60 (1993). For review of 1996 water resources legislation, see 13 Ga. St. U.L. Rev. 60 (1996).

12-5-30. Permits for construction, modification, or operation of facilities which discharge pollutants into waters; permits for discharge of dredged or fill material into waters and wetlands; participation in National Pollution Discharge Elimination System.

(a) Any person who owns or operates a facility of any type or who desires to erect, modify, alter, or commence operation of a facility of any type which results or will result in the discharge of pollutants from a point source into the waters of the state shall obtain from the director a permit to make such discharge. Any person desiring to erect, modify, alter, or commence operation of a facility which will result in such discharge but which is not discharging such pollutants as of July 1, 1974, must obtain such permit prior to the discharge of same. Any person who is operating a facility which results in such discharge as of July 1, 1974, may continue to make such discharge pending final action by the director on the application for such discharge permit, provided that such application has been filed with the director by September 29, 1974; and provided, further, that such discharge does not present an immediate health hazard to the public. The director, under the conditions he prescribes, may require the submission of such plans, specifications, and other information as he deems relevant in connection with the issuance of such permits. The director may, after public notice and opportunity for public hearing, issue a permit which authorizes the person to make such discharge, upon condition that such discharge meets or will meet, pursuant to any schedule of compliance included in such permit, all water quality standards, effluent limitations, and all other requirements established pursuant to this article.

(b) Any person desiring to erect or modify facilities or commence or alter an operation of any type which will result in the discharge of pollutants from a nonpoint source into the waters of the state, which will render or is likely to render such waters harmful to the public health, safety, or welfare, or harmful or substantially less useful for domestic, municipal, industrial, agricultural, recreational, or other lawful uses, or for animals, birds, or aquatic life, shall obtain a permit from the director to make such discharge. Any person desiring to erect, modify, alter, or commence operation of a facility which will result in such discharge but which is not discharging such pollutants as of July 1, 1974, must obtain such permit prior to the discharge of same. The director, under the conditions he prescribes, may require the submission of such plans, specifications, and other information as he deems relevant in connection with the issuance of such permits. The director may, after public notice and opportunity for public hearing, issue a permit which authorizes the person to make such discharge upon condition that such discharge meets or will meet, pursuant to any

schedule of compliance included in such permit, all water quality standards, effluent limitations, and all other requirements established pursuant to this article.

(c) The director is authorized to require as conditions in permits issued under subsections (a) and (b) of this Code section the achievement of effluent limitations established pursuant to this article. In imposing effluent limitations as conditions in such permits, the director shall base his determination upon the assessment of technology and processes unrelated to the quality of the receiving waters of this state. Effluent limitations required as conditions of such permits shall be achieved in the shortest reasonable period of time consistent with state law and the Federal Water Pollution Control Act, as amended. The director is further authorized to set schedules of compliance and include such schedules within the terms and conditions of such permits for the discharge of such pollutants into the waters of the state and to prescribe terms and conditions for such permits to assure compliance with applicable effluent limitations and water quality criteria established pursuant to this article, including, but not limited to, requirements concerning recording, reporting, monitoring, entry, and inspection to the extent permissible under this article, and such other requirements as are consistent with the purposes of this article.

(d) Each permit issued under subsections (a) and (b) of this Code section shall have a fixed term set by the director consistent with the federal Clean Water Act of 1977, P.L. 95-217, as now or hereafter amended but not to exceed ten years. Upon expiration of such permit, a new permit may be issued by the director after review by him in accordance with such guidelines as he shall prescribe; after notice and opportunity for public hearing; and upon condition that the discharge meets or will meet, pursuant to any schedule of compliance included in such permit, all applicable water quality standards, effluent limitations, and all other requirements established pursuant to this article. The director is authorized to include in permits issued under this subsection such terms and conditions as are authorized under subsections (a) and (c) of this Code section. The director may revoke, suspend, or modify any permit issued under this subsection or subsection (a) or (b) of this Code section, for cause, including but not limited to the following:

(1) Violation of any condition of the permit;

(2) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts;

(3) Change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

In the event of modification, suspension, or revocation of a permit, the director shall serve written notice of such action on the permit holder and shall set forth in such notice the reason for such action.

(e) Notwithstanding any other provision in this Code section, the director may issue permits, after notice and opportunity for public hearings, for the discharge of dredged or fill material into the waters and wetlands of the state, in accordance with the standards and criteria set forth in Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. Section 1344, as amended by the Clean Water Act of 1977 (P.L. 95-217), upon receiving delegation of such authority, except that this subsection shall not authorize the director to issue permits with respect to projects under review by the United States Army Corps of Engineers as to which a public hearing has been held before July 1, 1974. In administering such a program, the director is empowered with the authority to take such action as is set forth in Section 404(h)(1)(A) through (H) of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. Section 1344, as amended by the Clean Water Act of 1977 (P.L. 95-217). No person covered by this subsection shall discharge dredged or fill material into the waters and wetlands of this state except in a manner which complies with this article and Section 404 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. Section 1344, as amended by the Clean Water Act of 1977 (P.L. 95-217).

(f) The director may issue general permits for discharges of pollutants from categories of point sources which are subject to the same permit limitations and conditions. Such general permits may be issued without individual applications. At the discretion of the director, numeric effluent limitations and effluent monitoring provisions may be included in general permits or best management practices may be substituted for numeric effluent limitations without a showing that it would be infeasible to include effluent limitations; provided, however, that the director shall incorporate the provisions related thereto as provided in paragraphs (1), (2), and (3) of subsection (a) of Code Section 12-7-6 into any general permit issued for the discharge of storm water from construction activity.

(g) It is declared to be the public policy of this state, in furtherance of its responsibility to protect the public health, safety, and well-being of its citizens and to protect and enhance the quality of its environment, to prevent or mitigate where possible discharges of sediment into the waters of the state. The General Assembly declares its intent to partially fund the execution of the public policy set forth in this subsection and Chapter 7 of this title by and through the division with permit fees for the National Pollution Discharge Elimination System general permit or permits for storm-water runoff from construction

activities as is now in effect or as may be amended or reissued in the future pursuant to the state's authority to implement the same through federal delegation under the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251, et seq., and subsection (f) of this Code section. Such fees shall be administered by the division pursuant to rules and regulations established by the board pursuant to paragraph (5) of subsection (a) of Code Section 12-5-23. The General Assembly further declares its intent that the amount of funds provided by such permit fees will not be utilized for any purposes other than the administration of Chapter 7 of this title by the division or a local issuing authority and the administration of the state general permit defined in Code Section 12-7-3 by the division, which purposes shall specifically include without limitation the study and report required by Code Section 12-7-21; provided, however, that nothing in this subsection shall be construed so as to allow the department to retain any funds required by the Constitution of Georgia to be paid into the state treasury; provided, further, that the department shall comply with all provisions of Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act," except Code Section 45-12-92, prior to expending any funds derived from such permit fees.

History. — Ga. L. 1964, p. 416, § 10; Ga. L. 1973, p. 1288, § 1; Ga. L. 1974, p. 599, §§ 8-11; Ga. L. 1978, p. 2245, § 7; Ga. L. 1986, p. 350, §§ 1, 2; Ga. L. 1992, p. 6, § 12; Ga. L. 1995, p. 150, § 1; Ga. L. 2003, p. 224, § 4; Ga. L. 2007, p. 739, § 2/SB 200.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, a comma was inserted following "entry" in the fourth sentence of subsection (c).

Editor's notes. — Ga. L. 2007, p. 739, § 5/SB 200, not codified by the General Assembly, provides that the 2007 amendment shall only become effective on January 1, 2009, upon the ratification of a resolution at the November, 2008, state-wide general election that amends the Constitution so as to authorize the General Assembly to provide by general law for the creation and comprehensive regulation of infrastructure development districts. If such resolution is not so ratified, this Act shall not become effective and shall stand repealed in its entirety on January 1, 2009. The constitutional amendment proposed in Ga. L. 2007, p. 775, was defeated in the general election on November 4, 2008.

U.S. Code. — The Federal Water Pollution Control Act, as amended, and the federal Clean Water Act of 1977, as amended, are codified as 33 U.S.C. § 1251 et seq.

Law reviews. — For article criticizing impressionistic approach to water use classification established by permit system, see 23 Mercer L. Rev. 603 (1972). For article surveying Georgia cases dealing with environment, natural resources, and land use from June 1977 through May 1978, see 30 Mercer L. Rev. 75 (1978).

For note, "Regulation of Artificial Lakes and Recreational Subdivisions in Georgia," recommending methods for future regulation, see 8 Ga. St. B.J. 580 (1972). For note on the 1995 amendment of this Code section, see 12 Ga. St. U.L. Rev. 39 (1995). For note on the 2003 amendment of this Code section, see 20 Ga. St. U.L. Rev. 244 (2003). For note on 2007 amendment of this Code section, see 24 Ga. St. U.L. Rev. 255 (2007).

JUDICIAL DECISIONS

Interpretation of narrative standard rule as to discharges. — Georgia Department of Natural Resources Environmental Protection Division's (EPD's) interpretation of the narrative standard was entitled to deference as it was proper for the EPD to interpret the narrative standard as not intended to convert the designated use of a water body to a more protected use as the plain language of the narrative standard does not specify the degree of interference with legitimate water uses that would constitute a violation of the rule. Altamaha Riverkeeper, Inc. v. Rayonier Performance Fibers, LLC, 346 Ga. App. 269, 816 S.E.2d 125 (2018), cert. denied, No. S18C1474, 2019 Ga. LEXIS 554 (Ga. 2019).

Antidegradation rule did not apply to nonpoint sources. — Water quality standard in Ga. Comp. R. & Regs. 391-3-6-.03(2)(b)(ii) did not require antidegradation analysis for nonpoint sources of pollution and, therefore, did not apply to a city's permit for a land application system, which involved spraying wastewater treated to remove solids and break down organic waste onto a tract of land. City of Guyton v. Barrow, 305 Ga. 799, 828 S.E.2d 366 (2019).

Remand required. — Because it was unclear from the record whether or not the changes in a final degradation permit were significant enough to require a renewed public notice and comment period, because the ALJ summarily disposed of this issue and, thus, deprived the challengers of the opportunity to present evidence supporting the challengers' claim that the changes in the permit were significant enough to require a renewed public notice and comment period, the matter was remanded for an evidentiary hearing. Hughey v. Gwinnett County, 278 Ga. 740, 609 S.E.2d 324 (2004).

Cited in Quinn v. State, 221 Ga. App. 399, 471 S.E.2d 337 (1996); Pulte Home Corp. v. Simerly, 322 Ga. App. 699, 746 S.E.2d 173 (2013).

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 3, 4, 5.

C.J.S. — 39A C.J.S., Health and Environment, §§ 121, 162.

ALR. — Liability for pollution of subterranean waters, 38 A.L.R.3d 1265.

Modern status of rules governing interference with drainage of surface waters, 93 A.L.R.3d 1193.

12-5-30.1. Major spills by publicly owned treatment works.

(a) As used in this Code section, the term:

(1) "Board" means the Board of Natural Resources.

(2) "Consistently exceeding an effluent limitation" means a POTW's exceeding the POTW's assigned effluent limitation for at least five days out of each seven-day period during a total period of 180 consecutive days.

(3) "Major spill" means the discharge of pollutants into the waters of this state by a POTW at a rate substantially exceeding the effluent limitation of the POTW, and such term shall be more specifically defined by regulations of the board.

(4) "Monitoring" means the systematic measurement of chemical and biological pollutants present in waters of this state which are

affected by a major spill or by consistently exceeding an effluent limitation.

(5) "Publicly Owned Treatment Works" or "POTW" means the city, town, county, district, association, or other public body created by or pursuant to state law or federal law that owns and operates a treatment works and, where appropriate, shall include the treatment works and any sewers or other appurtenances that convey waste water to the treatment works.

(b) By not later than January 1, 1990, the board shall provide by rules or regulations for the following:

(1) For immediate notification to the division of a major spill by a POTW;

(2) For the POTW responsible for the major spill to cause to be published in the legal organ of the county where the spill occurred a notice of such spill, such notice to be published within not more than seven days after the date of the spill;

(3) For the division to provide notice of the major spill within 24 hours thereafter to every county, municipality, or other public agency whose public water supply is within a distance of 20 miles downstream and to any others which could potentially be affected by the spill.

(4) For independent monitoring of waters affected by a major spill or by consistently exceeding an effluent limitation, with such monitoring being at the expense of the POTW, for a period of at least one year and for the results of such monitoring to be regularly provided to all counties, municipalities, and other public agencies using the affected waters as a source of public water supply.

History. — Code 1981, § 12-5-30.1, enacted by Ga. L. 1989, p. 280, § 1.

12-5-30.2. Combined sewer overflow systems.

(a) As used in this Code section, the term "combined sewer overflow" or "CSO" means a sewage system so designed or constructed as to allow surface-water runoff to enter the conduit carrying sewage, industrial waste, or other waste and, when such conduit exceeds its maximum capacity, allows a discharge which bypasses the normal treatment works integral to such sewage system and allows untreated or incompletely treated sewage, industrial waste, or other waste to flow, directly or indirectly, into the waters of the state.

(b) After March 31, 1992, no person shall operate a CSO in this state unless he has obtained a permit to do so from the director. The director,

under the conditions he prescribes, shall require the submission of such plans, specifications, and other information as he deems relevant in connection with the issuance of such permits. Compliance with permit limits shall be required for all CSO discharges under design conditions as determined by the director.

(c) The director is authorized to require as conditions in permits issued under this Code section the achievement of effluent limitations established pursuant to this article. In imposing effluent limitations as conditions in such permits, the director shall base his determination upon the assessment of technology and processes unrelated to the quality of receiving waters of this state. Effluent limitations required as conditions of such permits shall be achieved in the shortest reasonable period of time consistent with state law and the Federal Water Pollution Control Act, as amended. The director is further authorized to set schedules of compliance and include such schedules within the terms and conditions of such permits for the operation of a CSO and to prescribe terms and conditions for such permits to assure compliance with applicable effluent limitations and water quality criteria established pursuant to this article, including, but not limited to, requirements concerning recording, reporting, monitoring, and inspection to the extent permissible under this article and such other requirements as are consistent with the purposes of this article.

(d) Each permit issued pursuant to this Code section shall have a fixed term of five years and may be renewed by the director in accordance with such guidelines as he shall prescribe but only after the director has issued a written finding, based upon actual investigation, that the applicant has substantially followed any schedules of compliance established pursuant to subsection (c) of this Code section.

History. — Code 1981, § 12-5-30.2, enacted by Ga. L. 1990, p. 1201, § 1; Ga. L. 1991, p. 1386, § 2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, substituted "bypasses" for "by-passes" in subsection (a).

12-5-30.3. Sludge land application systems.

(a) As used in this Code section, the term:

(1) "Sludge" means the solid or semisolid residue generated at a waste-water treatment or pretreatment plant. Such term specifically excludes treated effluent, septage, and sludge that has been treated to further reduce pathogens by such processes as composting, heat drying, or heat treating.

(2) "Sludge land application" means the placement of sludge on or under the ground surface for the purpose of sludge disposal, soil conditioning, or agricultural enhancement. Such term specifically excludes the disposal of sludge in a permitted landfill.

(b)(1) No person shall operate a sludge land application system without first securing the approval of the director. The director may include this approval and approval requirements in a permit issued under Code Section 12-5-30.

(2) Prior to the issuance of any permit for a sludge land application system, the director shall require written verification to be furnished by the applicant that the proposed facility complies with applicable local zoning or land use ordinances, if any.

(c) The Board of Natural Resources shall adopt technical regulations governing sludge land application and procedural regulations for approval of sludge land application systems, including public notice and public hearing requirements. All public hearings shall be conducted by the division and the applicant for the permit within the jurisdiction of the local governing authority where the proposed sludge land application site is located.

(d) The local governing authority in which a sludge land application site is located may assess upon the generator of the sludge and the owner of the sludge land application site reasonable fees for environmental monitoring of the site and may hire persons to monitor the site. Payment of the assessed fee shall be made prior to the application of sludge. Failure to pay such fees, if assessed, shall be grounds for the local governing authority to seek an injunction to stop the land application of sludge. The provisions of this subsection shall not apply to the land application of sludge which is generated by the treatment of industrial process waste water only.

(e) Any person who violates this Code section, regulations adopted by the Board of Natural Resources pursuant to this Code section, or any permit or approval requirements of the director issued pursuant to this Code section shall be subject to the civil penalties and the criminal penalties contained in Code Sections 12-5-52 and 12-5-53.

History. — Code 1981, § 12-5-30.3, enacted by Ga. L. 1993, p. 730, § 1; Ga. L. 2014, p. 598, § 1/HB 741; Ga. L. 2017, p. 774, § 12/HB 323.

Law reviews. — For note on 1993 enactment of this Code section, see 10 Ga. St. U.L. Rev. 65 (1993).

JUDICIAL DECISIONS

Authority of local governments. — Local governments are not authorized to regulate the application of sludge to land except in the specific area of monitoring. Franklin County v. Fieldale Farms Corp., 270 Ga. 272, 507 S.E.2d 460 (1998).

County ordinance preempted — O.C.G.A. § 12-5-30.3 preempted by implication the county's land disposal ordinance establishing a duplicate permit system that was not authorized by general law. Franklin County v. Fieldale Farms Corp., 270 Ga. 272, 507 S.E.2d 460 (1998).

12-5-30.4. Establishment of water emergency response procedures.

(a) Whenever any substance which would endanger the health or property of downstream users of the waters of this state is discharged into such waters, it shall be the duty of any person in charge of such substance to immediately notify the division of the location and nature of the discharge and to immediately take all reasonable steps to prevent injury to the health or property of such downstream users.

(b) The division shall immediately conduct an initial investigation upon receiving any notification made pursuant to this Code section or subsection (a) of Code Section 12-14-3 or by a member of the public who observes an emergency situation or discharge to determine if such notification satisfies the criteria described in subsection (a) of this Code section.

(c) If the division determines that there is a threat to the health or property of downstream users of the waters of this state, the division shall as soon as possible, but not more than 24 hours after such determination, notify and consult with the Georgia Emergency Management and Homeland Security Agency, the appropriate local emergency management agency, the appropriate local county health department, and other appropriate divisions within the department as necessary to determine if it is necessary to prepare and distribute a public notice concerning such threat. Upon notification by the division, the local emergency management agency or the local county health department shall prepare and post such public notice through electronic media and print. Such public notice shall be located at places where the public regularly uses the waters of this state or seeks information about such waters.

(d) The division shall ensure that immediate corrective action is initiated to the maximum extent practicable and as otherwise authorized by this title in order to prevent further danger to the health or property of downstream users.

(e) The division shall establish a protocol, to be reviewed every five years, for coordinated responses to discharges that create emergency situations and shall coordinate with the appropriate emergency response agencies to provide for continual emergency response so as to most efficiently and effectively meet the needs of affected communities. The division may provide training to state and local emergency response agencies to further the purposes of this Code section.

(f) Nothing in this Code section shall prevent any local governmental entity from taking any actions within its authority to protect public health.

(g) The department shall promulgate any rules and regulations necessary to implement and administer this Code section on or before December 1, 2014.

History. — Code 1981, § 12-5-30.4, enacted by Ga. L. 2014, p. 176, § 1/HB 549; Ga. L. 2016, p. 91, § 1/SB 416.

12-5-31. Regulated riparian rights to surface waters for general or farm use; permits for withdrawal, diversion, or impoundment; coordination with water plans; metering of farm use; interbasin transfers; appeal procedures.

(a) For purposes of this Code section, the term:

(1) "Director" means the director of the Environmental Protection Division of the Department of Natural Resources, or his designee.

(2) "Diversion" means a turning aside or altering of the natural course of surface waters.

(3) "Farm uses" means irrigation of any land used for general farming, forage, aquaculture, pasture, turf production, orchards, or tree and ornamental nurseries; provisions of water supply for farm animals, poultry farming, or any other activity conducted in the course of a farming operation. Farm uses shall also include the processing of perishable agricultural products and the irrigation of recreational turf, except in the Chattahoochee River watershed upstream from Peachtree Creek, where irrigation of recreational turf shall not be considered a farm use.

(4) "Impoundment" means the storing or retaining of surface water by whatever method or means.

(5) "Surface water(s) of the state" or "surface water(s)" means any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs producing in excess of 100,000 gallons per day, and all other bodies of surface water, natural or artificial, lying within or forming a part of the boundaries of the state which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation.

(6) "Withdrawal" means the taking away of surface water from its natural course.

(b)(1) No person shall make any withdrawal, diversion, or impoundment of any of the surface waters of the state for whatever use without obtaining a permit from the director; provided, however, that no permit shall be required for:

(A) Any such withdrawal which does not involve more than 100,000 gallons per day on a monthly average;

(B) Any such diversion which does not reduce the flow of the surface waters at the point where the watercourse, prior to diversion, leaves the person's or persons' property or properties on which the diversion occurred, by more than 100,000 gallons per day on a monthly average;

(C) Any such diversion accomplished as part of construction for transportation purposes which does not reduce the flow of surface waters in the diverted watercourse by more than 150,000 gallons per day on a monthly average; or

(D) Any such impoundment which does not reduce the flow of the surface waters immediately downstream of the impoundment by more than 100,000 gallons per day on a monthly average.

(2) No permit shall be required for a reduction of flow of surface waters during the period of construction of an impoundment, including the initial filling of the impoundment, or for farm ponds or farm impoundments constructed and managed for the sole purpose of fish, wildlife, recreation, or other farm uses.

(3)(A) Notwithstanding any other provision of this Code section to the contrary, a permit for the withdrawal or diversion of surface waters for farm uses shall be issued by the director to any person when the applicant submits an application which provides reasonable proof that the applicant's farm use of surface waters occurred prior to July 1, 1988, and when any such application is submitted prior to July 1, 1991. If submitted prior to July 1, 1991, an application for a permit to be issued based upon farm uses of surface waters occurring prior to July 1, 1988, shall be granted for the withdrawal or diversion of surface waters at a rate of withdrawal or diversion equal to the greater of the operating capacity in place for withdrawal or diversion on July 1, 1988, or, when measured in gallons per day on a monthly average for a calendar year, the greatest withdrawal or diversion capacity during the five-year period immediately preceding July 1, 1988. If submitted after July 1, 1991, or, regardless of when submitted, if it is based upon a withdrawal or diversion of surface waters for farm uses occurring or proposed to occur on or after July 1, 1988, an application shall be subject to evaluation and classification pursuant to subsections (e), (f), and (g) of this Code section, but a permit based upon such evaluation and classification shall be issued to ensure the applicant's right to a reasonable use of such surface waters. Any permit issued pursuant to this paragraph shall be conditioned upon the requirement that the permittee shall provide,

on forms prescribed by the director, information relating to a general description of the lands and number of acres subject to irrigation and the permit; a description of the general type of irrigation system used; the source of withdrawal water such as river, stream, or impoundment; and pump information, including rated capacity, pump location, and power information.

(B) Permits applied for under this paragraph on or after April 20, 2006, for farm use in the Flint River basin shall have a term of 25 years and shall be automatically renewed at the original permitted capacity unless an evaluation by the division indicates that renewal at the original capacity would have unreasonable adverse effects upon other water uses. The division may renew the original permit at a lower capacity, but such capacity shall be based on the reasonable use of the permittee and evaluation of the resource.

(C) A permittee may apply to have a permit issued under this paragraph modified, amended, transferred, or assigned to subsequent owners of the lands which are the subject of such permit; provided, however, that:

(i) The division shall receive written notice of any such transfer or assignment;

(ii) Any modification in or amendment to the use or capacity conditions contained in the permit or in the lands which are the subject of such permit shall require the permittee to submit an application for review and approval by the director consistent with this Code section;

(iii) The permittee may commence withdrawing water under the modified, amended, transferred, or assigned permit on the effective date stated on the revised permit for farm use; and

(iv) For all permits for which such modification, amendment, transfer, or assignment is effective on or after April 20, 2018, and for which no water-measuring device is installed, the permittee shall have one year from the updated effective date stated on the revised permit for farm use to have an acceptable type of water-measuring device installed, to have such device in operation at each point of permitted withdrawal, and to notify the division in writing once the installation has occurred. The division shall approve or disapprove the installation within 60 days of the date of notification. The permittee shall be responsible for all associated costs.

(D) Nothing in this paragraph shall be construed as a repeal or modification of Code Section 12-5-46.

(c) To obtain a permit pursuant to this Code section, the applicant must establish that the proposed withdrawal, diversion, or impoundment of surface waters is consistent with this article.

(d) All permit applications filed with the director under this Code section shall contain the name and address of the applicant or, in the case of a corporation, the address of its principal business office in this state; the date of filing; the source of the water supply; the quantity of water applied for; the use to be made of the water and any limitation thereon; the place of use; the location of the withdrawal, diversion, or impoundment; for those permits which indicate an increase in water usage, except for permits solely for agricultural use, a water conservation plan approved by the director and prepared based on guidelines issued by the director; and such other information as the director may deem necessary; provided, however, that any required information already provided the director by the applicant in the context of prior dealings with the division, which information is still correct, may be incorporated into the application by adequate reference to same. The director shall collect and disseminate such technical information as the director deems appropriate to assist applicants in the preparation of water conservation plans.

(e) Subject to subsection (g) of this Code section, the Board of Natural Resources shall by rule or regulation establish a reasonable system of classification for application in situations involving competing uses, existing or proposed, for a supply of available surface waters. Such classifications shall be based upon but not necessarily limited to the following factors:

(1) The number of persons using the particular water source and the object, extent, and necessity of their respective withdrawals, diversions, or impoundments;

(2) The nature and size of the water source;

(3) The physical and chemical nature of any impairment of the water source adversely affecting its availability or fitness for other water uses;

(4) The probable severity and duration of such impairment under foreseeable conditions;

(5) The injury to public health, safety, or welfare which would result if such impairment were not prevented or abated;

(6) The kinds of businesses or activities to which the various uses are related and the economic consequences;

(7) The importance and necessity of the uses, including farm uses, claimed by permit applicants and the extent of any injury or detriment caused or expected to be caused to other water uses;

(8) Diversion from or reduction of flows in other watercourses in accordance with Article 8 of this chapter or any state-wide water plan provided pursuant thereto;

(9) The prior investments of any person in lands, and plans for the usage of water in connection with such lands which plans have been submitted to the director within a reasonable time after July 1, 1977, or, if for farm uses, after July 1, 1988; provided, however, that the granting of such permit shall not have unreasonably adverse effects upon other water uses in the area, including potential as well as present use; and

(10) The varying circumstances of each case.

(f) In the event two or more competing applicants or users qualify equally under subsection (e) of this Code section, the director is authorized to grant permits to applicants or modify the existing permits of users for use of specified quantities of surface waters on a prorated or other reasonable basis in those situations where such action is feasible; provided, however, the director shall give preference to an existing use over an initial application.

(g) The division shall take into consideration the extent to which any withdrawals, diversions, or impoundments are reasonably necessary, in the judgment of the director, to meet the applicant's needs and shall grant a permit which shall meet those reasonable needs; provided, however, that the granting of such permit shall not have unreasonably adverse effects upon other water uses in the area, including but not limited to public use, farm use, and potential as well as present use; and provided, further, that the director shall grant a permit to any permit applicant who on July 1, 1977, has outstanding indebtedness in the form of revenue certificates or general obligation bonds which are being amortized through the sale of surface water, the permitted quantity of which shall be at least in an amount consistent with that quantity for which the revenue certificates or general obligation bonds were issued.

(h) Except for applications filed pursuant to paragraph (3) of subsection (b) of this Code section, permits may be granted for any period of time not less than ten years, unless the applicant requests a shorter period of time, nor more than 50 years. The director may base the duration of such permits on any reasonable system of classification based upon but not necessarily limited to such factors as source of supply and type of use. In evaluating any application for a permit for the use of water, the director shall evaluate the condition of the water supply to assure that the supply is adequate to meet the multiple needs of the citizens of the state as can reasonably be projected for the term of the permit and ensure that the issuance of such permit is based upon water development and conservation plans for the applicant and for the

region in accordance with Article 8 of this chapter. Such water development and conservation plans for the applicant and for the region shall promote the conservation and reuse of water within the state, guard against a shortage of water within the state, promote the efficient use of the water resource, and be consistent with the public welfare of the state, in accordance with Article 8 of this chapter. The board shall promulgate regulations for implementation of this subsection, including provisions for review of such permits periodically or upon a substantial reduction in average annual volume of the water resource which adversely affects water supplies to determine that the permittee continues in compliance with the conditions of the permit and that the plan continues to meet the overall supply requirements for the term of the permit. Regional water plans shall be developed in accordance with Article 8 of this chapter. Such regional plans shall include water development, conservation, and sustainable use and shall be based upon detailed scientific analysis of the water source, the projected future condition of the resource, current demand, and estimated future demands on the resource, in accordance with Article 8 of this chapter.

(i) A permittee may seek modification of any of the terms of an issued permit. The director may approve the proposed modification if the permittee establishes that a change in conditions has resulted in a need by the permittee of more water than is allowed under the existing permit, or that the proposed modification would result in a more efficient utilization of water than is possible under the existing permit, or that a proposed change in conditions would result in a need by the permittee of more water than is allowed under the existing permit. Any such modification shall be consistent with the health and safety of the citizens of this state and with this article. In any administrative review proceeding resulting from an action of the director under this subsection, the burden of proof in establishing that the requisite criteria have been met shall be upon the person seeking such modification.

(j) A permittee may seek renewal of a permit issued pursuant to this Code section from the director at any time within six months prior to the date of expiration of the permit. Except as otherwise specified in this Code section, all permit renewal applications shall be treated in the same manner as the initial permit application.

(k) The director may revoke, suspend, or modify a permit issued pursuant to this Code section as follows:

(1) For any material false statement in an application for a permit to initiate, modify, or continue a use of surface waters, or for any material false statement in any report or statement of fact required of the permittee pursuant to this Code section or pursuant to the conditions contained in a permit granted under this Code section, the director may revoke the user's permit, in whole or in part, permanently or temporarily;

(2) For any willful violation of the conditions of a permit granted pursuant to this Code section, the director may revoke the user's permit, in whole or in part, permanently or temporarily;

(3) For violation of any provision of this Code section, the director may revoke the permit, in whole or in part, for a period not to exceed one year;

(4) For nonuse of the water supply (or a significant portion thereof) allowed by the permit for a period of two consecutive years or more, the director may revoke the permit permanently, in whole or in part, unless the permittee can reasonably demonstrate that his nonuse was due to extreme hardship caused by factors beyond his control, except that this paragraph shall not apply to farm use permits issued pursuant to paragraph (3) of subsection (b) of this Code section after initial use has commenced;

(5) The director may revoke a permit permanently, in whole or in part, with the written consent of the permittee;

(6) The director may suspend or modify a permit, except farm use permits, if he should determine through inspection, investigation, or otherwise that the quantity of water allowed under the permit is greater than that needed by the permittee for the particular use upon which the application for permit was based or would prevent other applicants from reasonable use of surface waters, including farm uses;

(6.1) The director may permanently revoke any permit under this Code section for farm use within the Flint River Basin applied for on or after April 20, 2006, if initial use for the purpose indicated on the permit application, as measured by a flow meter approved by the division, has not commenced within two years of the date of issuance of the permit unless the permittee can reasonably demonstrate that his or her nonuse was due to financial hardship or circumstances beyond his or her control;

(7) The director may suspend or modify a farm use permit if he should determine through inspection, investigation, or otherwise that the quantity of water allowed under the permit would prevent other applicants from reasonable use of surface waters for farm use; and

(8) Consistent with the considerations set forth in subsection (g) of this Code section, the director may revoke, suspend, or modify a permit for any other good cause consistent with the health and safety of the citizens of this state and with this article.

In the event of modification, suspension, or revocation of a permit, the director shall serve written notice of such action on the permit holder and shall set forth in such notice the reason for such action.

(l) Emergency period of water shortage:

(1) Whenever it clearly appears to the director from specific facts shown by affidavits of residents of the affected area of this state that an emergency period of water shortage exists within such area, so as to place in jeopardy the health or safety of the citizens of such area or to threaten serious harm to the water resources of the area, he may by emergency order impose such restrictions on one or more permits previously issued pursuant to this Code section as may be necessary to protect adequately such citizens or water resources; provided, however, such order shall not be issued until an effort has been made to give written notice of the proposed action by certified mail or statutory overnight delivery to the permittee or permittees to be affected. Such written notice shall allow such permittee or permittees five days from the date of mailing of the notice to appear before the director in opposition to the proposed action. The director may impose such restrictions based upon any reasonable system of classification established by the Board of Natural Resources through rule or regulation. Such system of classification shall be based upon but not necessarily limited to those factors set forth in subsection (e) of this Code section;

(2) The director shall specify in such order any change in the conditions of the permit, any suspension of the permit, or any other restriction on withdrawal, diversion, or impoundment of surface waters for the duration of the emergency water shortage and shall serve same on the person by hand delivery or certified mail or statutory overnight delivery. Except as to farm uses, any such change, suspension, or other restriction shall be effective immediately upon receipt of such order by the permittee, his agent for service of process, or any agent or employee of the permittee who receives the notification at the permittee's principal place of business in the state. Any permittee, other than a farm use permittee, to whom such order is directed shall comply therewith immediately. Upon application to a hearing officer appointed by the Board of Natural Resources of this state, a permittee, including a farm use permittee, shall be afforded a hearing within 20 days of receipt of such notice by the hearing examiner in accordance with subsection (c) of Code Section 12-2-2. Farm use permittees may continue to make use of water to their permitted capacity during the appeal process, but failure to timely request a hearing in accordance with subsection (c) of Code Section 12-2-2 shall waive such right;

(3) During emergency periods of water shortage, the director shall give first priority to providing water for human consumption and second priority to farm use;

(4) The importance and necessity of water for industrial purposes are in no way modified or diminished by this Code section;

(4.1) The use of surface water by any permanent facility car wash shall be deemed not to be outdoor water use for purposes of any outdoor watering restrictions if the facility:

(A) Is connected to a sanitary sewer system of a political subdivision or local government authority or recycles used wash water; and

(B) Is certified by the division as meeting or exceeding applicable best management practices for car washing facilities, which the Board of Natural Resources shall provide by rules and regulations not later than October 1, 2008. Such certification shall expire annually and may be issued or renewed upon compliance with such best management practices and payment of a $50.00 fee to the division. The provisions of this subparagraph shall apply on and after the effective date of such board rules and regulations;

(4.2) The use of surface water for any swimming pool shall be deemed not to be outdoor water use for purposes of any outdoor watering restrictions if failure to maintain the swimming pool would create unsafe, unsanitary, or unhealthy conditions affecting the public health or welfare; and

(5) Upon expiration of the emergency period of water shortage, as determined by the director, the director shall immediately notify each affected permittee, in writing, of such expiration, and the permittees shall thereafter be authorized to operate under the permit as issued prior to the emergency period of water shortage.

(m) For all permits, including without limitation farm use permits, issued under this Code section, whenever required to carry out the objectives of this Code section, including but not limited to determining whether or not any person is in violation of any provision of this Code section or any rule or regulation promulgated pursuant to this Code section; encouraging or ensuring compliance with any provision of this Code section or any rule or regulation promulgated pursuant to this Code section; determining whether or not any person is in violation of any permit condition; or establishing a data bank on the usage of surface waters in a particular area or areas of this state, the director may by order, permit, or otherwise, in writing, require any person holding a permit under this Code section, or any other person who the director reasonably believes is withdrawing, diverting, or impounding surface waters in violation of the permitting requirements of this Code section, to:

(1) Establish and maintain records;

(2) Make reports;

(3) Install, use, and maintain monitoring equipment or methods; and

(4) Provide such other information as the director may reasonably require.

Notwithstanding the foregoing provisions of this subsection, any demand for such information by the director, which information has already been provided to the director by such person in the context of prior dealings with the division, and which is still correct, may be satisfied by adequate reference to same.

(m.1)(1) The division shall have the duty of implementing a program of measuring farm uses of water in order to obtain clear and accurate information on the patterns and amounts of such use, which information is essential to proper management of water resources by the state and useful to farmers for improving the efficiency and effectiveness of their use of water, meeting the requirements of subsections (b) and (m) of this Code section, and improving water conservation.

(2) The division:

(A) May conduct its duties with division staff and may contract with other persons to conduct any of its duties;

(B) May receive and use state appropriations, gifts, grants, or other sources of funding to carry out its duties;

(C) Shall develop a priority system for the installation of devices for measurement of farm uses of water at the points of those withdrawals for which a permit was issued as of July 1, 2003. The division may refine the priority system from time to time based on the amount of funding received by the division, considerations regarding cost effectiveness, new technical information, changes in resource use or conditions, or other factors as deemed relevant by the director;

(D) Shall, on behalf of the state, contract for the purchase and installation of that subset of water-measuring devices according to the priority system required by this Code section, and no charge shall be made to the permittee for such costs. However, when the division assesses the site or attempts to install such water-measuring devices and finds that the site lacks withdrawal or irrigation infrastructure, the division shall document such withdrawal or irrigation infrastructure conditions and notify the permittee in writing that a state funded water-measuring device or devices could not be installed and that a device or devices are still required. After the expiration of five years, such permittee shall be responsible for having an acceptable type of water-measuring device installed and placed into operation and all associated costs. The permittee shall notify the division in writing once the installation has occurred. The division shall approve or disapprove the installation within 60 days of the date of notification;

(E) Shall, at monthly intervals, read an appropriate proportion of water-measuring devices installed for measuring farm use of surface water and compile the collected data for use in meeting the purposes in paragraph (1) of this subsection, and the division shall communicate in advance with private property owners to establish reasonable times for such readings. In the event that a permittee's water-measuring devices are selected for monthly readings, the permittee may choose to perform those readings and transmit that information to the division; and

(F) Shall issue an annual progress report on the status of water-measuring device installation.

(3) Any person whose permit for agricultural water use was issued before July 1, 2003, and who desires to install a water-measuring device at no cost to the state may do so, provided that the permittee shall have an acceptable type of water-measuring device installed and placed in operation at each point of permitted withdrawal and the permittee shall notify the division in writing once the installation has occurred. The division shall approve or disapprove the installation within 60 days of the date of notification.

(4) Any person who desires to commence a farm use of water for which a permit is issued after July 1, 2003, shall not commence such use prior to receiving approval from the division that such person has installed an acceptable type of water-measuring device installed by the commission at each point of permitted withdrawal. The permittee shall be responsible for all such costs.

(5) Employees, contractors, or agents of the division are authorized to enter upon private property at reasonable times and upon reasonable notice to conduct the duties of the division under this subsection.

(6) Regarding all permits for which a water-measuring device is installed, regardless of when the permit was issued, the division shall contract for the annual reading of such water-measuring devices. The division shall require each contractor conducting such annual readings to transmit complete and accurate data required by the division to the division annually.

(7) The division shall audit a subset of reported water-measuring device readings submitted by permittees for the purpose of understanding and improving the accuracy of such readings.

(8) The division shall contract for any maintenance, repair, or replacement of water-measuring devices installed pursuant to this Code section where maintenance, repair, or replacement is required to ensure that such water-measuring devices accurately reflect the amount of water used, and no charge shall be made to the permittee for such costs.

(9) If the division determines that the permittee or the permittee's employees, tenants, licensees, or agents have willfully dismantled, sold, relocated, or removed any water-measuring device installed pursuant to this Code section, the permittee may be subject to enforcement action by the division, including but not limited to imposition of civil penalties.

(10) Any reports of amounts of use for recreational purposes under this Code section shall be compiled separately from amounts reported for all other farm uses.

(n) In the consideration of applications for permits which if granted would authorize the withdrawal and transfer of surface waters across natural basins, the director shall be bound by any factors related thereto under Article 8 of this chapter or any state-wide water plan provided pursuant thereto and the following requirements:

(1) The director shall give due consideration to competing existing uses and applications for permits which would not involve interbasin transfers of surface water and, subject to subsection (e) of this Code section, shall endeavor to allocate a reasonable supply of surface waters to such users and applicants; and

(2) The director shall provide a press release regarding the proposed issuance of all permits authorizing such interbasin transfer of surface waters to newspapers of general circulation in all areas of the state which would be affected by such issuance. The press release shall be provided at least seven days before the issuance of these permits. If the director should determine that sufficient public interest warrants a public hearing on the issuance of these permits, he or she shall cause such a hearing to be held somewhere in the area affected prior to the issuance of these permits.

(o)(1) Except as otherwise provided in subsection (l) of this Code section for emergency orders, any person who is aggrieved or adversely affected by any order or action of the director pursuant to this Code section shall, upon petition within 30 days after the issuance of such order or the taking of such action, have a right to a hearing before an administrative law judge appointed by the Board of Natural Resources. The hearing before the administrative law judge shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and the rules and regulations adopted by the board pursuant thereto. Any administrative law judge so appointed by the board shall fully meet and qualify as to all applicable conflict of interest requirements provided for in Section 304(h)(2)(D) of the Federal Water Pollution Control Act of 1972, as amended, and the rules, regulations, and guidelines promulgated thereunder. The decision of the administrative law judge shall

constitute the final decision of the board. Any party to the hearing, including the director, shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50, including the right to seek judicial review in the superior court of the county of the applicant's or permittee's residence.

(2) Persons are "aggrieved or adversely affected" where the challenged action has caused or will cause them injury in fact and where the injury is to an interest within the zone of interests to be protected or regulated by the statutes that the director is empowered to administer and enforce. In the event the director asserts in response to the petition before the administrative law judge that the petitioner is not aggrieved or adversely affected, the administrative law judge shall take evidence and hear arguments on this issue and thereafter make a ruling on this issue before continuing with the hearing. The burden of going forward with evidence on this issue shall rest with the petitioner.

(p) In addition to the other provisions of this Code section, there shall be established three categories of farm use surface water withdrawal permits: active, inactive, and unused. The rules and regulations implementing this subsection shall provide without limitation for the following:

(1) An active farm use surface water withdrawal permit means one that has been acted upon and used for allowable purposes;

(2) An inactive farm use surface water withdrawal permit means one where the permit holder has requested inactive status in order to retain ownership of the permit for possible future use or reuse. Inactive permits shall be retained by the permit holder without modification;

(3) An unused farm use surface water withdrawal permit means one that has never been used for allowable purposes. Unused permits expire after two years unless changed to active or inactive status by notification to the director. Unused permits shall not be transferred or assigned to subsequent owners of the lands as provided in paragraph (3) of subsection (b) of this Code section;

(4) An inactive farm use surface water withdrawal permit shall be reclassified to an active permit when the permit holder has given the director 60 days' written notice and paid any applicable fees in accordance with paragraph (3) of subsection (b) of this Code section; and

(5) The director shall, via certified mail, return receipt requested, contact, or cause to be contacted, any person who holds a permit that the director has determined is unused. The notification shall include

the permit identification and information regarding the classifications and procedures for changing classifications. The permit holder shall have 120 days to respond after which the director shall issue a second notice via certified mail, return receipt requested. Two years after the date on which the director first notified the permit holder via certified mail, return receipt requested, of the unused status determination of the permit, the director shall revoke the permit if the permit holder has not requested that the unused permit be reclassified as inactive or active.

History. — Ga. L. 1977, p. 368, § 3; Ga. L. 1982, p. 3, § 12; Ga. L. 1982, p. 2304, § 1; Ga. L. 1983, p. 3, § 9; Ga. L. 1984, p. 22, § 12; Ga. L. 1984, p. 404, § 2; Ga. L. 1988, p. 1694, § 1; Ga. L. 1994, p. 863, § 2; Ga. L. 1995, p. 706, § 2; Ga. L. 2000, p. 1589, § 3; Ga. L. 2001, p. 4, § 12; Ga. L. 2003, p. 813, § 2; Ga. L. 2006, p. 237, §§ 2, 3/SB 191; Ga. L. 2007, p. 739, § 3/SB 200; Ga. L. 2008, p. 322, § 1/SB 466; Ga. L. 2008, p. 644, § 4-2/SB 342; Ga. L. 2008, p. 814, § 2/HB 1281; Ga. L. 2010, p. 732, § 5/SB 370; Ga. L. 2012, p. 775, § 12/HB 942; Ga. L. 2018, p. 974, § 2/SB 451; Ga. L. 2019, p. 1056, § 12/SB 52.

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, revised punctuation and language in subparagraph (m.1)(2)(D).

Cross references. — Ground water withdrawal permits, §§ 12-5-96, 12-5-105.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, "the" was deleted preceding "July 1, 1988" in two places in the second sentence of paragraph (a)(3) (now (b)(3)), "operation" was substituted for "operations" at the end of the first sentence of paragraph (b)(3) (now (a)(3)), and "diversions" was substituted for "divisions" near the beginning of subsection (g).

Pursuant to Code Section 28-9-5, in 1992, a comma was inserted following "(f)" in paragraph (a)(3) (now (b)(3)).

Pursuant to Code Section 28-9-5, in 2006, in paragraph (a)(3) (now (b)(3)), "April 20, 2006," was substituted for "the effective date of this paragraph" in the fifth sentence, and "April 20, 2006," was substituted for "the effective date thereof", in the sixth sentence, and in paragraph (k)(6.1), "April 20, 2006," was substituted for "the effective date of this paragraph", and a semicolon was substituted for a colon at the end.

Pursuant to Code Section 28-9-5, in 2008, paragraph (l)(4.1), as enacted by Ga. L. 2008, p. 814, § 2, was redesignated as paragraph (l)(4.2).

The enactment of paragraph (l)(4.2) of this Code section by Ga. L. 2008, p. 322, § 1, irreconcilably conflicted with and was treated as superseded by Ga. L. 2008, p. 814, § 2. See County of Butts v. Strahan, 151 Ga. 417 (1921).

Pursuant to Code Section 28-9-5, in 2018, a comma was added following "contractors" near the beginning of paragraph (m.1)(5).

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provided that the 2000 amendment is applicable with respect to notices delivered on or after July 1, 2000.

Ga. L. 2007, p. 739, § 5/SB 200, not codified by the General Assembly, provides that the 2007 amendment shall only become effective on January 1, 2009, upon the ratification of a resolution at the November, 2008, state-wide general election that amends the Constitution so as to authorize the General Assembly to provide by general law for the creation and comprehensive regulation of infrastructure development districts. If such resolution is not so ratified, this Act shall not become effective and shall stand repealed in its entirety on January 1, 2009. The constitutional amendment proposed in Ga. L. 2007, p. 775, was defeated in the general election on November 4, 2008.

Ga. L. 2010, p. 732, § 1/SB 370, not codified by the General Assembly, provides: "The General Assembly recognizes

the imminent need to create a culture of water conservation in the State of Georgia. The General Assembly also recognizes the imminent need to plan for water supply enhancement during future extreme drought conditions and other water emergencies. In order to achieve these goals, the General Assembly directs the Georgia Department of Natural Resources to coordinate with its Environmental Protection Division, the Georgia Environmental Facilities Authority [now known as the Georgia Environmental Finance Authority], the Georgia Department of Community Affairs, the Georgia Forestry Commission, the Georgia Department of Community Health, including its Division of Public Health, the Georgia Department of Agriculture, and the Georgia Soil and Water Conservation Commission to work together as appropriate to develop programs for water conservation and water supply."

Law reviews. — For survey article on environment, natural resources, and land use, see 34 Mercer L. Rev. 145 (1982). For article, "Hazardous Waste Issues in Real Estate Transactions," see 38 Mercer L. Rev. 581 (1987). For article, "Water Rights, Public Resources, and Private Commodities: Examining the Current and Future Law Governing the Allocation of Georgia Water," see 38 Ga. L. Rev. 1009 (2004). For article, "Special Challenges to Water Markets in Riparian States," see 21 Ga. St. U.L. Rev. 305 (2004). For article, "Sharing Water Through Interbasin Transfer and Basis of Origin Protection in Georgia: Issues for Evaluation in Comprehensive State Water Planning for Georgia's Surface Water Rivers and Groundwater Aquifers," see 21 Ga. St. U.L. Rev. 339 (2004). For article on 2010 amendment of this Code section, "Conservation and Natural Resources," see 27 Ga. St. U.L. Rev. 185 (2010).

For note on the 1995 amendment of this Code section, see 12 Ga. St. U.L. Rev. 51 (1995). For note, "The Problem of Reallocation in a Regulated Riparian System: Examining the Law in Georgia," see 40 Ga. L. Rev. 207 (2005). For note on 2007 amendment of this Code section, see 24 Ga. St. U.L. Rev. 255 (2007).

For comment, "Who Gets the Hooch?: Georgia, Florida, and Alabama Battle for Water From the Apalachicola-Chattahoochee-Flint River Basin," see 55 Mercer L. Rev. 1453 (2004).

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Waters, §§ 359, 360.

C.J.S. — 93 C.J.S., Waters, § 357 et seq.

ALR. — Measure and amount of damages for breach of duty to furnish water, gas, light, or power service, 108 A.L.R. 1174.

Propriety of injunctive relief against diversion of water by municipal corporation or public utility, 42 A.L.R.3d 426.

Modern status of rules governing interference with drainage of surface waters, 93 A.L.R.3d 1193.

Extinguishment by prescription of natural servitude for drainage of surface waters, 42 A.L.R.4th 462.

12-5-31.1. Applications, permits, and variances for public water supply reservoirs.

(a) Upon request of any local government entity that desires to construct a new public water supply reservoir for which permits and certifications under Code Section 12-5-31 and Sections 401 and 404 of the federal Clean Water Act, 33 U.S.C. Sections 1341 and 1344, are required, the division shall make available in a single collection copies of all forms necessary for the purposes of making applications for such permits.

(b) The period for granting or denying a permit application provided by subparagraph (c)(1)(A) of Code Section 12-2-2 shall likewise apply to decisions to issue certifications for purposes of Section 401 of the federal Clean Water Act, 33 U.S.C. Section 1341, justifications of need, and minimum instream flow certifications for construction of a new public water supply reservoir by a local government entity; and such shall be issued simultaneously to a local government entity that is a qualified applicant.

(c) The division shall issue an affirmative variance from the requirements of Chapter 7 of this title, consistent with the exemption granted by paragraph (11) of Code Section 12-7-17, to a permittee within seven days after granting the permit and issuing the certifications and documents specified under subsection (b) of this Code section.

History. — Code 1981, § 12-5-31.1, enacted by Ga. L. 2008, p. 644, § 1-4/SB 342.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, Code Section 12-5-483, as enacted by Ga. L. 2008, p. 644, § 1-4/SB 342, was redesignated as Code Section 12-5-31.1.

Editor's notes. — Ga. L. 2008, p. 644, § 1-1/SB 342, not codified by the General Assembly, provides that: "This part shall be known and may be cited as the 'Water Conservation and Drought Relief Act.'"

Ga. L. 2008, p. 644, § 5-1/SB 342, not codified by the General Assembly, provides in part that this Code section shall apply to all applications pending on or after July 1, 2008.

12-5-32. Aid to pollution control and surface-water management — Powers of division with respect to federal acts; receipt and expenditure of federal and state appropriations.

The division shall be the water pollution control and surface-water resource management agency of the state for all purposes of any federal water pollution control act or any other federal act within the purview of this article and may:

(1) Take all necessary or appropriate action to obtain for the state the benefits of any federal act within the purview of this article;

(2) Apply for, receive, and use federal funds made available under any federal act within the purview of this article;

(3) Approve projects for which loans or grants under any federal act are made to any municipality, county, or agency of state government or to any private person or entity;

(4) Participate through its authorized representatives in proceedings under any federal act within the purview of this article and recommend measures for the reduction of water pollution originating within the state or proper management of the state's surface-water resources; and

(5) Receive and expend on behalf of the state all funds which are now or which may hereafter become available or allotted to the State of Georgia by virtue of any appropriation or act of Congress or regulation of the federal government, its agencies and instrumentalities, or by virtue of any appropriation by the General Assembly, for water quality control, management, and allocation of the state's surface-water resources within the purview of this article, or for any other purpose defined in this article to be administered by the division as provided in this article. The division is authorized to use so much of funds as may be appropriated by the General Assembly for the purpose of matching federal grants as may be necessary to secure such grants and derive full advantage to the state of benefits contemplated under the terms of such grants, and to comply with the terms of such grants.

This Code section shall not prohibit the State Soil and Water Conservation Commission from exercising its powers under paragraph (9) of Code Section 2-6-27.

History. — Ga. L. 1964, p. 416, § 23; Ga. L. 1977, p. 368, § 4; Ga. L. 1978, p. 2245, § 1; Ga. L. 2008, p. 644, § 1-3/SB 342.

Editor's notes. — Ga. L. 2008, p. 644, § 1-1/SB 342, not codified by the General Assembly, provides that: "This part shall be known and may be cited as the 'Water Conservation and Drought Relief Act.'"

Ga. L. 2008, p. 644, § 5-1/SB 342, not codified by the General Assembly, provides in part that the amendment to this Code section shall apply to all applications pending on or after July 1, 2008.

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 3, 4, 5.

C.J.S. — 39A C.J.S., Health and Environment, § 120.

12-5-33. Aid to pollution control and surface-water management — Grants to counties, municipalities, or other public authority for water pollution control projects.

(a) The division is authorized to make grants, as funds are available, to any county, municipality, or any combination thereof, or to any public authority, agency, commission, or institution, to assist them in the construction of those portions of water pollution control projects which qualify for federal aid and assistance under the provisions of Title II of the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500), 33 U.S.C. Section 1281, et seq., as amended by the Clean Water Act of 1977 (P.L. 95-217) or as may hereafter be amended.

(b) The State of Georgia is further authorized to make grants as funds are available to any county, municipality, or any combination of the same, or to any public authority, agency, commission, or institution, by appropriate action of the General Assembly, with or without quali-

fication for federal aid and assistance as set forth in subsection (a) of this Code section, where the need of such county, municipality, or combination thereof, or such public authority, agency, commission, or institution, is shown.

History. — Ga. L. 1961, p. 109, § 1; Ga. L. 1964, p. 416, § 25; Ga. L. 1966, p. 328, § 1; Ga. L. 1971, p. 176, § 1; Ga. L. 1978, p. 2245, § 2.

Law reviews. — For note, "Regulation of Artificial Lakes and Recreational Subdivisions in Georgia," recommending methods for future regulation, see 8 Ga. St. B.J. 580 (1972).

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 3, 4, 5.

61C Am. Jur. 2d, Pollution Control, § 675.

C.J.S. — 39A C.J.S., Health and Environment, § 120.

12-5-34. Aid to pollution control and surface-water management — Amount of state grant.

(a) The state's contribution toward the construction of water pollution control projects shall not be limited by percentage contribution, and the State of Georgia may make grants to counties, municipalities, or combinations thereof in any amount up to the full cost of the construction of such projects where local need is shown and where such funds are available.

(b) State funds may be provided for such projects or portions of projects wherever the need may exist in conjunction with or in addition to federal grants as might be received under Title II of the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500), 33 U.S.C. Section 1281, et seq., as amended by the Clean Water Act of 1977 (P.L. 95-217), or as such acts may hereafter be amended.

History. — Ga. L. 1961, p. 109, § 2; Ga. L. 1964, p. 416, § 26; Ga. L. 1966, p. 328, § 2; Ga. L. 1978, p. 2245, § 3.

12-5-35. Aid to pollution control and surface-water management — Administration of grants by division.

The division shall be the agency for the administration of the funds granted by the state. The administration of such granted funds shall be done in direct conjunction with the administration of federal funds granted for water pollution control projects.

History. — Ga. L. 1961, p. 109, § 3; Ga. L. 1964, p. 416, § 27.

Cross references. — Administration of funds by director, § 12-5-38.1.

12-5-36. Aid to pollution control and surface-water management — Consistency with federal acts.

The determination of the relative need for, the priority of, and the standards of construction for federally assisted water pollution control projects shall be consistent with the provisions of Title II of the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500), 33 U.S.C. Section 1281, et seq., as amended by the Clean Water Act of 1977 (P.L. 95-217), or as may hereafter be amended.

History. — Ga. L. 1961, p. 109, § 4; Ga. L. 1964, p. 416, § 28; Ga. L. 1978, p. 2245, § 4.

12-5-37. Aid to pollution control and surface-water management — Intent of article with regard to state contributions.

It is the intent of this article that full advantage be taken of all funds available under the Federal Water Pollution Control Act, but the State of Georgia shall not be limited in its contribution, and where no funds are available under the Federal Water Pollution Control Act, the State of Georgia shall be authorized to appropriate funds for the alleviation of pollution problems and for the construction of water pollution control projects throughout the State of Georgia as the need may be shown by counties, municipalities, or combinations thereof, or any public authority, agency, commission, or institution. Such grants by the state may be made for specific communities or for water pollution control projects to be determined by the division and administered by it.

History. — Ga. L. 1966, p. 328, § 3; Ga. L. 1971, p. 176, § 2.

U.S. Code. — The Federal Water Pollution Control Act, referred to in this Code section, is codified as 33 U.S.C. § 1251 et seq.

12-5-38. Aid to pollution control and surface-water management — Management by division of federal construction grants program.

The division is authorized to manage the construction grants program as set forth in Title II of the Federal Water Pollution Control Act Amendments of 1972 (P.L. 92-500), 33 U.S.C. Section 1281, et seq., as amended by the Clean Water Act of 1977 (P.L. 95-217), or as may hereafter be amended, upon receiving delegation of such program from the administrator of the federal Environmental Protection Agency. The division shall manage such program in accordance with the requirements and conditions set forth in Title II of the Federal Water Pollution Control Act Amendments of 1972, as amended.

History. — Ga. L. 1978, p. 2245, § 5.

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 3, 4, 5.

C.J.S. — 39A C.J.S., Health and Environment, § 120.

12-5-38.1. Administration of funds; water pollution control and drinking water revolving funds.

(a) The director is authorized to administer funds granted to the state by the administrator of the federal Environmental Protection Agency pursuant to Title VI of the Federal Water Pollution Control Act, as now or hereafter amended, for the purpose of providing assistance to municipalities or counties or any combination thereof or to any public authority, agency, commission, or institution for construction of treatment works as that term is defined in Section 212 of the federal Clean Water Act of 1977, P.L. 95-217, which are publicly owned. The director is further authorized to administer funds granted to the state by the administrator of the federal Environmental Protection Agency pursuant to Title XIV of the federal Safe Drinking Water Act, as now or hereafter amended, for the purpose of providing assistance to municipalities or counties or any combination thereof or any public or, if authorized by law, any private authority, agency, commission, or institution for the construction of public drinking water works as such term is defined in Section 1401 of the federal Safe Drinking Water Act Amendments of 1986, P.L. 99-339. The director shall administer all funds as provided in this Code section granted to the division prior to federal fiscal year 1994 until such grants are final and complete. All such grants made in or after federal fiscal year 1994 shall be administered by the Georgia Environmental Finance Authority. At the end of federal fiscal year 1994, the administration of the water pollution control revolving fund provided for in subsection (b) of this Code section, and the fund balance, assets, liabilities, and retained earnings shall be transferred to the Georgia Environmental Finance Authority.

(b) Any such funds received from the administrator of the federal Environmental Protection Agency shall be deposited in one or more water pollution control and drinking water revolving funds established by the director. In addition to such federal funds, other nonfederal funds may be deposited in such revolving funds as they become available to the authority. The forms of revolving fund assistance and the manner of administering such funds shall be determined in accordance with rules and regulations promulgated by the Board of Natural Resources. Such funds shall be transferred to the Georgia Environmental Finance Authority as provided in subsection (a) of this Code section.

(c) The director is authorized to contract with any other state agency, authority, board, or commission for the purpose of providing for the

management, investment, and disbursement of all funds deposited in the water pollution control and drinking water revolving funds.

History. — Code 1981, § 12-5-38.1, enacted by Ga. L. 1986, p. 350, § 3; Ga. L. 1994, p. 97, § 12; Ga. L. 1994, p. 555, § 1; Ga. L. 2010, p. 949, § 1/HB 244.

Cross references. — Administration of grants by state, § 12-5-35.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1986, "federal" preceding "Water Pollution Control Act" was capitalized in subsection (a).

U.S. Code. — The Federal Water Pollution Control Act, as amended, and the federal Clean Water Act of 1977, as amended, referred to in this Code section, are codified as 33 U.S.C. § 1251 et seq.

The Federal Safe Drinking Water Act, referred to in this Code section, is codified at 42 U.S.C. § 300f et seq.

OPINIONS OF THE ATTORNEY GENERAL

Constitutionality of loans. — Loans by the Department of Natural Resources pursuant to O.C.G.A. § 12-5-38.1 and loans by the Georgia Environmental Facilities Authority pursuant to O.C.G.A. § 50-23-1 et seq. do not cause a city or county to incur debt in accordance with Ga. Const. 1983, Art. IX, Sec. V, Para. I. The constitutional underpinning of these programs is in the intergovernmental contract clause, Ga. Const. 1983, Art. IX, Sec. III, Para. I(a). Thus, the procedural requirements in O.C.G.A. § 48-8-111 for submitting a debt question are not triggered when proceeds derived from the sales tax are to be applied to repayment of the loans by the Department of Natural Resources or the Georgia Environmental Facilities Authority. 1990 Op. Att'y Gen. No. U90-7.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of lead limitations and "lead and copper" rule of Safe Drinking Water Act, 16 A.L.R. Fed. 3d 3.

Citizen's cause of action under Safe Drinking Water Act, 42 U.S.C.A. § 300j-8, 16 A.L.R. Fed. 3d 4.

12-5-39. Aid to pollution control and surface-water management — Area-wide waste treatment management.

The division is authorized to develop and operate a continuing area-wide waste treatment management planning process pursuant to its powers contained in this article for all portions of the state for which the state is required to act as the planning agency in accordance with Section 208 of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. Section 1288, as amended by the Clean Water Act of 1977 (P.L. 95-217). With regard to any program submitted by the Governor pursuant to subsection 208(b)(4)(A) of the Federal Water Pollution Control Act Amendments of 1972, 33 U.S.C. Section 1288, as amended by the Clean Water Act of 1977 (P.L. 95-217), the director is empowered with the authority to take such action to comply with the requirements of subsections 208(b)(4)(B)(i) through (v) of such act.

History. — Ga. L. 1978, p. 2245, § 6.

U.S. Code. — Section 208(b)(4)(A) of the Federal Water Pollution Control Act, referred to in this Code section, is codified as 33 U.S.C. § 1288(b)(4)(A). Section 208(b)(4)(B)(i) through (v) of that same Act is codified as 33 U.S.C. § 1288(b)(4)(B)(i) through (v).

Law reviews. — For article surveying Georgia cases dealing with environment, natural resources, and land use from June 1977 through May 1978, see 30 Mercer L. Rev. 75 (1978).

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 3, 4, 5.

C.J.S. — 39A C.J.S., Health and Environment, § 120.

12-5-40. Aid to pollution control and surface-water management — Adoption of rules and regulations regarding application for state grants.

The Board of Natural Resources is empowered to adopt such rules, regulations, and procedures to be followed in applying for state grants authorized in this article as shall be necessary for the effective administration thereof.

History. — Ga. L. 1961, p. 109, § 5; Ga. L. 1964, p. 416, § 29.

Administrative rules and regulations. — Water quality control, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-6.

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 3, 4, 5.

C.J.S. — 39A C.J.S., Health and Environment, §§ 120, 123, 126, 132, 135, 139.

12-5-41. Aid to pollution control and surface-water management — Water and sewage treatment facilities or systems for eligible planned communities.

Reserved. Repealed by Ga. L. 2015, p. 385, § 2-1/HB 252, effective July 1, 2015.

Editor's notes. — This Code section was based on Ga. L. 1974, p. 1215, § 7; Ga. L. 1982, p. 3, § 12.

12-5-42. Cooperative efforts for abatement of pollution; order by director; request for hearing; allowance of reasonable time for abatement.

(a) Whenever the division determines that any person is discharging sewage, industrial waste, or other wastes into any waters of the state in a degree which prevents the water from meeting the established

standards of water purity, the division shall act to secure the person's cooperation in the reduction or elimination of the detrimental effects of the discharge.

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

(c) Whenever any person refuses to cooperate with the efforts of the director to reduce pollution, the director may issue an order to bring about the reduction or elimination of the pollution. Any order issued by the director under this article shall become final unless the person aggrieved requests in writing a hearing before the director no later than 30 days after such order is served. However, before issuing or enforcing such an order, the director shall allow any person a reasonable time to make the necessary financial arrangements or make other necessary preparations for the elimination of the pollution.

(d) Whenever the division determines that a violation of any provision of this article or any rule or regulation promulgated pursuant to this article relating to the withdrawal, diversion, or impoundment of surface water has occurred, the division shall by conference, conciliation, or persuasion attempt to convince the violator to cease such violation. If in the opinion of the director such efforts fail, the director may issue an order to bring about the cessation of such violation. Such order shall specify the alleged violation and shall prescribe a reasonable time for corrective action to be accomplished. Any order issued pursuant to this subsection shall become final unless the person aggrieved requests a hearing in writing before the director not later than 30 days after such order is served.

History. — Ga. L. 1964, p. 416, § 11; Ga. L. 1972, p. 1000, § 1; Ga. L. 1991, p. 995, § 1.

Law reviews. — For note, "Regulation of Artificial Lakes and Recreational Subdivisions in Georgia," recommending methods for future regulation, see 8 Ga. St. B.J. 580 (1972).

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 3, 4, 5.

61C Am. Jur. 2d, Pollution Control, §§ 950, 951, 952, 953, 960.

C.J.S. — 39A C.J.S., Health and Environment, § 120, 124 et seq.

12-5-43. Administrative hearings.

(a) Whenever a person is aggrieved or adversely affected by any action or by any order or orders of the director, or by any action or by any order or orders pursuant to authority delegated by the director, such person may request and obtain a hearing by filing a petition with

the director no later than 30 days after such order or notice of action is served upon such person. Code Section 50-13-13 shall apply insofar as it is applicable to the administrative procedure necessary under this article.

(b) Code Sections 50-13-15 through 50-13-17 shall apply to all hearings held under this article.

History. — Ga. L. 1964, p. 416, § 12; Ga. L. 1966, p. 316, § 3; Ga. L. 1972, p. 1000, § 2.

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 3, 4, 5.

C.J.S. — 39A C.J.S., Health and Environment, § 130.

12-5-44. Judicial review.

(a) Any person who has exhausted all administrative remedies available within the department and who is aggrieved by a final decision in a contested case is entitled to judicial review under this article. A preliminary, procedural, or intermediate action or ruling is immediately reviewable if review of the final decision would not provide an adequate remedy. In this connection, all proceedings for judicial review shall be in accordance with Code Section 50-13-19.

(b) The division or any other party to the proceeding may secure a review of the final judgment of the superior court to the appellate courts of this state.

History. — Ga. L. 1964, p. 416, § 13; Ga. L. 1966, p. 316, § 4.

JUDICIAL DECISIONS

Interpretation of narrative standard rule as to discharges. — Georgia Department of Natural Resources Environmental Protection Division's (EPD's) interpretation of the narrative standard was entitled to deference as it was proper for the EPD to interpret the narrative standard as not intended to convert the designated use of a water body to a more protected use as the plain language of the narrative standard does not specify the degree of interference with legitimate water uses that would constitute a violation of the rule. Altamaha Riverkeeper, Inc. v. Rayonier Performance Fibers, LLC, 346 Ga. App. 269, 816 S.E.2d 125 (2018), cert. denied, No. S18C1474, 2019 Ga. LEXIS 554 (Ga. 2019).

RESEARCH REFERENCES

Am. Jur. 2d. — 61C Am. Jur. 2d, Pollution Control, § 1895 et seq.

C.J.S. — 39A C.J.S., Health and Environment, § 131, 133, 135, 145.

12-5-45. Judgment in accordance with division's order.

The division may file in the superior court in the county in which the person under order resides, or in the county in which the violation occurred or, if the person is a corporation, in the county in which the corporation maintains its principal place of business, a certified copy of a final order of the director or the administrative law judge unappealed from or of a final order of the administrative law judge affirmed upon appeal, whereupon the court shall render judgment in accordance therewith and notify the parties. The judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though the judgment had been rendered in an action duly heard and determined by the court.

History. — Ga. L. 1971, p. 191, § 1; Ga. L. 1984, p. 404, § 3.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 359.

C.J.S. — 73A C.J.S., Public Administrative Law and Procedure, § 329 et seq.

12-5-46. Effect of article on rights of action.

Nothing in this article shall be construed to alter or abridge any right of action existing in law or equity, civil or criminal, nor shall any provision of this article be construed to prevent any person, as a riparian owner or otherwise, from exercising his rights to suppress nuisances or to abate any pollution.

History. — Ga. L. 1964, p. 416, § 17.

Cross references. — Property rights in water generally, T. 44, C. 8. Diversion, obstruction, or pollution of stream as constituting trespass, § 51-9-7.

Law reviews. — For article, "Water Rights, Public Resources, and Private Commodities: Examining the Current and Future Law Governing the Allocation of Georgia Water," see 38 Ga. L. Rev. 1009 (2004). For article, "Sharing Water Through Interbasin Transfer and Basis of Origin Protection in Georgia: Issues for Evaluation in Comprehensive State Water Planning for Georgia's Surface Water Rivers and Groundwater Aquifers," see 21 Ga. St. U.L. Rev. 339 (2004).

JUDICIAL DECISIONS

Intent of article. — This article is not intended to alter the general rules of law in regard to the abatement of public or private nuisances. J.D. Jewell, Inc. v. Hancock, 226 Ga. 480, 175 S.E.2d 847 (1970) (see O.C.G.A. § 12-5-20 et seq.).

RESEARCH REFERENCES

ALR. — Right of riparian owner to construct dikes, embankments, or other structures necessary to maintain or restore bank of stream or to prevent flood, 53 A.L.R. 1180; 23 A.L.R.2d 750.

Measure and elements of damages for pollution of a stream, 49 A.L.R.2d 253.

Propriety of injunctive relief against diversion of water by municipal corporation or public utility, 42 A.L.R.3d 426.

Maintainability in state court of class action for relief against air or water pollution, 47 A.L.R.3d 769.

Right to maintain action to enjoin public nuisance as affected by existence of pollution control agency, 60 A.L.R.3d 665.

Standing to sue for violation of state environmental regulatory statute, 66 A.L.R.4th 685.

12-5-47. Emergency orders; hearing.

Whenever the division finds that an emergency exists requiring that such action be taken as it deems necessary to meet the emergency, notwithstanding any other provisions of this article, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately but, on application to the division, shall be afforded a hearing as soon as possible. On the basis of such hearing, the division shall continue such order in effect, revoke it, or modify it.

History. — Ga. L. 1964, p. 416, § 20.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 120, 129.

12-5-48. Injunctive relief.

Whenever in the judgment of the division any person has engaged in or is about to engage in any act or practice which constitutes or will constitute any violation of this article, the division may make application to the superior court of the county where such person resides, or if nonresident of this state, then to the superior court of the county where such person is engaged in or is about to engage in such act or practice, for an order enjoining and restraining such act or practice. Upon a showing by the division that such person has engaged in or is about to engage in any such act or practice, a permanent or temporary injunction, restraining order, or other order shall be granted without the necessity of showing a lack of adequate remedy at law.

History. — Ga. L. 1964, p. 416, § 21.

JUDICIAL DECISIONS

Sufficient evidence to support injunctive relief. — As a trial court found that a permittee committed numerous violations of the permittee's permit and the

Georgia Water Quality Control Act, O.C.G.A. § 12-5-20 et seq., the court's interlocutory injunction limiting the permittee's operation until an administrative appeal was concluded, or until the permittee demonstrated the permittee could operate in accordance with the law, did not exceed the scope of O.C.G.A. § 12-5-48. Agri-Cycle LLC v. Couch, 284 Ga. 90, 663 S.E.2d 175 (2008).

RESEARCH REFERENCES

Am. Jur. 2d. — 61C Am. Jur. 2d, Pollution Control, § 1932 et seq.

C.J.S. — 39A C.J.S., Health and Environment, §§ 141, 146.

ALR. — Injunction against pollution of stream by private persons or corporations, 46 A.L.R. 8.

Measure and elements of damages for pollution of a stream, 49 A.L.R.2d 253.

Pollution control: preliminary mandatory injunction to prevent, correct, or reduce effects of polluting practices, 49 A.L.R.3d 1239.

12-5-49. Representation of division and its agents by Attorney General and his staff.

It shall be the duty of the Attorney General to represent the division and its agents or designate some member of his staff to represent them in all actions in connection with this article.

History. — Ga. L. 1964, p. 416, § 19.

12-5-50. Intent of article as to conflicts with federal laws and as to eligibility of division or departments of state government for federal funds; remedial action.

Nothing in this article is intended to conflict with any provision of federal law or result in loss of eligibility for any federal funds on the part of the division or any department of state government. In case such a conflict or loss of federal funds should occur by virtue of enactment of any portion of this article, then the division is authorized and empowered to take such action as may be necessary and to effect such changes within the division as may be necessary to prevent loss of such funds to the division or any department of state government affected and to secure to the same the full benefit of the federal laws.

History. — Ga. L. 1964, p. 416, § 31.

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 3, 4, 5.

C.J.S. — 39A C.J.S., Health and Environment, § 120.

12-5-51. Civil liability.

(a) Any person who intentionally or negligently causes or permits any sewage, industrial wastes, or other wastes, oil, scum, floating

debris, or other substance or substances to be spilled, discharged, or deposited in the waters of the state, resulting in a condition of pollution as defined by this article, shall be liable in damages to the state and any political subdivision thereof for any and all costs, expenses, and injuries occasioned by such spills, discharges, or deposits. The amount of the damages assessed pursuant to this Code section shall include, but shall not be limited to, any costs and expenses reasonably incurred by the state or any political subdivision thereof, as the case may be, in cleaning up and abating such spills, discharges, or deposits, and any costs and expenses reasonably incurred in replacing aquatic life destroyed by such spills, discharges, or deposits. Damages to the state shall be recoverable in a civil action instituted in the name of the Environmental Protection Division of the Department of Natural Resources and shall be paid into the state treasury to the credit of the general fund. Damages to a political subdivision shall be recoverable in a civil action instituted by such subdivision.

(b) Any person who intentionally, negligently, or accidentally causes or permits any toxic, corrosive, acidic, caustic, or bacterial substance or substances to be spilled, discharged, or deposited in the waters of the state, except by providential cause, in amounts, concentrations, or combinations which are harmful to the public health, safety, or welfare, or to animals, birds, or aquatic life, shall be strictly liable in damages to the state and any political subdivision thereof for any and all costs, expenses, and injuries occasioned by such spills, discharges, or deposits. Damages to the state shall be recoverable in a civil action instituted in the name of the Environmental Protection Division of the Department of Natural Resources and shall be paid into the state treasury to the credit of the general fund. Damages to a political subdivision shall be recoverable in a civil action instituted by such subdivision.

History. — Ga. L. 1971, p. 190, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 3, 4, 5.

61C Am. Jur. 2d, Pollution Control, § 1902.

Am. Jur. Pleading and Practice Forms. — 8C Am. Jur. Pleading and Practice Forms, Drains and Drainage Districts, § 50.

ALR. — Measure and elements of damages for pollution of a stream, 49 A.L.R.2d 253.

Validity of state statutory provision permitting administrative agency to impose monetary penalties for violation of environmental pollution statute, 81 A.L.R.3d 1258.

Liability insurance coverage for violations of antipollution laws, 88 A.L.R.3d 182; 87 A.L.R.4th 444.

12-5-52. Civil penalty.

(a) Any person violating any provision of this article or any permit condition or limitation established pursuant to this article or, negligently or intentionally, failing or refusing to comply with any final or emergency order of the director issued as provided in this article, shall be liable to a civil penalty not to exceed $50,000.00 per day for each day during which such violation continues; provided, however, that a separate and later incident creating a violation within a 12 month period shall be liable for a civil penalty not to exceed $100,000.00 per day for each day during which such violation continues.

(b) The director, after a hearing, shall determine whether or not any person has violated any provision of this article or has, negligently or intentionally, failed or refused to comply with any final or emergency order of the director and may, upon a proper finding, issue his order imposing such civil penalties as provided in this Code section. Any person so penalized under this Code section is entitled to judicial review. In this connection, all hearings and proceedings for judicial review under this Code section shall be in accordance with Code Section 12-5-44. All penalties recovered by the director as provided by this article shall be paid into the state treasury to the credit of the general fund.

History. — Ga. L. 1971, p. 87, § 2; Ga. L. 1972, p. 999, § 1; Ga. L. 1974, p. 599, § 13; Ga. L. 1986, p. 350, § 4; Ga. L. 1990, p. 1211, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Special environmental projects in lieu of monetary penalties. — Even though the Environmental Protection Division may authorize special environmental projects in lieu of unimposed or unaccrued monetary penalties, modification of a consent order to reduce fines imposed on a city and require that an amount equal to the reduction be spent on development of a proposed recreational park did not appear to be authorized. 1995 Op. Att'y Gen. No. U95-17.

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 3, 4, 5.

61C Am. Jur. 2d, Pollution Control, § 1895.

C.J.S. — 39A C.J.S., Health and Environment, § 124.

ALR. — Measure and elements of damages for pollution of a stream, 49 A.L.R.2d 253.

Liability insurance coverage for violations of antipollution laws, 87 A.L.R.4th 444.

12-5-53. Criminal penalty.

(a) Any person who violates any provision of this article or any permit condition or limitation established pursuant to this article or who fails, neglects, or refuses to comply with any final order of a court

lawfully issued as provided in this article or who violates any requirement imposed in a pretreatment program approved by the director or who introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage or which causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works pursuant to this article, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $2,500.00 per day nor more than $25,000.00 per day of violation, or imprisoned no more than one year, or both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall be by a fine of not more than $50,000.00 per day of violation, by imprisonment for not more than two years, or both.

(b) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained by this article or by any permit, rule, regulation, or order issued under this article, or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained by this article or by any permit, rule, regulation, or order issued under this article, shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000.00, imprisoned not more than two years, or both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall be by a fine of not more than $20,000.00 per day of violation, or by imprisonment for not more than four years, or both.

(c) Any person who knowingly violates any provision of this article or any permit condition or limitation established pursuant to this article or who knowingly fails, neglects, or refuses to comply with any final order of a court lawfully issued as provided in this article or who knowingly violates any requirement imposed in a pretreatment program approved by the director or who knowingly introduces into a sewer system or into a publicly owned treatment works any pollutant or hazardous substance which causes or may reasonably be anticipated to cause personal injury or property damage or which causes such treatment works to violate any effluent limitation or condition in any permit issued to the treatment works pursuant to this article shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not less than $5,000.00 per day nor more than $50,000.00 per day of violation or by imprisonment for not more than two years, or both. If the conviction is for a violation committed after the first conviction of such person under this subsection, punishment shall be by a fine of not more than $100,000.00 per day of violation or by imprisonment for not more than four years, or both.

(d) Any person who knowingly violates any provision of this article or any permit condition or limitation established pursuant to this article or who knowingly fails, neglects, or refuses to comply with any final order of a court lawfully issued as provided in this article and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than $250,000.00 or imprisonment of not more than 15 years, or both. A defendant that is an organization shall, upon conviction of violating this subsection, be subject to a fine of not more than $1 million. The following provisions apply for the purpose of this subsection:

(1) In determining whether a defendant who is an individual knew that his conduct placed another person in imminent danger of death or serious bodily injury, the person is responsible only for actual awareness or actual belief that he possessed, and knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant; except that in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information;

(2) It is an affirmative defense to prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of an occupation, a business, a profession, medical treatment, or medical or scientific experimentation conducted by professionally approved methods and that the person endangered had been made aware of the risks involved prior to giving consent. Such defense must be established by the preponderance of the evidence;

(3) The term "organization" means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons; and

(4) The term "serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(e) It shall be an affirmative defense under subsections (a) and (c) of this Code section that the introduction of any pollutant or hazardous substance into a sewer system or a publicly owned treatment works was in compliance with all applicable federal, state, and local requirements which govern the introduction of a pollutant or hazardous substance into a sewer or publicly owned treatment works.

History. — Ga. L. 1964, p. 416, § 22; Ga. L. 1974, p. 599, § 14; Ga. L. 1986, p. 350, § 5.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 151 et seq.

ALR. — Liability insurance coverage for violations of antipollution laws, 87 A.L.R.4th 444.

Construction and application of § 2Q1.2 and 2Q1.3 of United States Sentencing Guidelines (18 USCS Appx 2Q1.2 and 2Q1.3), pertaining to offenses involving hazardous or toxic substances, or other environmental pollutants, 138 A.L.R. Fed 507.

ARTICLE 3

WELLS AND DRINKING WATER

Cross references. — Anti-siphon devices for irrigation systems, § 2-1-4. Licensing water and wastewater treatment plant operators and laboratory analysts, T. 43, C. 51.

Administrative rules and regulations. — Rules for safe drinking water, Official Compilation of the Rules and Regulations for the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-5.

Law reviews. — For note on 1995 amendments of Code sections in this article, see 12 Ga. St. U.L. Rev. 51 (1995).

RESEARCH REFERENCES

ALR. — Liability of builder or real estate developer who sells new dwelling for failure to provide potable water, 16 A.L.R.4th 1246.

Part 1

General Provisions

Cross references. — Registration of geologists, T. 43, C. 19.

12-5-70. Prospecting for underground water supplies — Powers of department.

The department may, whenever directed so to do by the Governor, prospect for underground water supplies at such places in the state as the Governor may direct. In so doing, the department may drill wells, make borings and soundings, and do and perform such other acts as may be necessary in determining the location and existence of underground water supplies for public or industrial uses, including the acquisition of sites for drilling operations.

History. — Ga. L. 1953, Jan.-Feb. Sess., p. 5, § 1.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 346 et seq.

12-5-71. Prospecting for underground water supplies — Records of findings; acceptance of federal grants.

The department shall keep full records of all its findings, including full information as to geological formations encountered in drilling operations, and shall, in addition to keeping such records, file copies of the same with the Secretary of State. The department may also file copies of such records with the proper bureau or department of the United States and may accept any available federal grant for use in carrying on the work authorized by Code Section 12-5-70.

History. — Ga. L. 1953, Jan.-Feb. Sess., p. 5, § 2.

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 346 et seq.

12-5-72. Prospecting for underground water supplies — Contracts with counties or municipalities for use of water.

If the department, in carrying out Code Section 12-5-70, shall encounter water in sufficient quantities to be useful to any municipality or county in furnishing water to its inhabitants, the department may contract with such municipality for the use of such water, and, in so doing, may sell or lease any such well or water supply, provided that no such lease shall be for longer than 30 years. Such contract, whether in the form of a lease contract or a sales contract, shall be subject to approval as to form by the Attorney General.

History. — Ga. L. 1953, Jan.-Feb. Sess., p. 5, § 4.

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Waterworks and Water Companies, § 2.

C.J.S. — 94 C.J.S., Waters, §§ 539, 541, 542.

12-5-73. Prospecting for underground water supplies — Appropriation or allocation of funds to department.

The department may use, for the purposes authorized by Code Sections 12-5-70 through 12-5-72, such funds as may be from time to time appropriated or allocated therefor.

History. — Ga. L. 1953, Jan.-Feb. Sess., p. 5, § 3.

Part 2

Ground-water Use Generally

Cross references. — Powers and duties of department pertaining to protection of underground fresh water supplies against effects of deep drilling for oil and gas, § 12-4-40 et seq.

Administrative rules and regulations. — Groundwater use, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-2.

Law reviews. — For article, "The Groundwater Use Act of 1972: Protection for Georgia's Groundwater Resource," see 6 Ga. L. Rev. 709 (1972). For article, "Georgia's Environmental Law: A Survey," see 23 Mercer L. Rev. 633 (1972). For article discussing regulation of selected activities to effect environmental planning, see 10 Ga. L. Rev. 53 (1975). For article discussing legal questions relating to interbasin transfer of water supply, see 13 Ga. St. B.J. 48 (1976). For article, "Hazardous Waste Issues in Real Estate Transactions," see 38 Mercer L. Rev. 581 (1987).

RESEARCH REFERENCES

ALR. — Constitutionality of statutes relating to surface water, 85 A.L.R. 465.

12-5-90. Short title.

This part shall be known and may be cited as the "Ground-water Use Act of 1972."

History. — Ga. L. 1972, p. 976, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "Ground-water" was substituted for "Ground Water".

Law reviews. — For article, "Water Rights, Public Resources, and Private Commodities: Examining the Current and Future Law Governing the Allocation of Georgia Water," see 38 Ga. L. Rev. 1009 (2004). For article, "Special Challenges to Water Markets in Riparian States," see 21 Ga. St. U.L. Rev. 305 (2004). For article, "Sharing Water Through Interbasin Transfer and Basis of Origin Protection in Georgia: Issues for Evaluation in Comprehensive State Water Planning for Georgia's Surface Water Rivers and Groundwater Aquifers," see 21 Ga. St. U.L. Rev. 339 (2004).

JUDICIAL DECISIONS

Denial of groundwater withdrawal permit proper. — Georgia environmental department's analysis and decision to deny a city's application for a groundwater withdrawal permit complied with O.C.G.A. § 12-5-96(d) as a matter of law as the decision supported the policies of the Groundwater Use Act of 1972 as set out in O.C.G.A. § 12-5-91, the department was entitled to place more emphasis on the city's need or necessity for a new water withdrawal under O.C.G.A. § 12-5-90(d)(1) over other factors, and the department was not statutorily or regulatorily required to issue findings of fact and conclusions of law to show that the department considered all ten factors under § 12-5-96(d). City of Rincon v. Couch, 276 Ga. App. 567, 623 S.E.2d 754 (2005).

12-5-91. Declaration of policy.

The general welfare and public interest require that the water resources of the state be put to beneficial use to the fullest extent to which they are capable, subject to reasonable regulation in order to conserve these resources and to provide and maintain conditions which are conducive to the development and use of water resources.

History. — Ga. L. 1972, p. 976, § 2.
Law reviews. — For annual survey of local government law, see 58 Mercer L. Rev. 267 (2006).

RESEARCH REFERENCES

ALR. — Right of appropriator of water to recapture water which has escaped or is otherwise no longer within his immediate possession, 89 A.L.R. 210.

JUDICIAL DECISIONS

Factors considered for groundwater withdrawal permit. — Georgia environmental department was not required to grant a city's application for a groundwater withdrawal permit merely because no adverse effect on other users was shown as there were other circumstances that supported denial of the permit request, pursuant to Ga. Comp. R. & Regs. r. 391-3-2-.06(2) and O.C.G.A. § 12-5-96(d); the department was entitled to weigh the costs to the city of purchasing water against other public policy concerns, such as the need for conservation of limited water resources pursuant to O.C.G.A. § 12-5-91. City of Rincon v. Couch, 276 Ga. App. 567, 623 S.E.2d 754 (2005).

Denial of groundwater permit proper. — Georgia environmental department's analysis and decision to deny a city's application for a groundwater withdrawal permit complied with O.C.G.A. § 12-5-96(d) as a matter of law as the decision supported the policies of the Groundwater Use Act of 1972, as set out in O.C.G.A. § 12-5-91, the department was entitled to place more emphasis on the city's need or necessity for a new water withdrawal under O.C.G.A. § 12-5-90(d)(1) over other factors, and the department was not statutorily or regulatorily required to issue findings of fact and conclusions of law to show that the department considered all ten factors under § 12-5-96(d). City of Rincon v. Couch, 276 Ga. App. 567, 623 S.E.2d 754 (2005).

12-5-92. Definitions.

As used in this part, the term:

(1) "Aquifer" means a geologic formation, group of such formations, or a part of such a formation that is water-bearing.

(2) "Area of the state" means any municipality or county or portion thereof or other substantial geographical area of the state as may be designated by the division.

(3) "Consumptive use" means any use of water withdrawn from the ground other than a "nonconsumptive use," as defined in this part.

(4) "Director" means the director, or his designee, of the Environmental Protection Division of the Department of Natural Resources.

(5) "Division" means the Environmental Protection Division of the Department of Natural Resources.

(5.1) "Farm uses" means irrigation of any land used for general farming, forage, aquaculture, pasture, turf production, orchards, or tree and ornamental nurseries; provisions of water supply for farm animals, poultry farming, or any other activity conducted in the course of a farming operation. Farm uses shall also include the processing of perishable agricultural products and the irrigation of recreational turf, except in Chatham, Effingham, Bryan, and Glynn counties, where irrigation of recreational turf shall not be considered a farm use.

(6) "Ground water" means water of underground streams, channels, artesian basins, reservoirs, lakes, and other water under the surface of the earth, whether public or private, natural or artificial, which is contained within, flows through, or borders upon this state or any portion thereof, including those portions of the Atlantic Ocean over which this state has jurisdiction.

(7) "Nonconsumptive use" means the use of water withdrawn from a ground-water system or aquifer in such a manner that it is returned to the ground-water system or aquifer from which it was withdrawn without substantial diminution in quantity or substantial impairment in quality at or near the point from which it was withdrawn, provided that in determining whether a use of ground water is nonconsumptive, the division may take into consideration whether any material injury or detriment to other water users of the area, by reason of reduction of water pressure in the aquifer or system, has not been adequately compensated by the permit applicant who caused or substantially contributed to such injury or detriment.

(8) "Person" means any and all persons, including individuals, firms, partnerships, associations, public or private institutions, mu-

nicipalities or political subdivisions, governmental agencies, or private or public corporations organized under the laws of this state or any other state or country.

(9) "Well" means any excavation that is cored, bored, drilled, jetted, dug, or otherwise constructed for the purpose of locating, testing, or withdrawing ground water, or for the purpose of evaluating, testing, developing, draining, or recharging any ground-water reservoirs or aquifer, or any excavation that may control, divert, or otherwise cause the movement of water from or into any aquifer, provided that this shall not include a well constructed by an individual on land which is owned or leased by him, appurtenant to a single-family dwelling, and intended for domestic use, including household purposes, farm livestock, or gardens.

History. — Ga. L. 1972, p. 976, § 3; Ga. L. 1973, p. 1273, §§ 1-3; Ga. L. 1984, p. 22, § 12; Ga. L. 1988, p. 1694, §§ 2, 3.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "single-family dwelling" was substituted for "single family dwelling" in paragraph (9).

12-5-93. Power of director to employ personnel.

The director is authorized to employ, on a full-time or part-time basis, such professional personnel and clerical or other employees as may be necessary to discharge the additional duties delegated to the division by this part.

History. — Ga. L. 1972, p. 976, § 14.

12-5-94. Adoption of rules and regulations by Board of Natural Resources.

The Board of Natural Resources may adopt and modify from time to time rules and regulations to implement this part.

History. — Ga. L. 1972, p. 976, § 11.

Administrative rules and regulations. — Groundwater use, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-2.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 127 et seq.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 207, 212 et seq.

12-5-95. Proposed regulations regarding ground-water use; hearings; adoption and modification of regulations; contesting validity of regulations.

(a) The Board of Natural Resources shall prepare proposed regulations to be applied, containing such of the following provisions as the board finds appropriate concerning the use of ground waters:

(1) Provisions requiring water users within the area to submit reports not more frequently than at 30 day intervals concerning quantity of water used or withdrawn, sources of water, and the nature of the use thereof;

(2) With respect to ground waters, provisions concerning the timing of withdrawals, provisions to protect against or abate salt-water encroachment, and provisions to protect against or abate unreasonable adverse effects on other water users within the area, including but not limited to adverse effects on public use;

(3) With respect to ground waters, provisions concerning well depth and spacing controls, and provisions establishing a range of prescribed pumping levels (elevations below which water may not be pumped) or maximum pumping rates, or both, in wells or for the aquifer or for any part thereof based on the capacities and characteristics of the aquifer;

(4) Such other provisions not inconsistent with this part as the Board of Natural Resources finds necessary to implement the purposes of this part.

(b) The Board of Natural Resources shall conduct one or more hearings upon the proposed regulations, in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." Upon completion of the hearings and consideration of submitted evidence and arguments with respect to any proposed regulation, the board shall adopt its final action with respect thereto, and shall publish such final action as part of its official regulations. The board is empowered to modify or revoke from time to time any final action previously taken by it pursuant to this Code section, any such modifications or revocations, however, to be subject to the procedural requirements of this part, including notice and hearing.

(c) Any person wishing to contest the validity of a regulation may file for a declaratory judgment as provided for by Code Section 50-13-10.

History. — Ga. L. 1972, p. 976, § 5; Ga. L. 1973, p. 1273, §§ 5-9.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1999, a misspelling of "aquifer" was corrected in paragraph (a)(3).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 208, 210, 448. 78 Am. Jur. 2d, Waters, §§ 2, 219.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 207, 212 et seq., 228. 93 C.J.S., Waters, § 197 et seq.

12-5-96. Regulated reasonable use of ground water for general use; permits to withdraw, obtain, or utilize; coordination with water plans; appeal procedures.

(a)(1) No person shall withdraw, obtain, or utilize ground waters in excess of 100,000 gallons per day for any purpose unless such person shall first obtain a permit therefor from the division.

(2) Any person applying for a permit or a permit modification under this part which indicates an increase in water usage, except for permits for solely agricultural usage, shall also submit with such application a water conservation plan approved by the director and based on guidelines issued by the director. The director shall collect and disseminate such technical information as the director deems appropriate to assist in the preparation of water conservation plans.

(b) When sufficient evidence is provided by the applicant that the water withdrawn or used from the ground is not consumptively used, a permit therefor shall be issued by the division without a hearing and without the conditions provided in subsection (c) of this Code section. Applications for such permits shall set forth such facts as the division shall deem necessary to enable it to establish and maintain adequate records of all water uses.

(c) In all cases in which sufficient evidence of a nonconsumptive use is not presented by the applicant, the division shall notify the applicant of the division's proposed action concerning such permit and shall transmit with such notice a copy of any permit it proposes to issue to the applicant, which permit will become final unless a request for a hearing is made within 30 days from the date of service of such notice. The division shall have the power:

(1) To grant such permit with such conditions as the division deems necessary to implement the regulations adopted pursuant to Code Section 12-5-95;

(2) To grant any temporary permit for such period of time as the division shall specify where conditions make such temporary permit essential, even though the action allowed by such permit may not be consistent with the regulations of the Board of Natural Resources;

(3) To modify or revoke any permit upon not less than 60 days' written notice to any person affected;

(4) To deny such permit if the application therefor or the effect of the water use proposed or described therein upon the water resources of the area is found to be contrary to public interest. Any water user wishing to contest the proposed action shall be entitled to a hearing upon request therefor.

(d) In adopting any regulations pursuant to Code Section 12-5-95 and in considering permit applications, revocations, or modifications under this Code section, the Board of Natural Resources or the division shall consider:

(1) The number of persons using an aquifer and the object, extent, and necessity of their respective withdrawals or uses;

(2) The nature and size of the aquifer;

(3) The physical and chemical nature of any impairment of the aquifer adversely affecting its availability or fitness for other water uses, including public use;

(4) The probable severity and duration of such impairment under foreseeable conditions;

(5) The injury to public health, safety, or welfare which would result if such impairment were not prevented or abated;

(6) The kinds of businesses or activities to which the various uses are related;

(7) The importance and necessity of the uses, including farm uses, claimed by permit applicants under this Code section, or of the water uses of the area under Code Section 12-5-95, and the extent of any injury or detriment caused or expected to be caused to other water uses, including public use;

(8) Diversion from or reduction of flows in other watercourses or aquifers in accordance with Article 8 of this chapter or any state-wide water plan provided pursuant thereto; and

(9) Any other relevant factors.

(e) Regional water development and conservation plans for the state's major aquifers or any portion thereof shall be developed in accordance with Article 8 of this chapter. Such plans shall include water development, conservation, and sustainable use and shall be based on detailed scientific analysis of the aquifer, the projected future condition of the aquifer, and current demand and estimated future demands on the aquifer, in accordance with Article 8 of this chapter. Such plans shall serve to promote the conservation and reuse of water within the state, guard against a shortage of water within the state and each region, and promote the efficient use of the water resource and shall be

consistent with the general welfare and public interest of the state as provided in Code Section 12-5-91, in accordance with Article 8 of this chapter. Upon adoption of a regional plan, all permits issued by the division shall be consistent with such plan. The term of any permit and all provisions of any permit for which an application for renewal is made prior to the completion of any regional plan shall be extended at least until the completion of such plan. Applications for new permits shall be subject to review by the division, and the division may issue such permits as appropriate pending completion of a regional plan.

(f) The division shall give notice of all its official acts which have or are intended to have general application and effect to all persons on its mailing list on the date when such action is taken. It shall be the duty of the division to keep such a mailing list on which it shall record the name and address of each person who requests a listing thereon, together with the date of receipt of such request. Any person may, by written request to the division, ask to be permanently recorded on such a mailing list.

(g) Any hearing pursuant to this Code section shall be held in accordance with subsection (c) of Code Section 12-2-2 and also, for the purposes of this part, shall be specifically subject to subsection (a) of Code Section 50-13-19.

(h)(1) Except as otherwise provided in Code Section 12-5-102 for emergency orders, any person who is aggrieved or adversely affected by any order or action of the director pursuant to this Code section shall, upon petition within 30 days after the issuance of such order or the taking of such action, have a right to a hearing before an administrative law judge appointed by the Board of Natural Resources. The hearing before the administrative law judge shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and the rules and regulations adopted by the board pursuant thereto. Any administrative law judge so appointed by the board shall fully meet and qualify as to all applicable conflict of interest requirements provided for in Section 304(h)(2)(D) of the Federal Water Pollution Control Act Amendments of 1972, as amended, and the rules, regulations, and guidelines promulgated thereunder. The decision of the administrative law judge shall constitute the final decision of the board. Any party to the hearing, including the director, shall have a right of judicial review thereof in accordance with Chapter 13 of Title 50, including the right to seek judicial review in the superior court in the county of the applicant's or permittee's residence. For the purposes of this part, such review is also specifically subject to subsection (a) of Code Section 50-13-19.

(2) Persons are "aggrieved or adversely affected" where the challenged action has caused or will cause them injury in fact and where

the injury is to an interest within the zone of interests to be protected or regulated by the statutes that the director is empowered to administer and enforce. In the event the director asserts in response to the petition before the administrative law judge that the petitioner is not aggrieved or adversely affected, the administrative law judge shall take evidence and hear arguments on this issue and thereafter make a ruling on this issue before continuing with the hearing. The burden of going forward with evidence on this issue shall rest with the petitioner.

History. — Ga. L. 1972, p. 976, § 6; Ga. L. 1973, p. 1273, §§ 10-15; Ga. L. 1982, p. 3, § 12; Ga. L. 1988, p. 1694, §§ 4, 5; Ga. L. 1992, p. 6, § 12; Ga. L. 1994, p. 863, § 3; Ga. L. 1995, p. 706, §§ 3, 4; Ga. L. 2007, p. 739, § 4/SB 200; Ga. L. 2008, p. 644, § 4-3/SB 342.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, "aquifer" was substituted for "acquifer" in paragraph (d)(3).

Editor's notes. — Ga. L. 2007, p. 739, § 5/SB 200, not codified by the General Assembly, provides that the 2007 amendment shall only become effective on January 1, 2009, upon the ratification of a resolution at the November, 2008, state-wide general election that amends the Constitution so as to authorize the General Assembly to provide by general law for the creation and comprehensive regulation of infrastructure development districts. If such resolution is not so ratified, this Act shall not become effective and shall stand repealed in its entirety on January 1, 2009. The constitutional amendment proposed in Ga. L. 2007, p. 775, was defeated in the general election on November 4, 2008.

Law reviews. — For survey article on environment, natural resources, and land use, see 34 Mercer L. Rev. 145 (1982). For article, "Water Rights, Public Resources, and Private Commodities: Examining the Current and Future Law Governing the Allocation of Georgia Water," see 38 Ga. L. Rev. 1009 (2004).

For note, "The Problem of Reallocation in a Regulated Riparian System: Examining the Law in Georgia," see 40 Ga. L. Rev. 207 (2005). For note on 2007 amendment of this Code section, see 24 Ga. St. U.L. Rev. 255 (2007).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 258. 51 Am. Jur. 2d, Licenses and Permits, §§ 20 et seq., 36. 78 Am. Jur. 2d, Waters, §§ 2, 219.

C.J.S. — 53 C.J.S., Licenses, §§ 50, 52, 59, 60, 85. 93 C.J.S., Waters, § 197 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 249 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 252.

ALR. — Propriety of injunctive relief against diversion of water by municipal corporation or public utility, 42 A.L.R.3d 426.

JUDICIAL DECISIONS

Administrative law judge's final decision not subject to challenge. — Administrative law judge's affirmance of the Georgia environmental department's denial of a city's application for an additional groundwater withdrawal permit was not error because the denial was based on the conditions encompassed in a prior consent order that required the city to take various measures to obtain more groundwater as there was no issue regarding whether the city's current and projected water needs could be satisfied by carrying out the provisions of the consent order, pursuant to O.C.G.A. § 12-5-96(d)(1); claims that were not challenged previously be-

came final pursuant to O.C.G.A. § 12-5-185 and could not be collaterally attacked under res judicata principles. City of Rincon v. Couch, 276 Ga. App. 567, 623 S.E.2d 754 (2005).

Factors considered for groundwater withdrawal permit. — Georgia environmental department was not required to grant a city's application for a groundwater withdrawal permit merely because no adverse effect on other users was shown as there were other circumstances that supported denial of the permit request, pursuant to Ga. Comp. R. & Regs. r. 391-3-2-.06(2) and O.C.G.A. § 12-5-96(d); the department was entitled to weigh the costs to the city of purchasing water against other public policy concerns, such as the need for conservation of limited water resources pursuant to O.C.G.A. § 12-5-91. City of Rincon v. Couch, 276 Ga. App. 567, 623 S.E.2d 754 (2005).

Consideration of alternative water source. — Administrative law judge who reviewed the Georgia environmental department's denial of a city's application for an additional groundwater withdrawal permit properly considered whether there was an alternative water source currently available to the city, pursuant to O.C.G.A. § 12-5-96(d)(1), based on the plain language of the statute and of the term "necessity"; there was a lack of evidence regarding the department's alleged policy on that issue, such that the city's claim to the contrary lacked merit. City of Rincon v. Couch, 276 Ga. App. 567, 623 S.E.2d 754 (2005).

Denial of groundwater withdrawal permit proper. — Georgia environmental department's analysis and decision to deny a city's application for a groundwater withdrawal permit complied with O.C.G.A. § 12-5-96(d) as a matter of law as the decision supported the policies of the Groundwater Use Act of 1972, as set out in O.C.G.A. § 12-5-91, the department was entitled to place more emphasis on the city's need or necessity for a new water withdrawal under O.C.G.A. § 12-5-90(d)(1) over other factors, and the department was not statutorily or regulatorily required to issue findings of fact and conclusions of law to show that the department considered all ten factors under § 12-5-96(d). City of Rincon v. Couch, 276 Ga. App. 567, 623 S.E.2d 754 (2005).

12-5-97. Duration of permits; renewal; transfer; certified statements by holders; monitoring water use; granting permit to person withdrawing ground water prior to July 1, 1973; prior investments in land and nature of plans for water use; continued withdrawal pending decision on permit.

(a) Except for applications filed pursuant to subsection (a) of Code Section 12-5-105, permits under Code Section 12-5-96 may be granted for any period of time not less than ten years, unless the applicant requests a shorter period of time, nor more than 50 years. The director may base the duration of such permits on any reasonable system of classification based upon but not necessarily limited to such factors as source of supply and type of use. In evaluating any application for a permit for the use of water for a period of 25 years or more, the director shall evaluate the condition of the water supply to assure that the supply is adequate to meet the multiple needs of the citizens of the state as can reasonably be projected for the term of the permit and ensure that the issuance of such permit is based upon a water development and conservation plan for the applicant or for the region. Such regional plan shall promote the conservation and reuse of water within the state,

guard against a shortage of water within the state, promote the efficient use of the water resource, and be consistent with the public welfare of the state. The board shall promulgate regulations for implementation of this subsection, including provisions for review of such permits periodically or upon a substantial reduction in average annual volume of the water resource which adversely affects water supplies to determine that the permittee continues in compliance with the conditions of the permit. In the event the director determines that a regional plan is required in connection with any application for a permit for the use of water for a period of 25 years or more, the division or a person or entity designated by the division shall develop a plan as provided in subsection (e) of Code Section 12-5-96.

(b) Permits may be renewed at any time within six months prior to the date of their expiration upon compliance with Code Section 12-5-96.

(c) Except as provided in subsection (b) of Code Section 12-5-105, permits shall not be transferred except with the approval of the division.

(d) Except as provided in subsection (b) of Code Section 12-5-105, every person who is required by this part to secure a permit shall file with the division, in the manner prescribed by the division, a certified statement of quantities of water used and withdrawn, sources of water, and the nature of the use thereof not more frequently than at 30 day intervals. Such statements shall be filed on forms furnished by the division within 90 days after the issuance of regulations. Water users not required to secure a permit shall comply with procedures established to protect and manage the water resources of the state. Such procedures shall be within the provisions of this part and shall be adopted after public hearing. The requirements embodied in the two preceding sentences shall not apply to individual domestic water use.

(e) If any person who is required to secure a permit under this part is unable to furnish accurate information concerning amounts of water being withdrawn or used, or if there is evidence that his certified statement is false or inaccurate or that he is withdrawing or using a larger quantity of water or under different conditions than has been authorized by the division, the division shall have the authority to require such person to install water meters or some other more economical means for measuring water use acceptable to the division. In determining the amount of water being withdrawn or used by a permit holder or applicant, the division may use the rated capacity of his pumps, the rated capacity of his cooling system, data furnished by the applicant, or the standards or methods employed by the United States Geological Survey in determining such quantities or by any other accepted method.

(f) In any case where a permit applicant can prove to the division's satisfaction that the applicant was withdrawing or using water prior to

July 1, 1973, the division shall take into consideration the extent to which any uses or withdrawals were reasonably necessary, in the judgment of the division, to meet his needs and shall grant a permit which shall meet those reasonable needs; provided, however, that the granting of such permit shall not have unreasonably adverse effects upon other water uses in the area, including public use, and including potential as well as present use.

(g) The division shall also take into consideration in the granting of any permit the prior investments of any person in lands and the nature of any plans for the usage of water in connection with such lands, which plans have been submitted to the division within a reasonable time after July 1, 1973, or, if for farm uses, after July 1, 1988; provided, however, that the granting of such permit shall not have unreasonably adverse effects upon other water uses in the area, including public use, and including potential as well as present use.

(h) Pending the issuance or denial of a permit pursuant to subsection (f) or (g) of this Code section, the applicant may continue the same withdrawal or use which existed prior to July 1, 1973.

History. — Ga. L. 1972, p. 976, § 7; Ga. L. 1973, p. 1273, §§ 16-20; Ga. L. 1988, p. 1694, § 6; Ga. L. 1995, p. 706, § 5; Ga. L. 2018, p. 974, § 3/SB 451.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, "The" was deleted following "July 1, 1973, the" in subsection (f).

Law reviews. — For note, "The Problem of Reallocation in a Regulated Riparian System: Examining the Law in Georgia," see 40 Ga. L. Rev. 207 (2005).

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, §§ 36, 37, 50 et seq., 65.

C.J.S. — 53 C.J.S., Licenses, §§ 29, 59, 60.

12-5-98. Investigations; entry; protection of confidential information or trade secrets; refusing entry or access to and interference with authorized representatives of division.

(a) The division shall have the right to conduct such investigations as may reasonably be necessary to carry out its duties prescribed in this part and for this purpose to enter at reasonable times any property, public or private, for the purpose of investigating the condition, withdrawal, or use of any waters, investigating water sources, or investigating the installation or operation of any well, and to require written statements or the filing of reports under oath, with respect to pertinent questions relating to the installation or operation of any well, provided that no person shall be required to disclose any secret formula, processes, or methods used in any manufacturing operation or any

confidential information concerning business activities carried on by him or under his supervision.

(b) No person shall refuse entry or access to any authorized representative of the division who requests entry for the purposes of a lawful inspection and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with any such representative while in the process of carrying out his official duties consistent with the provisions of this part.

History. — Ga. L. 1972, p. 976, § 10.

OPINIONS OF THE ATTORNEY GENERAL

Requirement of liability waivers restricts state's police power. — Requiring the division personnel to sign waivers of liability for injuries to person or property sustained while on the premises for the purpose of carrying out their duties of inspection constitutes an unreasonable restriction on the state's police power. 1976 Op. Att'y Gen. No. 76-121.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 112.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 190.

12-5-99. Order by director after failure of conference, conciliation, or persuasion; hearings; appeal.

(a) Whenever the director has reason to believe that a violation of any provision of this part or any rule or regulation of the Board of Natural Resources adopted pursuant to this part has occurred, he shall attempt to obtain a remedy with the violator or violators by conference, conciliation, or persuasion.

(b) In the case of failure of such conference, conciliation, or persuasion to effect a remedy to such violation, the director may issue an order directed to such violator or violators. The order shall specify the provisions of the part or rule or regulation alleged to have been violated and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any order issued by the director under this part shall be signed by the director. Any such order shall become final unless the person or persons named therein request in writing a hearing before the director no later than 30 days after such order is served on such person or persons.

(c) Appeals from this order shall be in compliance with subsection (c) of Code Section 12-2-2, and also, for the purposes of this part, shall be specifically subject to subsection (a) of Code Section 50-13-19.

History. — Ga. L. 1973, p. 1273, § 21.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 353 et seq.

C.J.S. — 73A C.J.S., Public Administrative Law and Procedure, § 329 et seq.

12-5-100. Judgment in accordance with director's order.

The director may file in the superior court of the county wherein the person under order resides, or if the person is a corporation, in the county wherein the corporation maintains its principal place of business, or if the person is a nonresident of this state, in the superior court of the county wherein the violation occurred, a certified copy of a final order of the director unappealed from, or of a final order of the director affirmed upon appeal, whereupon the court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though the judgment had been rendered in an action duly heard and determined by such court.

History. — Ga. L. 1973, p. 1243, § 21.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 353 et seq.

C.J.S. — 73A C.J.S., Public Administrative Law and Procedure, § 329 et seq.

12-5-101. Injunctive relief.

Whenever, in the judgment of the director, any person has engaged in or is about to engage in any act or practice which constitutes or will constitute any violation of this part, the director may make application to the superior court of the county where such person resides, or if the person is a nonresident of this state, then to the superior court of the county where such person is engaged in or is about to engage in any such act or practice, for an order enjoining and restraining such act or practice, and, upon a showing by the director that such person has engaged in or is about to engage in any such act or practice, a permanent or temporary injunction, restraining order, or other order shall be granted without the necessity of showing a lack of adequate remedy at law.

History. — Ga. L. 1972, p. 976, § 8; Ga. L. 1973, p. 1273, § 22.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 240.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 87 et seq., 144 et seq.

ALR. — Propriety of injunctive relief

against diversion of water by municipal corporation or public utility, 42 A.L.R.3d 426.

12-5-102. Emergency orders; restrictions; hearing; appeal; use by certain entities.

(a) After receipt of affidavits or other sworn statements from persons setting forth an emergency situation requiring immediate action to protect the public health or welfare, and after the division finds that such an emergency exists requiring immediate action to protect the public health or welfare, the division may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as the division deems necessary to meet the emergency. Such order shall, except as to farm uses, be effective immediately, and any person to whom such order is directed shall comply therewith immediately but, on application to the division, shall be afforded a hearing within five days from the day on which the order is issued. On the basis of such hearing, the division shall continue such order in effect, revoke it, or modify it.

(b) Any appeal from such order shall be in accordance with subsection (c) of Code Section 12-2-2, and, for the purposes of this part, shall be specifically subject to subsection (a) of Code Section 50-13-19, except that the initial hearing shall be within five days from the date on which the order was issued. Farm use permittees may continue to make use of water to their permitted capacity during the appeal process, but failure to timely request a hearing shall waive such right.

(c) During emergency periods of water shortage, the director shall give first priority to providing water for human consumption and second priority to farm use.

(d) The importance and necessity of water for industrial purposes are in no way modified or diminished by this Code section.

(e) The use of ground water by any permanent facility car wash shall be deemed not to be outdoor water use for purposes of any outdoor watering restrictions if the facility:

(1) Is connected to a sanitary sewer system of a political subdivision or local government authority or recycles used wash water; and

(2) Is certified by the division as meeting or exceeding applicable best management practices for car washing facilities, which the Board of Natural Resources shall provide by rules and regulations not later than October 1, 2008. Such certification shall expire annually and may be issued or renewed upon compliance with such best management practices and payment of a $50.00 fee to the

division. The provisions of this paragraph shall apply on and after the effective date of such board rules and regulations.

(f) The use of ground water for any swimming pool shall be deemed not to be outdoor water use for purposes of any outdoor watering restrictions if failure to maintain the swimming pool would create unsafe, unsanitary, or unhealthy conditions affecting the public health or welfare.

History. — Ga. L. 1973, p. 1273, § 24; Ga. L. 1988, p. 1694, § 7; Ga. L. 2008, p. 322, § 2/SB 466; Ga. L. 2008, p. 814, § 3/HB 1281.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, subsection (e), as enacted by Ga. L. 2008, p. 814, § 3/HB 1281, was redesignated as subsection (f).

The enactment of subsection (f) of this Code section by Ga. L. 2008, p. 322, § 2/SB 466, irreconcilably conflicted with and was treated as superseded by Ga. L. 2008, p. 814, § 3/HB 1281. See County of Butts v. Strahan, 151 Ga. 417 (1921).

JUDICIAL DECISIONS

Inapplicable to city's application for groundwater withdrawal permit. — O.C.G.A. §§ 12-5-102(c) and 12-5-105(b)(4) were inapplicable to a consideration of a city's application for a groundwater withdrawal permit because there was no showing that an emergency period of water shortage existed. City of Rincon v. Couch, 276 Ga. App. 567, 623 S.E.2d 754 (2005).

12-5-103. Representation of department by Attorney General.

It shall be the duty of the Attorney General to represent the department and its agents or designate some member of his staff to represent them in all actions in connection with this part.

History. — Ga. L. 1973, p. 1273, § 25.

Cross references. — Attorney General, T. 45, C. 15, A. 1.

12-5-104. Effect of part on other laws.

Nothing contained in this part shall change or modify existing common or statutory law with respect to the rights of the use of surface water in this state.

History. — Ga. L. 1972, p. 976, § 12.

12-5-105. Regulated reasonable use of ground water for farm use; permits to withdraw, obtain, or utilize; metering; related procedures.

(a) Notwithstanding any provisions of Code Section 12-5-95, 12-5-96, or 12-5-97 to the contrary, a permit to withdraw, obtain, or utilize ground waters for farm uses, as that term is defined by paragraph (5.1) of Code Section 12-5-92, shall be issued by the director to any person when the applicant submits an application which provides reasonable proof that the applicant's farm use of ground water occurred prior to July 1, 1988, and when such application is submitted prior to July 1, 1991. If submitted prior to July 1, 1991, an application for a permit to be issued based upon farm uses of ground water occurring prior to July 1, 1988, shall be granted for the withdrawal of ground water at a rate of withdrawal equal to the greater of the operating capacity in place for withdrawal on July 1, 1988, or, when measured in gallons per day on a monthly average for a calendar year, the greatest withdrawal capacity during the five-year period immediately preceding July 1, 1988. If submitted after July 1, 1991, or, regardless of when submitted, if it is based upon a withdrawal of ground water for farm uses occurring or proposed to occur on or after July 1, 1988, an application shall be subject to evaluation and classification pursuant to Code Sections 12-5-96 and 12-5-97, but a permit based upon such evaluation and classification shall be issued to ensure the applicant's right to a reasonable use of such ground water. Applications under this Code section submitted on or after April 20, 2006, for farm use within the Flint River basin shall be assessed a nonrefundable application fee in the amount of $250.00 per application. Any permit issued pursuant to this Code section shall be further conditioned upon the requirement that the permittee shall provide, on forms prescribed by the director, information relating to a general description of the lands and number of acres subject to irrigation and the permit; the name and address of the permittee; a description of the general type of irrigation system used; well construction; and pump information, including rated capacity, pump setting depth, and power information.

(b) Notwithstanding any provisions of Code Section 12-5-95, 12-5-96, or 12-5-97 to the contrary, permits to withdraw, obtain, or utilize ground waters for farm uses, as that term is defined in paragraph (5.1) of Code Section 12-5-92, whether for new withdrawals or under subsection (a) of this Code section, shall be governed as follows:

(1) Permits applied for under this Code section on or after April 20, 2006, for farm use within the Flint River basin shall have a term of 25 years and shall be automatically renewed at the original permitted capacity unless an evaluation by the division indicates that renewal at the original capacity would have unreasonable adverse

effects upon other water uses. The division may renew the original permit at a lower capacity, but such capacity shall be based on the reasonable use of the permittee and evaluation of the resource;

(2) A permittee may apply to have a permit issued under this Code section modified, amended, transferred, or assigned to subsequent owners of the lands which are the subject of such permit; provided, however, that:

(A) The division shall receive written notice of any such transfer or assignment;

(B) Any modification in or amendment to the use or capacity conditions contained in the permit or in the lands which are the subject of such permit shall require the permittee to submit an application for review and approval by the director consistent with the requirements of this part;

(C) The permittee may commence withdrawing water under the modified, amended, transferred, or assigned permit on the effective date stated on the revised permit for farm use; and

(D) For all permits for which such modification, amendment, transfer, or assignment is effective on or after April 20, 2018, and for which no water-measuring device is installed, the permittee shall have one year from the updated effective date stated on the revised permit for farm use to have an acceptable type of water-measuring device installed, to have such device in operation at each point of permitted withdrawal, and to notify the division in writing once the installation has occurred. The division shall approve or disapprove the installation within 60 days of the date of notification. The permittee shall be responsible for all associated costs;

(3) Permits for farm use, after initial use has commenced, shall not be revoked, in whole or in part, for nonuse; except that the director may permanently revoke any permit under this Code section for farm use within the Flint River Basin applied for on or after April 20, 2006, if initial use for the purpose indicated on the permit application, as measured by a flow meter approved by the division has not commenced within two years of the date of issuance of the permit unless the permittee can reasonably demonstrate that his or her nonuse was due to financial hardship or circumstances beyond his or her control;

(4) The director may suspend or modify a permit for farm use if he or she should determine through inspection, investigations, or otherwise that the quantity of water allowed would prevent other applicants from reasonable use of ground water beneath their property for farm use;

(5) During emergency periods of water shortage, the director shall give first priority to providing water for human consumption and second priority to farm use; and

(6) The importance and necessity of water for industrial purposes are in no way modified or diminished by this Code section.

(b.1)(1) The division shall have the duty of implementing a program of measuring farm uses of water in order to obtain clear and accurate information on the patterns and amounts of such use, which information is essential to proper management of water resources by the state and useful to farmers for improving the efficiency and effectiveness of their use of water, meeting the requirements of subsections (b) and (b.1) of this Code section, and improving water conservation.

(2) The division:

(A) May conduct its duties with division staff and may contract with other persons to conduct any of its duties;

(B) May receive and use state appropriations, gifts, grants, or other sources of funding to carry out its duties;

(C) Shall develop a priority system for the installation of devices for measurement of farm uses of water at the points of those withdrawals for which a permit was issued as of July 1, 2003. The division may refine the priority system from time to time based on the amount of funding received by the division, considerations regarding cost effectiveness, new technical information, changes in resource use or conditions, or other factors as deemed relevant by the director;

(D) Shall, on behalf of the state, contract for the purchase and installation of that subset of water-measuring devices according to the priority system required by this Code section, and no charge shall be made to the permittee for such costs. However, when the division assesses the site or attempts to install such water-measuring devices and finds that the site lacks the withdrawal or irrigation infrastructure, the division shall document such withdrawal or irrigation infrastructure conditions and notify the permittee in writing that a state funded water-measuring device or devices could not be installed and that a device or devices are still required. After the expiration of five years, such permittee shall be responsible for having an acceptable type of water-measuring device installed and placed into operation and all associated costs. The permittee shall notify the division in writing once the installation has occurred. The division shall approve or disapprove the installation within 60 days of the date of notification;

(E) Shall, at monthly intervals, read an appropriate proportion of water-measuring devices installed for measuring farm use of ground water and compile the collected data for use in meeting the purposes in paragraph (1) of this Code section, and the division shall communicate in advance with private property owners to establish reasonable times for such readings. In the event that a permittee's water-measuring devices are selected for monthly readings, the permittee may choose to perform those readings and transmit that information to the division; and

(F) Shall issue an annual progress report on the status of water-measuring device installation.

(3) Any person whose permit for agricultural water use was issued before July 1, 2003, and who desires to install a water-measuring device at no cost to the state may do so, provided that the permittee shall have an acceptable type of water-measuring device installed and placed in operation at each point of permitted withdrawal and the permittee shall notify the division in writing once the installation has occurred. The division shall approve or disapprove the installation within 60 days of the date of notification.

(4) Any person who desires to commence a farm use of water for which a permit is issued after July 1, 2003, shall not commence such use prior to receiving approval from the division that such person has installed an acceptable type of water-measuring device installed by the commission at each point of permitted withdrawal. The permittee shall be responsible for all such costs.

(5) Regarding all permits for which a water-measuring device is installed, regardless of when the permit was issued, the division shall contract for the annual reading of such water-measuring devices. The division shall require each contractor conducting such annual readings to transmit complete and accurate data required by the division to the division annually.

(6) The division shall audit a subset of reported water-measuring device readings submitted by permittees for the purpose of understanding and improving the accuracy of such readings.

(7) Employees, contractors, or agents of the division are authorized to enter upon private property at reasonable times and upon reasonable notice to conduct the duties of the division under this subsection.

(8) The division shall contract for any maintenance, repair, or replacement of water-measuring devices installed pursuant to this Code section where maintenance, repair, or replacement is required to ensure that such water-measuring devices accurately reflect the amount of water used, and no charge shall be made to the permittee for such costs.

(9) If the division determines that the permittee or the permittee's employees, tenants, licensees, or agents have willfully dismantled, sold, relocated, or removed any water-measuring device installed pursuant to this Code Section, the permittee may be subject to enforcement action by the division, including but not limited to imposition of civil penalties.

(10) Any reports of amounts of use for recreational purposes under this part shall be compiled separately from amounts reported for all other farm uses.

(c) Nothing in this Code section shall be construed as a repeal or modification of Code Section 12-5-104.

(d) In addition to the other provisions of this Code section, there shall be established three categories of farm use ground-water withdrawal permits: active, inactive, and unused. The rules and regulations implementing this subsection shall provide without limitation for the following:

(1) An active farm use ground-water withdrawal permit means one that has been acted upon and used for allowable purposes;

(2) An inactive farm use ground-water withdrawal permit means one where the permit holder has requested inactive status in order to retain ownership of the permit for possible future use or reuse. Inactive permits shall be retained by the permit holder without modification;

(3) An unused farm use ground-water withdrawal permit means one that has never been used for allowable purposes. Unused permits expire after two years unless changed to active or inactive status by notification to the director. Unused permits shall not be transferred or assigned to subsequent owners of the lands as provided in paragraph (1) of subsection (b) of this Code section;

(4) An inactive farm use ground-water withdrawal permit shall be reclassified to active when the permit holder has given the director 60 days' written notice and paid any applicable fees in accordance with subsection (a) of this Code section; and

(5) The director shall, via certified mail, return receipt requested, contact, or cause to be contacted, any person who holds a permit that the director has determined is unused. The notification shall include the permit identification and information regarding the classifications and procedures for changing classifications. The permit holder shall have 120 days to respond after which the director shall issue a second notice via certified mail, return receipt requested. Two years after the date on which the director first notified the permit holder via certified mail, return receipt requested, of the unused status deter-

mination of the permit, the director shall revoke the permit if the permit holder has not requested that the unused permit be reclassified as inactive or active.

History. — Ga. L. 1972, p. 976, § 13; Ga. L. 1973, p. 1273, § 26; Ga. L. 1982, p. 2306, § 1; Ga. L. 1988, p. 1694, § 8; Ga. L. 2003, p. 813, § 3; Ga. L. 2006, p. 237, § 4/SB 191; Ga. L. 2010, p. 732, § 6/SB 370; Ga. L. 2018, p. 974, § 4/SB 451; Ga. L. 2019, p. 1056, § 12/SB 52.

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, revised punctuation and language in subparagraph (b.1)(2)(D).

Cross references. — Surface water withdrawal permits, § 12-5-31.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2003, "paragraph (5.1)" was substituted for "paragraph (10)" in the first sentence of subsection (a).

Pursuant to Code Section 28-9-5, in 2006, "April 20, 2006," was substituted for "the effective date of this subsection" in the fourth sentence of subsection (a) and in the second sentence of paragraph (b)(1), and "April 20, 2006," was substituted for "the effective date of this paragraph" in paragraph (b)(2) (now paragraph (b)(3)).

Pursuant to Code Section 28-9-5, in 2010, a semicolon was substituted for a colon at the end of paragraph (d)(3) and "and" was added at the end of paragraph (d)(4).

Editor's notes. — Ga. L. 2010, p. 732, § 1/SB 370, not codified by the General Assembly, provides: "The General Assembly recognizes the imminent need to create a culture of water conservation in the State of Georgia. The General Assembly also recognizes the imminent need to plan for water supply enhancement during future extreme drought conditions and other water emergencies. In order to achieve these goals, the General Assembly directs the Georgia Department of Natural Resources to coordinate with its Environmental Protection Division, the Georgia Environmental Facilities Authority [now known as the Georgia Environmental Finance Authority], the Georgia Department of Community Affairs, the Georgia Forestry Commission, the Georgia Department of Community Health, including its Division of Public Health, the Georgia Department of Agriculture, and the Georgia Soil and Water Conservation Commission to work together as appropriate to develop programs for water conservation and water supply."

Law reviews. — For survey article on environment, natural resources, and land use, see 34 Mercer L. Rev. 145 (1982). For article, "Water Rights, Public Resources, and Private Commodities: Examining the Current and Future Law Governing the Allocation of Georgia Water," see 38 Ga. L. Rev. 1009 (2004). For article on 2010 amendment of this Code section, "Conservation and Natural Resources," see 27 Ga. St. U.L. Rev. 185 (2010).

For note, "The Problem of Reallocation in a Regulated Riparian System: Examining the Law in Georgia," see 40 Ga. L. Rev. 207 (2005).

JUDICIAL DECISIONS

Inapplicable to city's application for groundwater withdrawal permit. — O.C.G.A. §§ 12-5-102(c) and 12-5-105(b)(4) were inapplicable to a consideration in a city's application for a groundwater withdrawal permit because there was no showing that an emergency period of water shortage existed. City of Rincon v. Couch, 276 Ga. App. 567, 623 S.E.2d 754 (2005).

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Waters, § 219.

12-5-106. Civil penalties; procedure for imposing penalties; hearing; judicial review.

(a) Any person violating this part or intentionally or negligently failing or refusing to comply with any final order of the director issued as provided in this part shall be liable for a civil penalty not to exceed $1,000.00 for such violation and an additional civil penalty not to exceed $500.00 for each day during which such violation continues.

(b) Whenever the director has reason to believe that any person has violated this part or has negligently or intentionally failed or refused to comply with any final order of the director, the director may request a hearing before a hearing officer appointed by the Board of Natural Resources. Upon a finding that the person has violated this part or has negligently or intentionally failed or refused to comply with a final order of the director, the hearing officer shall issue his initial decision imposing such civil penalties as are provided in this Code section. Such hearing and any judicial review thereof shall be conducted in accordance with subsection (c) of Code Section 12-2-2, and also, for the purposes of this part, shall be specifically subject to subsection (a) of Code Section 50-13-19.

History. — Ga. L. 1973, p. 1273, § 23.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 383.
C.J.S. — 73A C.J.S., Public Administrative Law and Procedure, §§ 256, 257, 329 et seq.

12-5-107. Criminal penalty.

Any person violating any of the provisions of this part shall be guilty of a misdemeanor.

History. — Ga. L. 1972, p. 976, § 8; Ga. L. 1982, p. 3, § 12.

Part 3

Water Well Standards

12-5-120. Short title.

This part shall be known and may be cited as the "Water Well Standards Act of 1985."

History. — Ga. L. 1976, p. 974, § 1; Ga. L. 1985, p. 1192, § 1.

12-5-121. Legislative intent.

It is the intent of the General Assembly to provide in this part for the application of standards for the siting, construction, operation, maintenance, and abandonment of wells and boreholes so as to protect the public health and the water resources of this state.

History. — Ga. L. 1976, p. 974, § 2; Ga. L. 1985, p. 1192, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Waters, § 219.

12-5-122. Definitions.

As used in this part, the term:

(1) "Abandoned well" means a well or borehole, the use of which has been permanently discontinued, which is in such a state of disrepair that continued use for obtaining ground water or for other useful purposes is impracticable, or from which ground water for useful purposes is not obtainable.

(2) "Aquifer" means a geologic formation, group of formations, or a part of a formation that is capable of yielding water to a well.

(3) "Borehole" means a hole made into the earth's surface and extending at least 50 feet into the earth or at least ten feet below the water table, whichever is greater, with a drill, auger, or other tool for the purpose of: exploring subsurface strata in search of minerals, engineering or geologic data, water for water supply, blasting purposes, or monitoring.

(4) "Capping" or "cap" means the temporary placing of a watertight seal on the upper terminal of a completed well so that no surface pollutants can enter the well.

(5) "Casing" means an impervious durable pipe placed in a well to prevent the walls from caving and to seal off surface drainage or undesirable water, gas, or other fluids to prevent them from entering the well and includes specifically, but is not limited to, the following:

(A) "Liner pipe" which shall mean a well casing installed without driving within a protective casing or open drillhole;

(B) "Protective casing" which shall mean the permanent casing of the well; and

(C) "Temporary casing" which shall mean a temporary casing placed in soft, sandy, or caving subsurface formations to prevent the hole from caving during drilling.

(6) "Construction" means all acts necessary to construct a well or borehole for any intended purpose or use, including locating and drilling and the installation of pumps and pumping equipment.

(7) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water, in excess of naturally occurring levels.

(8) "Corehole" means a borehole made into the earth's surface and extending at least 50 feet into the earth or at least ten feet below the water table, whichever is greater, with a hollow drill to sample a cylindrical section of the earth's strata beneath the surface of the land or water.

(9) "Council" means the State Water Well Standards Advisory Council.

(10) "Dewatering well" means any well withdrawing 100,000 gallons of ground water or less on any one day in order to remove ground water from the vicinity of an excavation and which extends at least 50 feet into the earth or at least ten feet below the water table, whichever is greater.

(11) "Director" means the Director of the Environmental Protection Division of the Department of Natural Resources, State of Georgia, or his designee.

(12) "Division" means the Environmental Protection Division of the Department of Natural Resources, State of Georgia.

(13) "Driller" means any person who engages in drilling or drilling operations and the installation of pumps and pumping equipment. Driller shall not include a person who only installs, services, and repairs pumps and pumping equipment.

(14) "Drilling" or "drilling operation" means creating an excavation, well, borehole, or corehole by coring, boring, jetting, digging, driving, or otherwise constructing for any intended purpose or use, including locating, testing, or withdrawing ground water which is intended or usable as a source of water supply.

(15) "Engineering borehole" means a borehole for which the primary purpose is to collect data for engineering design.

(16) "Filled, sealed, and plugged" means the placing of impervious material when appropriate in the well or borehole to prevent pollutants from entering the subsurface strata or water-bearing formations

from the surface, to conserve the aquifer yield or artesian head, or to eliminate physical hazards.

(17) "Geologic borehole" means any borehole not regulated under the authority of Part 2 of Article 2 of Chapter 4 of this title for which the primary purpose is to collect data for geologic, geophysical, or mineral resource evaluations.

(17.1) "Geothermal borehole" means any hole in the earth which is drilled for the purpose of installing piping for heating and air conditioning systems through which water, antifreeze, water mixtures, freon, or other media are circulated to exchange heat with the earth for the purpose of heating or cooling, or both.

(18) "Ground water" means water of underground streams, channels, artesian basins, reservoirs, lakes, and other water under the surface of the earth, whether public or private, natural or artificial, which is contained within, flows through, or borders upon this state or any portion thereof, including those portions of the Atlantic Ocean over which the state has jurisdiction.

(19) "Individual water well" means any well constructed for the purpose of obtaining ground water to supply water appurtenant to a single-family dwelling and intended for domestic use, including, but not limited to, household purposes, farm livestock, or gardens.

(20) "Industrial well" means any well constructed for the purpose of withdrawing 100,000 gallons of ground water or less on any one day for processing or cooling water or for purposes other than drinking water.

(21) "Irrigation well" means any well constructed for the purpose of obtaining ground water to supply irrigation water for agriculture, silviculture, golf courses, fish farms, and land beautification, but excluding single-family irrigation of lawns or gardens.

(22) "Monitoring well" means any well for which the primary purpose is to collect data for hydrologic, geohydrologic, or ground water quality or quantity evaluations.

(23) "Nonpublic water well" means any well constructed as a source of water supply for a water system which provides piped water to the public for human consumption, if such system has less than 15 service connections or regularly serves less than 25 individuals, excluding individual water wells.

(24) "Person" means any individual, partnership, association, trust, firm, corporation, county, municipality, or other entity, including the state and the federal government.

(25) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical

wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, industrial wastes, municipal wastes, agricultural wastes, or any other wastes or substances that do not naturally occur in the aquifer.

(26) "Professional engineer" means a person registered to practice professional engineering in the State of Georgia in accordance with Chapter 15 of Title 43.

(27) "Professional geologist" means a person registered to practice as a geologist in the State of Georgia in accordance with Chapter 19 of Title 43.

(27.1) "Pump contractor" means any person who engages in the business of installing, servicing, or repairing pumps and pumping equipment for water wells but who is not a driller or water well contractor.

(28) "Seismic shot hole" means any borehole in which explosives are detonated for the purpose of seismic investigations.

(29) "Under the direction of a professional geologist or professional engineer" means that a professional geologist or professional engineer has reviewed well or borehole drilling, construction, and abandonment plans or criteria and has provided instructions to the driller as to how the well or borehole is to be drilled, constructed, or abandoned.

(30) "Water table" means, exclusive of perched conditions, the shallowest permanent occurrence of ground water.

(31) "Water well" means any excavation which is cored, bored, drilled, jetted, dug, or otherwise constructed for the purpose of locating, testing, or withdrawing ground water and which is intended or usable as a source of water supply for individual homes, farms, irrigation, industrial processes, public water systems, or nonpublic water systems.

(32) "Water well contractor" means any person engaging in the business of constructing water wells and installing pumps and pumping equipment. Water well contractor shall not include a person who only installs, services, and repairs pumps and pumping equipment.

(33) "Well" means any excavation in which the vertical dimension exceeds the horizontal dimension that is bored, cored, drilled, dug, jetted, or otherwise constructed for the purpose of locating, testing, or withdrawing ground water; or for evaluating, testing, developing, draining, or recharging ground water reservoirs or aquifers; or for the exploration, evaluating, testing, or developing of minerals; or which

causes the movement of water from or into any aquifer or subsurface strata; and shall include engineering and geologic boreholes.

History. — Ga. L. 1977, p. 1506, § 4; Ga. L. 1985, p. 1192, § 1; Ga. L. 1986, p. 10, § 12; Ga. L. 2001, p. 315, § 1; Ga. L. 2003, p. 607, §§ 1, 2; Ga. L. 2010, p. 254, § 1/HB 1206.

JUDICIAL DECISIONS

Jury instruction on duty to fill in wells properly denied. — Trial court properly refused the defendant's request for a jury charge on the duty to fill in abandoned wells since the requested charge was not accurate and was not adjusted to the evidence. McCoy v. State, 262 Ga. 699, 425 S.E.2d 646 (1993).

12-5-123. Creation of council; membership; chairperson; meetings; majority vote; quorum; director as secretary; self-governance; reimbursement for expenses; Attorney General to provide legal services.

(a) The State Water Well Standards Advisory Council is created. The council shall be composed of the following:

(1) A member appointed by the Governor from the public at large, who shall not be in any way connected with the well drilling industry. The member representing the public on July 1, 2001, shall continue to serve in this position from July 1, 2001, to June 30, 2002;

(2) A member appointed by the commissioner of natural resources. The member appointed by the commissioner of natural resources serving on July 1, 2001, shall continue to serve in this position until June 30, 2002;

(3) A member appointed by the Governor representing the farming industry. The member representing the farming industry on July 1, 2001, shall continue to serve in this position until June 30, 2003;

(4) Four members representing the water well drilling industry appointed by the Governor who shall be licensed and practicing drillers. The members who are water well drillers serving on July 1, 2001, shall continue to serve in these positions until June 30, 2002, at which time the Governor shall appoint two members to terms ending June 30, 2003; one member to a term ending June 30, 2004; and one member to a term of office ending June 30, 2005. The members serving on such date shall be eligible for reappointment; and

(5) A member appointed by the Governor who is a registered professional geologist or registered professional engineer. The member who is a registered professional geologist or registered professional engineer serving on July 1, 2001, shall continue to serve in such position until June 30, 2004.

(b) The successor to each member appointed pursuant to the provisions of subsection (a) of this Code section shall be appointed for a term of three years, and the Governor shall fill any vacancy in the council, except for the member appointed by the commissioner of natural resources, with each successor appointed in the same manner as his predecessor.

(c) At the first meeting of the council held in each calendar year, the council shall elect a chairperson who shall serve for one year, adopt rules of procedure, and develop a work plan. The chairperson may be reelected in subsequent years by the council. A vacancy in the position of chairperson shall be filled by vote of the council.

(d) The council shall meet at such times and at such designated places as it may determine but shall hold at least three regular meetings each year. An affirmative vote of a majority of the members present shall be necessary to transact business. Four members shall constitute a quorum.

(e) The director or his designee shall be the secretary of the council and, in addition to his duties as prescribed by law, shall perform such other administrative duties as may be prescribed by the council. Except as provided in this part, the council shall provide by rule and regulation for its own government. Members of the council shall serve without compensation but shall receive the same expense allowance as that received by members of the General Assembly and the same mileage allowance for the use of a personal car as that received by all other state officials and employees or a travel allowance of actual transportation cost if traveling by public carrier within the state. Any councilmember shall also be reimbursed for any conference or meeting registration fee incurred in the performance of his duties as a councilmember. For each day's service outside of the state as a councilmember, such member shall receive actual expenses as an expense allowance as well as the same mileage allowance for the use of a personal car as that received by other state officials and employees or a travel allowance of actual transportation cost if traveling by public carrier or by rental motor vehicle. Expense vouchers submitted by members of the council are subject to approval of the director or his designee.

(f) The Attorney General shall provide legal services for the council.

History. — Ga. L. 1976, p. 974, § 3; Ga. L. 1977, p. 1506, § 1; Ga. L. 1980, p. 52, § 1; Ga. L. 1985, p. 1192, § 1; Ga. L. 1988, p. 1373, § 1; Ga. L. 2001, p. 315, § 2.

Cross references. — Provisions pertaining to professional licensing boards generally, T. 43, C. 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, in subsection (e), "councilmember" was substituted for "council member" in three places.

Administrative rules and regulations. — Organization, Official Compilation of the Rules and Regulations of the State of Georgia, Water Well Standards Advisory Council, Chapter 770-1 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 20, 31, 32.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 17 et seq., 73.

12-5-124. Powers and duties of council generally.

In carrying out this part, the council shall have the following powers and duties:

(1) To adopt and amend rules and regulations which may be reasonably necessary to govern the licensing of water well contractors and the regulation of proceedings before the council and to carry out such other powers and duties assigned to the council under this part. The council and all of its rules, regulations, and procedures are subject to and shall comply with the provisions of Chapter 13 of Title 50, the "Georgia Administrative Procedure Act";

(2) To pay into the state treasury all fees and moneys received by it;

(3) To adopt and have an official seal;

(4) To set the amount of all fees required by this part;

(5) To license water well contractors and certify pump contractors;

(6) To review the effect and practicality of standards set up in this part and recommend to the General Assembly adjustments and changes to achieve the purposes of this part;

(7) To review and recommend to the General Assembly any legislation which would improve the quality of relations between the water well drilling industry and the public; and

(8) To conduct hearings and institute and prosecute court actions as may be necessary to enforce compliance with any provisions of this part and any rules and regulations promulgated pursuant to this part that relate to water wells.

History. — Ga. L. 1977, p. 1506, § 4; Ga. L. 1977, p. 1520, § 5; Ga. L. 1985, p. 1192, § 1; Ga. L. 2001, p. 315, § 3; Ga. L. 2003, p. 607, § 3.

Administrative rules and regulations. — Organization, Official Compilation of the Rules and Regulations of the State of Georgia, Water Well Standards Advisory Council, Chapter 770-1 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 45, 50, 62.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 75 et seq., 147.

12-5-125. License requirement; drilling under direction of professional geologist or engineer.

Except as provided in subsection (f) of Code Section 12-5-127, no person shall drill a water well or geothermal borehole without first having a water well contractor's license issued by the council. No person, including licensed water well contractors, shall drill any kind of well, borehole, or corehole, other than a water well or geothermal borehole, unless such person is acting under the direction of a professional geologist or a professional engineer.

History. — Code 1981, § 12-5-125, enacted by Ga. L. 1985, p. 1192, § 1; Ga. L. 1992, p. 6, § 12; Ga. L. 2010, p. 254, § 2/HB 1206.

Editor's notes. — Ga. L. 1985, p. 1192, § 1 repealed former Code Section 12-5-125 and enacted the present Code section. The former Code section pertained to the council's duty to study the need for standards and rules and regulations as to water wells and to make recommendations to the General Assembly and was based on Ga. L. 1976, p. 974, § 5, and Ga. L. 1977, p. 1506, § 3. For present provisions regarding such standards and rules and regulations, see §§ 12-5-124 (paragraphs (5) and (6)) and 12-5-134.

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 207, 212 et seq.

12-5-126. Director as administrative agent; administrative duties of division; orders, notices, and processes.

(a) The director or his designee shall act as the administrative agent for the council.

(b) The division shall have the duty to bring together and keep all records of the council; to receive all applications for licenses; to schedule a time and place for examinations, with the consent of the council; to schedule a time and place for all hearings; to issue certificates upon authority of the council; and to collect all fees and to remit them to the state treasury.

(c) All orders and processes of the council shall be signed and attested by the director or his designee, and any notice or legal process necessary to be served upon the council may be served upon the director.

History. — Ga. L. 1977, p. 1506, § 4; Ga. L. 1985, p. 1192, § 1; Ga. L. 1996, p. 6, § 12.

Cross references. — General duties of division director, authority of division director as to determination of expiration, renewal, and penalty dates of licenses, §§ 43-1-3, 43-1-4.

12-5-127. Licensing of water well contractors generally; applications for trainee licenses; violation of Code section.

(a) Any person desiring to engage in the business of water well construction in this state shall apply to the council for a license as a water well contractor. All such applications shall be made on forms provided by the division and shall be accompanied by a fee to be prescribed by the council but not exceeding $400.00 per license period.

(b) An applicant for a license as a water well contractor shall be required to have two years' experience working in the water well construction business under a licensed water well contractor and shall be required to pass an examination administered by the council. The examination may be written, oral, or practical work, or any combination of the three. The examination shall relate to the applicant's knowledge of basic ground water, basic well construction, and the general contents of this part.

(c) Satisfactory proof of two years' experience in the water well construction business shall be made by presenting certified affidavits from one or more licensed water well contractors that the applicant has had at least two years of full-time water well construction experience. If the required experience was obtained under two or more licensed water well contractors, then a certified affidavit specifying exact dates of such experience shall be required from each licensed contractor. In lieu of the method described above, an applicant may present other proof satisfactory to the council of two years' experience constructing water wells. The council may require the applicant and the water well contractors who swear to such affidavits to appear before the council to discuss the applicant's qualifications.

(d)(1) Any person wishing to engage in the water well construction business shall designate himself or herself or at least one partner, officer, or full-time employee to fulfill the above requirements. If the requirements are satisfactorily fulfilled, the person shall be granted a license under this part, and such license shall cover water well construction activities for which the person is responsible and so licensed. The partners, officers, and employees of the person shall be allowed to engage in the activities covered by the license if the individual who fulfilled the licensing requirements has performed or approved such activities and such approval is posted at the site of the activity on forms to be provided by the council for that purpose. Any such license shall be valid so long as the designated partner, officer, or full-time employee is associated with the licensee or until it otherwise expires.

(2) The provisions of paragraph (1) of this subsection notwithstanding, the water well construction activities of the partners,

officers, and employees of the individual who fulfilled the licensing requirements shall continue to be authorized under a license which was valid at the time of the licensee's death for a period of 180 days following the date of such death.

(e) The council, upon application, may issue an appropriate license to any person who holds a similar license in any state, territory, or possession of the United States, if the requirements for the license do not conflict with this part and are of a standard not less than that specified by this part and by rules and regulations promulgated under this part; provided, however, that such other state, territory, or possession grants similar reciprocity to license holders in this state.

(f) Nothing in this Code section shall be construed to require the registration of a person who constructs a well on his or her own or leased property intended for use only in a single-family house which is his or her permanent residence or intended for use only for farming purposes on his or her farm, which well produces less than 25,000 gallons per day, so long as the waters to be produced are not intended for use by the public or in any residence other than his or her own.

(g) The State of Georgia preempts the field of licensing water well contractors. Licenses issued by the council shall authorize bona fide holders thereof to engage in the business authorized by such licenses anywhere within the territorial limits of the state. No provision of this part shall be construed as prohibiting or preventing a municipality or county from fixing, charging, assessing, or collecting any business license fee, registration fee, tax, or gross receipt tax on any profession covered by this part or upon any related profession or anyone engaged in any related profession governed by this part.

(h)(1) The council shall be authorized to require persons seeking renewal of licenses under this Code section to complete continuing education of not more than four hours annually. The council may provide courses and shall approve such courses offered by the division, institutions of higher learning, technical colleges, and trade, technical, or professional organizations; provided, however, that continuing education courses or programs related to water well construction or standards provided or conducted by public utilities, equipment manufacturers, or institutions under the State Board of the Technical College System of Georgia shall constitute acceptable continuing professional education programs for the purposes of this subsection. Continuing education courses or programs shall be in the areas of safety, environmental protection, ground-water geology, technological advances, business management, or government regulation. Continuing education courses shall be designed for water well contractors having variable educational backgrounds. Courses or programs conducted by manufacturers specifically to promote their products shall not be approved.

(2) All provisions of this subsection relating to continuing professional education shall be administered by the council.

(3) The council shall be authorized to waive the continuing education requirements in cases of hardship, disability, or illness or under such other circumstances as the council deems appropriate.

(i) No license shall be granted unless the council specifically authorizes the granting of such license. Staff members of the council may not issue licenses without the specific authorization of the council.

(j) Any person who violates the provisions of this Code section with regard to licensing shall not be eligible to apply for or receive a license under this Code section for a period of two years after being convicted of such violation.

History. — Ga. L. 1977, p. 1506, § 4; Ga. L. 1982, p. 3, § 12; Ga. L. 1985, p. 1192, § 1; Ga. L. 1986, p. 10, § 12; Ga. L. 1988, p. 1373, § 2; Ga. L. 1991, p. 963, § 1; Ga. L. 1993, p. 301, § 1; Ga. L. 2001, p. 315, § 4; Ga. L. 2003, p. 607, § 4; Ga. L. 2011, p. 632, § 3/HB 49.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, "two years'" was substituted for "two year's" in the first sentence of subsection (b).

OPINIONS OF THE ATTORNEY GENERAL

Requirements for license as well water contractor. — Individuals, applying for a license as a well water contractor subsequent to January 1, 1978, must pass an examination administered by the council prior to receiving a license. 1979 Op. Att'y Gen. No. U79-9.

Water well contractors need not be licensed as electrical or plumbing contractors. — Persons licensed as water well contractors by the State Water Well Standards Advisory Council are not required to hold licenses as electrical or plumbing contractors when, in the course of constructing water wells, the individuals make certain electrical and plumbing connections at the well site which are incidental to the trade for which the individuals have been licensed. 1981 Op. Att'y Gen. No. U81-45.

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, §§ 21, 33, 44, 49.

C.J.S. — 53 C.J.S., Licenses, §§ 7, 50, 52, 59, 60.

12-5-128. Contents of license; display.

(a) The licenses granted under Code Section 12-5-127 shall contain the name of the contractor, date of issuance, expiration date, license number, and the official designation or symbol of the council, together with the signatures of the council chairman and the chief administrative officer of the council. This license shall be displayed in a conspicuous place at the operator's principal place of business.

(b) All rigs and commercial vehicles used by water well contractors in well construction operations shall prominently display on each rig or vehicle the name of the contractor and shall likewise display the appropriate water well contractor's license number.

History. — Ga. L. 1977, p. 1506, § 4; Ga. L. 1985, p. 1192, § 1.

RESEARCH REFERENCES

C.J.S. — 53 C.J.S., Licenses, § 62.

12-5-129. Suspension and revocation of licenses; hearings; reissuance of revoked licenses; injunction; cessation of well operation; seizure of equipment.

(a) The council may suspend or revoke a license upon a finding of one or more of the following grounds:

(1) Material misstatement in the application for license;

(2) Willful disregard or violation of Code Section 12-5-133 or any law of the State of Georgia relating to wells, including any violation of standards or rules adopted pursuant to this part;

(3) Willfully aiding or abetting another in the violation of Code Section 12-5-133 or any law of the State of Georgia relating to wells;

(4) Incompetency in the performance of the work of a water well contractor;

(5) Making substantial misrepresentations or false promises in connection with the occupation of a water well contractor;

(6) Failure to provide and maintain on file at all times with the director a performance bond or irrevocable letter of credit as required by Code Section 12-5-135; and

(7) Allowing an unlicensed driller to use or to work under such licensee's license in any way. However, this paragraph shall not apply to any employee of a licensed driller who receives only a salary or hourly wage or a bona fide business partner.

(b) The council shall have power and authority to hear and determine all complaints of violations of this part and the regulations pursuant thereto, filed with the council by any interested party, after first giving the person against whom the complaint is filed at least ten days' written notice of the time and place of hearing, together with a copy of the complaint filed against such person. Hearings will be conducted according to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." If, upon the hearing, the council deems such

complaint meritorious, the council may, in its discretion, suspend or revoke the license of the person against whom the complaint is filed or may allow the person a reasonable time in which to meet and correct the complaint of the objecting party. Suspensions or revocations of licenses shall be conducted according to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(c) The council, by majority vote of the quorum, may reissue a license to any person whose license has been revoked upon written application to the council by the applicant, showing good cause to justify the reissuance.

(d) Whenever it shall appear to the council that any person is or has been violating any provisions of this part or any of the lawful rules, regulations, or orders of the council, the council or the appropriate district attorney may file a petition for injunction in the appropriate superior court of this state against such person, for the purpose of enjoining any such violation. It shall not be necessary to allege or prove that there is no adequate remedy at law. The right of injunction provided for in this Code section shall be in addition to any other legal remedy which the council has and shall be in addition to any right of criminal prosecution provided by law.

(e) The director shall be authorized to order the cessation of operation of any well operated in violation of this part and the seizure of all drilling equipment used in such drilling operation; provided, however, that the operator of any such drilling operation shall be afforded a hearing before the administrative law judge of the Department of Natural Resources on such order of the director within 48 hours.

History. — Ga. L. 1977, p. 1506, § 4; Ga. L. 1982, p. 3, § 12; Ga. L. 1985, p. 1192, § 1; Ga. L. 1991, p. 963, § 2; Ga. L. 2001, p. 315, § 5; Ga. L. 2003, p. 607, § 5.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 240. 51 Am. Jur. 2d, Licenses and Permits, §§ 35 et seq., 43.

C.J.S. — 53 C.J.S., Licenses, § 85. 73 C.J.S., Public Administrative Law and Procedure, §§ 87 et seq, 144 et seq.

ALR. — Hearsay in proceeding for suspension or revocation of license to conduct business or profession, 142 A.L.R. 1388.

12-5-130. Expiration and renewal of licenses; replacement of lost, destroyed, or mutilated licenses.

All licenses expire biennially. All applications for renewal shall be filed with the division prior to the expiration date, accompanied by a renewal fee not exceeding $400.00 per renewal period as prescribed by the division. A license which has expired for failure to renew may be restored only after application and payment of the prescribed restora-

tion fee. A new license to replace any license lost, destroyed, or mutilated may be issued, subject to the rules of the council and payment of a fee set by the council.

History. — Ga. L. 1977, p. 1506, § 4; Ga. L. 1985, p. 1192, § 1; Ga. L. 2001, p. 315, § 6; Ga. L. 2003, p. 607, § 6.

RESEARCH REFERENCES

C.J.S. — 53 C.J.S., Licenses, § 76 et seq.

12-5-131. Notifying contractors of changes in rules and regulations.

The council may from time to time amend its rules and regulations governing water well contractors. The council will notify each water well contractor on the official list of licensed water well contractors of any changes in the rules and regulations prior to the effective date of the changes. This notification or lack thereof will in no way affect the effective date of the changes in the rules and regulations.

History. — Ga. L. 1977, p. 1506, § 4; Ga. L. 1985, p. 1192, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 207, 210.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 257 et seq.

12-5-131.1. Licensing requirements for drilling well on own property; water well contractors completing electrical or plumbing work incidental to drilling and construction of well.

(a) Nothing in this part shall prohibit a person from drilling a well on his or her own property if such property is his or her primary residence. A person is prohibited from drilling a well or wells on property he or she owns and is developing for resale unless such person has a license as a water well contractor.

(b) Notwithstanding any other provisions of law, a person licensed as a water well contractor pursuant to Code Section 12-5-127 is not required to be licensed under Chapter 14 of Title 43, when in the course of constructing a water well, he or she makes certain electrical or plumbing connections or performs other electrical or plumbing work incidental to the drilling and construction of the well; provided, however, that any such electrical and plumbing work meets or exceeds all applicable local, state, or federal codes, whichever is most stringent.

History. — Code 1981, § 12-5-131.1, enacted by Ga. L. 2001, p. 315, § 7.

12-5-132. Effect of part.

(a) Nothing in this part shall affect oil and gas drilling operations covered by Part 2 of Article 2 of Chapter 4 of this title.

(b) Nothing in this part shall affect the regulation of ground-water use by the division pursuant to Part 2 of this article.

History. — Ga. L. 1977, p. 1506, § 4; Ga. L. 1985, p. 1192, § 1; Ga. L. 1986, p. 10, § 12.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "ground-water" was substituted for "ground water" in subsection (b).

12-5-133. Penalty; evidence of violation of part.

(a) Any person who engages in or follows the business or occupation of, or advertises, holds himself or herself out, or acts, temporarily or otherwise, as a water well contractor without having first secured the required license or renewal thereof or any person who otherwise violates any provisions of this part shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100.00 and not more than $1,000.00. Each day during which such violation exists or continues shall constitute a separate offense.

(b) In order to prove a violation of this part, it shall not be necessary for a state or local enforcement official to actually observe a well being drilled by a person who does not possess a valid license as required by this part. Other evidence of a violation of this part, including, but not limited to, bills, invoices, photographs, proposals, or any form of advertising, may be sufficient for a conviction.

History. — Ga. L. 1977, p. 1506, § 4; Ga. L. 1985, p. 1192, § 1; Ga. L. 2001, p. 315, § 8; Ga. L. 2015, p. 693, § 3-10/HB 233.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting. — Georgia Crime Information Center is not authorized to collect and file fingerprints of persons charged with a violation of O.C.G.A. § 12-5-133. 2001 Op. Att'y Gen. No. 2001-11.

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, § 175.

C.J.S. — 53 C.J.S., Licenses, § 139.

12-5-133.1. Civil penalties; hearing.

(a) In addition to the provisions of Code Section 12-5-133, any person violating any provision of this part or the rules or regulations effective under this part shall be liable for a civil penalty not to exceed $5,000.00 per day. Each day during which the violation or failure or refusal to comply continues shall be a separate violation.

(b) Whenever the director has reason to believe that any person has violated any provision of this part or any rule or regulation effective under this part, he or she may upon written request cause a hearing to be conducted before a hearing officer appointed by the board. Upon finding that such person has violated any provision of this part or any rule or regulation effective under this part, the hearing officer shall issue his or her decision imposing civil penalties as provided in this Code section. Such hearing and any administrative or judicial review thereof shall be conducted in accordance with subsection (c) of Code Section 12-2-2.

(c) In rendering a decision under this Code section imposing civil penalties, the hearing officer shall consider all factors which are relevant, including, but not limited to, the following:

(1) The amount of civil penalty necessary to ensure immediate and continued compliance and the extent to which the violator may have profited by failing or delaying to comply;

(2) The character and degree of impact of the violation or failure on the natural resources of the state, especially any rare or unique natural phenomena;

(3) The conduct of the person incurring the civil penalty in promptly taking all feasible steps or procedures necessary or appropriate to comply with this part or to correct the violation or failure;

(4) Any prior violations of or failures by such person to comply with statutes, rules, regulations, or orders administered, adopted, or issued by the director or the council;

(5) The character and degree of injury to or interference with public health or safety which is caused or threatened to be caused by such violation or failure; and

(6) The character and degree of injury to or interference with reasonable use of property which is caused or threatened to be caused by such violation or failure.

History. — Code 1981, § 12-5-133.1, enacted by Ga. L. 2001, p. 315, § 9.

12-5-134. Standards for wells and boreholes.

The following standards shall apply to all wells and boreholes:

(1) In the case of individual and nonpublic water wells:

(A)(i) The well should be located as far removed, and in a direction opposite to the ground-water flow, from known or potential sources of pollutants as the general layout of the premises and surroundings permits; however, prior to actual construction, the water well contractor shall notify the county health department of the intent to drill a water well, providing such information as is required on forms prepared by the council. The well shall not be located in areas subject to flooding unless the well casing extends at least two feet above the level of the highest known flood of record. Except as otherwise provided in division (ii) of this subparagraph, all new wells must be located at least the following horizontal distances from the following structures:

(I) Not less than ten feet from a sewer line;

(II) Not less than 50 feet from a septic tank;

(III) Not less than 100 feet from a septic tank absorption field;

(IV) Not less than 150 feet from a cesspool or seepage pit; and

(V) Not less than 100 feet from an animal or fowl enclosure.

(ii) Any property owner may apply to the health department for a variance of the distances cited in this subparagraph due to extenuating circumstances. The owner shall provide for the health department written information explaining the need for a variance. The health department, upon considering the information provided and any other information it deems necessary, may issue a variance;

(B) Every well shall be protected against surface runoff;

(C) Every well shall be located so it will be accessible for cleaning, treatment, repair, testing, inspection, and such other maintenance as may be necessary;

(D) Water-bearing formations that are or are likely to be polluted shall be sealed off;

(E) No material shall be used in the well that will result in the delivered water being hazardous, toxic, or having objectionable taste or odor;

(F) Materials that are to be a part of the permanent well shall be durable and sufficient to protect the well against structural deficiencies during and after the construction and against the entrance of pollutants during the expected life of the well;

(G) The casing and liner pipe joints shall be watertight to the point of maximum drawdown in bored or driven wells and the entire length of the casing in drilled wells;

(H) The alignment in a drilled well shall be such that the installation and operation of the pump will not be impaired;

(I) All drill cuttings and other materials shall be removed from the entire depth of the well and the well shall be disinfected;

(J) The upper terminal of the well shall be protected by a sanitary seal or cover to prevent entrance of pollutants to the well;

(K) Any existing abandoned well or borehole shall be filled, sealed, and plugged by the present owner;

(L) The drilling contractor shall maintain in his or her office and shall furnish the owner a copy of the well construction data within 30 days of the well completion. The data shall include: name of the owner of the well, location of the well, size of pump installed if pump is installed by the drilling contractor, total depth of well, borehole diameter, casing depth, size and type of casing material, grouting information, static water level, pumping water level and yield if test pumped, confirmation of well disinfection and description of method used for disinfection, dates of well construction, name and address and state certificate number of pump installer if the contractor does not install the pump, name and address of contractor, and water well contractor's license number. Any estimate of gallons per minute of water that the well is expected to produce shall not be considered under any circumstances to be a guarantee of the quantity of the water produced by the well. The failure of any water well contractor to provide any of such written information shall subject such contractor to any applicable penalty by the council;

(M) A well having an open annular space between the casing and borehole shall be grouted and shall be filled with neat or sand-cement grout or other impervious material to prevent the entrance of pollutants or contaminants to the well. The following shall be considered minimum depths of seal below ground surface:

(i) Individual wells — ten feet;

(ii) Nonpublic wells — 25 feet in igneous or metamorphic rock; and

(iii) Nonpublic wells — 50 feet in sedimentary rock.

For large diameter water wells cased with concrete pipe or other acceptable casing material, if the casing joints are not sealed, the annular space shall be grouted as specified above, and the annular space below the grout shall be filled with sand or gravel;

(N) All permanent casing, liners, and other manufactured material used in the well installation shall be new, unless otherwise approved in writing by the owner, and adequate to protect the well against entrance of pollutants or contaminants during the expected life of the well. The casing material shall be of steel, plastic, or concrete and meet nationally accepted standards for well casing. Sewer pipe shall not be used for individual or nonpublic water supply wells;

(O) The well screen, when used, shall be of a standard design and manufactured specifically for the purpose of the well construction, shall be of a strength to satisfactorily withstand chemical and physical forces applied to it during and after installation, shall be designed to permit optimum development of the aquifer with minimum head loss consistent with the intended use of the well, shall have openings designed to prevent clogging or jamming, and multiscreened wells shall not connect aquifers or zones which have differences in water quality that would result in deterioration of the water quality in any aquifer or zone;

(P) All gravel placed in a well to be used as a source of drinking water shall be clean, washed, free of organic matter, disinfected prior to emplacement, or provisions made for disinfection in place. The gravel pack material should consist mainly of silicious, well-rounded, smooth, uniform grain particles and of such size to prevent the formation material from entering the well;

(Q) All individual and nonpublic wells producing water for drinking or food processing shall be disinfected following construction, repair, or when work is done on the pump, before the well is placed in service. The well and pumping equipment shall be disinfected with chlorine applied so that a concentration of at least 50 parts per million of chlorine shall be obtained in all parts of the well with a minimum contact period of two hours before pumping the well; and

(R) All individual and nonpublic wells shall be curbed at the surface by the owner with a watertight curbing of concrete at least

four inches thick and extending at least two feet in all directions from the well casing and sloping away from the casing;

(2) All water wells constructed as sources of public water supply for a public water system as defined in Part 5 of this article, the "Georgia Safe Drinking Water Act of 1977," shall be constructed in accordance with the standards and rules and regulations established pursuant to said part;

(3) Irrigation wells shall be constructed in accordance with the standards established for individual and nonpublic wells except that the well does not require disinfection. The minimum depth of the grout seal shall be at least 20 feet below ground surface. Irrigation wells having casing of internal diameter of more than four inches and capable of producing 100,000 gallons of water per day or more shall be constructed only after the division has issued a letter of concurrence or a permit to the landowner;

(4) Industrial wells shall be constructed in accordance with the standards established for individual and nonpublic wells. The minimum depth of the grout seal shall be the same as for nonpublic wells;

(5)(A) Wells and boreholes other than water wells shall be constructed:

(i) So that no toxic or hazardous material is used in or introduced to the borehole;

(ii) So that water-bearing formations that are, or are likely to be, polluted shall be sealed off; and

(iii) To prevent water of different qualities from migrating between zones or aquifers.

(B) Engineering boreholes shall be constructed under the direction of a professional engineer.

(C) Geologic boreholes shall be constructed under the direction of a professional engineer or a professional geologist.

(D) Monitoring wells shall be constructed under the direction of a professional engineer or a professional geologist and shall be constructed in accordance with the following minimum requirements:

(i) Well casing and well screens that are part of the monitoring well shall be durable and sufficient to protect the well against structural deficiencies during the construction and during the expected life of the well;

(ii) The upper terminal of the monitoring well shall be protected by a sanitary seal or cover to prevent entrance of pollutants to the well;

(iii) All casing and liner pipe joints shall be watertight for the entire length of the casing;

(iv) The annular space around the well casing shall be grouted with impervious materials to prevent the entrance of interformational pollutants after due consideration of the local soil conditions, local geology, and the intended use of the well;

(v) The alignment of the well is such that the well may be pumped or sampled;

(vi) All drilling equipment and tools shall be washed and steam cleaned immediately upon completion of any monitoring well located within 1,000 feet of any operating or abandoned sanitary landfill or hazardous materials facility or within 1,000 feet of any area where hazardous materials are known or believed to have been deposited, spilled, or discharged; and

(vii) At least once every five years, the owner of the property on which a monitoring well is constructed shall have the monitoring well inspected by a professional engineer or professional geologist, who shall direct appropriate remedial corrective work to be performed if the well does not conform to standards.

(E) Dewatering wells to be constructed for the purpose of withdrawing 100,000 gallons or less of ground water on any one day shall be constructed under the direction of a professional engineer or a professional geologist and shall be constructed in accordance with the following minimum requirements:

(i) Well casing and well screens that are a part of the dewatering well shall be durable and sufficient to protect the well against structural deficiencies during the construction and against entrance of pollutants during the expected life of the well;

(ii) The upper terminal of the dewatering well shall be protected by a sanitary seal or cover to prevent entrance of pollutants to the well;

(iii) All casing and liner pipe joints shall be watertight for the entire length of the casing;

(iv) The annular space around the well casing shall be grouted with impervious materials to prevent the entrance of interformational pollutants after due consideration of the local soil conditions and local geology; provided, however, that such grouting shall not be required if dewatering is to be accomplished by well points or a well point field;

(v) The alignment of the well shall be such that the installation and operation of the pump will not be impaired; and

(vi) The dewatering well shall be pumped in a manner and rate to prevent significant loss of strength of nearby soil and rock.

(F) Seismic shot holes shall be constructed under the direction of a professional engineer or a professional geologist and shall be constructed in accordance with the following minimum requirements:

(i) Exclusive of explosives, no toxic or hazardous materials shall be used in or introduced to the shot hole;

(ii) Materials that are to be a part of the seismic shot hole shall be durable and sufficient to protect the seismic shot hole against structural deficiencies during the construction and against entrance of pollutants during the expected life of the seismic shot hole;

(iii) Prior to being charged with explosives, seismic shot holes shall contain temporary seals adequate to prevent the entrance of pollutants to any aquifer;

(iv) Seismic shot holes shall not be charged with explosives more than 24 hours prior to detonation; and

(v) In the event explosives are not detonated within one year after reaching total depth, the seismic shot hole shall have all temporary seals removed and be completely plugged with impervious materials to prevent the entrance of pollutants to any aquifer.

(G) Geothermal boreholes that penetrate into ground water shall be grouted from bottom to top by forced injection using impervious grouting material designed for such purpose. Geothermal boreholes shall be constructed or located at a safe distance from any potential source of contamination. The minimum safe distance from the following sources of contamination shall be:

(i) Ten feet from sewer lines;

(ii) Twenty-five feet from septic tanks;

(iii) Fifty feet from septic drain fields;

(iv) Ten feet from a connection between a house and a septic tank; and

(v) Ten feet from a connection between a house and a sewer line;

(6)(A) A water well shall be considered as temporarily abandoned when its use has been interrupted for a period of more than one

year and not more than three years. Such a well shall be sealed and the well maintained whereby it is not a source or a channel of contamination or pollution when not in service.

(B) A water well shall be considered as permanently abandoned when its service has been interrupted for a period of more than three years or it meets the definition of abandoned well as defined in this part. Such a well shall be filled, sealed, and plugged.

(C) Whenever a well or borehole is excavated for the exploration, testing, or use as a source of water supply but is no longer used for that purpose, it shall be the owner's responsibility to have the borehole filled, sealed, and plugged within 30 days of the excavation or disuse to protect against the entrance of pollutants into the subsurface.

(D) No abandoned water well or borehole shall be used for the purpose of disposing of any wastes or pollutants that may contaminate the ground water.

(E) All engineering boreholes, regardless of the depth limitations defined in paragraphs (3) and (8) of Code Section 12-5-122, which are located on property which is being used or is proposed to be used for the storage, manufacture, or processing of petroleum products, hazardous materials, hazardous wastes, industrial or municipal waste water, brines, or any other chemical substances, must be completely filled, sealed, and plugged within 30 days after the total depth is reached. Engineering boreholes which are in locations scheduled to be excavated, covered with pavement, or covered by the concrete foundation or basement of a building within two years after drilling need not be filled, sealed, and plugged. All other engineering boreholes must be filled, sealed, and plugged within 90 days after the total depth is reached. It shall be the responsibility of the person in charge of the borehole construction to ensure proper abandonment.

(F) Geologic boreholes which are in locations scheduled to be mined within two years after drilling need not be filled, sealed, and plugged. Other geologic boreholes shall be filled, sealed, and plugged within 30 days after drilling. It shall be the responsibility of the person in charge of borehole construction to ensure proper abandonment.

(G) Monitoring wells shall meet the requirements of abandonment as defined by this part unless they are declared temporarily abandoned. A monitoring well that is temporarily abandoned shall have a cap placed on it within 15 days of its temporary abandonment. It shall be the responsibility of the owner of the property on which the monitoring well is constructed to ensure proper abandonment of the well.

(H) Seismic shot holes shall be filled, sealed, and plugged within 60 days after the explosives have been detonated. It shall be the responsibility of the person in charge of the shot hole construction to ensure proper abandonment.

(I) Abandoned individual, nonpublic, public, irrigation, and industrial wells shall be filled, sealed, and plugged by a water well contractor licensed by the council.

(J) Abandoned engineering boreholes, geologic boreholes, dewatering wells, monitoring wells, and seismic shot holes shall be filled, sealed, and plugged under the direction of a registered professional geologist or registered professional engineer; and

(7) No well or borehole shall be drilled or used for the purpose of injecting any surface water into the Floridan aquifer in any county governed by the Georgia coastal zone management program provided by Code Section 12-5-327 before July 1, 2014.

History. — Code 1981, § 12-5-134, enacted by Ga. L. 1985, p. 1192, § 1; Ga. L. 1986, p. 10, § 12; Ga. L. 1988, p. 1373, § 3; Ga. L. 2000, p. 458, § 2; Ga. L. 2001, p. 315, § 10; Ga. L. 2003, p. 607, § 7; Ga. L. 2009, p. 330, § 1/HB 552; Ga. L. 2010, p. 254, § 3/HB 1206.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, "well" was substituted for "wells" following "abandonment of the" in the last sentence of subparagraph (6)(G).

Pursuant to Code Section 28-9-5, in 1986, a hyphen was inserted between "well" and "rounded" in subparagraph (1)(P).

Pursuant to Code Section 28-9-5, in 1992, "ground-water" was substituted for "ground water" in division (1)(A)(i) and "waste water" was substituted for "wastewater" in subparagraph (6)(E).

Editor's notes. — Ga. L. 2009, p. 330, § 3/HB 552, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall apply to wells or boreholes and drilling wells or boreholes on or after April 30, 2009.

Law reviews. — For note on 2000 amendment of this Code section, see 17 Ga. St. U.L. Rev. 29 (2000).

JUDICIAL DECISIONS

Jury instruction on duty to fill in wells properly denied. — Trial court properly refused defendant's request for a jury charge on the duty to fill in abandoned wells since the requested charge was not accurate and was not adjusted to the evidence. McCoy v. State, 262 Ga. 699, 425 S.E.2d 646 (1993).

RESEARCH REFERENCES

ALR. — Validity, construction, and application of lead limitations and "lead and copper" rule of Safe Drinking Water Act, 16 A.L.R. Fed. 3d 3.

Citizen's cause of action under Safe Drinking Water Act, 42 U.S.C.A. § 300j-8, 16 A.L.R. Fed. 3d 4.

12-5-135. Requirement of bond or letter of credit.

(a) A performance bond or letter of credit shall be provided to the director by any water well contractor or driller for the conduct of drilling operations to ensure compliance with the procedures and standards contained in this part.

(b) The bond or letter of credit required in subsection (a) of this Code section shall be:

(1) Conditioned upon faithful compliance with the conditions and terms of this part; and

(2) In such amount as determined by the director to ensure compliance with the procedures and standards contained in this part, but in any event not to exceed $75,000.00.

(c) Such performance bond or letter of credit shall be placed on file with the director in one of the following forms:

(1) A performance bond, payable to the director and issued by an insurance company authorized to issue such bonds in this state; or

(2) An irrevocable letter of credit issued in favor of and payable to the director from a commercial bank or other financial institution approved by the director.

(d) The council shall not issue any new license or renew any old license unless the license application is accompanied by a letter from the director or his designee stating that the applicant's bond or letter of credit is acceptable. Failure to provide an acceptable bond or irrevocable letter of credit shall constitute grounds for denial of the issuance or renewal of a license.

(e) Upon a determination by the director that a water well contractor, driller, or other person responsible for the conduct of the drilling operation has failed to meet the standards as set out in this part, the director may, after written notice of the failure to the contractor, driller, or other person responsible for the conduct of the drilling operation in accordance with subsections (e) and (f) of Code Section 12-5-136:

(1) Forfeit or draw that amount of such bond or letter of credit that the director determines necessary to correct the violations;

(2) Expend such amount for such purposes;

(3) Enter into contracts for such purposes; and

(4) Require the replacement of that amount of such bond or letter of credit forfeited or drawn upon.

(f) If a business has more than one water well contractor, that business, in lieu of obtaining bonds or irrevocable letters of credit for

each individual licensee, may substitute a blanket bond or blanket irrevocable letter of credit for all water well contractors within that business. The blanket bond or blanket irrevocable letter of credit shall be payable to the director in an amount not to exceed $75,000.00.

(g) The bond or irrevocable letter of credit provided for in this Code section shall have state-wide application.

(h) Upon delivery of the prescribed bond or irrevocable letter of credit to the director, no other bond or irrevocable letter of credit shall be required of any water well contractor or driller for the purposes of protecting the state or any political subdivision of the state or the citizens thereof from water well contractors or drillers who fail to meet the standards as set out in this part or for any other like purpose required by any department, agency, or instrumentality of the state or a political subdivision thereof.

(i) No bond or irrevocable letter of credit provided for in this Code section shall be accepted by the director from any water well contractor or driller who shall drill any well or borehole for the purpose of injecting any surface water into the Floridan aquifer in any county governed by the Georgia coastal zone management program provided by Code Section 12-5-327 after July 1, 2003, and before July 1, 2014.

History. — Code 1981, § 12-5-135, enacted by Ga. L. 1985, p. 1192, § 1; Ga. L. 1991, p. 963, § 3; Ga. L. 1999, p. 760, § 1; Ga. L. 2001, p. 315, § 11; Ga. L. 2003, p. 607, § 8; Ga. L. 2009, p. 330, § 2/HB 552; Ga. L. 2010, p. 878, § 12/HB 1387.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1985, "subsection" was substituted for "paragraph" in the introductory language of subsection (b); and "12-5-136" was substituted for "12-2-136" in subsection (e).

Pursuant to Code Section 28-9-5, in 1992, "written" was substituted for "writen" in subsection (e).

Pursuant to Code Section 28-9-5, in 2003, "July 1, 2003," was substituted for "the effective date of this subsection" near the end of subsection (i).

Editor's notes. — Ga. L. 2009, p. 330, § 3/HB 552, not codified by the General Assembly, provides, in part, that the amendment to this Code section shall apply to wells or boreholes and drilling wells or boreholes on or after April 30, 2009.

12-5-136. Compliance with standards and licensing requirements; inspections; action by director if well not up to standard.

(a) All water well contractors or other persons drilling boreholes or coreholes are required to conduct their work in a manner that complies with the well construction standards established in this part and are required to be licensed or acting under the direction of a professional engineer or professional geologist as set forth in Code Section 12-5-125.

(b) The director or designated representatives of the division shall conduct inspections of wells and boreholes of all types to determine compliance with construction standards established in this part. Such

inspections may be made in response to requests from the council or from any person who has reason to believe a well or borehole does not comply with the standards. The director may also select wells and boreholes to inspect at random.

(c) The director or designated representatives of the division shall be permitted access in or upon any private or public property at all reasonable times for the purpose of inspecting and investigating conditions of wells, methods of drilling, and records relating to the drilling and abandonment of wells and boreholes.

(d) The director shall report the results of all inspections to the respective driller, contractor, or person responsible for the drilling and to the council.

(e) The director shall notify the driller, contractor, or person responsible for the drilling and the council that a portion of bondedness or line of credit in such amount as necessary to provide corrective action may be assessed if that person does not bring the well or borehole up to the standards described in this part within 30 days.

(f) If a well or borehole is not brought up to the standards described in this part within this 30 day notification period, the director may, upon expiration of the notification period, expend whatever portion of the bond or letter of credit is necessary to hire another contractor to bring the well or borehole up to standards or to construct a new well.

History. — Code 1981, § 12-5-136, enacted by Ga. L. 1985, p. 1192, § 1.

12-5-137. Forfeiture of contraband equipment.

All drilling rigs or commercial vehicles used to drill any well and other equipment used to drill any well by a person who is not a licensed water well contractor or driller or who is not acting under the direction of a professional engineer or professional geologist as required by this part are declared to be contraband subject to forfeiture in accordance with Chapter 16 of Title 9.

History. — Code 1981, § 12-5-137, enacted by Ga. L. 1985, p. 1192, § 1; Ga. L. 2001, p. 4, § 12; Ga. L. 2015, p. 693, § 3-11/HB 233.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

12-5-138. Council authorized to establish rules and regulations for pump installation; certification requirements; civil penalties for violations.

(a)(1)(A) The council is authorized and directed to establish rules and regulations to provide for the certification of pump contractors who install, service, and repair pumps on or in water wells regulated under the provisions of this part and to provide standards for installation of such pumps in order to protect public health and safety. The council shall provide for classes of certificates which distinguish the levels of competencies of certificants to perform various tasks associated with such services. The council is authorized to establish fees and the director is authorized to charge such fees for such certification and the annual renewal thereof; provided, however, that the fee for the pump contractor shall not exceed the fee for the licensed water well contractor. The director may require any person to meet certain qualifications in order to be eligible for certification as a pump contractor. The director may provide that persons who can document that they have been in the business of installing, servicing, and repairing pumps and pumping equipment prior to December 31, 2003, may be granted a certification by paying the appropriate fees but without any requirement to pass any type of test.

(B) Any person wishing to engage in the business of a pump contractor shall designate himself or herself or at least one partner, officer, or full-time employee to fulfill the above certification requirements. If the requirements are satisfactorily fulfilled, the person shall be granted a certification under this Code section, and such certification shall cover pump contracting activities for which the person is responsible and so certified. The partners, officers, and employees of the person shall be allowed to engage in the activities covered by the certification if the individual who fulfilled the certification requirements has performed or approved such activities and such approval is posted at the site of the activity on forms to be provided by the council for that purpose. Any such certification shall be valid so long as the designated partner, officer, or full-time employee is associated with the certificant or until the certificate otherwise expires.

(2) The provisions of paragraph (1) of this subsection notwithstanding, the pump contracting activities of the partners, officers, and employees of the individual who fulfilled the certification requirements shall continue to be authorized under a certificate which was valid at the time of the certificant's death for a period of 180 days following the date of such death.

(3) The provisions of this subsection shall not prohibit a person licensed as an electrical contractor, master plumber, or journeyman

plumber under Chapter 14 of Title 43 from engaging in any business activities or practices within the scope of such license without being certified as a pump contractor.

(b) Any person who installs any pump on or in a water well in violation of any installation standards adopted by the council pursuant to subparagraph (a)(1)(A) of this Code section which violation causes or has the potential for causing contamination of ground water shall be subject to civil penalties as provided in Code Section 12-5-133.1.

History. — Code 1981, § 12-5-138, enacted by Ga. L. 2001, p. 315, § 12; Ga. L. 2003, p. 607, § 9.

Editor's notes. — Former Code Section 12-5-138, relating to termination, and based on Ga. L. 1983, p. 478, § 1; Ga. L. 1985, p. 1192, § 1; Ga. L. 1991, p. 432, § 1, was repealed by Ga. L. 1992, p. 3137, § 40, effective July 1, 1992.

Part 4

Artesian Wells

12-5-150. Conditions under which artesian wells must be tapped.

The owner of any real property in this state on which any free-flowing artesian well is located or any person having immediate supervision over any real property in this state on which any free-flowing artesian well is located shall have any such artesian well tapped or shall otherwise stop the flow of any such well, except when in use, when the following conditions exist:

(1) When the flow of any such artesian well is greater than one inch in diameter; and

(2) When any such artesian well is located within a one-half-mile radius of any other free-flowing well.

History. — Ga. L. 1969, p. 669, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Waters, § 219.

ALR. — Right to conduct and use artesian water out of artesian basin, 31 A.L.R. 906.

12-5-151. Wells on government property.

In the event the State of Georgia or any agency thereof or any political subdivision of this state owns any real property affected by the provisions of Code Section 12-5-150, it shall be the duty of the person or persons having immediate supervision of such real property to comply

with the requirements of Code Section 12-5-150 but the expenses involved in so complying shall be borne by the state agency or the political subdivision owning such real property, as the case may be.

History. — Ga. L. 1969, p. 669, § 2.

RESEARCH REFERENCES

ALR. — Right to conduct and use artesian water out of artesian basin, 31 A.L.R. 906.

12-5-152. Applicability of part.

This part shall not apply to any free-flowing artesian well which is in constant use for the purpose of watering and cooling livestock or for the purpose of supplying water to any public swimming pool.

History. — Ga. L. 1969, p. 669, § 4.

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Waters, § 219.

ALR. — Public swimming pool as nuisance, 49 A.L.R.3d 652.

12-5-153. Penalty.

It shall be the duty of any person owning or having supervision of any real property affected by this part to comply with the requirements of this part by not later than January 1, 1970. Any such person failing to comply with such requirements by such date shall be guilty of a misdemeanor. After such date, each day of continuing failure to comply with such requirements shall constitute a separate offense.

History. — Ga. L. 1969, p. 669, § 3.

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Waters, § 219.

Part 5

Public Water Systems

Cross references. — Supplementary powers of local governments, Ga. Const. 1983, Art. IX, Sec. II, Para. III. Power of municipal corporations to acquire and construct water and sewage systems, § 36-34-5.

Administrative rules and regulations. — Rules for safe drinking water,

Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-5.

Water quality control, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-6.

Law reviews. — For article, "Hazardous Waste Issues in Real Estate Transactions," see 38 Mercer L. Rev. 581 (1987).

OPINIONS OF THE ATTORNEY GENERAL

Purpose of this part is to obtain fluoridation of the drinking water supplies of the people of this state to improve dental health. 1973 Op. Att'y Gen. No. 73-181 (see O.C.G.A. T. 12, C. 5, A. 3, P. 5).

Fluoridation authorization limited to incorporated communities. — This part empowers the Department of Natural Resources to require fluoridation of the water supplies of incorporated communities only. 1973 Op. Att'y Gen. No. 73-181 (see O.C.G.A. T. 12, C. 5, A. 3, P. 5).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Contamination of Subterranean Water Supply by Sewage, 6 POF2d 595.

Citizens' suits under the Safe Drinking Water Act, 67 POF3d 95.

ALR. — Injunction against pollution of stream by private persons or corporations, 46 A.L.R. 8.

Validity, construction, and effect of statute, ordinance, or other measure involving chemical treatment of public water supply, 43 A.L.R.2d 453.

12-5-170. Short title.

This part shall be known and may be cited as the "Georgia Safe Drinking Water Act of 1977."

History. — Ga. L. 1977, p. 351, § 2.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of lead limitations and "lead and copper" rule of Safe Drinking Water Act, 16 A.L.R. Fed. 3d 3.

Citizen's cause of action under Safe Drinking Water Act, 42 U.S.C.A. § 300j-8, 16 A.L.R. Fed. 3d 4.

12-5-171. Declaration of policy; legislative intent; Environmental Protection Division to administer part.

As a guide to the interpretation and application of this part, it is declared to be the policy of the State of Georgia that the drinking waters of the state shall be utilized prudently to the maximum benefit of the people and that the quality of such waters shall be considered a major factor in the health and welfare of all people in the State of Georgia. To achieve this end, the government of the state shall assume responsibility for the quality of such waters and the establishment and maintenance of a water-supply program adequate for present needs and designed to care for the future needs of the state.

This requires that an agency of the state be charged with this duty and that it have the authority to require the use of reasonable methods, that is, those methods which are economically and technologically feasible, to ensure adequate water of the highest quality for water-supply systems. Because of substantial and scientifically significant variations in the characteristics, usage, and effect upon public interest of the various surface and underground waters of the state, uniform requirements will not necessarily apply to all waters or segments thereof. It is the intent of this part to confer discretionary administrative authority upon such agency to take the above and related circumstances into consideration in its decisions and actions in determining, under the conditions prevailing in specific cases, those procedures to best protect the public interests.

The Environmental Protection Division of the Department of Natural Resources shall be the state agency to administer the provisions of this part consistent with the above-stated policy.

History. — Code 1933, § 88-2601, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1977, p. 351, § 1.

JUDICIAL DECISIONS

Cited in Bass v. Ledbetter, 257 Ga. 738, 363 S.E.2d 760 (1988); Moore v. Dixon, 264 Ga. 797, 452 S.E.2d 484 (1994).

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Waterworks and Water Companies, § 2.

C.J.S. — 94 C.J.S., Waters, §§ 539, 541, 542, 636, 637.

ALR. — Validity of statute prescribing standard of purity of water furnished for human consumption, 6 A.L.R. 475.

Waters: right of municipality, as riparian owner, to use of water for public supply, 141 A.L.R. 639.

Liability of water supplier for damages resulting from furnishing impure water, 54 A.L.R.3d 936.

12-5-172. Definitions.

As used in this part, the term:

(1) "Administrator" means the administrator of the U.S. Environmental Protection Agency.

(2) "Contaminant" means any physical, chemical, biological, or radiological substance or matter in water.

(3) "Cross-connection" means any physical arrangement whereby a public water supply is or may be connected directly or indirectly with a nonpotable water supply or unapproved water-supply system,

sewer, drain, conduit, pool, storage reservoir, plumbing fixture, or other device which contains or may contain contaminated water, liquid, gases, sewerage, or other waste of unknown or unsafe quality, which may be capable of imparting contamination to the public water supply as the results of backflow, bypass arrangements, jumper connections, removable sections, swivel or changeover devices, and other temporary, permanent, or potential connections through which or because of which backflow or backsiphonage could or would occur.

(4) "Director" means the director of the Environmental Protection Division, or his designee.

(5) "Division" means the Environmental Protection Division of the Department of Natural Resources.

(6) "Federal act" means the Safe Drinking Water Act, P.L. 93-523.

(7) "Georgia primary drinking water regulation" means a regulation which:

(A) Applies to public water systems;

(B) Specifies contaminants which, in the judgment of the director, may have any adverse effect on the health of persons;

(C) Specifies for each contaminant either a maximum contaminant level in public water systems if, in the judgment of the director, it is economically and technologically feasible to ascertain the level of such contaminant in such systems, or if, in the judgment of the director, it is not economically or technologically feasible to ascertain the level of such contaminant, each treatment technique known to the director which leads to a reduction in the level of such contaminant sufficient to satisfy the requirements of 42 U.S.C. Section 300g-1;

(D) Contains criteria and procedures to assure a supply of drinking water which dependably complies with such maximum contaminant levels, including quality control and testing procedures to ensure compliance with such levels and to ensure proper operation and maintenance of the system, and requirements as to the minimum quality of water which may be taken into the system and siting for new facilities for public water systems.

(8) "Municipality" means a city, town, or other public body created by or pursuant to state law.

(9) "National primary drinking water regulations" means primary drinking water regulations promulgated by the administrator pursuant to the federal act.

(10) "Person" or "persons" means any individual, corporation, company, association, partnership, county, municipality, state agency, or other entity.

(11) "Public water system" means a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves at least 25 individuals. Such term includes but is not limited to any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system, and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system.

(12) "Secondary drinking water regulation" means a regulation which applies to public water systems and which specifies the maximum contaminant levels which, in the judgment of the director or administrator, are requisite to protect the public welfare. Such regulations may apply to any contaminant in drinking water which may adversely affect the odor or appearance of such water and consequently may cause a substantial number of the persons served by the public water system providing such water to discontinue its use, or which may otherwise adversely affect the public welfare.

(13) "Waters of the state" means and includes any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and all other bodies of surface or underground water, natural or artificial, of this state.

History. — Ga. L. 1977, p. 351, § 3; Ga. L. 1982, p. 3, § 12.

U.S. Code. — The Safe Drinking Water Act, referred to in this Code section, is codified principally as 42 U.S.C. § 300f et seq.

JUDICIAL DECISIONS

Environmental Protection Division's mandate is limited to public aspects of water delivery systems and is governed by the provisions of paragraph (11) of O.C.G.A. § 12-5-172 defining a public water system. Bass v. Ledbetter, 257 Ga. 738, 363 S.E.2d 760 (1988).

Environmental Protection Division authority is confined either to any facilities of the public water system under the operator's control or to any collection or pretreatment storage facilities not under the operator's control. Bass v. Ledbetter, 257 Ga. 738, 363 S.E.2d 760 (1988).

Private lines running from the service connections of the distribution facilities into the homes of subdivision residents were not within the control of the water system operator; consequently, the Environmental Protection Division was charged with no responsibility for those private lines. Bass v. Ledbetter, 257 Ga. 738, 363 S.E.2d 760 (1988).

Cited in Moore v. Dixon, 264 Ga. 797, 452 S.E.2d 484 (1994).

12-5-173. Designation of division as state agency to receive financial aid from federal government and other sources.

The division shall be designated as the state agency to receive and administer financial aid from the federal government or other public or

nonprofit sources for purposes of water-supply quality control, administration of the state's water-supply program, administration of any federal or state water-supply grant program, or any purposes relating to the furnishing of water by public water systems.

History. — Ga. L. 1977, p. 351, § 23.

12-5-174. Powers and duties of Board of Natural Resources as to public water systems.

(a) In the performance of its duties, the Board of Natural Resources shall:

(1) Establish by rule or regulation standards of quality for water that will be distributed in public water systems;

(2) Establish by rule or regulation such policies, requirements, or standards governing the source, collection, distribution, purification, treatment, and storage of water for public water systems as it deems necessary for the reasonable and proper use thereof in conformity with the intent of this part;

(3) Adopt, modify, repeal, and promulgate such rules and regulations, including but not limited to the Georgia primary drinking water regulations, as are necessary for the proper administration of this part, which rules and regulations shall be applicable throughout the state and shall govern the installation, use, and operation of systems; cross-connection control; quality control; laboratory certification; and methods and means for treating and furnishing water to the public by way of public water systems;

(4) Adopt, modify, repeal, and promulgate Georgia secondary drinking water regulations at such time as, in the judgment of the director or the administrator, they are necessary to protect the public welfare.

(b) The powers and duties enumerated in subsection (a) of this Code section may be exercised and performed by the Board of Natural Resources through such duly authorized agents and employees as it deems fit and proper.

History. — Code 1933, § 88-2603, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1973, p. 1289, § 2; Ga. L. 1977, p. 351, § 4.

Administrative rules and regulations. — Rules for safe drinking water, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-5.

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Waterworks and Water Companies, §§ 2, 32, 39.
C.J.S. — 94 C.J.S., Waters, §§ 539, 541, 542, 636 et seq.
ALR. — Power of board of health to prescribe means or methods of keeping water supply free of impurities, 23 A.L.R. 228.

12-5-175. Fluoridation of public water systems; state funds for cost of fluoridation equipment, chemicals, and materials; tax deduction for fluoride-removing devices.

(a) The Board of Natural Resources shall have the power to require, by regulation, fluoridation of potable public water supplies in incorporated communities lying wholly within this state, provided that in no case should such fluoridation be required at a level greater than one part per million parts of water; provided, further, that any municipality or county and its water system can remove themselves from the terms of this part by referendum called by petition of 10 percent of the registered voters in such political subdivision who voted in the last general election. This applies to a referendum for or against fluoridation.

(b) No incorporated municipality, county, or public or private water authority shall be required to comply with subsection (a) of this Code section unless the state has made available funds for the cost of the fluoridation equipment, the installation of such equipment, and the materials and chemicals required for six months of fluoridation of such potable public water supplies.

(c) Any person who is deemed allergic to fluoridated water and who finds it necessary, upon the advice of a physician or upon approval by the Department of Public Health, to purchase a device to remove the fluoride from the water may treat the cost of the device as a tax-deductible medical expense.

History. — Ga. L. 1973, p. 148, §§ 1, 1A, 2; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.
Administrative rules and regulations. — Drinking water fluoridation grant program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, § 391-3-21-03.
Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

JUDICIAL DECISIONS

Referendum provisions as to removal of county from fluoridation requirement constitutional. — Construction of subsection (a) of O.C.G.A. § 12-5-175 by a county board of elections, that a referendum petition to remove the county from the statutory requirement of fluoridation of public water must be signed by 10% of the registered voters who actually voted in the election, did not

violate the constitutional rights of the petitioners to equal protection and the right to vote. Kelly v. Macon-Bibb County Bd. of Elections, 608 F. Supp. 1036 (M.D. Ga. 1985).

OPINIONS OF THE ATTORNEY GENERAL

Purpose of this part is to obtain fluoridation of the drinking water supplies of the people of this state to improve dental health. 1973 Op. Att'y Gen. No. 73-181 (see O.C.G.A. T. 12, C. 5, A. 3, P. 5).

Fluoridation authorization limited to incorporated communities. — This part empowers the Department of Natural Resources to require fluoridation of the water supplies of incorporated communities only. 1973 Op. Att'y Gen. No. 73-181 (see O.C.G.A. T. 12, C. 5, A. 3, P. 5).

Requirements for signing referendum petition. — Person signing a petition calling for county or city referendum on question of fluoridation must be registered voter at time of signing and must have voted in last general election. 1982 Op. Att'y Gen. No. 82-37.

Effect of fluoridation grant agreement. — Garden City may hold a referendum pursuant to O.C.G.A. § 12-5-175 to determine whether the city desires to remove itself from state fluoridation requirements even after signing a fluoridation grant agreement with the Department of Natural Resources; however, after signing such agreement, Garden City may not avoid the terms thereof, notwithstanding the outcome of the referendum. 1984 Op. Att'y Gen. No. U84-43.

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Initiative and Referendum, §§ 6, 7. 78 Am. Jur. 2d, Waterworks and Water Companies, § 40.

C.J.S. — 82 C.J.S., Statutes, § 205. 94 C.J.S., Waters, § 690 et seq. 85 C.J.S., Taxation, § 2026 et seq.

12-5-176. Powers and duties of director as to public water systems generally.

(a) The director shall have and may exercise the following powers and duties:

(1) To exercise general supervision over the administration and enforcement of this part and all rules and regulations and orders promulgated hereunder;

(2) To encourage, participate in, or conduct studies, investigations, research, and demonstrations relating to the quality and purity of waters for public water systems of the state as he deems advisable and necessary;

(3) To issue permits covering the operation of public water systems, stipulating in each permit the conditions under which such permit was issued, and to deny, revoke, modify, or amend permits for good cause. In the event of denial, modification, or revocation of a permit, the director shall serve written notice of such action on the permit holder and shall set forth in such notice the reason for such action;

(4) To make investigations, laboratory analyses, and inspections to ensure compliance with this part, rules and regulations issued pursuant hereto, and any orders which the director may issue;

(5) To advise, consult, cooperate, and contract with other agencies of the state and political subdivisions thereof and, with the approval of the Governor, to negotiate and enter into agreements with the governments of other states and the United States and their several agencies on water quality matters, insofar as such agreements relate to the operation of public water systems;

(6) To conduct such public hearings as he deems necessary for the proper administration of this part;

(7) To collect and disseminate information relating to the quality of the water being furnished by the public water systems of the state;

(8) To issue orders as may be necessary to enforce compliance with this part and all rules and regulations promulgated hereunder;

(9) To investigate any apparent violation of this part and to take any action authorized hereunder as he deems necessary to enforce this part;

(10) To institute, in the name of the division, proceedings of mandamus or other proper legal proceedings to enforce this part;

(11) To exercise all incidental powers necessary to carry out the purposes of this part; and

(12) At the discretion of the director, to give instruction and training to public water system operators and public water system laboratory analysts; to provide technical assistance for such instruction and training by others; to collect fees for such training and assistance in accordance with Code Section 45-12-92; to purchase the services of any person to render such instruction and training; and to make available to any such person suitable space and facilities for the rendering of such instruction and training. The director may collect from the participants in any such instructional or training program a pro rata share of any actual out-of-pocket expenses incurred by the division in producing such program including, without limitation, the rental of nonagency facilities and the payment of nonagency instructors.

(b) The above and foregoing powers and duties may be exercised and performed by the director through such duly authorized agents and employees as he deems necessary and proper.

History. — Code 1933, § 88-2603, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1973, p. 1289, §§ 1, 3; Ga. L. 1977, p. 351, § 5; Ga. L. 1982, p. 3, § 12; Ga. L. 1993, p. 305, § 2.

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Waterworks and Water Companies, §§ 2, 39.

C.J.S. — 94 C.J.S., Waters, § 578 et seq., 658, 689.

12-5-177. Enforcement of rules and regulations; minimum requirements for and applicability of Georgia primary drinking water regulations; records and reports.

(a) The director shall enforce all rules and regulations promulgated and adopted pursuant to this part.

(b) The Georgia primary drinking water regulations shall be no less stringent than the complete interim or revised national primary drinking water regulations adopted pursuant to the federal act.

(c) The Georgia primary drinking water regulations shall apply to each public water system in the state, except that such regulations shall not apply to a public water system which:

(1) Consists only of distribution and storage facilities and which does not have any collection and treatment facilities;

(2) Obtains all of its water from, but is not owned or operated by, the owner or operator of a public water system to which such regulations apply;

(3) Does not sell water to any persons; and

(4) Is not a carrier which conveys passengers in intrastate commerce.

(d) The director shall initiate procedures for the enforcement of the rules and regulations promulgated and adopted pursuant to this part, including, but not necessarily limited to, monitoring and inspection procedures.

(e) The director shall keep such records and make such reports with respect to his activities under subsections (a) and (d) of this Code section as may be required by regulations established by the administrator pursuant to the federal act.

History. — Ga. L. 1977, p. 351, § 6.

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Waterworks and Water Companies, §§ 2, 39, 41.

C.J.S. — 94 C.J.S., Waters, §§ 543, 545.

ALR. — Waters: right of municipality, as riparian owner, to use of water for public supply, 141 A.L.R. 639.

12-5-178. Variances and exemptions.

The director may authorize variances or exemptions from the regulations promulgated pursuant to this part under such conditions and in such manner as he deems necessary and desirable; provided, however, that such variances or exemptions shall not be permitted under conditions which are less stringent than the conditions under which variances and exemptions may be granted under the federal act.

History. — Ga. L. 1977, p. 351, § 8.

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Waterworks and Water Companies, §§ 2, 39.

C.J.S. — 94 C.J.S., Waters, §§ 631, 636 et seq. .

12-5-179. Permits for operation of public water systems; performance bonds.

(a) It shall be unlawful for any person to own or operate a public water system, except in such a manner as to conform and comply with all rules, regulations, orders, and permits established under this part and applicable to the waters involved.

(b) Except as to those owners or operators of public water systems excepted from Georgia primary drinking water regulations under Code Section 12-5-177, any person who owns or operates a public water system or who desires to commence operation of a public water system shall obtain a permit from the director to operate same. Any person who desires to own or operate a public water system but who was not operating such a system as of July 1, 1977, must obtain such permit prior to the operation of same. The director, under the conditions he prescribes, may require the submission of such plans, specifications, and other information as he deems relevant in connection with the issuance of such permits. The director may issue a permit which authorizes the person to operate a public water system, upon condition that the owner or operator of such system meets or will meet, pursuant to any schedule of compliance included in such permit, all rules and regulations promulgated pursuant to this part, including, but not limited to, drinking water regulations established pursuant to this part.

(c) The director is authorized to require as conditions in permits issued under subsection (b) of this Code section the compliance with maximum contaminant levels established pursuant to this part. Max-

imum contaminant levels shall be complied with in the shortest reasonable period of time consistent with this part and the federal act. The director is further authorized, in conformity with this part and the federal act, to set schedules of compliance and include such schedules within the terms and conditions of such permits and to prescribe terms and conditions for such permits to assure compliance with applicable maximum contaminant levels and drinking water criteria established pursuant to this part, including, but not limited to, requirements concerning recording, reporting, monitoring, entry, inspection, and laboratory analyses, to the extent permissible under this part, and such other requirements as are consistent with the purposes of this part.

(d) Each permit issued under subsection (b) of this Code section shall have a fixed term not to exceed ten years. Upon expiration of such permit, a new permit may be issued by the director and upon condition that the continued operation of such public water system meets or will meet all applicable drinking water standards, maximum contaminant levels, and all other requirements established pursuant to this part. The director is authorized to include in permits issued under this subsection such terms and conditions as are authorized under this subsection and subsections (b) and (c) of this Code section.

(e) The director may revoke, suspend, or modify any permit issued under subsection (b), (c), or (d) of this Code section for cause, including, but not limited to, the following:

(1) Violation of any condition of the permit;

(2) Obtaining a permit by misrepresentation, or failure to disclose fully all relevant facts;

(3) Change in any condition that requires either a temporary or permanent decrease in the maximum contaminant levels or elimination of the permitted operation.

(f) In the event of modification, suspension, or revocation of a permit, the director shall serve written notice of such action on the permit holder and shall set forth in such notice the reason for the action.

(g)(1) A performance bond or letter of credit may be required by the director to further assist in the assurance that a public water system serving year-round residents maintains compliance with the established contaminant levels and the provision of an adequate supply of water at or above the required minimum pressure. Such a performance bond or letter of credit shall be required of the owner or operator of any public water system serving year-round residents if:

(A) After the first violation of contaminant or water supply standards or requirements, the owner or operator of the public

water system fails to make the necessary corrections after receiving a notice from the director specifying:

(i) The corrections which must be made; and

(ii) A reasonable period of time for the completion of necessary corrective action; or

(B) After a second violation of contaminant or water supply standards or requirements, the director makes a determination, based on factors such as past performance, frequency and severity of violations, and timeliness of corrective action, that a performance bond or letter of credit is required.

(2) Any owner or operator of a public water system serving year-round residents who is required to obtain a performance bond or letter of credit pursuant to paragraph (1) of this subsection shall file with the director the following:

(A) A performance bond, payable to the director and issued by an insurance company authorized to issue such bonds in this state; or

(B) An irrevocable letter of credit, issued in favor of and payable to the director, from a commercial bank or other financial institution approved by the director.

(3) The bond or letter of credit required in paragraph (2) of this subsection shall be:

(A) Conditioned upon faithful compliance with this part, the regulations promulgated pursuant to this part, and the conditions and terms of the permit issued for the operation of the public water system;

(B) In such amount as determined by the director as necessary to ensure the continued lawful operation of the public water system for a period up to ten years in the event the owner or operator fails to do so; provided, however, the range shall be as follows:

(i) Systems with 25 service connections or less — an amount not to exceed $30,000.00;

(ii) Systems with 26 to 50 service connections — an amount not to exceed $40,000.00; or

(iii) Systems with more than 50 service connections — an amount not to exceed $50,000.00;

(C) Subject to termination or expiration only upon 120 days' written notice to the director; and

(D) Conditioned upon coverage for any violation occurring during the term of the bond or letter of credit of which written notice

has been given to the owner or operator prior to 120 days after said term even though the initial or final determination of the violation occurs after the term of the bond or letter of credit.

(4) If an existing bond or letter of credit is to expire or terminate, the owner or operator of the public water system shall file a replacement bond or letter of credit meeting the requirements of this subsection at least 60 days prior to the termination or expiration of the existing bond or letter of credit.

(5) Upon a determination by the director that an owner or operator has violated this part, the regulations promulgated under this part, or the terms or conditions of a permit, the director may, after written notice of the violation to the owner or operator:

(A) Forfeit or draw that amount of such bond or letter of credit that the director determines necessary to correct the violations determined and continue the lawful operation of the public water system; and

(B) Expend such amount for such purposes.

(6) No action taken by the director pursuant to this subsection, including the forfeiture of a bond or the drawing of funds from a letter of credit, shall relieve the owner or operator of a public water system from compliance with all provisions of this part, including the requirement to maintain in full force and effect a bond or letter of credit meeting the requirements of this subsection.

(7) Every permit issued under this part shall be conditioned upon compliance with this subsection.

(8) The provisions of this subsection shall not apply to:

(A) Any public water system of the state, an agency of the state, a county, a municipality, or of any other political subdivision or governmental entity;

(B) Any water system owned by a church or other religious institution;

(C) Any water system owned or provided by an employer and used primarily to serve employees; and

(D) Any water system which is jointly owned by private individuals who are the users of the water supplied by the system.

(h)(1) Any privately owned public water supplier within this state supplying water to customers who, incidental to the purchase of such water, utilize a waste-water sewer system owned or operated by a county, municipality, or local authority to dispose of or discharge the water purchased shall furnish to such political subdivision the

amount of water consumed by each individually metered customer account during each billing period.

(2) Upon receiving notice from a county, municipality, or local authority described in paragraph (1) of this subsection that a customer has failed to timely pay any charges for the use of the waste-water sewer system, the private water supplier shall, within five business days of such notice, suspend water supply to that customer. The water supply to such customer shall remain suspended until such political subdivision notifies the water supplier to resume water service. The private water supplier shall be authorized to charge a reasonable fee to the customer for the cost of suspension or resumption of water service.

(3) Nothing in this subsection shall abrogate the provisions of Code Section 36-60-17.

(4) The requirements of this subsection shall not apply to submetered multifamily, multi-industrial, or multicommercial properties.

History. — Code 1933, § 88-2606, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1977, p. 351, § 7; Ga. L. 1982, p. 3, § 12; Ga. L. 1984, p. 1074, § 1; Ga. L. 1986, p. 10, § 12; Ga. L. 1996, p. 6, § 12; Ga. L. 2012, p. 843, § 1/HB 1102.

JUDICIAL DECISIONS

Compliance with Act. — When the performance of an agreement to supply water between the defendant, operator of a public water system, and the plaintiff, owner of neighboring property, was illegal because the defendant did not obtain the necessary permit under O.C.G.A. § 12-5-179, the plaintiff had no viable claim for enforcement of the agreement. Moore v. Dixon, 264 Ga. 797, 452 S.E.2d 484 (1994).

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Waterworks and Water Companies, § 2.

C.J.S. — 94 C.J.S., Waters, § 658.

12-5-180. Duty of permit applicants and holders to supply information as required by director.

(a) Any applicant for a permit whose application is pending final consideration shall upon request of the director provide such additional information as may be necessary to complete final disposition of the application.

(b) Any permit holder shall on request of the director furnish such information as is reasonably necessary and pertinent to enable the director to discharge his duties under this part.

History. — Code 1933, § 88-2607, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1977, p. 351, § 9.

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Waterworks and Water Companies, § 2.

C.J.S. — 94 C.J.S., Waters, § 658.

12-5-180.1. Allocating water and waste-water usage among tenants; charging tenants for usage; measuring water usage.

(a) Except as otherwise provided in subsections (c) and (d) of this Code section, the owner or operator of a building containing residential units may install equipment or use an economic allocation methodology to determine the quantity of water that is provided to the tenants and used in the common areas of such a building; and the owner of such a building may charge tenants separately for water and waste-water service based on usage as determined through the use of such equipment or allocation methodology.

(b) Except as otherwise provided in subsections (c) and (d) of this Code section, the owner or operator of a building containing residential units may charge tenants separately for water and waste-water service, provided that the total amount of the charges to the tenants of such a building shall not exceed the total charges paid by the owner or operator for water and waste-water service for such building plus a reasonable fee for establishing, servicing, and billing for water and waste-water service and provided, further, that the terms of the charges are disclosed to the tenants prior to any contractual agreement.

(c) All new multiunit residential buildings permitted on or after July 1, 2012, shall be constructed in a manner which will permit the measurement by a county, municipal, or other public water system or by the owner or operator of water use by each unit. This subsection shall not apply to any building constructed or permitted prior to July 1, 2012, which is thereafter: (1) renovated; or (2) following a casualty or condemnation, renovated or rebuilt.

(d) All new multiunit retail and light industrial buildings permitted or with a pending permit application on or after July 1, 2012, shall be constructed in a manner which will permit the measurement by the owner or operator of water use by each unit. This subsection shall not apply to any building constructed or permitted prior to July 1, 2012, which is thereafter: (1) renovated; or (2) following a casualty or condemnation, renovated or rebuilt. This subsection is not intended to apply to newly constructed multiunit office buildings or office components of mixed use developments. Multiunit office buildings and the

office component of mixed use developments may seek reimbursement from office tenants for water and waste-water use through an economic allocation which approximates the water use of each tenant based on square footage. The retail component of a mixed use development shall be constructed in a manner which will permit the measurement by the owner or operator of water use by each retail unit.

(e)(1) A county, municipal, or other public water system, if applicable, or the owner or operator of a building which is subject to subsection (c) or (d) of this Code section shall seek reimbursement for water and waste-water usage by the units through an economic allocation methodology which is based on the measured quantity of water used by each unit.

(2) The owner or operator of such a building which includes common areas for the benefit of the units may also seek reimbursement for common area water and waste-water use through an economic allocation which approximates the portion of the common area water and waste-water services allocable to each unit.

(3) The total amount of charges to the units under paragraphs (1) and (2) of this subsection shall not exceed the total charges paid by the owner or operator for water and waste-water service for the building, plus a reasonable fee for establishing, servicing, and billing water and waste-water consumption.

(4) The director shall be empowered to issue a temporary waiver of this subsection upon a showing by an owner or operator of a building subject to this subsection that compliance with this subsection has temporarily become impracticable due to circumstances beyond the control of the owner or operator. Such waiver shall be limited in duration to the period during which such circumstances remain in effect and beyond the control of the owner or operator to change.

(5) The owner or operator who seeks reimbursement for water and waste-water usage as required by this chapter shall be relieved of liability for actions or inactions that occur as a result of billing or meter-reading errors by an unaffiliated third-party billing or meter-reading company.

(f) A county, municipal, or other public water system shall be prohibited from charging any fee or levy for the installation or use of privately owned meters or other devices which measure or assist in the measurement of water use under subsection (c) of this Code section; provided, however, that a county, municipal, or other public water system shall be permitted to charge a fee or levy for the installation or use of publicly owned meters or other devices which measure or assist in the measurement of water use.

(g) Subsections (c), (d), and (e) of this Code section shall not apply to any construction of a building the permit for which was granted prior to July 1, 2012.

History. — Code 1981, § 12-5-180.1, enacted by Ga. L. 2000, p. 1341, § 1; Ga. L. 2001, p. 4, § 12; Ga. L. 2002, p. 1272, § 1; Ga. L. 2010, p. 732, § 7/SB 370; Ga. L. 2011, p. 752, § 12/HB 142.

Cross references. — Landlord and tenant, T. 44, C. 7.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2011, ", municipal or other" was deleted following "provided, however, that a county, municipal, or other" in subsection (f).

Editor's notes. — Ga. L. 2000, p. 1341, § 2, not codified by the General Assembly, provides that that Act is applicable with respect to agreements entered into on or after July 1, 2000.

Ga. L. 2010, p. 732, § 1/SB 370, not codified by the General Assembly, provides: "The General Assembly recognizes the imminent need to create a culture of water conservation in the State of Georgia. The General Assembly also recognizes the imminent need to plan for water supply enhancement during future extreme drought conditions and other water emergencies. In order to achieve these goals, the General Assembly directs the Georgia Department of Natural Resources to coordinate with its Environmental Protection Division, the Georgia Environmental Facilities Authority [now known as the Georgia Environmental Finance Authority], the Georgia Department of Community Affairs, the Georgia Forestry Commission, the Georgia Department of Community Health, including its Division of Public Health, the Georgia Department of Agriculture, and the Georgia Soil and Water Conservation Commission to work together as appropriate to develop programs for water conservation and water supply."

Law reviews. — For article on 2010 amendment of this Code section, see 27 Ga. St. U.L. Rev. 185 (2010).

RESEARCH REFERENCES

Am. Jur. 2d. — 42A Am. Jur. 2d, Landlord and Tenant, §§ 637 et seq., 688.

C.J.S. — 52A C.J.S., Landlord and Tenant, §§ 532, 533, 535 et seq., 541 et seq., 645, 763, 786, 787.

12-5-180.2. Fire sprinkler protection systems; limitation on fee for water service.

(a) The purpose of this Code section is to encourage the use of fire sprinkler protection systems.

(b) No county, municipal, or other public water system shall charge or assess a separate fee for water service for fire sprinkler protection systems for more than the costs to provide such service.

History. — Code 1981, § 12-5-180.2, enacted by Ga. L. 2018, p. 353, § 1/SB 404.

RESEARCH REFERENCES

Am. Jur. 2d. — Proposal and acceptance of installation of sprinkler system, Am. Jur. Legal Forms § 117:8 et seq. 35A Am. Jur. 2d, Fixtures, § 90.

Am. Jur. Proof of Facts. — Negligent Failure to Install or Maintain Smoke Alarm or Sprinkler System, 5 Am. Jur. POF 3d 383.

12-5-181. Inspections and investigations by division.

The director or any agents or employees of the division shall be permitted access in or upon any private or public property at all reasonable times for the purpose of inspecting and investigating conditions, processes, methods of treatment, and records relating to the operation of any public water system, or in order to test any feature of a public water system, including its raw water source.

History. — Code 1933, § 88-2608, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1977, p. 351, § 10.

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Waterworks and Water Companies, § 32.

12-5-182. Powers of director as to protection of public from contaminants presenting imminent and substantial danger.

The director, upon receipt of information that a contaminant is present in or is likely to enter a public water system and that such contaminant may present imminent and substantial danger to the public health, may take such authorized action as he may deem necessary in order to protect the public health. The actions which the director may take include, but shall not be limited to, issuing such orders as may be necessary to protect the health of persons who are or may be users of such system, including travelers; commencing actions under Code Section 12-5-187; and commencing a civil action for appropriate relief, including, but not limited to, an action to obtain a restraining order or temporary or permanent injunction.

History. — Ga. L. 1977, p. 351, § 11.

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Waterworks and Water Companies, § 39 et seq.

12-5-183. Plan for emergency provision of water.

The director shall develop an adequate plan for the provision of safe drinking water under emergency circumstances. When, in the judgment of the director, emergency circumstances exist in the state with

respect to a need for safe drinking water, he may take such actions as he may deem necessary in order to provide such water where it otherwise would not be available.

History. — Ga. L. 1977, p. 351, § 12.

12-5-184. Notice of violations, variances, and exemptions involving public water systems.

Whenever a public water system:

(1) Is not in compliance with the Georgia primary drinking water regulations, including, but not limited to, failure to comply with a maximum contaminant level;

(2) Fails to perform monitoring required by regulations adopted pursuant to this part;

(3) Is subject to a variance granted for an inability to meet a maximum contaminant level requirement;

(4) Is subject to an exemption from a maximum contaminant level; or

(5) Fails to comply with the requirements prescribed by a variance or exemption,

the owner or operator of such system shall as soon as practicable notify the local public health department, the director, and communications media serving the area served by the system, of the nature, extent, and possible adverse health effects of such situation. Such notice shall also be given by the owner or operator of such system in a form and manner and to the extent reasonably prescribed by the director, which shall, at a minimum, include publication in a newspaper of general circulation within the area served by such water system at least once every three months so long as the violation, variance, exemption, or other such situation continues. Such notice shall also be included with the water bills of the system so long as such situation continues, as follows: If the water bills of a public water system are issued more often than once every three months, such notice shall be included in at least one water bill of the system for each customer every three months; if the system issues its water bills less often than once every three months, such notice shall be included in each of the water bills issued by the system for each customer; provided, however, that the director may prescribe in regulations alternative notice requirements.

History. — Ga. L. 1977, p. 351, § 13.

Administrative rules and regulations. — Rules for safe drinking water, Official Compilation of the Rules and Reg-

ulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-5.

RESEARCH REFERENCES

ALR. — Duty of public utility to notify patrons in advance of temporary suspension of service, 52 A.L.R. 1078.

12-5-185. Order by director after failure of conference, conciliation, or persuasion; hearing on order or permit issued by director.

(a) Whenever the director has reason to believe that a violation of any provision of this part or any rule or regulation adopted pursuant to this part has occurred, he shall attempt to obtain compliance therewith by conference, conciliation, or persuasion, if the making of such an attempt is appropriate under the circumstances. If he fails to obtain compliance in this manner, the director may order the violator to take whatever corrective action the director deems necessary in order to obtain such compliance within a period of time to be prescribed in such order.

(b) Any order issued by the director under this part shall be signed by the director.

(c) Any order or permit issued by the director shall become final unless the person or persons named therein files with the director a written request for a hearing within 30 days after such order or permit is served on such person or persons.

History. — Ga. L. 1977, p. 351, § 15.

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Waterworks and Water Companies, §§ 2, 39.

JUDICIAL DECISIONS

Administrative law judge's final decision not subject to challenge. — Administrative law judge's affirmance of the Georgia environmental department's denial of a city's application for an additional groundwater withdrawal permit was not error because it was based on the conditions encompassed in a prior consent order that required the city to take various measures to obtain more groundwater as there was no issue regarding whether the city's current and projected water needs could be satisfied by carrying out the provisions of the consent order, pursuant to O.C.G.A. § 12-5-96(d)(1); claims that were not challenged previously became final pursuant to O.C.G.A. § 12-5-185, and could not be collaterally attacked un-

der res judicata principles. City of Rincon v. Couch, 276 Ga. App. 567, 623 S.E.2d 754 (2005).

12-5-186. Hearings; judicial review.

Hearings on contested matters and judicial review of final orders, permits, or other enforcement actions under this part shall be provided and conducted in accordance with subsection (c) of Code Section 12-2-2.

History. — Ga. L. 1977, p. 351, § 16.

12-5-187. Emergency orders; hearing; review.

Whenever the director finds that an emergency exists requiring immediate action to protect the public health, he may, without notice or hearing, issue an order reciting the existence of such an emergency and requiring that such action be taken as he deems necessary to meet the emergency. Notwithstanding the provisions of Code Sections 12-5-185 and 12-5-186, such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately but shall be afforded a hearing within 20 days of the issuance of same. Notice of the time and place of such hearing shall be specified in such order. The hearing shall be conducted by a hearing officer appointed by the Board of Natural Resources. Based upon findings adduced at such hearing, the order shall be modified, revoked, or continued by the hearing officer as he deems appropriate. Review of the hearing officer's decision shall be conducted in accordance with subsection (c) of Code Section 12-2-2.

History. — Ga. L. 1977, p. 351, § 17.

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Waterworks and Water Companies, §§ 2, 39.

12-5-188. Injunctive relief.

Whenever in the judgment of the director any person has engaged in or is about to engage in any act or practice which constitutes or will constitute an unlawful action under this part, he may make application to the superior court of the county in which the unlawful act or practice has been or is about to be engaged in or in which jurisdiction is appropriate for an order enjoining such act or practice, or for an order requiring compliance with the part; and upon a showing by the director that such person has engaged in or is about to engage in any such act or practice, a permanent or temporary injunction, restraining order, or

other order shall be granted without the necessity of showing lack of an adequate remedy at law.

History. — Ga. L. 1977, p. 351, § 20.

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Waterworks and Water Companies, § 41.
ALR. — Injunction against pollution of stream by private persons or corporations, 46 A.L.R. 8.

12-5-189. Judgment in accordance with director's order.

The director may file in the superior court of the county wherein the person under order resides, or if the person is a corporation, in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred or in which jurisdiction is appropriate, a certified copy of a final order of the director unappealed from or a final order of the director affirmed upon appeal, whereupon the court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though the judgment had been rendered in an action duly heard and determined by such court.

History. — Ga. L. 1977, p. 351, § 21.
Law reviews. — For annual survey of administrative law, see 57 Mercer L. Rev. 1 (2005). For annual survey of appellate practice and procedure, see 57 Mercer L. Rev. 35 (2005).

JUDICIAL DECISIONS

Generally. — Because a city could have challenged an agency consent order under O.C.G.A. §§ 12-2-2(c) and 50-13-19, but did not, the city's appeal of a judgment to enforce the consent order did not fall under O.C.G.A. § 5-6-35(a)(1), but arose from proceedings under O.C.G.A. § 12-5-189; since the city did not appeal the director's decision, the appellate issue was limited to the propriety of the judgment and not the correctness of the decision. City of Rincon v. Couch, 272 Ga. App. 411, 612 S.E.2d 596 (2005).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 359.
C.J.S. — 73A C.J.S., Public Administrative Law and Procedure, §§ 329 et seq.

12-5-190. Legal assistance by Attorney General.

It shall be the duty of the Attorney General to represent the director or the Board of Natural Resources or designate some member of his staff to represent either or both in all actions in connection with this part.

History. — Ga. L. 1977, p. 351, § 18.
Cross references. — Attorney General, T. 45, C. 15, A. 1.

12-5-191. Prohibited acts.

(a) Subject to subsection (b) of Code Section 12-5-179 it shall be unlawful for any person to own or operate a public water system without first having secured a permit for such operation from the director.

(b) It shall be unlawful for an owner or operator of a public water system to commit or cause the commission of the following acts:

(1) Failure to comply with the requirements of Code Section 12-5-184 or dissemination of any false or misleading information with respect to notices required pursuant to Code Section 12-5-184 or with respect to remedial actions being undertaken to achieve compliance with the Georgia primary drinking water regulations;

(2) Failure to comply with regulations promulgated pursuant to this part or with conditions for variances or exemptions authorized under Code Section 12-5-178.

History. — Code 1933, § 88-2605, enacted by Ga. L. 1964, p. 499, § 1; Ga. L. 1977, p. 351, § 14.

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Waterworks and Water Companies, § 39.
C.J.S. — 94 C.J.S., Waters, §§ 543, 545.
ALR. — Liability of water supplier for damages resulting from furnishing impure water, 54 A.L.R.3d 936.

12-5-192. Civil penalties; procedures for imposing penalty; hearing; review.

(a)(1) For any public water system serving 10,000 or more individuals, any person violating any provision of this part or any permit condition or limitation established pursuant to this part or negligently or intentionally failing or refusing to comply with any final order of the director issued as provided in this part shall be liable for a civil penalty not to exceed $1,000.00 per day per violation.

(2) For any public water system serving fewer than 10,000 individuals, any person violating any provision of this part or any permit condition or limitation established pursuant to this part or negligently or intentionally failing or refusing to comply with any final order of the director issued as provided in this part shall be liable for

a civil penalty not to exceed $1,000.00 for the first day of each violation and a subsequent additional civil penalty not to exceed $500.00 per violation for each additional day during which the violation continues.

(3) Any person willfully violating any provision of this part or any permit condition or limitation established pursuant to this part or willfully failing or refusing to comply with any final order of the director issued as provided in this part shall be liable for a civil penalty not to exceed $5,000.00 per day per violation.

(b) Whenever the director has reason to believe that any person has violated any provision of this part or has negligently or willfully failed or refused to comply with any final order of the director, he or she may, upon written request, cause a hearing to be conducted before a hearing officer appointed by the Board of Natural Resources. Upon a finding that such person has violated any provision of this part or has negligently or willfully failed or refused to comply with a final order of the director, the hearing officer shall issue his or her initial decision imposing such civil penalties as are provided in this Code section. Such hearing and any administrative or judicial review thereof shall be conducted in accordance with subsection (c) of Code Section 12-2-2.

History. — Ga. L. 1977, p. 351, § 19; Ga. L. 1998, p. 1667, § 1.

Law reviews. — For review of 1998 legislation relating to conservation and natural resources, see 15 Ga. St. U.L. Rev. 21 (1998).

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Waterworks and Water Companies, §§ 2, 39.

ALR. — Recovery of cumulative statutory penalties, 71 A.L.R.2d 986.

Liability of water supplier for damages resulting from furnishing impure water, 54 A.L.R.3d 936.

12-5-193. Criminal penalty.

Any person who engages in any action made unlawful by this part shall be guilty of a misdemeanor. Each day of continued violation after conviction shall constitute a separate offense.

History. — Ga. L. 1977, p. 351, § 22.

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Waterworks and Water Companies, § 39.

C.J.S. — 94 C.J.S., Waters, §§ 543, 545.

ALR. — Liability of water supplier for damages resulting from furnishing impure water, 54 A.L.R.3d 936.

PART 6

WATER SYSTEM INTERCONNECTION, REDUNDANCY, AND RELIABILITY

Editor's notes. — Ga. L. 2010, p. 204, § 1/SB 380, not codified by the General Assembly, provides: "Section 2 of this Act shall be known and may be cited as the 'Water System Interconnection, Redundancy, and Reliability Act.'"

RESEARCH REFERENCES

Am. Jur. 2d. — 20 Am. Jur. Legal Forms 2d, Waterworks and Water Companies, § 261 et seq.

Am. Jur. Pleading and Practice Forms. — 25 Am. Jur. Pl. & Pr. Forms, Waterworks and Water Companies, § 1 et seq.

12-5-200. Legislative findings.

The General Assembly finds that:

(1) Water is an essential resource, the continued provision of which is necessary for the health, safety, and welfare of the State of Georgia; and

(2) It is in the best interests of the State of Georgia for public water systems in the Metropolitan North Georgia Water Planning District to evaluate their withdrawal, treatment, and distribution systems and to take proactive measures to reduce the risk of catastrophic interruptions of water service during emergencies.

History. — Code 1981, § 12-5-200, enacted by Ga. L. 2010, p. 204, § 2/SB 380.

12-5-201. Definitions.

As used in this part, the term:

(1) "Authority" means the Georgia Environmental Finance Authority created by Code Section 50-23-3.

(2) "District" means the Metropolitan North Georgia Water Planning District created by Code Section 12-5-572.

(3) "Emergency plan" means the written emergency water supply plan developed as provided in Code Section 12-5-202.

(4) "Essential water needs" means the minimum amount of water needed for residential and commercial means for food processing, drinking, toilet flushing, fire fighting, hospital use, and critical asset use and a portion of the system's unaccounted for water.

(5) "Qualified system" means any public water system owned and operated by a city, county, or water authority in the district.

History. — Code 1981, § 12-5-201, enacted by Ga. L. 2010, p. 204, § 2/SB 380.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, "the Georgia Environmental Finance Authority" was substituted for "the Georgia Environmental Facilities Authority" in paragraph (1).

12-5-202. District-wide emergency plan.

(a) Subject to authorization as provided in subsection (c) of Code Section 12-5-203, not later than September 1, 2010, the authority shall issue a request for proposal for a thorough and detailed engineering study developing a district-wide emergency plan covering every qualified system. Such plan shall identify sufficient emergency water supply sources and detailed steps required to modify a qualified system's operations to accept or share water with adjacent water providers within the Metropolitan North Georgia Water Planning District during emergencies to supply essential water needs.

(b) The emergency plan shall evaluate risks and, where feasible, plan for a district-wide interconnection reliability target for immediate implementation of approximately 35 percent of the annual average daily demand and a long-range district-wide interconnection reliability planning goal of approximately 65 percent of the annual average daily demand.

(c) Such plan shall be based initially on the 2035 water demand forecasted by the district in 2009 and updated by a revised forecast every five years thereafter and shall include or be based upon:

(1) An evaluation of factors affecting water system reliability, including raw and finished water storage, infrastructure conditions, equipment redundancy, and existing interconnection capability;

(2) Detailed hydraulic studies to determine overall distribution system improvements required to meet projected demands;

(3) A consideration of various emergency situations, including, without limitation:

(A) The failure of the largest water treatment facility of a qualified system;

(B) The full unavailability of major raw water sources due to federal or state government actions;

(C) The limited or reduced availability of major raw water sources due to federal or state government actions;

(D) The short-term catastrophic failure of a water distribution system;

(E) The short-term contamination of a water supply system; and

(F) The short-term contamination of a raw water source making it unsuitable for use;

provided, however, that the results of poor planning or inadequate infrastructure investments by a qualified system shall not constitute an emergency situation.

(4) An evaluation of the feasibility and cost effectiveness of providing multidirectional flows at existing and future interconnections with a pipe diameter equal to or greater than 12 inches;

(5) A continuously updated inventory of distribution system components, including good system maps;

(6) Steps that need to be taken to receive water from an adjacent utility within the Metropolitan North Georgia Water Planning District or to provide water to another utility within the district, including required new infrastructure and the location of such infrastructure for both the interconnection reliability target for immediate implementation and the long-range interconnection planning goal;

(7) Consideration of chemical compatibility, treatment requirements, water quality, operating pressure, and impact on water withdrawal permits;

(8) A detailed estimate of the costs of implementation for both the interconnection reliability target for immediate implementation and the long-range interconnection planning goal;

(9) A model intergovernmental agreement for sharing and pricing of water during emergency situations; and

(10) Creative financing options for implementation of recommended interconnection projects.

(d) Each qualified system shall coordinate with and assist the authority in the development of the emergency plan.

(e) The authority and its consultant shall meet at least once every three months with the district water supply technical coordinating committee to review the progress of the plan. The authority and its consultants shall receive and may incorporate the comments of the committee into the plan.

History. — Code 1981, § 12-5-202, enacted by Ga. L. 2010, p. 204, § 2/SB 380.

12-5-203. Technical panel; members; preliminary scope of work statement; modifications.

(a) There shall be a technical panel as provided in this subsection. The Governor, the President of the Senate, and the Speaker of the House of Representatives shall each appoint one member of the technical panel, each of whom shall be the director of a public water system located within the district. The Governor, the President of the Senate, and the Speaker of the House of Representatives or such officers' designees shall also serve on the technical panel.

(b) The authority and the technical panel shall use the provisions of Code Section 12-5-202 as a basis fully to define the water shortage scenarios to be evaluated in the emergency plan. The authority and the technical panel shall also prepare a preliminary scope of work statement for the plan consistent with the defined scenarios and Code Section 12-5-202.

(c) The authority shall submit by July 15, 2010, the preliminary scope of work statement to the Governor, the President of the Senate, and the Speaker of the House of Representatives to receive authorization to issue a request for proposals based on such preliminary scope of work statement not later than September 1, 2010.

(d) The authority shall modify the preliminary scope of work statement or the preparation of the emergency plan if specific water allocations are provided by final federal courts rulings, state compacts, or other mechanisms. The plan shall be based on such allocations.

History. — Code 1981, § 12-5-203, enacted by Ga. L. 2010, p. 204, § 2/SB 380.

12-5-204. Completion and submission of emergency plan; costs.

(a) The authority shall ensure the completion of the emergency plan not later than September 1, 2011, and shall submit the emergency plan to the director of the Environmental Protection Division of the Department of Natural Resources, the director of the Georgia Emergency Management and Homeland Security Agency, the Governor, Lieutenant Governor, Speaker of the House of Representatives, and chairpersons of the Senate and House Committees on Natural Resources and Environment and of the Senate and House Committees on Appropriations not later than September 15, 2011.

(b) The authority shall update the emergency plan on the same schedule as updates for the district's water supply and water conservation management plans.

(c) The costs of producing the emergency plan shall be borne by the authority.

History. — Code 1981, § 12-5-204, enacted by Ga. L. 2010, p. 204, § 2/SB 380; Ga. L. 2016, p. 91, § 2/SB 416.

Cross references. — Loans and grants for reservoirs, § 50-23-28.1.

ARTICLE 4

COASTAL WATERS, BEACHES, AND SAND DUNES

Administrative rules and regulations. — Coastal resources, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Chapter 391-2.

Part 1

General Provisions

Cross references. — Authority of board of regents to establish and operate marine resources extension centers and an institute for oceanographic studies, T. 20, C. 12. Duties of Department of Industry, Trade, and Tourism to promote marine research and industrial activities, § 50-7-30.

RESEARCH REFERENCES

ALR. — Conservation: validity, construction, and application of enactments restricting land development by dredging or tilling, 46 A.L.R.3d 1422.

12-5-210. Development and utilization of coastal and offshore waters, lands, and resources; delegation of powers and duties; power to make contracts.

(a) The department shall study and develop plans, proposals, reports, and recommendations for the development and utilization of the coastal and offshore lands, waters, and resources of this state.

(b) The department may delegate to its officers, agents, and employees such powers and duties as it may deem proper to carry out the purposes of this part.

(c) The department may contract with any department, board, or agency of the state, local, or federal government; the University System of Georgia or any of its component units; other public or private colleges and universities; nonprofit organizations; foundations; corporations; private business firms; and individuals, as shall be consonant with all the purposes of this part.

History. — Ga. L. 1967, p. 12, §§ 1, 4; Ga. L. 1969, p. 754, § 1.

12-5-211. Receipt of financial and other assistance; plans and proposals for development and utilization of coastal and offshore resources; coordination between state agencies; reporting.

The department shall have the power:

(1) To receive, for the purposes expressed in this part, funds, facilities, land, or other support, in any form, such as grants, allocations, gifts, exchanges, or rentals, from local, state, and federal governments; from nonprofit organizations and foundations; and from business firms and individuals;

(2) To study and develop plans, proposals, reports, and recommendations for the development and utilization of the coastal and offshore lands and waters and other coastal and offshore resources of this state for the purpose of determining those uses which will produce the most beneficial economic, industrial, recreational, and aesthetic results; and to publish in print or electronically and make available reports or information in connection with such studies;

(3) To coordinate plans between state agencies when such agencies have a common interest in matters affecting utilization or development of coastal or offshore lands, waters, and other resources; and

(4) To prepare and furnish studies, reports, plans, and recommendations to any state agency, department, or commission requesting them in connection with development or utilization of coastal or offshore lands, waters, and other resources.

History. — Ga. L. 1967, p. 12, § 4; Ga. L. 1969, p. 754, § 3; Ga. L. 2010, p. 838, § 10/SB 388.

12-5-212. Annual report.

The department shall make an annual report to the General Assembly which shall include a report on all funds and properties received or disbursed under this part. The department shall not be required to distribute copies of the annual report to the members of the General Assembly but shall notify the members of the availability of the annual report in the manner which it deems to be most effective and efficient.

History. — Ga. L. 1967, p. 12, § 10; Ga. L. 2005, p. 1036, § 5/SB 49.

12-5-213. Liberal construction of part.

This part, being for the welfare of the state and its inhabitants, shall be liberally construed to effect the purposes hereof.

History. — Ga. L. 1967, p. 12, § 11.

Part 2

Shore Protection

Editor's notes. — Ga. L. 1992, p. 1362, § 1, effective July 1, 1992, repealed the Code sections formerly codified as this part and enacted the current part. The former part, relating to shoreline management, was based on Ga. L. 1979, p. 1636, §§ 1-17 and Ga. L. 1984, p. 404, § 4.

Administrative rules and regulations. — Shore protection, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-2-2.

Law reviews. — For article surveying recent legislative and judicial developments in zoning, planning and environmental law, see 31 Mercer L. Rev. 89 (1979). For survey article on environment, natural resources, and land use, see 34 Mercer L. Rev. 145 (1982). For article, "Hazardous Waste Issues in Real Estate Transactions," see 38 Mercer L. Rev. 581 (1987). For annual survey on local government law, see 66 Mercer L. Rev. 135 (2014). For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014).

For note discussing the historical aspects and current law concerning the state's ownership rights in tidelands, see 17 Ga. L. Rev. 851 (1983). For note on the 1992 enactment of this part, see 9 Ga. St. U.L. Rev. 205 (1992).

JUDICIAL DECISIONS

Cited in Goodyear v. Trust Co. Bank, 247 Ga. 281, 276 S.E.2d 30 (1981).

12-5-230. Short title.

This part shall be known and may be cited as the "Shore Protection Act."

History. — Code 1981, § 12-5-230, enacted by Ga. L. 1992, p. 1362, § 1.

Law reviews. — For annual survey on local government law, see 66 Mercer L. Rev. 135 (2014).

JUDICIAL DECISIONS

Sovereign immunity barred injunctive relief. — In a suit brought by an organization seeking to enjoin the Georgia Department of Natural Resources from issuing letters of permission authorizing land alterations, the appellate court erred by reversing the dismissal of the organization's claim for injunctive relief because sovereign immunity barred injunctive relief against the state at common law and the plain language of the Shore Protection Act, O.C.G.A. § 12-5-245, did not provide for a specific waiver of governmental immunity. Ga. Dep't of Natural Res. v. Ctr. for a Sustainable Coast, Inc., 294 Ga. 593, 755 S.E.2d 184 (2014).

Cited in Ctr. for a Sustainable Coast, Inc. v. Ga. Dep't of Natural Res., 319 Ga. App. 205, 734 S.E.2d 206 (2012).

12-5-231. Legislative findings and declarations.

The General Assembly finds and declares that coastal sand dunes, beaches, sandbars, and shoals comprise a vital natural resource system, known as the sand-sharing system, which acts as a buffer to protect real and personal property and natural resources from the damaging effects of floods, winds, tides, and erosion. It is recognized that the coastal sand dunes are the most inland portion of the sand-sharing system and that because the dunes are the fragile product of shoreline evolution, they are easily disturbed by actions harming their vegetation or inhibiting their natural development. The General Assembly further finds that offshore sandbars and shoals are the system's first line of defense against the potentially destructive energy generated by winds, tides, and storms, and help to protect the onshore segment of the system by acting as reservoirs of sand for the beaches. Removal of sand from these bars and shoals can interrupt natural sand flows and can have unintended, undesirable, and irreparable effects on the entire sand-sharing system, particularly when the historical patterns of sand and water flows are not considered and accommodated. Also, it is found that ocean beaches provide an unparalleled natural recreation resource which has become vitally linked to the economy of Georgia's coastal zone and to that of the entire state. The General Assembly further finds that this natural resource system is costly, if not impossible, to reconstruct or rehabilitate once adversely affected by man related activities and is important to conserve for the present and future use and enjoyment of all citizens and visitors to this state and that the sand-sharing system is an integral part of Georgia's barrier islands, providing great protection to the state's marshlands and estuaries. The General Assembly further finds that this sand-sharing system is a vital area of the state and is essential to maintain the health, safety, and welfare of all the citizens of the state. Therefore, the General Assembly declares that the management of the sand-sharing system has more than local significance, is of equal importance to all citizens of the state, is of state-wide concern, and consequently is properly a matter for regulation under the police power of the state. The General Assembly further finds and declares that activities and structures on offshore sandbars and shoals, for all purposes except federal navigational activities, must be regulated to ensure that the values and functions of the sand-sharing system are not impaired. It is declared to be a policy of this state and the intent of this part to protect this vital natural resource system by allowing only activities and alterations of the sand dunes and beaches which are considered to be in the best interest of the state and which do not substantially impair the values

and functions of the sand-sharing system and by authorizing the local units of government of the State of Georgia to regulate activities and alterations of the ocean sand dunes and beaches and recognizing that, if the local units of government fail to carry out the policies expressed in this part, it is essential that the department undertake such regulation.

History. — Code 1981, § 12-5-231, enacted by Ga. L. 1992, p. 1362, § 1.

Cross references. — Control of soil erosion and sedimentation by means of regulation of clearing, dredging, grading of land, T. 12, C. 7.

Law reviews. — For note discussing the historical aspects and current law concerning the state's ownership rights in tidelands, see 17 Ga. L. Rev. 851 (1983).

JUDICIAL DECISIONS

Sovereign immunity barred injunctive relief. — In a suit brought by an organization seeking to enjoin the Georgia Department of Natural Resources from issuing letters of permission authorizing land alterations, the appellate court erred by reversing the dismissal of the organization's claim for injunctive relief because sovereign immunity barred injunctive relief against the state at common law and the plain language of the Shore Protection Act, O.C.G.A. § 12-5-245, did not provide for a specific waiver of governmental immunity. Ga. Dep't of Natural Res. v. Ctr. for a Sustainable Coast, Inc., 294 Ga. 593, 755 S.E.2d 184 (2014).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, §§ 94, 97, 120, 157, 162.

12-5-232. Definitions.

As used in this part, the term:

(1) "Applicant" means any person who files an application for a permit under this part.

(2) "Bare sand surface" means an area of nearly level unconsolidated sand landward of the ordinary high-water mark which does not contain sufficient indigenous vegetation to maintain its stability.

(3) "Barrier islands" means the following islands: Daufuskie, Tybee, Little Tybee, Petit Chou, Williamson, Wassaw, Ossabaw, St. Catherines, Blackbeard, Sapelo, Cabretta, Wolf, Egg, Little St. Simons, Sea, St. Simons, Jekyll, Little Cumberland, Cumberland, Amelia, and any ocean-facing island which is formed in the future and which has multiple ridges of sand, gravel, or mud built on the seashore by waves and currents; ridges generally parallel to the shore; and areas of vegetation.

(4) "Beach" means a zone of unconsolidated material that extends landward from the ordinary low-water mark to the line of permanent vegetation.

(5) "Board" means the Board of Natural Resources.

(6) "Boardwalk" or "crosswalk" means a nonhabitable structure, usually made of wood and without a paved or poured surface of any kind, whose primary purpose is to provide access to or use of the beach, while maintaining the stability of any sand dunes it traverses.

(6.1) "Commissioner" means the commissioner of natural resources.

(7) "Committee" means the Shore Protection Committee.

(8) "Dynamic dune field" means those elements of the sand-sharing system including the dynamic area of beach and sand dunes, varying in height and width, but does not include stable sand dunes. The ocean boundary of the dynamic dune field extends to the ordinary high-water mark as determined by the department. The landward boundary of the dynamic dune field, as determined by the department, shall be the first occurrence of either the seaward most portion of a structure existing on July 1, 1979, or the landward most line that is 25 feet landward of the landward toe of the most landward sand dune, or 25 feet landward of the crest of a serviceable shoreline stabilization activity. In the absence of any of the aforesaid, the line shall be 25 feet landward of the ordinary high-water mark, except for property owned by the state, in which case the line shall be 100 feet landward of the ordinary high-water mark. If a real estate appraiser certified pursuant to Chapter 39A of Title 43 determines that an existing structure, shoreline engineering activity, or other alteration which forms part of the landward boundary of the dynamic dune field has been more than 80 percent destroyed by storm driven water or erosion, the landward boundary of the dynamic dune field shall be determined as though such structure had not been in existence on July 1, 1979.

(9) "Erosion" means the wearing away of land whereby materials are removed from the sand dunes, beaches, and shore face by natural processes, including, but not limited to, wave action, tidal currents, littoral currents, and wind.

(9.1) "Letter of permission" means written authorization from the department to conduct a proposed activity in an area subject to the jurisdiction of this part, provided such activity is either within the physical perimeter of an existing serviceable project or involves the construction and removal of a project or other temporary activity that concludes within six months, inclusive of the time needed to return

all affected areas to a condition approximate to, or better than, that which existed before commencement of the activity.

(10) "Local unit of government" means a county, as defined by Code Section 36-1-1, or an incorporated municipality, as defined by Code Section 36-40-21, or any combination thereof which has been authorized by an Act of the General Assembly, any of which has within its jurisdiction any sand dune or beach.

(10.1) "Minor activity" means an activity such as the construction or installation of decks, patios, or porches or the alteration of native landscaping, so long as such construction, installation, or alteration, when combined with other structures on the subject parcel or portion thereof, does not impact more than a total of one-third of the subject parcel or portion thereof that is subject to the jurisdiction of this part; or the construction or installation of elevated crosswalks providing access across sand dunes and shoreline stabilization activities.

(11) "Ordinary high-water mark" means the upper reach of the tide along the shore established by the fluctuations of water and indicated by physical characteristics such as a clear natural line impressed on the shore, shelving, changes in the character of soil, or the presence of litter and debris, as determined by the department.

(12) "Ordinary low-water mark" means the position along the shore of the mean monthly spring low tide reached during the most recent tidal epoch. This term is not synonymous with "mean" low-water mark.

(13) Reserved.

(14) "Person" means any association, individual, partnership, corporation, public or private authority, or local unit of government, and shall include the State of Georgia and all its departments, boards, bureaus, commissions, authorities, any other government agencies or instrumentalities, and any other legal entity.

(15) "Sand dunes" means mounds of sand within the sand-sharing system deposited along a coastline by wind, tidal, or wave action, or by beach nourishment or dune construction, which mounds are often covered with sparse, pioneer vegetation, such as, but not limited to, sea oats (Uniola paniculate), beach morning glory (Ipomoea pes-caprae), and large salt meadow cordgrass (Spartina patens), and are located landward of the ordinary high-water mark and may extend into the tree line.

(16) "Sand-sharing system" means an interdependent sediment system composed of sand dunes, beaches, and offshore bars and shoals.

(16.1) "Serviceable" means usable as is or with only minor maintenance, but not so degraded as to essentially require reconstruction, as determined by the department.

(17) "Shoreline engineering activity" means an activity which encompasses any artificial method of altering the natural topography or vegetation of the sand dunes, beaches, bars, submerged shoreline lands, and other components of the sand-sharing system. This includes, but is not limited to, such activities as:

(A) Grading, clearing vegetation, excavating earth, or landscaping, where such activities are for purposes other than erection of a structure;

(B) Artificial dune construction;

(C) Beach restoration or renourishment;

(D) Erosion control activities, including, but not limited to, the construction and maintenance of groins and jetties;

(E) Shoreline stabilization activities, including, but not limited to, the construction and maintenance of seawalls and riprap protection; and

(F) The construction and maintenance of pipelines and piers.

(18) "Stable sand dune" means a sand dune not in the sand-sharing system that is maintained in a steady state of neither erosion nor accretion by indigenous woody vegetative cover such as, but not limited to, pines (Pinus), oaks (Quercus), and wax myrtles (Morella cerifera).

(19) "Structure" means an institutional, residential, commercial, or industrial building.

(20) "Submerged shoreline lands" means the intertidal and submerged lands from the ordinary high-water mark seaward to the limit of the state's jurisdiction in the Atlantic Ocean.

(21) "Tidal epoch" means the variations in the major tide-producing forces that result from changes in the moon's phase, declination of the earth, distance of the moon from the earth, and regression of the moon's modes, and which go through one complete cycle in approximately 19 years.

History. — Code 1981, § 12-5-232, enacted by Ga. L. 1992, p. 1362, § 1; Ga. L. 2013, p. 874, § 1/HB 402; Ga. L. 2019, p. 493, § 1/HB 445.

The 2019 amendment, effective May 3, 2019, for purposes of promulgating rules and regulations and for all other purposes effective December 30, 2019, substituted the present provisions of paragraph (8) for the former provisions, which read: "'Dynamic dune field' means the dynamic area of beach and sand dunes, varying in height and width, the ocean boundary of which extends to the

ordinary high-water mark and the landward boundary of which is the first occurrence either of live native trees 20 feet in height or greater or of a structure existing on July 1, 1979. The landward boundary of the dynamic dune field shall be the seaward most line connecting any such tree or structure as set forth in this part to any other such tree or structure if the distance between the two is a reasonable distance not to exceed 250 feet. In determining what is a reasonable distance for purposes of this paragraph, topography, dune stability, vegetation, lot configuration, existing structures, distance from the ordinary high-water mark, and other relevant information shall be taken into consideration in order to conserve the vital functions of the sand-sharing system. If a real estate appraiser certified pursuant to Chapter 39A of Title 43 determines that an existing structure, shoreline engineering activity, or other alteration which forms part of the landward boundary of the dynamic dune field has been more than 80 percent destroyed by storm driven water or erosion, the landward boundary of the dynamic dune field shall be determined as though such structure had not been in existence on July 1, 1979."; added paragraph (10.1); substituted the present provisions of paragraph (11) for the former provisions, which read: "'Ordinary high-water mark' means the position along the shore of the mean monthly spring high tide reached during the most recent tidal epoch. This term is not synonymous with 'mean' high-water mark."; substituted "Reserved" for the former provisions of paragraph (13), which read: "'Permit-issuing authority' means the Shore Protection Committee or a local unit of government which has adopted a program of shore protection which meets the standards of this part and which has been certified by the board as an approved program."; in paragraph (15), inserted "within the sand-sharing system" near the beginning, inserted ", tidal, or wave" and "or by beach nourishment or dune construction," near the middle, and inserted ", such as, but not limited to, sea oats (Uniola paniculate), beach morning glory (Ipomoea pes-caprae), and large salt meadow cordgrass (Spartina patens)," in the middle; and, in paragraph (18), inserted "not in the sand-sharing system" near the beginning, inserted "woody" in the middle, and added "such as, but not limited to, pines (Pinus), oaks (Quercus), and wax myrtles (Morella cerifera)" at the end.

Editor's notes. — Ga. L. 2019, p. 493, § 10/HB 445, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval for the purposes of promulgating rules and regulations necessary to administer the provisions of this Act and shall become effective on December 31, 2019, for all other purposes." The Act was approved by the Governor on May 3, 2019.

Law reviews. — For survey article on environment, natural resources, and land use, see 34 Mercer L. Rev. 145 (1982).

JUDICIAL DECISIONS

Sovereign immunity barred injunctive relief. — In a suit brought by an organization seeking to enjoin the Georgia Department of Natural Resources from issuing letters of permission authorizing land alterations, the appellate court erred by reversing the dismissal of the organization's claim for injunctive relief because sovereign immunity barred injunctive relief against the state at common law and the plain language of the Shore Protection Act, O.C.G.A. § 12-5-245, did not provide for a specific waiver of governmental immunity. Ga. Dep't of Natural Res. v. Ctr. for a Sustainable Coast, Inc., 294 Ga. 593, 755 S.E.2d 184 (2014).

12-5-233. Area of operation of part.

The area of operation of this part shall be:

(1) The dynamic dune fields on the barrier islands of this state as determined by reference to Code Section 12-5-232. Such determination shall be made by the committee on the basis of site inspection and evaluation of other pertinent information as provided for in subsection (d) of Code Section 12-5-239;

(2) The submerged shoreline lands of this state from the seaward limit of this state's jurisdiction landward to the dynamic dune fields or to a line projected from the westernmost point of the dynamic dune field on the southern end of a barrier island, to the westernmost point of the dynamic dune field on the northern end of the adjacent barrier island to the south; and

(3) If an area has dynamic dune fields as defined by Code Section 12-5-232, and marshlands as defined by Code Section 12-5-282, it is subject to the jurisdiction of this part and Part 4 of this article. In the event of a conflict between this part and Part 4 of this article, the commissioner shall determine which part shall apply so as to best protect the public interest.

History. — Code 1981, § 12-5-233, enacted by Ga. L. 1992, p. 1362, § 1; Ga. L. 2019, p. 493, § 2/HB 445.

The 2019 amendment, effective May 3, 2019, for purposes of promulgating rules and regulations and for all other purposes effective December 30, 2019, substituted "committee" for "permit-issuing authority" in the middle of the second sentence of paragraph (1).

Editor's notes. — Ga. L. 2019, p. 493, § 10/HB 445, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval for the purposes of promulgating rules and regulations necessary to administer the provisions of this Act and shall become effective on December 31, 2019, for all other purposes." The Act was approved by the Governor on May 3, 2019.

Law reviews. — For survey article on environment, natural resources, and land use, see 34 Mercer L. Rev. 145 (1982).

JUDICIAL DECISIONS

Cited in Rolleston v. State, 245 Ga. 576, 266 S.E.2d 189 (1980).

12-5-234. Powers and duties of department.

(a) The department shall have the following authority:

(1) To administer and enforce this part and all rules, regulations, and orders issued pursuant to this part;

(2) To accept moneys from persons, government units, and private organizations;

(3) To conduct public hearings and to institute and to prosecute court actions as may be necessary to enforce compliance with this part and any rules and regulations promulgated pursuant to this

part; provided, however, that all such actions shall be in the name of the department;

(4) To make reasonable inspections of the lands within jurisdiction of this part to ascertain whether the requirements of this part and the rules, regulations, and permits promulgated or issued pursuant to this part are faithfully complied with;

(5) To issue letters of permission and impose a reasonable fee for processing such letters of permission; and

(6) To exercise all incidental powers necessary to carry out the purposes of this part.

(b) The foregoing powers and duties may be exercised and performed by the department through such duly authorized agents and employees as it deems necessary and proper.

History. — Code 1981, § 12-5-234, enacted by Ga. L. 1992, p. 1362, § 1; Ga. L. 2013, p. 874, § 2/HB 402.

JUDICIAL DECISIONS

Sovereign immunity barred injunctive relief. — In a suit brought by an organization seeking to enjoin the Georgia Department of Natural Resources from issuing letters of permission authorizing land alterations, the appellate court erred by reversing the dismissal of the organization's claim for injunctive relief because sovereign immunity barred injunctive relief against the state at common law and the plain language of the Shore Protection Act, O.C.G.A. § 12-5-245, did not provide for a specific waiver of governmental immunity. Ga. Dep't of Natural Res. v. Ctr. for a Sustainable Coast, Inc., 294 Ga. 593, 755 S.E.2d 184 (2014).

12-5-235. Shore Protection Committee.

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

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

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

(d) Any permit for minor activity may be issued by the commissioner based on the recommendations of staff, past committee actions, and the results of public comments. The commissioner may refer the application to the committee to decide on permits for minor activities that, in his or her judgment, should receive broader consideration. A committee member may choose to have the full committee decide on permit applications for minor activities that the member feels should receive broader consideration.

History. — Code 1981, § 12-5-235, enacted by Ga. L. 1992, p. 1362, § 1; Ga. L. 2004, p. 400, § 1; Ga. L. 2015, p. 385, § 2-2/HB 252; Ga. L. 2019, p. 493, § 3/HB 445.

The 2019 amendment, effective May 3, 2019, for purposes of promulgating rules and regulations and for all other purposes effective December 30, 2019, in subsection (c), substituted "chairperson" for "chairman" in the first and third sentences, and inserted "or her" in the middle of the third sentence; and added subsection (d).

Editor's notes. — Ga. L. 2019, p. 493, § 10/HB 445, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval for the purposes of promulgating rules and regulations necessary to administer the provisions of this Act and shall become effective on December 31, 2019, for all other purposes." The Act was approved by the Governor on May 3, 2019.

Administrative rules and regulations. — Shore protection, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-2-2.

JUDICIAL DECISIONS

Cited in Ctr. for a Sustainable Coast, Inc. v. Ga. Dep't of Natural Res., 319 Ga. App. 205, 734 S.E.2d 206 (2012); Ga. Dep't of Natural Res. v. Ctr. for a Sustainable Coast, Inc., 294 Ga. 593, 755 S.E.2d 184 (2014).

12-5-236. Rules and regulations.

The board shall have the power to promulgate rules and regulations for the implementation and enforcement of this part consistent with the purpose of this part.

History. — Code 1981, § 12-5-236, enacted by Ga. L. 1992, p. 1362, § 1.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, §§ 123, 126, 132, 135, 139.

12-5-237. Permit required; exceptions.

(a) No person shall construct or erect any structure or construct, erect, conduct, or engage in any shoreline engineering activity or engage in any land alteration which alters the natural topography or vegetation of any area within the jurisdiction of this part, except in accordance with the terms and conditions of a permit therefor issued in accordance with this part. A permit may authorize the construction or maintenance of the project proposed in an application. After construction of a project pursuant to a permit, the project may be maintained without an additional permit so long as it does not further alter the natural topography or vegetation of the site or increase the size or scope of the project, and remains in serviceable condition.

(b)(1) No permit shall be required for a structure, shoreline engineering activity, or land alteration which exists as of July 1, 1979, provided that a permit must be obtained for any modification which will have a greater adverse effect on the sand-sharing system or for any addition to or extension of such shoreline engineering activity, structure, or land alteration; provided, further, that, if any structure, shoreline engineering activity, or land alteration is more than 80 percent destroyed by wind, water, or erosion as determined by an appraisal of the fair market value by a real estate appraiser certified pursuant to Chapter 39A of Title 43, a permit is required for reconstruction.

(2) No permit shall be required for any activity conducted pursuant to a letter of permission. At least 15 days prior to the commencement of any activity authorized pursuant to a letter of permission, the department shall provide public notice describing such activity and the location thereof; provided, however, that public notice shall not be required for any such activity that is necessary for public safety or the delivery of public services.

History. — Code 1981, § 12-5-237, enacted by Ga. L. 1992, p. 1362, § 1; Ga. L. 2013, p. 874, § 3/HB 402.

Cross references. — Certification of professional engineers, T. 43, C. 15.

Law reviews. — For survey article on environment, natural resources, and land use, see 34 Mercer L. Rev. 145 (1982).

JUDICIAL DECISIONS

Sovereign immunity barred injunctive relief. — In a suit brought by an organization seeking to enjoin the Georgia Department of Natural Resources from

issuing letters of permission authorizing land alterations, the appellate court erred by reversing the dismissal of the organization's claim for injunctive relief because sovereign immunity barred injunctive relief against the state at common law and the plain language of the Shore Protection Act, O.C.G.A. § 12-5-245, did not provide for a specific waiver of governmental immunity. Ga. Dep't of Natural Res. v. Ctr. for a Sustainable Coast, Inc., 294 Ga. 593, 755 S.E.2d 184 (2014).

Permit requirement. — Trial court erred in dismissing a claim for injunctive relief because the issuance of letters of permission by the Department of Natural Resources for activities that required a permit under the Shore Protection Act, O.C.G.A. § 12-5-237, were subject to challenge under O.C.G.A. § 12-5-245; the center's claim for declaratory relief from letters already issued was properly dismissed because a justiciable controversy no longer existed for which a declaratory judgment would have been appropriate. Ctr. for a Sustainable Coast, Inc. v. Ga. Dep't of Natural Res., 319 Ga. App. 205, 734 S.E.2d 206 (2012).

Cited in Rolleston v. State, 245 Ga. 576, 266 S.E.2d 189 (1980).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, §§ 97, 121.

12-5-238. Form and contents of application for permit.

All applications for permits required by this part must be on forms prescribed by the committee, must be properly executed, and must include the following:

(1) The name and address of the applicant;

(2) A brief description of the proposed project;

(3) Construction documents showing the applicant's proposed project and the manner or method by which the project shall be accomplished. Such document shall identify the dynamic dune field affected;

(4) A copy of the deed or other instrument under which the applicant claims title to the property or, if the applicant is not the owner, a copy of the deed or other instrument under which the owner claims the title together with written permission from the owner to carry out the project on the owner's land. In lieu of a deed or other instrument referred to in this paragraph, the committee may accept some other reasonable evidence of ownership of the property in question or other lawful authority to make use of the property. If all or any part of the proposed construction or alteration shall take place on property which is owned by the State of Georgia, the applicant shall present an easement, revocable license, or other written permission from the state to use the property for the proposed project; in the alternative, the committee may condition the issuance of the permit on the requirement to obtain written permission from the state. The committee will not adjudicate title disputes concerning the

property which is the subject of the application; provided, however, that the committee may decline to process an application when submitted documents show conflicting deeds;

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

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

(7) A nonrefundable application fee to be set by the board in an amount necessary to defray the administrative cost of issuing such permit. Renewal fees shall be equal to application fees, which shall not exceed $1,000.00 for any one proposal and shall be paid to the department;

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

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

(10) Any and all other relevant data required by the committee for the purposes of ascertaining that the proposed improvements, activities, and uses will meet the standards of this part;

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

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

History. — Code 1981, § 12-5-238, enacted by Ga. L. 1992, p. 1362, § 1; Ga. L. 2019, p. 493, § 4/HB 445.

The 2019 amendment, effective May 3, 2019, for purposes of promulgating rules and regulations and for all other purposes effective December 30, 2019, substituted "committee" for "permit-

issuing authority" throughout this Code section; substituted "the owner's" for "his" near the end of the first sentence in paragraph (4); substituted the present provisions of paragraph (7) for the former provisions, which read: "An application fee in such reasonable amount as is designated by the permit-issuing authority or, if the committee is the permit-issuing authority, a nonrefundable application fee as set by the board which reflects the cost to the department to evaluate the application. Fees for the renewal of a permit shall be equal to the application fee. Application fees shall not exceed $1,000.00 for any one proposal. If the committee is the permit-issuing authority, such fees shall be paid to the department;"; substituted "would not violate" for "is not violative of" near the end of paragraph (11); and inserted "or she" near the middle of paragraph (12).

Editor's notes. — Ga. L. 2019, p. 493 § 10/HB 445, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval for the purposes of promulgating rules and regulations necessary to administer the provisions of this Act and shall become effective on December 31, 2019, for all other purposes." The Act was approved by the Governor on May 3, 2019.

JUDICIAL DECISIONS

Sovereign immunity barred injunctive relief. — In a suit brought by an organization seeking to enjoin the Georgia Department of Natural Resources from issuing letters of permission authorizing land alterations, the appellate court erred by reversing the dismissal of the organization's claim for injunctive relief because sovereign immunity barred injunctive relief against the state at common law and the plain language of the Shore Protection Act, O.C.G.A. § 12-5-245, did not provide for a specific waiver of governmental immunity. Ga. Dep't of Natural Res. v. Ctr. for a Sustainable Coast, Inc., 294 Ga. 593, 755 S.E.2d 184 (2014).

Cited in Rolleston v. State, 245 Ga. 576, 266 S.E.2d 189 (1980); Ctr. for a Sustainable Coast, Inc. v. Ga. Dep't of Natural Res., 319 Ga. App. 205, 734 S.E.2d 206 (2012).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, §§ 97, 121.

12-5-239. Completion of permit; notice of proposed activity; requirements and restrictions regarding issuance of permit.

(a) The committee shall take action on each permit application within 90 days after the application is completed; provided, however, that this provision may be waived upon the written request of the applicant. An application is complete when it contains substantially all of the written information, documents, forms, fees, and materials required by this part. An application must be completed sufficiently in advance of the committee meeting at which the project will be considered to allow for public notice and evaluation by the committee.

(b) After receipt of a completed application and at least 15 days prior to acting on the application, the committee shall notify all persons

identified by the applicant as owning land adjacent to the location of the proposed project and to all persons who have filed a written request with the committee that their names be placed on a mailing list for receipt of such notice. Any person desiring to be placed on such mailing list must so request in writing and renew such request in December of each year. The name of any person who has not renewed such request shall be removed from the list. The landowners who have not requested to be placed on a mailing list shall be notified in writing if their addresses are known. Such notice shall be in writing and shall include a general description of the proposed project and its location. The applicant shall post such notice in a conspicuous place on the subject property at or prior to the time the committee issues public notice of the application. If the applicant has filed an affidavit that the names or addresses of the adjoining landowners were not ascertained after a diligent search, the committee shall cause a notice of the proposed activity and a brief description of the land to be affected to be published in the legal organ or a newspaper of general circulation in the county in which such land lies. Cost of such public notices shall be paid by the applicant. Whenever there appears to be sufficient public interest, the committee may call a public hearing.

(c) No permit shall be issued except in accordance with the following provisions:

(1) A permit for a structure or land alteration, including, but not limited to, private residences, motels, hotels, condominiums, and other commercial structures, in the dynamic dune field may be issued only when:

(A) The proposed project shall occupy the landward area of the subject parcel and, if feasible, the area landward of the sand dunes;

(B) At least a reasonable percentage, not less than one-third, of the subject parcel shall be retained in its naturally vegetated and topographical condition;

(C) The proposed project is designed according to applicable hurricane-resistant standards;

(D) The activities associated with the construction of the proposed project are kept to a minimum, are temporary in nature, and, upon project completion, restore the natural topography and vegetation to at least its former condition, using the best available technology; and

(E) The proposed project will maintain the normal functions of the sand-sharing mechanisms in minimizing storm-wave damage and erosion, both to the unaltered section of the subject parcel and at other shoreline locations;

(2) No permits shall be issued for a structure on beaches, eroding sand dune areas, and submerged lands; provided, however, that a permit for a pier, boardwalk, or crosswalk in such an area may be issued, provided that:

(A) The activities associated with the construction of the proposed land alterations are kept to a minimum, are temporary in nature, and, upon project completion, the natural topography and vegetation shall be restored to at least their former condition, using the best available technology; and

(B) The proposed project maintains the normal functions of the sand-sharing mechanisms in minimizing storm-wave damage and erosion, both to the unaltered section of the subject parcel and at other shoreline locations;

(3) A permit for shoreline engineering activity or for a land alteration on beaches, sand dunes, and submerged lands may be issued only when:

(A) The activities associated with the construction of the proposed project are to be temporary in nature, and the completed project will result in complete restoration of any beaches, dunes, or shoreline areas altered as a result of that activity;

(B) The proposed project will insofar as possible minimize effects to the sand-sharing mechanisms from storm-wave damage and erosion both to the subject parcel and at other shoreline locations;

(C) In the event that shoreline stabilization is necessary, either low-sloping porous rock structures or other techniques which maximize the dissipation of wave energy and minimize shoreline erosion shall be used. Permits may be granted for shoreline stabilization activities when the applicant has demonstrated that no reasonable or viable alternative exists; provided, however, that beach restoration and renourishment techniques are preferable to the construction of shoreline stabilization activities; and

(D) A copy of the permit application has been transmitted to the local unit of government wherein the project site lies, if such local unit of government has been certified by the board, requesting comments on such application.

(d) In evaluating a permit application in order to determine compliance with the provisions set forth in subsection (c) of this Code section, the committee may use the following assessment tools and techniques, as appropriate and as available:

(1) Historic photographs and topographic data of the project site, which can be used in determining the impact of a proposed project on the stability of the shoreline;

(2) On-site inspections to determine the impact of a proposed project on topographic and vegetative conditions, erosion or accretion rates, and other factors influencing the life cycles of dune plants;

(3) Any recognized or accepted scientific investigations necessary to determine the proposed project's impacts on the surrounding biological and geological systems, and the historic and archeological resources;

(4) When present, the potential effects of shoreline engineering structures (seawalls, groins, jetties, etc.), their condition, and their apparent influence on the sand-sharing system as it relates to the proposed project;

(5) Historic, climatological, tidal data, and meteorological records of the vicinity of the project and possible potential effects of a proposed project upon erosion and accretion rates; and

(6) New scientific information which, through recent advances, would effect a more competent decision relative to wise use and management of Georgia's sand-sharing system.

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

(f) All plans, documents, and materials contained in any application for any permit required by this part shall be made a part of the permit, if granted, and conformance to such plans, documents, and materials shall be a condition of the permit. No change or deviation from any such plans, documents, or materials shall be permitted without the prior notification and approval of the committee.

(g) Compliance with all other federal, state, and local statutes, ordinances, and regulations shall also be a condition of every permit issued pursuant to this part. If, prior to completion of review of an application under this part the committee receives notice of the denial of a permit or authorization necessary for the project, review of the project shall be suspended and, if the denial becomes final, the application shall stand denied.

(h) All permit-issuing authorities may place such conditions on any permit issued under this Code section as are necessary to carry out this part.

(i) In passing upon the application for a permit, the committee shall consider the public interest which for purposes of this part shall be deemed to be the following considerations:

(1) Whether or not unreasonably harmful, increased alteration of the dynamic dune field or submerged lands, or function of the sand-sharing system will be created;

(2) Whether or not the granting of a permit and the completion of the applicant's proposal will unreasonably interfere with the conservation of marine life, wildlife, or other resources; and

(3) Whether or not the granting of a permit and the completion of the applicant's proposal will unreasonably interfere with reasonable access by and recreational use and enjoyment of public properties impacted by the project.

(j) Issuance of a permit under this part and construction of the permitted project shall not remove the designated property from the jurisdiction of this part. All changes in permitted uses which increase impacts to any land subject to the provisions of this part must be ruled upon by the committee to determine if the proposed change is consistent with this part and the permit. Each permitted alteration within the area of operation of this part shall be reviewed by the committee on a five-year basis or when noncompliance with the purpose for which the permit was issued is evident to determine if the use within the area of operation of this part is consistent with the intent of this part. If the permit holder is found not to be in compliance with this part, the committee shall take action as authorized under Code Section 12-5-247.

(k)(1) A permit granted by the committee becomes final immediately upon issuance, but no construction or alteration may commence until the expiration of 30 days following the date of the committee meeting at which the application is approved, except as otherwise provided in paragraph (2) of this subsection; provided, however, that if a timely appeal is filed, no construction or alteration may commence until all administrative proceedings are terminated except as otherwise provided in paragraph (2) of this subsection.

(2) If the committee, either at the request of the applicant or on its own motion, finds that an emergency exists in any particular geographic area or in regard to any particular permit issued by the committee, the committee is authorized to allow a permittee to commence immediately or to continue the construction or alteration authorized by the permit. The committee in determining an emer-

gency shall base its determination on imminent peril to the public health, safety, or welfare or a grave danger to life, real property, structures, or shoreline engineering activities. If the committee makes such a finding of an emergency, the permittee may commence immediately or continue the construction or alteration authorized by the permit, but such construction or alteration is undertaken at the risk to the permittee of an administrative or judicial order requiring the sand dunes, beaches, and submerged lands to be returned to their condition prior to such construction or alteration.

(l) When work has been completed in accordance with provisions of a permit, the permittee shall so notify the committee in writing within 30 days of such completion.

History. — Code 1981, § 12-5-239, enacted by Ga. L. 1992, p. 1362, § 1; Ga. L. 2019, p. 493, § 5/HB 445.

The 2019 amendment, effective May 3, 2019, for purposes of promulgating rules and regulations and for all other purposes effective December 30, 2019, substituted "committee" for "permit-issuing authority" throughout this Code section; in the first sentence of subsection (b), substituted "15 days" for "30 days" and substituted "the committee" for "such permit-issuing authority" in the middle; in subsection (e), substituted "the holder of an unexpired permit" for "a permit holder" near the beginning of the third sentence, and, in the fourth sentence, substituted "new owner must notify the committee within 30 days after change of ownership of the land or any portion thereof" for "permittee must notify the permit-issuing authority within 30 days after change of ownership of property".

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, a comma was inserted following the second occurrence of "issued" in paragraph (c)(2).

Editor's notes. — Ga. L. 2019, p. 493, § 10/HB 445, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval for the purposes of promulgating rules and regulations necessary to administer the provisions of this Act and shall become effective on December 31, 2019, for all other purposes." The Act was approved by the Governor on May 3, 2019.

JUDICIAL DECISIONS

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Cited in Ctr. for a Sustainable Coast, Inc. v. Ga. Dep't of Natural Res., 319 Ga. App. 205, 734 S.E.2d 206 (2012).

12-5-240. Posting of permit.

A copy of every permit issued to an applicant shall be prominently displayed within the area of proposed activity. If the committee deems

it advisable, the applicant may be required to cause a sign to be erected bearing the permit number, date of issuance, name of applicant, and such other information as the committee may reasonably require. The committee may specify the type of and, within reasonable dimensions, the size of the sign.

History. — Code 1981, § 12-5-240, enacted by Ga. L. 1992, p. 1362, § 1; Ga. L. 2019, p. 493, § 6/HB 445.

The 2019 amendment, effective May 3, 2019, for purposes of promulgating rules and regulations and for all other purposes effective December 30, 2019, substituted "committee" for "permit-issuing authority" throughout this Code section.

Editor's notes. — Ga. L. 2019, p. 493, § 10/HB 445, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval for the purposes of promulgating rules and regulations necessary to administer the provisions of this Act and shall become effective on December 31, 2019, for all other purposes." The Act was approved by the Governor on May 3, 2019.

12-5-241. Local shore assistance programs.

Reserved. Repealed by Ga. L. 2015, p. 385, § 2-3/HB 252, effective July 1, 2015.

Editor's notes. — This Code section was based on Code 1981, § 12-5-241, enacted by Ga. L. 1992, p. 1362, § 1.

JUDICIAL DECISIONS

Cited in Ctr. for a Sustainable Coast, Inc. v. Ga. Dep't of Natural Res., 319 Ga. App. 205, 734 S.E.2d 206 (2012).

12-5-242. Technical assistance to local governments; model ordinance.

The department shall provide technical assistance to any local unit of government which requests such assistance in order to develop an ordinance meeting the requirements of this part. The department shall also develop a model ordinance which may be used by such local units of government.

History. — Code 1981, § 12-5-242, enacted by Ga. L. 1992, p. 1362, § 1.

12-5-243. Local governments not prohibited from adopting more restrictive ordinances.

Nothing in this part shall be construed as prohibiting a local unit of government from adopting ordinances more restrictive in regard to

activity on sand dunes and beaches than the standards set forth in this part.

History. — Code 1981, § 12-5-243, enacted by Ga. L. 1992, p. 1362, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 349, 350.

C.J.S. — 62 C.J.S., Municipal Corporations, § 187.

12-5-244. Administrative and judicial review.

(a) Any person who is aggrieved or adversely affected by any order or action of the committee shall, upon petition within 30 days after the issuance of such order or taking of such action, have a right to a hearing before an administrative law judge appointed by the board. The hearing before the administrative law judge shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and the rules and regulations adopted by the board pursuant thereto. The decision of the administrative law judge shall constitute the final decision of the board and any party to the hearing, including the committee, shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50.

(b) Persons are "aggrieved or adversely affected" where the challenged action has caused or will cause them injury in fact and where the injury is to an interest within the zone of interests to be protected or regulated by this part. In the event the committee or local unit of government, as appropriate, asserts in response to the petition before the administrative law judge that the petitioner is not aggrieved or adversely affected, the administrative law judge shall take evidence and hear arguments on this issue and thereafter make a ruling on this issue before continuing with the hearing. The burden of going forward with evidence on this issue shall rest with the petitioner.

History. — Code 1981, § 12-5-244, enacted by Ga. L. 1992, p. 1362, § 1; Ga. L. 2019, p. 493, § 7/HB 445.

The 2019 amendment, effective May 3, 2019, for purposes of promulgating rules and regulations and for all other purposes effective December 30, 2019, deleted former subsection (b), which read: "Where a local unit of government has, pursuant to this part, granted, suspended, modified, extended, conditioned, or denied a permit, any person aggrieved or adversely affected by such action shall be afforded a right to administrative and judicial review of such action."; and redesignated former subsection (b) as present subsection (c).

Editor's notes. — Ga. L. 2019, p. 493, § 10/HB 445, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval for the purposes of promulgating rules and regulations necessary to administer the provisions of this Act and shall become effective on Decem-

ber 31, 2019, for all other purposes." This Act was approved by the Governor on May 3, 2019.

Administrative rules and regulations. — Procedures for disposition of contested cases, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-1-2.

JUDICIAL DECISIONS

Cited in Rolleston v. State, 245 Ga. 576, 266 S.E.2d 189 (1980).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 349.

C.J.S. — 39A C.J.S., Health and Environment, § 130.

12-5-245. Injunctive relief.

Any activity in violation of this part or of any ordinance or regulation adopted pursuant to this part shall be a public nuisance; and such activity may be enjoined or abated by an action filed in the appropriate superior court by the Attorney General on behalf of the department, by any local unit of government affected, or by any person. Upon showing of any activity in violation of this part or of any ordinance or regulation adopted pursuant to this part, a temporary restraining order, a permanent or temporary injunction, or other order shall be granted without the necessity of showing lack of an adequate remedy at law and irreparable injury. The relief granted by the court in an action filed pursuant to this Code section may include, but shall not be limited to, an order requiring the sand dunes, beaches, and submerged lands to be returned to their condition prior to such violation.

History. — Code 1981, § 12-5-245, enacted by Ga. L. 1992, p. 1362, § 1.

JUDICIAL DECISIONS

Sovereign immunity barred injunctive relief. — In a suit brought by an organization seeking to enjoin the Georgia Department of Natural Resources from issuing letters of permission authorizing land alterations, the appellate court erred by reversing the dismissal of the organization's claim for injunctive relief because sovereign immunity barred injunctive relief against the state at common law and the plain language of the Shore Protection Act, O.C.G.A. § 12-5-245, did not provide for a specific waiver of governmental immunity. Ga. Dep't of Natural Res. v. Ctr. for a Sustainable Coast, Inc., 294 Ga. 593, 755 S.E.2d 184 (2014).

Suit seeking injunctive relief proper. — Trial court erred in dismissing a claim for injunctive relief because the issuance of letters of permission by the Department of Natural Resources for activities that required a permit under the Shore Protection Act, O.C.G.A. § 12-5-237, were subject to challenge under O.C.G.A. § 12-5-245; the center's claim for declaratory relief from letters already issued was properly dismissed because a justiciable controversy no longer

existed for which a declaratory judgment would have been appropriate. Ctr. for a Sustainable Coast, Inc. v. Ga. Dep't of Natural Res., 319 Ga. App. 205, 734 S.E.2d 206 (2012).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, §§ 141, 146.

ALR. — Requirement that there be continuing violation to maintain citizen suit under federal environmental protection statutes — post-Gwaltney cases, 158 A.L.R. Fed. 519.

12-5-246. Jurisdiction of superior court.

The superior court of the county in which the land or any part thereof is located or in which jurisdiction is otherwise proper shall have jurisdiction to restrain a violation of this part at the action of any person.

History. — Code 1981, § 12-5-246, enacted by Ga. L. 1992, p. 1362, § 1.

12-5-247. Enforcement of part; civil penalty.

(a) If the department determines that any person is violating any provision of this part or any rule or regulation adopted pursuant to this part or the terms and conditions of any permit issued under this part, the department may employ any combination of the following:

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

(2) Whenever the committee finds that an emergency exists requiring immediate action to protect the public or private interest where the public interest is served, it may issue an order reciting the existence of such an emergency and requiring or allowing that such action be taken as it deems necessary to meet the emergency.

Notwithstanding any other provision of this part, such order shall be effective immediately. If an order requiring a person to take action is issued pursuant to this paragraph, such person shall be entitled to a hearing within ten days of the date of issuance of the order. Any person who is aggrieved or adversely affected by an emergency order of the committee, upon petition within ten days after issuance of such order, shall have a right to a hearing before an administrative law judge appointed by the board. The committee shall hold a meeting no sooner than 30 days after the issuance of an emergency order to review such order to determine whether the order has been complied with, whether the order should continue in force, and any possible effects of such order on the sand-sharing system;

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

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

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

(c) Any person who causes or permits any removal, filling, or other alteration of the dynamic dune field or submerged lands in this state without first obtaining a permit from the committee shall be liable in damages to the state and any political subdivision of the state for any and all actual or projected costs and expenses and injuries occasioned

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

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

History. — Code 1981, § 12-5-247, enacted by Ga. L. 1992, p. 1362, § 1; Ga. L. 2019, p. 493, § 8/HB 445.

The 2019 amendment, effective May 3, 2019, for purposes of promulgating rules and regulations and for all other purposes effective December 30, 2019, substituted the present provisions of subsection (a) for the former provisions, which read: "If the department determines that any person is violating any provision of this part or any rule or regulation adopted pursuant to this part or the terms and conditions of any permit issued under this part, and such violation is in an area where the committee is the permit-issuing authority, the department may employ any one, or any combination of any or all, of the enforcement methods specified in paragraphs (1) through (4) of this subsection:"; substituted "such" for "said" in the second sentence of subsection (b) and near the end of the last sentence of subsection (c); and substituted "committee" for "permit-issuing authority" in the third sentence of subsection (b) and in the first sentence of subsection (c).

Editor's notes. — Ga. L. 2019, p. 493, § 10/HB 445, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval for the purposes of promulgating rules and regulations necessary to administer the provisions of this Act and shall become effective on December 31, 2019, for all other purposes." The Act was approved by the Governor on May 3, 2019.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 353, 354.

C.J.S. — 39A C.J.S., Health and Environment, §§ 120, 124, 129.

12-5-248. Criminal violations.

(a) It shall be unlawful for any person to:

(1) Operate any motorized vehicle or other motorized machine on, over, or across sand dunes or beaches except as authorized by the department or committee, except that individual disability vehicles, emergency vehicles, and governmental vehicles utilized for beach maintenance or research may operate within sand dunes and beaches without authorization from the department or committee so long as those vehicles operate across existing cross-overs, paths, or drives; or

(2) Store or park sailboats, catamarans, or other commercial or recreational marine craft on any sand dune.

(b) All such lawful activities conducted under this part shall provide protection to nesting sea turtles and their hatchlings and habitats and to nesting shore birds and their hatchlings and habitats.

(c) Any person violating the provisions of subsection (a) of this Code section shall be guilty of a misdemeanor.

History. — Code 1981, § 12-5-248, enacted by Ga. L. 1992, p. 1362, § 1; Ga. L. 1995, p. 1302, § 13; Ga. L. 2002, p. 521, § 1; Ga. L. 2019, p. 493, § 9/HB 445.

The 2019 amendment, effective May 3, 2019, for purposes of promulgating rules and regulations and for all other purposes effective December 30, 2019, in paragraph (a)(1), substituted "department or committee" for "permit-issuing authority" near the middle, and substituted "department or committee so" for "permit-issuing authority as" near the end.

Editor's notes. — Ga. L. 2019, p. 493, § 10/HB 445, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval for the purposes of promulgating rules and regulations necessary to administer the provisions of this Act and shall become effective on December 31, 2019, for all other purposes." The Act was approved by the Governor on May 3, 2019.

Part 3

Preservation and Management of Coastal Zone

12-5-260 through 12-5-267.

Reserved. Repealed by Ga. L. 1979, p. 1302, § 4, effective July 1, 1984.

Editor's notes. — This part was based on Ga. L. 1978, p. 245; Ga. L. 1979, p. 1302; and Ga. L. 1982, p. 3.

Ga. L. 2013, p. 141, § 12/HB 79, reserved the designation of this part, effective April 24, 2013.

Part 4

Coastal Marshlands

Administrative rules and regulations. — Coastal marshlands protection, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-2-3.

Law reviews. — For article, "Georgia's Environmental Law: A Survey," see 23 Mercer L. Rev. 633 (1972). For article, "Public Rights in Georgia's Tidelands," see 9 Ga. L. Rev. 79 (1974). For article, "Hazardous Waste Issues in Real Estate Transactions," see 38 Mercer L. Rev. 581 (1987). For article, "Georgia Wetlands: Values, Trends, and Legal Status," see 41 Mercer L. Rev. 791 (1990).

For note, "Regulation and Ownership of the Marshlands: The Georgia Marshlands Act," see 5 Ga. L. Rev. 563 (1971). For note discussing the historical aspects and current law concerning the state's ownership rights in tidelands, see 17 Ga. L. Rev. 851

(1983). For note on 1992 amendment of this part, see 9 Ga. St. U.L. Rev. 205 (1992).

OPINIONS OF THE ATTORNEY GENERAL

Georgia Ports Authority exempt from part. — Because the Georgia Ports Authority, at the time of enactment of O.C.G.A. § 12-5-280 et seq., was empowered and charged with responsibility of development and improvement of rivers and seaports of this state, as a general matter, the Authority is exempt from the requirements of this part. 1981 Op. Att'y Gen. No. 81-85.

Limitation on exemption of Georgia Ports Authority from this part. — While the Georgia Ports Authority is generally exempt from provisions of O.C.G.A. § 12-5-280 et seq., the Authority must obtain prior written approval of the Coastal Marshlands Protection Committee for any proposed alteration of marshlands adjacent to Colonels Island which were conveyed to the Georgia Ports Authority pursuant to Ga. L. 1973, p. 747. 1981 Op. Att'y Gen. No. 81-85.

Brunswick Port Authority falls within the terms of the exception to O.C.G.A. § 12-5-280 et seq. for state agencies responsible for navigation, and is, thus, exempt from the provisions of that part. 1982 Op. Att'y Gen. No. 82-21.

RESEARCH REFERENCES

ALR. — Conservation: validity, construction, and application of enactments restricting land development by dredging or tilling, 46 A.L.R.3d 1422.

12-5-280. Short title.

This part shall be known and may be cited as the "Coastal Marshlands Protection Act of 1970."

History. — Ga. L. 1970, p. 939, § 1; Ga. L. 1992, p. 2294, § 1.

Law reviews. — For article, "From Marshes to Mountains, Wetlands Come Under State Regulation," see 41 Mercer L. Rev. 865 (1990). For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010). For article, "The Chevron Two-Step in Georgia's Administrative Law," see 46 Ga. L. Rev. 871 (2012). For annual survey on administrative law, see 64 Mercer L. Rev. 39 (2012).

For comment, "'Wrest' in Peace: The Effect of the Georgia Environmental Protection Division's 'Wrested Vegetation Rule' on Coastal Salt Marshes," see 32 Georgia St. U.L. Rev. 953 (2016).

12-5-281. Legislative findings and declarations.

The General Assembly finds and declares that the coastal marshlands of Georgia comprise a vital natural resource system. It is recognized that the estuarine area of Georgia is the habitat of many species of marine life and wildlife and, without the food supplied by the marshlands, such marine life and wildlife cannot survive. The General Assembly further finds that intensive marine research has revealed that the estuarine marshlands of coastal Georgia are among the richest providers of nutrients in the world. Such marshlands provide a nursery for commercially and recreationally important species of shellfish and

other wildlife, provide a great buffer against flooding and erosion, and help control and disseminate pollutants. Also, it is found that the coastal marshlands provide a natural recreation resource which has become vitally linked to the economy of Georgia's coastal zone and to that of the entire state. The General Assembly further finds that this coastal marshlands resource system is costly, if not impossible, to reconstruct or rehabilitate once adversely affected by man related activities and is important to conserve for the present and future use and enjoyment of all citizens and visitors to this state. The General Assembly further finds that the coastal marshlands are a vital area of the state and are essential to maintain the health, safety, and welfare of all the citizens of the state. Therefore, the General Assembly declares that the management of the coastal marshlands has more than local significance, is of equal importance to all citizens of the state, is of state-wide concern, and consequently is properly a matter for regulation under the police power of the state. The General Assembly further finds and declares that activities and structures in the coastal marshlands must be regulated to ensure that the values and functions of the coastal marshlands are not impaired and to fulfill the responsibilities of each generation as public trustees of the coastal marshlands for succeeding generations.

History. — Code 1981, § 12-5-281, enacted by Ga. L. 1992, p. 2294, § 1.

JUDICIAL DECISIONS

No authority regarding residential upland areas. — Committee's authority to issue a permit under the Coastal Marshlands Protection Act (CPMA), O.C.G.A. § 12-5-280 et seq., did not extend to residential upland areas of the development at issue because the use of the term "otherwise alter" in O.C.G.A. § 12-5-286(a) was not authority for such a determination and, although the developer was required to secure a permit because the developer intended to place structures in the marshlands, the permitting process was not triggered because of any other activity that could have been deemed to "otherwise alter" the marshlands; extending the permitting reach of the committee to upland areas even miles away from the marshes and coastal waters did not mesh with O.C.G.A. § 12-5-288(a)'s admonition that a project not water-related should not gain a permit under the CMPA. The structure of the statute, and the language used therein, showed an intent for a far more limited role for the committee. Ctr. for a Sustainable Coast v. Coastal Marshlands Prot. Comm., 284 Ga. 736, 670 S.E.2d 429 (2008).

12-5-282. Definitions.

As used in this part, the term:

(1) "Applicant" means any person who files an application under this part.

(2) "Board" means the Board of Natural Resources.

(3) "Coastal marshlands" or "marshlands" means any marshland intertidal area, mud flat, tidal water bottom, or salt marsh in the State of Georgia within the estuarine area of the state, whether or not the tidewaters reach the littoral areas through natural or artificial watercourses. "Vegetated marshlands" shall include those areas upon which grow one, but not necessarily all, of the following: salt marsh grass (Spartina alterniflora), black needlerush (Juncus roemerianus), saltmeadow cordgrass (Spartina patens), big cordgrass (Spartina cynosuroides), saltgrass (Distichlis spicata), coast dropseed (Sporobolus virginicus), bigelow glasswort (Salicornia bigelovii), woody glasswort (Salicornia virginica), saltwort (Batis maritima), sea lavender (Limonium nashii), sea oxeye (Borrichia frutescens), silverling (Baccharis halimifolia), false willow (Baccharis angustifolia), and high-tide bush (Iva frutescens). The occurrence and extent of salt marsh peat at the undisturbed surface shall be deemed to be conclusive evidence of the extent of a salt marsh or a part thereof.

(4) "Commissioner" means the commissioner of natural resources.

(5) "Committee" means the Coastal Marshlands Protection Committee created by this part.

(6) "Eligible person" means any person who is the owner of high land adjoining the state owned marshland or water bottoms, or combination thereof, sought to be leased by said person such that at least 100 percent of the landward boundary of the state owned marshland or water bottom, or combination thereof, sought to be leased is bordered by said adjoining high land.

(7) "Estuarine area" means all tidally influenced waters, marshes, and marshlands lying within a tide-elevation range from 5.6 feet above mean tide level and below.

(7.1) "Letter of permission" means written authorization from the department to conduct a proposed activity in an area subject to the jurisdiction of this part, provided such activity is either within the physical perimeter of an existing serviceable project or involves the construction and removal of a project or other temporary activity that concludes within six months, inclusive of the time needed to return all affected areas to a condition approximate to, or better than, that which existed prior to the commencement of such activity.

(8) Reserved.

(9) "Minor alteration" means any change in the marshlands which, taken singularly or in combination with other changes, involve less than 0.10 acres. Minor alteration also includes renewal of permits previously issued by the committee.

(10) "Person" means any individual, partnership, corporation, municipal corporation, county, association, or public or private authority, and shall include the State of Georgia, its political subdivisions, and all its departments, boards, bureaus, commissions, or other agencies, unless specifically exempted by this part.

(11) "Political subdivision" means the governing authority of a county or a municipality in which the marshlands to be affected or any part thereof are located.

(12) "Private dock" means a structure built onto or over the marsh and submerged lands which is used for recreational fishing and other recreational activities, is not available to the public, does not have enclosures, and does not create a navigation hazard; provided, however, that a private dock may be covered and screened with wainscotting not higher than three feet and may be equipped with a hoist.

(13) "Serviceable" means usable as is or with only minor maintenance but not so degraded as to essentially require reconstruction, as determined by the department.

History. — Ga. L. 1970, p. 939, § 2; Code 1981, § 12-5-281; Ga. L. 1982, p. 3, § 12; Ga. L. 1989, p. 574, § 1; Ga. L. 1990, p. 8, § 12; Code 1981, § 12-5-282, as redesignated by Ga. L. 1992, p. 2294, § 1; Ga. L. 2012, p. 1074, § 2/SB 319; Ga. L. 2013, p. 874, § 4/HB 402; Ga. L. 2019, p. 741, § 4/HB 201.

The 2019 amendment, effective January 1, 2020, substituted "Reserved" for the former provisions of paragraph (8), which read: "'Live-aboard' means a floating vessel or other watercraft capable of safe, mechanically propelled navigation under average Georgia coastal wind and current conditions which is utilized as a human or animal abode and is located at a marina or a mooring area established by the department."

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 10.

JUDICIAL DECISIONS

"Eligible person." — There are two components of eligibility under O.C.G.A. § 12-5-282(6) for a marshland/water bottom lease: (1) the ownership interest in the high land (or upland); and (2) the metes and bounds of the high land contiguous to the water bottom so that at least 100 percent of the landward boundary of the state owned water bottom is bordered by this adjoining high land. DBL, Inc. v. Carson, 284 Ga. App. 898, 645 S.E.2d 56, cert. denied, No. S07C1191, 2007 Ga. LEXIS 566 (2007).

Marshlands boundary correctly determined. — Relevant marshlands boundary was where the boundary lay before the owner began the owner's second construction activity in March 2009, because the owner's 2008 excavation had created additional tide-influenced areas; since the second replacement bulkhead encroached on jurisdictional marshlands,

the March 2016 removal order was affirmed. C&M Enters. of Ga., LLC v. Williams, 346 Ga. App. 79, 816 S.E.2d 44 (2018), cert. denied, No. S18C1407, 2019 Ga. LEXIS 52 (Ga. 2019).

12-5-283. Coastal Marshlands Protection Committee created; members; powers; per diem and expenses; administrative hearings and review; permits for minor alterations.

(a) There is created the Coastal Marshlands Protection Committee to be composed of five members. The commissioner of natural resources and four persons selected by the board shall be the members of this committee. Each of three persons selected by the board shall be a resident of Camden, Glynn, McIntosh, Liberty, Bryan, or Chatham County. Three members of the committee shall constitute a quorum. The committee shall issue all orders and shall grant, deny, revoke, and amend all permits and leases provided for by this part. The members of the committee shall be entitled to reimbursement of actual expenses and mileage together with a per diem as set by the board to be paid out of funds appropriated for use by the department.

(b) Any person who is aggrieved or adversely affected by any order or action of the committee shall, upon petition within 30 days after the issuance of such order or the taking of such action, have a right to a hearing before an administrative law judge appointed by the board. The hearing before the administrative law judge shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and the rules and regulations adopted by the board pursuant thereto. The decision of the administrative law judge shall constitute the final decision of the board and any party to the hearing, including the committee, shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50.

(c) Persons are "aggrieved or adversely affected" where the challenged action has caused or will cause them injury in fact and where the injury is to an interest within the zone of interests to be protected or regulated by this part. In the event the committee asserts in response to the petition before the administrative law judge that the petitioner is not aggrieved or adversely affected, the administrative law judge shall take evidence and hear arguments on this issue and thereafter make a ruling on this issue before continuing with the hearing. The burden of going forward with evidence on this issue shall rest with the petitioner.

(d) Any permit for minor alteration of the marshlands may be issued by the commissioner based on the recommendations of staff, past committee actions, and the results of public comments. The commissioner may refer the application to the committee to decide on permits for minor alterations that, in his judgment, should receive broader

consideration. A committee member may choose to have the full committee decide on permit applications for minor alterations that the member feels should receive broader consideration.

History. — Ga. L. 1972, p. 1015, § 17; Ga. L. 1973, p. 564, § 1; Code 1981, § 12-5-282; Ga. L. 1984, p. 404, § 5; Ga. L. 1985, p. 1465, § 3; Ga. L. 1989, p. 574, § 2; Code 1981, § 12-5-283, as redesignated by Ga. L. 1992, p. 2294, § 1; Ga. L. 2004, p. 400, § 2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1989, a comma was inserted following "Act" in the second sentence of subsection (b).

Administrative rules and regulations. — Procedures for disposition of contested cases, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-1-2.

Law reviews. — For article surveying Georgia cases dealing with environment, natural resources, and land use from June 1977 through May 1978, see 30 Mercer L. Rev. 75 (1978). For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010).

JUDICIAL DECISIONS

Board may not further review decisions of committee. Department of Natural Resources v. American Cyanamid Co., 239 Ga. 740, 238 S.E.2d 886 (1977).

Landowners not entitled to a hearing regarding neighbors' planned dock. — Landowners' claims against the state for declaratory judgment, mandamus, an unconstitutional taking, and due process and equal protection violations, all arising out of the issuance of a license to their neighbors to build a private dock in a coastal marshland area, all failed. The Coastal Marshlands Protection Act did not apply to a private dock, pursuant to O.C.G.A. § 12-5-295(7); therefore, the landowners were not entitled to a hearing under the Act pursuant to O.C.G.A. § 12-5-283(b) and the Administrative Procedure Act, O.C.G.A. §§ 50-13-13(a) and 50-13-2(2). Hitch v. Vasarhelyi, 302 Ga. App. 381, 691 S.E.2d 286 (2010).

Permit improperly reversed. — Trial court reviewing an administrative law judge's (ALJ) decision affirming the issuance of a permit to build a dock over marshlands, under the Coastal Marshlands Protection Act of 1970, O.C.G.A. § 12-5-280 et seq., by the Coastal Marshlands Protection Committee (Committee) erroneously reversed the decision because the court focused on the Committee's decision, instead of deciding whether the ALJ correctly affirmed the Committee's decision, since the ALJ conducted a de novo review of the Committee's decision at which new evidence could be received. Coastal Marshlands Prot. Comm. v. Altamaha Riverkeeper, Inc., 315 Ga. App. 510, 726 S.E.2d 539 (2012).

Marshlands boundary correctly determined. — Relevant marshlands boundary was where the boundary lay before the owner began the owner's second construction activity in March 2009, because the owner's 2008 excavation had created additional tide-influenced areas; since the second replacement bulkhead encroached on jurisdictional marshlands, the March 2016 removal order was affirmed. C&M Enters. of Ga., LLC v. Williams, 346 Ga. App. 79, 816 S.E.2d 44 (2018), cert. denied, No. S18C1407, 2019 Ga. LEXIS 52 (Ga. 2019).

Cited in Coastal Marshlands Prot. Comm. v. Ctr. for a Sustainable Coast, 286 Ga. App. 518, 649 S.E.2d 619 (2007); Ctr. for a Sustainable Coast, Inc. v. Ga. Dep't of Natural Res., 319 Ga. App. 205, 734 S.E.2d 206 (2012).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 349.

C.J.S. — 73A C.J.S., Public Administrative Law and Procedure, §§ 375 et seq.

12-5-284. Authority of department as to coastal marshlands generally.

(a) The department shall have the following authority:

(1) To administer and enforce this part and all rules, regulations, and orders promulgated under this part and to determine jurisdiction under this part;

(2) To accept moneys that are available from persons, government units, and private organizations;

(3) To conduct public hearings and institute and prosecute court actions as may be necessary to enforce compliance with this part and any rules and regulations promulgated hereunder, provided that all such actions shall be in the name of the department;

(4) To issue letters of permission and impose a reasonable fee for processing such letters of permission; and

(5) To exercise all incidental powers necessary to carry out the purposes of this part.

(b) The foregoing powers and duties may be exercised and performed by the department through such duly authorized agents and employees as it deems necessary and proper.

History. — Ga. L. 1970, p. 939, § 4; Ga. L. 1972, p. 991, § 1; Code 1981, § 12-5-283; Code 1981, § 12-5-284, as redesignated by Ga. L. 1992, p. 2294, § 1; Ga. L. 2013, p. 874, § 5/HB 402.

JUDICIAL DECISIONS

Cited in Ctr. for a Sustainable Coast v. Coastal Marshlands Prot. Comm., 284 Ga. 736, 670 S.E.2d 429 (2008).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 61, 174, 175, 181, 185, 186, 282, 440, 441.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 226. 73A C.J.S., Public Administrative Law and Procedure, §§ 575 et seq. 81A C.J.S., States, § 271.

12-5-285. Power of board to promulgate rules and regulations.

The board shall have power to promulgate rules and regulations for the implementation and enforcement of this part.

History. — Ga. L. 1970, p. 939, § 4; Code 1981, § 12-5-284; Code 1981,§ 12-5-285, as redesignated by Ga. L. 1992, p. 2294, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 61, 174, 175, 181, 185, 186, 282, 440, 441.
C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 226. 73A C.J.S., Public Administrative Law and Procedure, §§ 575 et seq. 81A C.J.S., States, § 271.

12-5-286. Permit required; application; notice; public hearing; issuance; denial; dynamic dune fields.

(a)(1) No person shall remove, fill, dredge, drain, or otherwise alter any marshlands or construct or locate any structure on or over marshlands in this state within the estuarine area thereof without first obtaining a permit from the committee or, in the case of minor alteration of marshlands, the commissioner. A permit may authorize the construction or maintenance of the project proposed in an application. After construction pursuant to a permit, a project may be maintained without an additional permit so long as it does not further alter the natural topography or vegetation at the project site and remains in serviceable condition.

(2) No permit shall be required for any activity conducted pursuant to a letter of permission. At least 15 days prior to the commencement of any activity authorized pursuant to a letter of permission, the department shall provide public notice describing such activity and the location thereof; provided, however, that public notice shall not be required for any such activity that is necessary for public safety or the delivery of public services.

(b) Each application for such permit shall be properly executed and filed with the department on forms prescribed by the department and shall include:

(1) The name and address of the applicant;

(2) A plan or drawing showing the applicant's proposal and the manner or method by which such proposal shall be accomplished. Such plan shall identify the coastal marshlands affected;

(3) A plat of the area in which the proposed work will take place;

(4) A copy of the deed or other instrument under which the applicant claims title to the property or, if the applicant is not the

owner, then a copy of the deed or other instrument under which the owner claims title together with written permission from the owner to carry out the project on his land. In lieu of a deed or other instrument referred to in this paragraph, the committee may accept some other reasonable evidence of ownership of the property in question or other lawful authority to make use of the property. The committee will not adjudicate title disputes concerning the property which is the subject of the application; provided, however, that the committee may decline to process an application when submitted documents show conflicting deeds;

(5) A list of all adjoining landowners together with such owners' addresses, provided that if the names or addresses of adjoining landowners cannot be determined, the applicant shall file in lieu thereof a sworn affidavit that a diligent search, including, without limitation, a search of the records of the county tax assessor's office, has been made but that the applicant was not able to ascertain the names or addresses, as the case may be, of adjoining landowners;

(6) A letter from the local governing authority of the political subdivision in which the property is located, stating that the applicant's proposal is not violative of any zoning law;

(7) A nonrefundable application fee to be set by the board in an amount necessary to defray the administrative cost of issuing such permit. Renewal fees shall be equal to application fees, which shall not exceed $1,000.00 for any one proposal and shall be paid to the department;

(8) A description from the applicant of alternative sites and why they are not feasible and a discussion of why the permit should be granted;

(9) A statement from the applicant that he has made inquiry to the appropriate authorities that the proposed project is not over a landfill or hazardous waste site and that the site is otherwise suitable for the proposed project;

(10) A copy of the water quality certification issued by the department if required for the proposed project;

(11) Certification by the applicant of adherence to soil and erosion control responsibilities if required for the proposed project; and

(12) Such additional information as is required by the committee to properly evaluate the application.

(c) A copy of each application for a permit shall be delivered to each member of the committee at least seven days prior to any meeting of the committee.

(d) The department, after receipt of an application, shall notify in writing all adjoining landowners that the application has been received. Such notice shall indicate the use the applicant proposes to make of the property. Should the applicant indicate that any adjoining landowner is unknown or that the address of such landowner is unknown, then the department shall, after receipt of a completed application, cause a notice of the proposed activity and a brief description of the affected land to be published in the legal organ of or a newspaper of general circulation in the county or counties in which such land lies. Cost of such publication shall be paid by the applicant. Should the property to be affected by the applicant be bordered on any side or on more than one side by other property of the applicant, the applicant shall supply the names and addresses of the nearest landowners whose land borders on his land. If the names or addresses, or both, of the nearest landowners cannot be ascertained, the applicant shall supply a sworn statement of diligent search as provided in this Code section. The landowners named by the applicant shall be notified either directly or by advertisement as provided in this Code section. The department may also make inquiry to adjoining landowners to ascertain whether or not there is objection to issuance of a permit.

(e) The committee shall provide notice of applications by either public notice distributed jointly with the United States Army Corps of Engineers or public notice distributed by the committee. In no instance shall a public notice be issued for less than seven days prior to the meeting at which the committee reviews the subject of the public notice. Public notices shall be distributed to all persons who have requested to be placed on the mailing list. Such request shall be made in writing and shall be renewed in December of each year. Failure to renew the request shall result in the removal of such name from the mailing list.

(f) Whenever there appears to be sufficient public interest, the committee may call a public hearing.

(g) In passing upon the application for permit, the committee shall consider the public interest, which, for purposes of this part, shall be deemed to be the following considerations:

(1) Whether or not unreasonably harmful obstruction to or alteration of the natural flow of navigational water within the affected area will arise as a result of the proposal;

(2) Whether or not unreasonably harmful or increased erosion, shoaling of channels, or stagnant areas of water will be created; and

(3) Whether or not the granting of a permit and the completion of the applicant's proposal will unreasonably interfere with the conservation of fish, shrimp, oysters, crabs, clams, or other marine life, wildlife, or other resources, including but not limited to water and oxygen supply.

(h) It is the responsibility of the applicant to demonstrate to the committee that the proposed alteration is not contrary to the public interest and that no feasible alternative sites exist. If the committee finds that the application is not contrary to the public interest and no feasible alternative sites exist, as specified in this subsection, it shall issue to the applicant a permit. Such permit may be conditioned upon the applicant's amending the proposal to take whatever measures are necessary to protect the public interest.

(i) The committee shall act upon an application for a permit within 90 days after the application is complete; provided, however, that this provision may be waived upon the written request of the applicant. An application must be complete sufficiently in advance of the committee meeting at which the project will be considered to allow for public notice and evaluation by the department. An application is complete when it contains substantially all of the written information, documents, forms, fees, and materials required by this part.

(j) In the event a majority of the members of the committee determine that a permit should be denied, the application for permit shall be denied. Any applicant who is aggrieved or adversely affected thereby shall have the right to appeal as provided in Code Section 12-5-283.

(k) Should a majority of the members of the committee agree that a permit should be conditional, the permit shall be issued on such conditions as a majority of the committee directs. Any applicant who is aggrieved or adversely affected thereby shall have the right to appeal as provided in Code Section 12-5-283.

(l) Every permit shall require that the proposed project be completed within five years after the date of the issuance of the permit and such permit shall expire five years after the date of issuance. Such time may be extended an additional five years upon showing that all due efforts and diligence toward the completion of the work have been made. Any permit may be revoked by the committee for noncompliance with or for violation of its terms after written notice of intention to do so has been furnished to the holder thereof.

(m) A permit to alter marshlands that has been granted by the committee becomes final immediately upon issuance, but no construction or alteration may commence until the expiration of 30 days following the date of the committee meeting at which the application is approved; provided, however, that if a timely appeal is filed, no construction or alteration may commence until all administrative and judicial proceedings are terminated.

(n) Issuance of a permit under this part and construction of the permitted project shall not remove the designated property from the jurisdiction of this part. All changes in permitted uses which increase

impacts to any land subject to the provisions of this part must be assessed by the committee to determine if the proposed change is consistent with this part and the permit. Each permitted alteration of marshlands shall be reviewed by the department on a five-year basis, or when noncompliance with the purpose for which the permit was issued is evident, to determine if the use of the marshland is consistent with the intent of this part. If the permit holder is found not to be in compliance with this part, the committee shall take action as authorized under Code Section 12-5-291.

(o) All plans, documents, and materials contained in any application for any permit required by this part shall be made a part of the permit, if granted, and conformance to such plans, documents, and materials shall be a condition of the permit. No change or deviation from any such plans, documents, or materials shall be permitted without the prior notification and approval of the committee.

(p) The permittee shall notify the department of completion of a project within 30 days of completion.

(q) If, prior to completion of review of an application under this part, the committee receives notice of the denial of a permit or authorization necessary for the project, review of the project shall be suspended and, if the denial becomes final, the application shall stand denied.

(r) If an area has both marshlands as defined in Code Section 12-5-282 and dynamic dune fields as defined in Code Section 12-5-232, it shall be subject to the jurisdiction of both such parts. In the event of a conflict between this part and Part 2 of this article, the commissioner shall determine which part shall apply so as to best protect the public interest.

History. — Ga. L. 1970, p. 939, § 5; Code 1981, § 12-5-285; Code 1981, § 12-5-286, as redesignated by Ga. L. 1992, p. 2294, § 1; Ga. L. 2013, p. 874, § 6/HB 402.

Law reviews. — For annual survey on administrative law, see 64 Mercer L. Rev. 39 (2012).

JUDICIAL DECISIONS

State requires that permit be obtained when improvements to boat repair and maintenance facilities involve filling lands between high and low watermarks which are owned by the state. Isle of Hope Historical Ass'n v. United States Army Corps of Eng'rs, 646 F.2d 215 (5th Cir. 1981).

Regulation of storm water runoff. — Coastal Marshlands Protection Act, O.C.G.A. § 12-5-280 et seq., can be construed to regulate storm water runoff into the marshlands under the "otherwise alter" provision of O.C.G.A. § 12-5-286(a) only to the extent that the runoff alters the marshlands in a direct physical manner akin to removing, filling, dredging, or draining the marshlands; storm water runoff into the marshlands that does not alter the marshlands in this manner is not regulated under the "otherwise alter" provision, despite the fact that the runoff

carries pollutants and may have an adverse impact on the marshlands. Coastal Marshlands Prot. Comm. v. Ctr. for a Sustainable Coast, 286 Ga. App. 518, 649 S.E.2d 619 (2007), aff'd, 284 Ga. 736, 670 S.E.2d 429 (2008).

Because there was no evidence that storm water runoff generated by a upland residential development "otherwise altered" marshlands in a direct physical manner akin to removing, filling, dredging, or draining under O.C.G.A. § 12-5-286(a), it was error to construe the Coastal Marshlands Protection Act to regulate the runoff from this area. Coastal Marshlands Prot. Comm. v. Ctr. for a Sustainable Coast, 286 Ga. App. 518, 649 S.E.2d 619 (2007), aff'd, 284 Ga. 736, 670 S.E.2d 429 (2008).

Lease on upland property. — Having a lease on upland property can satisfy the ownership component of being an "eligible person" for a water bottom lease under O.C.G.A. § 12-5-287; the upland lease here, however, could not be construed as a written assignment of rights to the water bottom or as permission to apply for the water bottom lease under O.C.G.A. § 12-5-286(b)(4). DBL, Inc. v. Carson, 284 Ga. App. 898, 645 S.E.2d 56, cert. denied, No. S07C1191, 2007 Ga. LEXIS 566 (2007).

No authority regarding residential upland areas. — Committee's authority to issue a permit under the Coastal Marshlands Protection Act, O.C.G.A. § 12-5-280 et seq., did not extend to residential upland areas of the development at issue because the use of the term "otherwise alter" in O.C.G.A. § 12-5-286(a) was not authority for such a determination and, although the developer was required to secure a permit because the developer intended to place structures in the marshlands, the permitting process was not triggered because of any other activity that could have been deemed to "otherwise alter" the marshlands. Ctr. for a Sustainable Coast v. Coastal Marshlands Prot. Comm., 284 Ga. 736, 670 S.E.2d 429 (2008).

Permit properly affirmed. — Under an "any evidence" standard of review, an ALJ did not err in affirming portions of a permit issued by the Coastal Marshlands Protection Committee when the permit contained conditions to reduce erosion and use of best management practices to comply with the Erosion and Sedimentation Act of 1975 as a biological assessment and other conditions of the permit provided a sufficient basis for the finding that granting the permit and completing the proposed project would not unreasonably interfere with the conservation of gopher tortoises, indigo snakes, shorebirds, and wood storks; private docks were not part of the permitted project and were not regulated to the extent the docks complied with the provisions of O.C.G.A. § 12-5-295, and the developer had agreed to restrict the number and size of the private docks that could be built. Coastal Marshlands Prot. Comm. v. Ctr. for a Sustainable Coast, 286 Ga. App. 518, 649 S.E.2d 619 (2007), aff'd, 284 Ga. 736, 670 S.E.2d 429 (2008).

Permit improperly reversed. — Trial court reviewing an administrative law judge's (ALJ) decision affirming the issuance of a permit to build a dock over marshlands, under the Coastal Marshlands Protection Act of 1970, O.C.G.A. § 12-5-280 et seq., by the Coastal Marshlands Protection Committee (Committee) erroneously reversed the decision because the court focused on the Committee's decision, instead of deciding whether the ALJ correctly affirmed the Committee's decision, since the ALJ conducted a de novo review of the Committee's decision at which new evidence could be received. Coastal Marshlands Prot. Comm. v. Altamaha Riverkeeper, Inc., 315 Ga. App. 510, 726 S.E.2d 539 (2012).

Marshlands encroachment removal order affirmed. — Relevant marshlands boundary was where the boundary lay before the owner began the owner's second construction activity in March 2009, because the owner's 2008 excavation had created additional tide-influenced areas; since the second replacement bulkhead encroached on jurisdictional marshlands, the March 2016 removal order was affirmed. C&M Enters. of Ga., LLC v. Williams, 346 Ga. App. 79, 816 S.E.2d 44 (2018), cert. denied, No. S18C1407, 2019 Ga. LEXIS 52 (Ga. 2019).

12-5-287. Leasing of state owned marshland or water bottoms.

(a) The committee, acting for and on behalf of and in the name of the state, is further authorized and empowered to grant and convey to any eligible person a lease of state owned marshland or water bottoms, or a combination thereof, upon such terms and conditions as the committee deems advisable for the purpose of constructing, operating, and maintaining thereupon a marina or marinas or dock providing more than 500 linear feet of dock space, including the installing, maintaining, repairing, removing, and replacing of buildings, structures, piers, docks, floating docks, marine railways, dolphins, pilings, appurtenances thereto, and all facilities and improvements that shall be reasonably used for or in connection therewith, subject always to the initial and continuing compliance by the lessee with all applicable laws pertaining to the use of the leased property and subject always to the use and enjoyment of the public of any navigable waters upon or over the leased property. The applicant for any such lease shall inform the committee of the total linear footage of dock space proposed, but the final decision as to the total dock space available to moor boats shall be in the sound discretion of the committee.

(b) Upon application by any interested person for a lease pursuant to this Code section, the committee shall determine whether or not the applicant is an eligible person. The committee must also determine whether or not the applicant has sufficient lands properly to service the area to be leased. If the committee determines that the applicant is an eligible person and that sufficient lands exist to service the marina or dock, then the committee is authorized to grant and convey to the applicant a lease of the state owned marshland or water bottoms, or a combination thereof, described in the application without the necessity of public bid.

(c) The application for the lease shall be in writing and shall contain a request for a lease of the state owned property described therein. Such application shall include all of the information required for a permit under this part. The entire application must be in a form acceptable to the committee.

(d) Each lease granted under this Code section shall be upon such provisions, requirements, and conditions as the committee shall make and shall, except as provided in subsection (h) of this Code section, provide for a primary term of not more than ten years. Each lease, except as provided in subsection (h) of this Code section, shall require the payment of an annual rental fee which, as of May 5, 2009, shall be $1,000.00 per acre, which acreage shall consist of the covered area of dock structures and a ten-foot buffer surrounding such dock structures; and the committee shall in each calendar year thereafter adjust the

amount of the annual rental fee per acre to reflect the effect of annual inflation or deflation for the immediately preceding calendar year in accordance with rules and regulations adopted by the board, which rules and regulations may use for this purpose the Consumer Price Index as reported by the Bureau of Labor Statistics of the United States Department of Labor or any other similar index established by the federal government, if the board determines that such federal index reflects the effect of inflation and deflation on the lessees. Except as provided in subsection (h) of this Code section, an initial lease shall be for the annual fee in effect and established by the committee at the time such lease is entered into. Such lease shall be adjusted annually thereafter as provided in this subsection. Each lease may provide for two renewal terms, each of which shall not be for a term of more than equal duration to the primary term. Rental fees shall be paid in one installment to the department not later than July 15 of each year. A penalty of 10 percent of the annual rental shall be assessed for late payment. Failure to pay rental by August 1 of the year due shall result in the cancellation of the lease.

(e) Each lease granted under this Code section shall protect the interest of owners of marshland and high land adjoining the high land of the lessee upon which the lessee's eligibility for lease was based to a right of access to the state owned marshland or water bottoms adjoining the state owned marshland or water bottoms leased to the applicant; provided, however, said owners of adjoining high land may assign their rights in writing in favor of the applicant and such written assignment may be used to determine the percentage of landward boundary required for eligibility to lease the state owned marshland and water bottoms described in the application.

(f) If the eligible person desires the ability to transfer or convey ownership interests in the leasehold to individuals purchasing or leasing on a long-term basis the slips of the marina or marinas, each lease granted under this Code section shall require the formation of a condominium pursuant to Code Section 44-3-72.

(g) Reserved.

(h) Upon application of any eligible person who is either a nonprofit corporation, a nonprofit organization, or a public entity, the committee may grant a lease of state owned marshland or water bottoms for the construction and operation of a marina as a community or public dock. Each lease granted under this subsection shall be for a term of ten years from the date of its execution with a nominal rental of $1.00 for the entire term.

(i) The department shall make an annual report of its activities each calendar year to the General Assembly. The report shall include a

summary of all applications received and leases granted, including length of terms, rentals, and locations. Copies of the annual report shall be provided to the director of the State Properties Commission, the chairperson of the House Natural Resources and Environment Committee, the chairperson of the House Committee on State Properties, the chairperson of the Senate Natural Resources and the Environment Committee, and the chairperson of the Senate Committee on State and Local Governmental Operations. The department shall not be required to distribute copies of the annual report to the members of the General Assembly but shall notify the members of the availability of the annual report in the manner which it deems to be most effective and efficient.

(j) The committee may place such terms, limitations, restrictions, and conditions in such leases as are deemed necessary to ensure that the utilization of the property is in the public interest. Leased areas shall be deemed to be areas where resources are managed by the state and lessee for the protection of wildlife and other natural resources.

(k) The committee may designate staff of the department to act on its behalf to evaluate, enforce, and execute leases issued under this part.

(l) A lease granted under this part shall be issued only to applicants who agree not to discriminate against any person on the basis of race, gender, color, national origin, religion, or disability. Discrimination by lessee may be punished by termination of the lease, by injunction, or by any other legal remedy available to the committee.

History. — Code 1981, § 12-5-285.1, enacted by Ga. L. 1989, p. 574, § 3; Code 1981, § 12-5-287, as redesignated by Ga. L. 1992, p. 2294, § 1; Ga. L. 1995, p. 10, § 12; Ga. L. 1995, p. 462, § 1; Ga. L. 2005, p. 1036, § 6/SB 49; Ga. L. 2006, p. 72, § 12/SB 465; Ga. L. 2009, p. 778, § 1/HB 170; Ga. L. 2013, p. 141, § 12/HB 79; Ga. L. 2015, p. 385, § 2-4/HB 252.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, "May 5, 2009" was substituted for "the effective date of this subsection" in the second sentence of subsection (d).

Editor's notes. — Ga. L. 2009, p. 778, § 3/HB 170, not codified by the General Assembly, provides that the amendment to this Code section shall not be applied to impair an obligation of contract entered into prior to May 5, 2009.

JUDICIAL DECISIONS

Standing to challenge lease. — As landowners had a property interest in the water fronting the landowners property, which O.C.G.A. § 12-5-287(e) protected, and the landowners showed that this interest was being harmed by the operation of a marina in front of the landowners property, the landowners had standing to sue the marina operator and to challenge the validity of the marina's water bottom lease. DBL, Inc. v. Carson, 262 Ga. App. 252, 585 S.E.2d 87 (2003).

Eligibility to apply for water bottom lease. — Having a lease on upland property can satisfy the ownership component of being an "eligible person" for a water bottom lease under O.C.G.A. § 12-5-287; the upland lease here, however, could not be construed as a written assignment of rights to the water bottom or as permission to apply for the water bottom lease under O.C.G.A. § 12-5-286(b)(4). DBL, Inc. v. Carson, 284 Ga. App. 898, 645 S.E.2d 56, cert. denied,

No. S07C1191, 2007 Ga. LEXIS 566 (2007).

12-5-288. Restriction on granting of permits; size restriction; activities and structures considered contrary to public interest.

(a) If the project is not water related or dependent on waterfront access or can be satisfied by the use of an alternative nonmarshland site or by use of existing public facilities, a permit usually should not be granted pursuant to Code Section 12-5-286.

(b) The amount of marshlands to be altered must be minimum in size. The following activities and structures are normally considered to be contrary to the public interest when located in coastal marshlands but the final decision as to whether any activity or structure is considered to be in the public interest shall be in the sound discretion of the committee:

(1) Filling of marshlands for residential, commercial, and industrial uses;

(2) Filling of marshlands for private parking lots and private roadways;

(3) Construction of dump sites and depositing of any waste materials or dredge spoil;

(4) Dredging of canals or ditches for the purpose of draining coastal marshlands;

(5) Mining;

(6) Construction of lagoons or impoundments for waste treatment, cooling, agriculture, or aquaculture which would occupy or damage coastal marshlands or life forms therein; and

(7) Construction of structures which constitute an obstruction of view to adjoining riparian landowners, including signs and enclosures.

History. — Code 1981, § 12-5-288, enacted by Ga. L. 1992, p. 2294, § 1; Ga. L. 2012, p. 1074, § 3/SB 319; Ga. L. 2019, p. 741, § 5/HB 201.

The 2019 amendment, effective January 1, 2020, added "and" at the end of paragraph (b)(6); substituted a period for "; and" at the end of paragraph (b)(7); and deleted former paragraph (b)(8), which read: "Occupying a live-aboard for more than 90 days during any calendar year; provided, however, that the commissioner may grant extensions of time beyond 90 days to persons making a request in writing stating the reasons for such extension. Owners of docks where live-aboards are moored as well as owners and occupants of live-aboards are responsible under this part".

JUDICIAL DECISIONS

No authority regarding residential upland areas. — Committee's authority to issue a permit under the Coastal Marshlands Protection Act (CPMA), O.C.G.A. § 12-5-280 et seq., did not extend to residential upland areas of the development at issue because the use of the term "otherwise alter" in O.C.G.A. § 12-5-286(a) was not authority for such a determination and, although the developer was required to secure a permit because the developer intended to place structures in the marshlands, the permitting process was not triggered because of any other activity that could have been deemed to "otherwise alter" the marshlands; extending the permitting reach of the committee to upland areas even miles away from the marshes and coastal waters did not mesh with O.C.G.A. § 12-5-288(a)'s admonition that a project not water-related should not gain a permit under the CMPA. Ctr. for a Sustainable Coast v. Coastal Marshlands Prot. Comm., 284 Ga. 736, 670 S.E.2d 429 (2008).

12-5-289. Inspection of marshlands.

The department, through its officers, staff, and game wardens, shall, in addition to its other duties prescribed by law, make reasonable inspections of the marshlands to ascertain whether the requirements of this part and the rules, regulations, and permits promulgated or issued under this part are being faithfully complied with.

History. — Ga. L. 1970, p. 939, § 6; Code 1981, § 12-5-286; Code 1981, § 12-5-289, as redesignated by Ga. L. 1992, p. 2294, § 1; Ga. L. 2019, p. 808, § 7/SB 72.

The 2019 amendment, effective July 1, 2019, substituted "game wardens" for "conservation rangers" near the beginning of this Code section.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 254.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 190.

12-5-290. Jurisdiction to restrain violation of part.

The superior court of the county in which land or any part thereof lies or in which jurisdiction is appropriate shall have jurisdiction to restrain a violation of this part at the action of any person.

History. — Ga. L. 1970, p. 939, § 7; Code 1981, § 12-5-287; Code 1981, § 12-5-290, as redesignated by Ga. L. 1992, p. 2294, § 1.

RESEARCH REFERENCES

C.J.S. — 21 C.J.S., Courts, § 252 et seq.

12-5-291. Enforcement of part.

(a) In order to enforce this part or any orders issued under this part or any rules and regulations promulgated under this part, any one or any combination of any or all of the following methods may be employed:

(1) Whenever any person not exempted from this part by Code Section 12-5-295 is altering the marshlands without a permit, altering the marshlands in violation of the terms and conditions of a permit, or violating this part in any other manner, the committee may, prior to any hearing, issue a cease and desist order or other appropriate order to such person; provided, however, that the issuance of such order shall not affect the availability of relief under paragraph (4) of this subsection. Any such order becomes final unless the person named therein requests in writing a hearing before a hearing officer appointed by the board no later than ten days after the issuance of such order. Review of such order shall be available as provided in subsection (b) of Code Section 12-5-283;

(2) Whenever, after a hearing is held in accordance with Code Section 12-5-283 and Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," at the request of the committee, for the imposition of civil penalties, the administrative law judge determines that any person has failed, neglected, or refused to comply with any provision of this part or any order of the committee or administrative law judge, the administrative law judge may issue an order imposing a civil penalty not to exceed $10,000.00 for such violation and an additional civil penalty not to exceed $10,000.00 for each day during which such violation continues. All penalties and interest recovered as provided in this Code section, together with the cost thereof, shall be paid into the state treasury to the credit of the general fund;

(3) The committee may file in the superior court in the county in which the person under order resides or in the county in which the violation occurred or, if the person is a corporation, in the county in which the corporation maintains its principal place of business a certified copy of the final order of the committee or administrative law judge, unappealed from, or of a final order of the administrative law judge affirmed upon appeal; whereupon the court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereof shall thereafter be the same, as though such judgment has been rendered in an action duly heard and determined by the court;

(4) Whenever the committee, either before or after a hearing, determines that any person is or has been violating any of the provisions of this part or any orders issued under this part or any

rules and regulations promulgated under this part, the committee may file a petition for injunction in the proper superior court of this state against such person for the purpose of enjoining such actions or, if appropriate, may make application for a writ of mandamus in the proper superior court of this state against such person for the purpose of compelling the proper performance of his official duty. It shall not be necessary for the committee to allege or prove that it has no adequate remedy at law; and

(5) The superior court, upon finding that any person is or has been violating any of the provisions of this part or any orders issued under this part or any rules and regulations promulgated under this part, may order the person to restore, as nearly as possible, all marshland to the condition existing prior to the alteration of the marshland.

(b) Owners of property with knowledge of unauthorized activities occurring thereon are responsible under this part.

History. — Ga. L. 1972, p. 991, § 2; Code 1981, § 12-5-288; Ga. L. 1984, p. 404, § 6; Code 1981, § 12-5-291, as redesignated by Ga. L. 1992, p. 2294, § 1.

JUDICIAL DECISIONS

Cited in C&M Enters. of Ga., LLC v. Williams, 346 Ga. App. 79, 816 S.E.2d 44 (2018).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 240, 353, 354.
C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 108 et seq., 226. 73A C.J.S., Public Administrative Law and Procedure, §§ 575, 577.

12-5-292. Posting of permit.

A copy of every permit issued to an applicant shall be prominently displayed within the area of proposed activity. If the committee deems it advisable, the applicant may be required to cause a sign to be erected bearing the permit number, date of issuance, name of applicant, and such other information as the committee may reasonably require. The committee may specify the type of sign to be erected and may designate, within reasonable dimensions, the size of the sign.

History. — Ga. L. 1970, p. 939, § 8; Code 1981, § 12-5-289; Code 1981, § 12-5-292, as redesignated by Ga. L. 1992, p. 2294, § 1.

12-5-293. Effect on permit of sale, lease, or other conveyance of land.

If a permit holder sells, leases, rents, or otherwise conveys the land or any portion thereof for which the permit was issued, and if the permittee has notified the department within 30 days of such transfer or conveyance, such permit shall be continued in force in favor of the new owner, lessee, tenant, or other assignee so long as there is no change in the use of the land as set forth in the original application.

History. — Ga. L. 1970, p. 939, § 9; § 12-5-293, as redesignated by Ga. L. Code 1981, § 12-5-290; Code 1981, 1992, p. 2294, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, § 65.

C.J.S. — 53 C.J.S., Licenses, § 84.

12-5-294. Existence of an emergency; order; right to hearing.

In the event of an emergency, whether created by act of God or by actions of domestic or foreign enemies, or in circumstances where grave peril to human life or welfare exists, the committee shall issue an order reciting the existence of such an emergency and requiring or allowing that such action be taken as it deems necessary to meet the emergency. Notwithstanding any other provisions of this part to the contrary, such order shall be effective immediately. If an order requiring a person to take action is issued pursuant to this Code section, such person shall be entitled to a hearing within ten days of the date of issuance of the order.

History. — Ga. L. 1970, p. 939, § 12; § 12-5-294, as redesignated by Ga. L. Code 1981, § 12-5-291; Code 1981, 1992, p. 2294, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 73 Am. Jur. 2d, Statutes, § 255.

C.J.S. — 82 C.J.S., Statutes, § 363.

12-5-295. Applicability of part.

This part shall not apply to the following:

(1) Activities of the Department of Transportation incident to constructing, repairing, and maintaining a public road system in Georgia;

(2) Activities of the Department of Transportation and political subdivisions in maintaining existing drainage systems and ditches as long as such activities do not impact additional marshlands;

(3) Agencies of the United States charged by law with the responsibility of keeping the rivers and harbors of this state open for navigation, and agencies of this state charged by existing law with the responsibility of keeping the rivers and harbors of this state open for navigation including areas for utilization for spoilage designated by such agencies;

(4) Activities of public utility companies regulated by the Public Service Commission, electric membership corporations, public authorities operating electric systems, or municipal electric systems incident to constructing, erecting, repairing, and maintaining utility lines for the transmission of gas, electricity, or telephone messages;

(5) Activities of companies regulated by the Public Service Commission incident to constructing, erecting, repairing, and maintaining railroad lines and bridges;

(6) Activities of political subdivisions incident to constructing, repairing, and maintaining pipelines that have been approved by the department or appropriate authority for the transport of drinking water and sewage;

(7) The building of a private dock exclusively for the noncommercial use of the owner or his or her invitees and constructed on pilings, the walkways of which are above the marsh grass not obstructing tidal flow, by:

(A) The owner of a lot on which a detached single-family residence is located on high land adjoining such dock; or

(B) The owner of a lot having at least 50 front feet of land abutting the marshlands which contains high land suitable for the construction of a detached single-family residence and where the construction of such a residence is not prohibited.

The lot owner shall and is authorized to maintain the structure in good condition and repair the same as necessary, and the use of repair or replacement materials comparable in quality to the original authorized materials shall be sufficient for such purposes;

(7.1) The building of a single private dock by the owners of up to four adjoining lots, each of which is riparian and would qualify for an exemption as provided in paragraph (7) of this Code section, for the exclusive noncommercial use of such owners or their invitees and constructed as a single walkway on pilings above the marsh grass not obstructing tidal flow and in a size to be determined by the department taking into consideration the number of adjoining lots utilizing the dock; provided, however, that the exemption provided by this paragraph shall apply only if each of the owners of such adjoining lots has entered into a binding covenant that runs with the land, in favor

of the state, which covenant prohibits the building of any future private dock on his or her lot unless the dock exempted pursuant to this paragraph is removed or converted to a single-family private dock which would qualify for an exemption as provided in paragraph (7) of this Code section. The granting of the exemption provided by this paragraph shall be the state's consideration for the covenant of each such lot owner. The lot owners shall and are authorized to maintain the structure in good condition and repair the same as necessary, and the use of repair or replacement materials comparable in quality to the original authorized materials shall be sufficient for such purposes;

(8) The reclamation of manmade boat slips as a part of any publicly funded construction project and ancillary development projects including, without limitation, hotels, restaurants, retail facilities, and recreational facilities, whether public or private, within any industrial areas continued in existence pursuant to Article XI, Section I, Paragraph IV(d) of the Constitution which are wholly contained on an island; or

(9) The placement of gear for mariculture activities regulated by the department such as anchors, cages, upwellers, and any other gear as the department determines to be required.

History. — Ga. L. 1970, p. 939, § 11; Code 1981, § 12-5-292; Ga. L. 1989, p. 574, § 4; Code 1981, § 12-5-295, as redesignated by Ga. L. 1992, p. 2294, § 1; Ga. L. 1995, p. 462, § 2; Ga. L. 2003, p. 316, § 1; Ga. L. 2008, p. 117, § 1/HB 68; Ga. L. 2009, p. 778, § 2/HB 170; Ga. L. 2019, p. 619, § 2/HB 501.

The 2019 amendment, effective May 6, 2019, for purposes of promulgating rules and regulations and effective March 1, 2020 for all other purposes, deleted "or" at the end of paragraph (7.1); in paragraph (8), substituted "Paragraph IV(d)" for "Paragraph IV, subparagraph (d)" and added "; or" at the end; and added paragraph (9).

Editor's notes. — Ga. L. 2019, p. 619, § 3/HB 501, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law with such approval for purposes of promulgating rules and regulations necessary to administer the provisions of this Act and shall become effective on March 1, 2020, for all other purposes." This Act was signed by the Governor on May 6, 2019.

Law reviews. — For annual survey of law on administrative law, see 62 Mercer L. Rev. 1 (2010).

JUDICIAL DECISIONS

Private dock not subject to Coastal Marshlands Protection Act. — Landowners' claims against the state for declaratory judgment, mandamus, an unconstitutional taking, and due process and equal protection violations, all arising out of the issuance of a license to the landowners' neighbors to build a private dock in a coastal marshland area, all failed. The Coastal Marshlands Protection Act, O.C.G.A. § 12-5-280 et seq., did not apply to a private dock, pursuant to O.C.G.A. § 12-5-295(7); therefore, the landowners were not entitled to a hearing under the Act pursuant to O.C.G.A. § 12-5-283(b) and the Administrative Procedure Act,

O.C.G.A. §§ 50-13-13(a) and 50-13-2(2). Hitch v. Vasarhelyi, 302 Ga. App. 381, 691 S.E.2d 286 (2010).

Corps of Engineers may not follow planning documents not adopted by county. — The National Environmental Policy Act of 1969, 42 U.S.C. § 4321 et seq., contemplates a relationship of cooperation between local and federal authorities with the central aspect of such relationship being the respect for the sovereignty of local authorities. Thus, the United States Army Corps of Engineers, a federal agency, was never intended by that Act to have the power or responsibility of a planning and zoning review board, and could not follow planning documents which the local county had not adopted, nor engage in independent analysis of inconsistencies which those specifically charged with zoning enforcement did not find. Isle of Hope Historical Ass'n v. United States Army Corps of Eng'rs, 646 F.2d 215 (5th Cir. 1981).

RESEARCH REFERENCES

Am. Jur. 2d. — 64 Am. Jur. 2d, Public Utilities, §§ 1, 2. 78 Am. Jur. 2d, Waters, §§ 151, 153.

C.J.S. — 15 C.J.S., Commerce, § 24. 73 C.J.S., Public Utilities, § 1.

12-5-296. Criminal violation.

Any person violating any of the provisions of this part shall be guilty of a misdemeanor.

History. — Ga. L. 1970, p. 939, § 10; Code 1981, § 12-5-293; Code 1981, § 12-5-296, as redesignated by Ga. L. 1992, p. 2294, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 21 Am. Jur. 2d, Criminal Law, § 20.

C.J.S. — 22 C.J.S., Criminal Law, §§ 7, 22.

12-5-297. Liability for damages.

Any person who causes or permits any removal, filling, dredging, or draining or other alteration of marshlands in this state within the estuarine area thereof without first obtaining a permit from the committee shall be liable in damages to the state and any political subdivision thereof for any and all actual or projected costs, expenses, and injuries occasioned by such alteration of the marshlands. The amount of damages assessed pursuant to this Code section shall include, but shall not be limited to, any actual or projected costs and expenses incurred by the state or any political subdivision thereof in restoring as nearly as possible the natural movement of the waters in the marshlands and replacing the vegetation and aquatic life destroyed by any alteration of marshlands. Damages to the state shall be recoverable in a civil action instituted by the department and shall be paid to the department to cover the cost of restoration. Damages to a political subdivision shall be recoverable in a civil action instituted by said subdivision.

History. — Code 1981, § 12-5-297, enacted by Ga. L. 1992, p. 2294, § 1.

Part 5

Sea Oats

12-5-310. Legislative purpose.

It is the purpose of this part to protect the beaches and shores of the state from erosion by preserving natural vegetative cover to bind the sand of such beaches and shores.

History. — Ga. L. 1973, p. 727, § 1.
Cross references. — Wildflower preservation generally, § 12-6-170 et seq. Contents of ordinances, resolutions, and other provisions adopted for purpose of governing activities which may result in soil erosion or sedimentation of waters or lands, § 12-7-6.

12-5-311. Cutting, harvesting, removing, or eradicating sea oats.

It is unlawful for any person to cut, harvest, remove, or eradicate any of the grass commonly known as sea oats (Uniola paniculata L.) from any public land of this state or from any private land without the consent of the owner of such land or the persons having lawful possession thereof.

History. — Ga. L. 1973, p. 727, § 2.

12-5-312. Penalty.

Any person violating any provision of this part shall be guilty of a misdemeanor.

History. — Ga. L. 1973, p. 727, § 3.

RESEARCH REFERENCES

Am. Jur. 2d. — 21 Am. Jur. 2d, Criminal Law, § 20.
63C Am. Jur. 2d, Public Lands, § 21 et seq.
83 Am. Jur. 2d, Zoning and Planning, § 7.

C.J.S. — 22 C.J.S., Criminal Law, §§ 7, 22.
65 C.J.S., Navigable Waters, §§ 61, 119.

PART 6

COASTAL MANAGEMENT

Law reviews. — For article commenting on the enactment of this part, see 14 Ga. St. U.L. Rev. 42 (1997).

12-5-320. Short title.

This part shall be known and may be cited as the "Georgia Coastal Management Act."

History. — Code 1981, § 12-5-320, enacted by Ga. L. 1997, p. 1037, § 1.

12-5-321. Legislative findings.

The General Assembly finds and declares that the coastal area of Georgia comprises a vital natural resource system. The General Assembly recognizes that the coastal area of Georgia is the habitat of many species of marine life and wildlife which must have clean waters and suitable habitat to survive. The General Assembly further finds that intensive research has revealed that activities affecting the coastal area may degrade water quality or damage coastal resources if not properly planned and managed. The General Assembly further finds that the coastal area provides a natural recreation resource which has become vitally linked to the economy of Georgia's coast and to that of the entire state. The General Assembly further finds that resources within this coastal area are costly, if not impossible, to reconstruct or rehabilitate once adversely affected by human related activities and it is important to conserve these resources for the present and future use and enjoyment of all citizens and visitors to this state. The General Assembly further finds that the coastal area is a vital area of the state and that it is essential to maintain the health, safety, and welfare of all the citizens of the state. Therefore, the General Assembly declares that the management of the coastal area has more than local significance, is of equal importance to all citizens of the state, is of state-wide concern, and consequently is properly a matter for coordinated regulation under the police power of the state. The General Assembly further finds and declares that activities and structures in the coastal area must be regulated to ensure that the values and functions of coastal waters and natural habitats are not impaired and to fulfill the responsibilities of each generation as public trustees of the coastal waters and habitats for succeeding generations.

History. — Code 1981, § 12-5-321, enacted by Ga. L. 1997, p. 1037, § 1.

Law reviews. — For comment, "'Wrest' in Peace: The Effect of the Geor-

gia Environmental Protection Division's 'Wrested Vegetation Rule' on Coastal Salt Marshes," see 32 Georgia St. U.L. Rev. 953 (2016).

12-5-322. Definitions.

As used in this part, the term:

(1) "Activity" or "activities" means an action or actions which will have reasonably foreseeable effects upon land use, water use, or natural resources of the coastal area.

(2) "Board" means the Board of Natural Resources.

(3) "Certification of consistency" means a certification made by a person in connection with an application for a federally administered permit to conduct an activity or activities as defined in this Code section. Such certification of consistency shall be based on determination of the activity's compliance with the policies of the Georgia coastal management program. Only those activities requiring a federally administered permit will require such certification of consistency.

(4) "Coastal area" or "coastal zone" means all tidally influenced waters and submerged land seaward to the state's jurisdictional limits and all lands, submerged lands, waters, and other resources within the Counties of Brantley, Bryan, Camden, Charlton, Chatham, Effingham, Glynn, Long, Liberty, McIntosh, and Wayne.

(5) "Department" means the Department of Natural Resources.

(6) "Determination of consistency" means a determination made by a federal agency proposing an activity or activities as defined in this Code section. Such determination of consistency shall be based on a determination of the activity's effects upon the coastal area. Only those activities proposed to be undertaken by a federal agency will be subject to a determination of consistency.

(7) "Federal agency" means the United States government and all its departments, boards, bureaus, commissions, and wholly owned corporations owned by the federal government.

(8) "Federally administered permit" means only those permits, licenses, or approvals required by federal law or regulation and issued by an agency of the federal government.

(9) "Georgia coastal management program" means a compilation of policies to guide the public and private uses of land and waters within the coastal area administered by the department in consultation with the state agencies and local governments of the coastal area and approved by the secretary of commerce in accordance with the

requirements of the federal Coastal Zone Management Act of 1972, as amended, 16 U.S.C. Sections 1451 and following.

(10) "Local government" means a county, as defined by Code Section 36-1-1, or an incorporated municipality, as defined by Code Section 36-40-21, or any combination thereof, which has been authorized by an Act of the General Assembly, any of which has within its jurisdiction any coastal area.

(11) "Person" means any individual, partnership, corporation, municipal corporation, local government, association, state agency, or public or private authority.

(12) "Policy" or "policies" of the Georgia coastal management program means the enforceable provisions of present or future applicable statutes of this state or regulations duly promulgated thereunder.

(13) "State agency" means this state and all its departments, boards, authorities, bureaus, and commissions.

(14) "State permit" means all those permits, licenses, or approvals, whether required by a federal or state law, which are administered by a state agency.

(15) "Submerged land" means all lands lying or being under tidally influenced waters of the state.

(16) "Tidally influenced waters" means any water where the tide ebbs and floods on a daily basis.

History. — Code 1981, § 12-5-322, enacted by Ga. L. 1997, p. 1037, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, "Counties" was substituted for "counties" in paragraph (4), and "secretary of commerce" was substituted for "Secretary of Commerce" in paragraph (9).

12-5-323. Powers and duties of department.

The department shall have the following authority, which shall not be delegated to any other state agency:

(1) To prepare and administer a Georgia coastal management program and to monitor and inform appropriate local, state, and federal agencies concerning enforcement of this part and all rules, regulations, and orders upon which the Georgia coastal management program is based;

(2) To accept, expend, grant, and administer moneys that are available from persons or federal agencies to carry out the provisions of this part;

(3) To conduct public hearings on the Georgia coastal management program or any actions taken under this part;

(4) To concur or object to a certification of consistency filed by a person only in connection with an application for a federally administered permit and to concur or object to a determination of consistency filed by a federal agency in connection with a federal activity based on the policies of the Georgia coastal management program established pursuant to this part; provided, however, that if, prior to completion of review of a federally administered permit or federal activity under this part, the department receives notice of the denial of a state permit necessary for the activity, the department shall object to all certifications of consistency or determinations of consistency relating to the proposed activity filed by such person or federal agency; provided, further, that nothing in this part shall be construed to prevent the department from withdrawing such objection; and

(5) To exercise all incidental powers necessary to carry out the purposes of this part.

History. — Code 1981, § 12-5-323, enacted by Ga. L. 1997, p. 1037, § 1.
Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, the subsection (a) designation was deleted as there was no subsection (b).

12-5-324. Power of board to promulgate rules and regulations.

The board shall have the authority to promulgate rules and regulations for the implementation of the Georgia coastal management program in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History. — Code 1981, § 12-5-324, enacted by Ga. L. 1997, p. 1037, § 1.

12-5-325. Additional duties of department.

The department shall, in addition to its other duties prescribed by law, coordinate and cooperate with other state agencies, as necessary, as provided in paragraph (1) of Code Section 12-5-323, and to make reasonable inspections within the coastal area where activities have been proposed to determine whether the proposed activities are consistent with this part and the policies of the Georgia coastal management program as provided in paragraph (4) of Code Section 12-5-323.

History. — Code 1981, § 12-5-325, enacted by Ga. L. 1997, p. 1037, § 1.
Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, "of subsection (a)" was deleted following "paragraph (1)" and following "paragraph (4)".

12-5-326. Duties of other state agencies in relation to this part.

All state agencies shall coordinate and cooperate with the department in the administration of this part. All state agencies exercising

regulatory authority or management or planning authority in the coastal area shall administer such authority in conformity with the provisions of this part and shall apply such regulatory authority in a manner consistent with the policies of the Georgia coastal management program. All state agencies and local governments exercising statutory authority in the coastal area are authorized to enter into agreements regarding implementation of the Georgia coastal management program within their legal authority.

History. — Code 1981, § 12-5-326, enacted by Ga. L. 1997, p. 1037, § 1.

12-5-327. Duty of department to prepare document for submission to Governor; duty to prepare report every three years.

(a) The department shall prepare a document reflecting the Georgia coastal management program for submission to the Governor. The Governor shall have the authority to review and approve such document. Once approved, the Governor shall have the authority to submit the document reflecting the Georgia coastal management program to the secretary of commerce for approval as outlined in the federal Coastal Zone Management Act of 1972, as amended. At any time, the Governor, with the concurrence of the General Assembly, may withdraw the state from participation in the federal Coastal Zone Management Act of 1972 if it is determined that continued participation is not in the best interest of the state.

(b) The department shall make a report every three years of its activities under this part to the Governor and General Assembly. The report shall include a summary of the effectiveness of the program, a survey of user groups, and the department's opinion of the value of Georgia's continued participation in the program. Copies of the report shall be provided to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the chairperson of the House Natural Resources and Environment Committee, the chairperson of the Senate Natural Resources and the Environment Committee, and the Board of Natural Resources.

History. — Code 1981, § 12-5-327, enacted by Ga. L. 1997, p. 1037, § 1; Ga. L. 2009, p. 303, § 13/HB 117.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, "secretary of commerce" was substituted for "Secretary of Commerce" in subsection (a) and "chairperson" was substituted for "Chairperson" in two places in subsection (b).

Editor's notes. — Ga. L. 2009, p. 303, § 20/HB 117, not codified by the General Assembly, provides that: "This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act."

12-5-328. Nothing in part to be construed as waiver of federal immunity or consent for other state to exercise jurisdiction.

Nothing contained in this part shall be construed as a consent to waiver of immunity under the Eleventh Amendment of the United States Constitution or consent for any other state to exercise regulatory jurisdiction within the boundaries of this state.

History. — Code 1981, § 12-5-328, enacted by Ga. L. 1997, p. 1037, § 1.

12-5-329. Repeal of part on July 1, 2009.

Reserved. Repealed by Ga. L. 2008, p. 117, § 2/HB 68, effective July 1, 2008.

Editor's notes. — This Code section was based on Code 1981, § 12-5-329, enacted by Ga. L. 1997, p. 1037, § 1; Ga. L. 2003, p. 260, § 1.

ARTICLE 5

RIVERS AND RIVER BASINS

Cross references. — Designation of artificial-lure streams, § 27-4-36. Waters of the state generally, T. 52.

PART 1

GENERAL PROVISIONS

RESEARCH REFERENCES

ALR. — Constitutionality of levee and flood control acts, 70 A.L.R. 1274.

Am. Jur. 2d. — 83 Am. Jur. 2d, Zoning and Planning, § 10.

C.J.S. — 65 C.J.S., Navigable Waters, § 61.

12-5-330. Resources Advisory Board, Southeast River Basins.

Reserved. Repealed by Ga. L. 2001, p. 873, § 3, effective July 1, 2001.

Editor's notes. — This Code section was based on Ga. L. 1964, p. 244; Ga. L. 1965, p. 508, § 1.

12-5-331. Duties and powers of department as to development of state's rivers.

(a) The Department of Natural Resources shall negotiate with the proper authorities of the United States from time to time concerning the development of the rivers of Georgia with particular reference to flood control. The department shall be privileged to appear before committees of Congress concerning appropriations for river development, to gather and disseminate information, and to cooperate with the federal and state authorities toward the development of Georgia's rivers.

(b) Such information pertinent to the development of Georgia's rivers as may be obtained by the Department of Natural Resources may be filed from time to time with the Department of Economic Development and, subject to approval of the Governor and the Secretary of State, with the Division of Archives and History.

History. — Ga. L. 1953, Nov.-Dec. Sess., p. 67, §§ 5, 6; Ga. L. 1989, p. 1641, § 8; Ga. L. 2002, p. 532, § 1; Ga. L. 2004, p. 690, § 10.

Cross references. — Powers and duties of department relating to projects for deepening, widening, and improving river channels for navigational and other purposes, § 52-9-1.

Editor's notes. — Ga. L. 1989, p. 1641, § 18, not codified by the General Assembly, provides: "In the event of any substantive conflict between this Act and any other Act of the 1989 General Assembly, such other Act shall control over this Act."

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, § 22.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 184.

Part 2

Georgia Scenic River System

12-5-350. Short title.

This part shall be known and may be cited as the "Georgia Scenic Rivers Act of 1969."

History. — Ga. L. 1969, p. 933, § 1.

12-5-351. Definitions.

As used in this part, the term:

(1) "Free-flowing," as applied to any river or section of a river, means existing or flowing in natural condition without impound-

ment, diversion, straightening, rip-rapping, or other modification of the waterway.

(2) "River" means a flowing body of water, or a section, portion, or tributary thereof, and includes streams, creeks, branches, and small lakes.

(3) "Scenic easement" means an interest in land which limits the use of land along the shoreline of a scenic river for the purpose of protecting the scenic, recreational, or natural characteristics of the area.

(4) "Scenic river" means certain rivers or sections of rivers of the State of Georgia which have valuable scenic, recreational, or natural characteristics which should be preserved for the benefit and enjoyment of present and future generations.

History. — Ga. L. 1969, p. 933, § 2.

12-5-352. Rivers comprising the Georgia Scenic River System.

(a) The Georgia Scenic River System shall be comprised of the following:

(1) That portion of the Jacks River contained within the Cohutta National Wilderness Area and located in Fannin and Murray counties, Georgia, which portion extends a length of approximately 16 miles;

(2) That portion of the Conasauga River located within the Cohutta National Wilderness Area and located in Fannin, Gilmer, and Murray counties, Georgia, which portion extends a length of approximately 17 miles;

(3) That portion of the Chattooga River and its West Fork which are now designated as part of the Chattooga National Wild and Scenic River and located in Rabun County, Georgia, which portion extends a length of approximately 34 miles; and

(4) That portion of Ebenezer Creek from Long Bridge on County Road S 393 to the Savannah River and located in Effingham County, Georgia, which portion extends a length of approximately seven miles.

(b) The Georgia Scenic River System shall also be comprised of any river or section of a river designated as a scenic river by Act or resolution of the General Assembly.

History. — Ga. L. 1969, p. 933, § 3; Ga. L. 1978, p. 2207, § 1; Ga. L. 1981, p. 459, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, "seven miles" was substituted for "7 miles" at the end of paragraph (a)(4).

Law reviews. — For article surveying Georgia cases dealing with environment, natural resources, and land use from June 1977 through May 1978, see 30 Mercer L. Rev. 75 (1978).

12-5-353. Duties of department as to scenic rivers.

(a) The Department of Natural Resources shall study and from time to time recommend to the Governor and General Assembly rivers or sections of rivers to be considered for designation as scenic rivers. Each recommendation shall be accompanied by a report showing the proposed area and its classification, the characteristics which qualify the river or section of river for designation as a scenic river, ownership and use of land in the area, the state agency which should administer the area, and the estimated costs of acquiring fee title and scenic easements and of administering the area as a scenic river. The department may conduct such studies in cooperation with appropriate agencies of the State of Georgia and the United States and may apply for and receive funds therefor from the Land and Water Conservation Fund and other federal sources, provided that such studies must be first approved by the person or persons appointed by the Governor to serve as a liaison with certain federal agencies under the terms of Public Law 90-542 (82 Stat. 906), approved October 2, 1968, such law having been designated the "Wild and Scenic Rivers Act."

(b) The department shall proceed to make a study of each of the following rivers and make a report of its findings and recommendations to the Governor and the General Assembly:

(1) The Suwanee River from its source in the Okefenokee Swamp to the point where it flows out of the State of Georgia; and

(2) That section of the Chattooga River within the State of Georgia.

(c) Each scenic river, together with the land lying within its authorized boundary, as established by the General Assembly, shall be classified as one of the following:

(1) **Natural river area.** This is a free-flowing river or section of river generally inaccessible except by trail, with the shoreline undeveloped and unused;

(2) **Pastoral river area.** This is a free-flowing river or section of river accessible by roads, with the shoreline mostly undeveloped and unused; or

(3) **Recreational river area.** This is a free-flowing river or section of river accessible by roads, with limited development along the shoreline.

History. — Ga. L. 1969, p. 933, § 4; Ga. L. 1972, p. 1015, § 1511.

Cross references. — Provision in deeds for easements to preserve land or water areas in natural or scenic condition, § 44-10-1 et seq.

U.S. Code. — The federal Wild and Scenic Rivers Act, as amended, referred to in this Code section, is codified at 16 U.S.C. § 1271 et seq.

RESEARCH REFERENCES

ALR. — Construction and application of Wild and Scenic Rivers Act (WSRA), 16 U.S.C.A. §§ 1271 to 1287, 71 A.L.R. Fed. 2d 373.

12-5-354. Construction, operation, or maintenance of dams, reservoirs, or other structures on scenic rivers; acquisition of land within boundaries of scenic rivers.

After designation of any river or section of a river as a scenic river by the General Assembly pursuant to Code Section 12-5-352:

(1) No dam, reservoir, or other structure impeding the natural flow of the waterway shall be constructed, operated, or maintained in such river or section of river so designated as a scenic river, unless specifically authorized by an Act of the General Assembly;

(2) The department may acquire by purchase, gift, grant, bequest, devise, lease, or otherwise fee title or any lesser interest in the land lying within the authorized boundary of such river or section of river designated as a scenic river. Any interest in land acquired by the department pursuant to this Code section shall be transferred to such governmental agency as the General Assembly may by Act direct.

History. — Ga. L. 1969, p. 933, § 5.

OPINIONS OF THE ATTORNEY GENERAL

Acquisition of title to land limited. — Ability of the council (now Department of Natural Resources) to acquire title to land is limited by: (1) area - land lying within a certain authorized boundary of the designated scenic river; and (2) time - only after the river has been designated by the General Assembly as scenic. 1970 Op. Att'y Gen. No. 70-6.

Transfer of title to acquired land required. — Department may acquire the title to land lying within the authorized boundaries of a river or section of river previously designated by the General Assembly as a scenic river, but upon acquisition, the title must be transferred to another state agency designated by the General Assembly. 1970 Op. Att'y Gen. No. 70-6.

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 184.

PART 3

DAM SAFETY

Administrative rules and regulations. — Rules for dam safety, Official Compilation of the Rules and Regulations for the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-8.

Law reviews. — For survey of Georgia cases dealing with environment, natural resources, and land use from June 1977 through May 1978, see 30 Mercer L. Rev. 75 (1978). For survey article on environment, natural resources, and land use, see 34 Mercer L. Rev. 145 (1982).

RESEARCH REFERENCES

ALR. — Applicability of rule of strict or absolute liability to overflow or escape of water caused by dam failure, 51 A.L.R.3d 965.

12-5-370. Short title.

This part shall be known and may be cited as the "Georgia Safe Dams Act of 1978."

History. — Ga. L. 1978, p. 795, § 1.

JUDICIAL DECISIONS

Directed verdict proper when issue of ownership previously decided. — Trial court properly directed a verdict against the county and in favor of the homeowners on the issue of the county's ownership interest in a dam in the homeowners' suit seeking to limit the county's ability to breach the dam; that issue was resolved in a prior administrative action and appeals from that determination in which the county was found to be an owner required to repair or breach the dam pursuant to the Georgia Safe Dams Act, O.C.G.A. § 12-5-370 et seq., and the suit did not concern whether there were additional owners of the dam. Forsyth County v. Martin, 279 Ga. 215, 610 S.E.2d 512 (2005).

Motion for directed verdict properly denied. — County's motion for a directed verdict on the county's counterclaim and cross-claim for declaratory relief against the homeowners was properly denied because the jury was not asked to decide issues of inverse condemnation, nuisance, or other claims of county liability for damages purportedly caused when the county dug a trench across a dam in response to the demand for immediate action by the Environmental Protection Division of the Georgia Natural Resources Department, pursuant to the Georgia Safe Dams Act, O.C.G.A. § 12-5-370 et seq., due to the danger the dam posed. Forsyth County v. Martin, 279 Ga. 215, 610 S.E.2d 512 (2005).

Cited in Bishop Eddie Long Ministries, Inc. v. Dillard, 272 Ga. App. 894, 613 S.E.2d 673 (2005).

12-5-371. Declaration of purpose.

It is the purpose of this part to provide for the inspection and permitting of certain dams in order to protect the health, safety, and welfare of all the citizens of the state by reducing the risk of failure of such dams. The General Assembly finds and declares that the inspection and permitting of certain dams is properly a matter for regulation under the police powers of the state.

History. — Ga. L. 1978, p. 795, § 2.

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Inspection Laws, § 1 et seq. 51 Am. Jur. 2d, Licenses and Permits, §§ 6 et seq., 30.

C.J.S. — 53 C.J.S., Licenses, § 7. 93 C.J.S., Waters, §§ 319, 320.

12-5-372. Definitions.

As used in this part, the term:

(1) "Board" means the Board of Natural Resources.

(2) "Commission" means the State Soil and Water Conservation Commission.

(3) "Construct" or "construction" means the building of any artificial barrier, together with appurtenant works, for the impoundment or diversion of water or liquid substances and shall include any activity which, other than routinely as part of an approved maintenance program, repairs or restores such artificial barrier, or alters its design, shape, or structural characteristics, and shall also include any enlargement of such artificial barrier.

(4)(A) Except as otherwise provided in subparagraph (B) of this paragraph, "dam" means any artificial barrier, including appurtenant works, which impounds or diverts water and which:

(i) Is 25 feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier, or from the lowest elevation of the outside limit of the barrier, if the barrier is not across a stream channel or watercourse, to the maximum water storage elevation; or

(ii) Has an impounding capacity at maximum water storage elevation of 100 acre-feet or more.

(B) The word "dam" shall not include:

(i) Any dam owned and operated by any department or agency of the United States government;

(ii) Any dam constructed or financially assisted by the United States Soil Conservation Service or any other department or agency of the United States government when such department or agency designed or approved plans and supervised construction and maintains a regular program of inspection of the dam; provided, however, that this exemption shall cease on November 1, 2000, only if funds are specifically appropriated on or before November 1, 1995, for purposes of inspection, reconstruction, and financial assistance with respect to such dams in an appropriations Act making specific reference to this division; otherwise this exemption shall cease on November 1, 1995, for all such dams over which the supervising federal agency has relinquished authority for the operation and maintenance of such a dam to a person unless the supervising federal agency certifies by said date and at least biannually thereafter to the director that such dams are in compliance with requirements of this part, including minimum spillway design, and with the maintenance standards of the supervising federal agency;

(iii) Any dam licensed by the Federal Energy Regulatory Commission, or for which a license application is pending with the Federal Energy Regulatory Commission;

(iv) Any dam classified by the director as a category II dam pursuant to Code Section 12-5-375, except that such category II dams shall be subject to the provisions of this part for the purposes of said Code Section 12-5-375 and for the purposes of subsection (b) of Code Section 12-5-376; or

(v) Any artificial barrier which is not in excess of six feet in height regardless of storage capacity, or which has a storage capacity at maximum water storage elevation not in excess of 15 acre-feet regardless of height.

(5) "Director" means the director of the Environmental Protection Division of the Department of Natural Resources, or his designee.

(6) "Division" means the Environmental Protection Division of the Department of Natural Resources.

(7) "Enlargement" means any change in or addition to an existing dam or impoundment, which change or addition raises or may raise the water storage elevation of the water impounded by the dam or reservoir.

(8) "Impoundment" means the water or liquid substance that is or will be stored by a dam and which may be commonly referred to as the reservoir.

(9) "Local unit of government" means a municipal corporation or county, or any legal consolidation thereof.

(10) "Operate" or "operation" means the impoundment or diversion of water or liquid substance by a dam.

(11) "Person" means any municipal corporation or county, or legal consolidation thereof; individual; partnership; corporation; or public or private authority and shall include the State of Georgia and all its departments, boards, bureaus, commissions, authorities, and any other agencies or instrumentalities.

History. — Ga. L. 1978, p. 795, § 3; Ga. L. 1982, p. 2339, §§ 1, 8; Ga. L. 1983, p. 3, § 9; Ga. L. 1984, p. 454, § 1; Ga. L. 1986, p. 196, § 1; Ga. L. 1988, p. 269, § 20; Ga. L. 1990, p. 326, § 1; Ga. L. 1995, p. 987, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, "all such dams over which the supervising federal agency has" was deleted following "November 1, 1995," in division (4)(B)(ii). The deleted language was included twice in the Act, as enacted.

12-5-373. Powers and duties of director generally.

In addition to any other powers and duties provided for in this part, the director shall have and may exercise the following powers and duties:

(1) To exercise general supervision over the administration and enforcement of this part and all rules and regulations and orders promulgated hereunder;

(2) To require progress reports from the supervising engineer of a dam construction project, as deemed necessary;

(3) To supervise investigations necessary to carry out the duties prescribed in this part;

(4) To advise, consult, cooperate, contract, and enter into cooperative agreements with private persons, local units of government, and other governmental agencies or committees, including, but not limited to, the Department of Transportation, the State Soil and Water Conservation Commission, and the United States Army Corps of Engineers for the purposes of carrying out this part;

(5) To take such other actions as may be necessary to carry out this part.

History. — Ga. L. 1978, p. 795, § 13; Ga. L. 1984, p. 454, § 2; Ga. L. 1988, p. 269, § 21.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 107. 63C Am. Jur. 2d, Public Officers and Employees, §§ 236, 251.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 184.

12-5-374. Powers and duties of board as to dams and artificial barriers.

In the performance of its duties, the board shall:

(1) Establish by rule or regulation such policies, requirements, or standards governing the construction, operation, and maintenance of dams or artificial barriers permitted or required to be permitted under this part, including, but not limited to, the following:

(A) Requiring that the engineer who provides engineering design services for a dam constructed after July 1, 1978, certify to the director that he is registered by the State of Georgia and that he has the necessary training and experience to design such dam, and requiring that the engineer attach such certification to the application for permit;

(B) Requiring that, if the engineer determines that a geological investigation of the dam site is advisable, such investigation shall be conducted by a professional geologist registered to practice in the State of Georgia;

(C) Requiring that the engineer who undertakes the design of a dam constructed after July 1, 1978, submit to the director all documentation of the analysis and calculations for such design and the as-built drawings for such dam;

(D) Requiring that an approved plan for inspection and maintenance be put into effect by the owner or operator for any permitted dam;

(E) Requiring that the owner of a dam immediately notify the division of the occurrence of symptoms of failure, including, but not limited to, erosion, surface cracks, seepage, settlement, or movement;

(F) Requiring that prior to construction of a dam the owner shall provide the board of commissioners or other governing authority of the county in which the dam is to be constructed with the name and address of the person owning such dam and the person having direct responsibility for the operation of such dam. In addition, the owner shall have recorded on the official land plat for the county the location of such dam;

(2) Establish by rule or regulation such criteria to be included in dam construction and operation application forms;

(3) Establish by rule or regulation such standards necessary to govern the inspection of permitted dams; and

(4) Adopt, modify, repeal, and promulgate such other rules and regulations relating to dam safety as are necessary and proper to carry out the purposes of this part, including Code Section 12-5-375.

History. — Ga. L. 1978, p. 795, § 12; Ga. L. 1982, p. 2339, §§ 6, 9; Ga. L. 1984, p. 454, § 3.

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 207, 212 et seq.

12-5-375. Inventory and classification of dams; investigations; technical assistance to local government; artificial barriers; notice requirements; provision of information regarding dams to clerks of superior courts.

(a) It shall be the duty of the director to inventory the dams in this state and to classify each dam into one of the following categories:

(1) Category I — Dams where improper operation or dam failure would result in probable loss of human life. Situations constituting "probable loss of human life" are those situations involving frequently occupied structures or facilities, including, but not limited to, residences, commercial and manufacturing facilities, schools, and churches.

(2) Category II — Dams where improper operation or dam failure would not be expected to result in probable loss of human life.

(b) The first inventory shall be completed by July 1, 1983. The director shall reinventory the dams in this state at least once every five years after the completion of the first inventory. The director is authorized to contract with other state or federal agencies or private entities to accomplish the purposes of this Code section.

(c) The director is authorized to use information furnished to the director by the United States Army Corps of Engineers to accomplish the purposes of this Code section, including, but not limited to, the classification of dams as set forth in subsection (a) of this Code section.

(d) The director shall have the right to direct and conduct investigations as the director may reasonably deem necessary to carry out the director's duties as prescribed in this Code section. For this purpose, the employees of the division or any authorized representatives shall have the right to enter at reasonable times on any property, public or private, for the purpose of inventorying, classifying, and investigating any dam and to require written reports from the owner or operator of any dam

for the purpose of accomplishing its duties under this Code section. It is specifically provided, however, that if the owner of the dam is a resident of the county wherein the dam is located, the director shall notify the owner before the division employees or representatives shall enter the property of the dam for the purposes of this Code section.

(e) Upon request of the governing authority of a local unit of government, the director is authorized in the director's discretion to provide technical assistance to such local unit of government relative to those dams within its jurisdiction for which a permit is not required by this part. Such assistance may include, but shall not necessarily be limited to, the inventorying of dams of any size or holding capacity for which a permit is not required by this part, visual inspections, written reports on any structural inadequacies discovered during such inspections, written descriptions of the potential dam failure flood plain, technical advice on procedures to correct such structural inadequacies, and assistance in the development of model dam safety ordinances.

(f) Any person who desires to construct an artificial barrier for the purpose of impounding or diverting water may request of the director, and the director is authorized to furnish such person with, a determination as to whether such artificial barrier, if constructed, would be a category I or category II dam for the purposes of this part.

(g) Before a permit to construct a structure or facility is issued by the governing authority of a local unit of government which would result in changing a category II dam to a category I dam, the local unit of government shall notify the owner of said dam by certified mail or statutory overnight delivery of the proposed permit. The owner of the dam may within ten days of the notice request the director to inspect said dam and determine whether or not said dam is in compliance. If the director determines the dam is not in compliance with category I, both the owner and the local unit of government shall be notified in writing.

(h) Not later than December 31, 2005, and annually thereafter, the director shall provide the clerk of the superior court of each county with information relating to each category I and category II dam in the county. Such information shall include, without limitation, the exact location of the dam and the name and address of the owner of the dam. The clerk shall maintain the information in an easily accessible location near the county's land records for information purposes only.

History. — Ga. L. 1978, p. 795, § 6; Ga. L. 1982, p. 2339, §§ 2-4, 10-12; Ga. L. 1983, p. 3, § 9; Ga. L. 1984, p. 454, § 4; Ga. L. 1990, p. 326, § 2; Ga. L. 2000, p. 1589, § 3; Ga. L. 2005, p. 57, § 1/HB 496.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "or" was substituted for "of" preceding "facility" near the beginning of subsection (g).

Pursuant to Code Section 28-9-5, in 1991, "category" was substituted for "Category" in three places in subsection (g).

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provided that the 2000 amendment was applicable with respect to notices delivered on or after July 1, 2000.

Law reviews. — For survey article on environment, natural resources, and land use, see 34 Mercer L. Rev. 145 (1982).

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 184, 190, 207, 212 et seq.

12-5-376. Permits to construct and operate dams.

(a) Any person who desires to construct a dam but has not commenced such construction as of July 1, 1978, shall obtain a permit from the director to construct a dam prior to commencement of construction. Any person who is operating a dam or who is in the physical process of constructing a dam as of July 1, 1978, shall obtain a permit from the director for such operation or construction, provided that the person may continue to operate or construct such dam pending final action by the director on the application for a permit; provided, further, that such application has been filed with the director within 180 days after the director serves upon the person a written notice that such dam has been classified as a category I dam in accordance with Code Section 12-5-375. Service of notice upon the person shall be made by delivering the notice to the person or by mailing it to the person by certified mail or statutory overnight delivery at the person's home or business address. Service by mail is complete upon mailing unless the notice is returned to the director by the U.S. Postal Service for any reason other than a refusal by the person to accept the mailing. Permits issued for the construction of dams pursuant to this part shall also authorize the operation of such dams in accordance with the conditions contained in such permits.

(b) If the director reclassifies a dam formerly classified as a category II dam as a category I dam because of modification in the dam or because of changing circumstances, the director shall serve upon the owner or operator of the dam a written notice of the director's determination regarding the dam. Within 180 days after such service of notice, the owner or operator shall apply to the director for a permit to operate the dam. Notice shall be served in accordance with subsection (a) of this Code section. Such owner or operator may continue to operate the dam pending final action by the director on the application for a permit. A permit to operate such dam shall be issued in accordance with the requirements of subsection (g) of this Code section, notwithstanding the date specified in said subsection (g).

(c) Notwithstanding subsection (a) of this Code section, no permit shall be required to be obtained by any person who constructs a dam, if

the dam is constructed in connection with or incidental to "surface mining" as defined in Part 3 of Article 2 of Chapter 4 of this title, but if the dam so constructed is classified by the director as a category I dam, the owner or operator shall, upon the completion of the mining activity in connection with which such dam was constructed, either drain and reclaim the impoundment formed by such dam pursuant to such person's mining land use plan approved by the director under Part 3 of Article 2 of Chapter 4 of this title, the "Georgia Surface Mining Act of 1968," or stabilize such impoundment as a lake pursuant to such mining land use plan. If the impoundment is reclaimed as a lake and the dam which created the impoundment remains in place as a category I dam, then, before such lake is deemed acceptable reclamation and the miner is released from his obligations under Part 3 of Article 2 of Chapter 4 of this title the miner must obtain a permit for such dam as provided by this part.

(d) Consistent with the provisions of Code Section 12-5-376.1, the director is authorized to establish such conditions in permits issued pursuant to this part as are necessary to assure compliance with this part and all rules and regulations promulgated under this part. The director, under the conditions he prescribes, may require the submission of such plans, specifications, and other information as he deems relevant in connection with the issuance of such permits and subsequent construction and operation of such dams.

(e) Permit applications for the construction of dams shall be accompanied by a certificate from a professional engineer registered to practice in Georgia stating that he is responsible for the design of the dam and that the design meets the standards of this part and the rules and regulations promulgated under this part. As an alternative to a certificate from a professional engineer, the director may accept a permit application accompanied by a certificate from the United States Soil Conservation Service stating that the design of the dam meets the standards of this part and the rules and regulations promulgated under this part.

(f) If the director disapproves an application for construction of a dam, a copy of the application shall be returned to the applicant with a statement of the reasons for such disapproval. Such applicant may reapply incorporating the improvements indicated by the director.

(g) Permits authorizing the operation of dams in existence or being physically constructed as of July 1, 1978, shall be issued only when one of the following conditions precedent is met:

(1) Approval by the director of the applicant's submission of a detailed engineering study of the dam, prepared by a professional engineer registered by the State of Georgia or prepared by the United States Soil Conservation Service;

(2) Approval by the director of a written report prepared by the division or other authorized agency under contract with the director entered into upon behalf of the division after a visual inspection has been performed by such agency under the supervision of a professional engineer registered by the State of Georgia; or

(3) Approval by the director of the applicant's submission of a written report prepared by a professional engineer registered by the State of Georgia after a visual inspection has been performed under the supervision of such engineer.

(h) Subsection (g) of this Code section shall not be construed as exempting any existing dam from compliance with the design standards established pursuant to this part and the rules and regulations promulgated under this part prior to the issuance of a permit authorizing the operation of such dam. Further, in the event a visual inspection provided for in paragraph (2) or paragraph (3) of subsection (g) of this Code section reveals that distress of the dam is indicated by various conditions including, but not limited to, lack of adequate maintenance, seepage, surface cracks, settlement, movement, or erosion, or when such inspection indicates that the dam was not designed or constructed in accordance with the requirements of this part and the rules and regulations promulgated under this part, a permit may be issued only after the director has received a detailed engineering study as provided for in paragraph (1) of subsection (g) of this Code section. Based upon a review of such study, the director shall deny the permit or issue it subject to conditions necessary to bring the dam into compliance with this part and the rules and regulations promulgated under this part.

(i) The visual inspection performed pursuant to paragraph (2) of subsection (g) of this Code section shall be made by the division or under the provisions of a contract between the director entered into upon behalf of the division and the United States Army Corps of Engineers, the United States Soil Conservation Service, the Georgia Department of Transportation, or some other governmental agency.

(j) The director may revoke, suspend, or modify any permit issued pursuant to this part or deny the issuance of a permit for cause, including, but not limited to, the following:

(1) Violation of any condition of the permit;

(2) Obtaining a permit by misrepresentation or by failure to disclose fully all relevant facts;

(3) Violation of any provision of this part or any rule or regulation promulgated under this part;

(4) Failure to comply with dam safety standards provided for in this part or any rules and regulations promulgated under this part;

(5) Change in any condition that requires revocation, suspension, or modification of a permit in order to ensure compliance with this part or any rules and regulations promulgated under this part.

(k) Earthen embankments serving as dams shall be protected from surface erosion by appropriate vegetation or some other type protective surface such as riprap or paving and shall be maintained in a safe condition. Examples of appropriate vegetation include, but are not limited to, Bermuda grass, Tall Fescue, and Lespedeza sericea. Inappropriate vegetation such as trees shall be removed from dams only after consultation with the division on the proper procedures for removal. Hedges and small shrubs may be allowed if they do not obscure inspection or interfere with the operation and maintenance of the dam.

History. — Ga. L. 1978, p. 795, § 7; Ga. L. 1982, p. 2339, §§ 5, 13; Ga. L. 1983, p. 3, § 9; Ga. L. 1984, p. 454, §§ 5, 6; Ga. L. 1992, p. 1098, § 6; Ga. L. 1996, p. 6, § 12; Ga. L. 2000, p. 1589, § 3.

Editor's notes. — Ga. L. 2000, p. 1589, § 16, not codified by the General Assembly, provided that the 2000 amendment was applicable with respect to notices delivered on or after July 1, 2000.

JUDICIAL DECISIONS

Condemnation action. — O.C.G.A. § 12-5-376(a) provides only that a permit must be obtained prior to the commencement of construction of a dam. Ware v. Henry County Water & Sewerage Auth., 258 Ga. App. 778, 575 S.E.2d 654 (2002).

OPINIONS OF THE ATTORNEY GENERAL

Scope of exemption under subsection (c). — Under subsection (c) of O.C.G.A. § 12-5-376, impoundments constructed in connection with surface mining activities are exempt from subsections (a) and (b) only so long as the impoundment is used in connection with mining activities. 1981 Op. Att'y Gen. No. 81-3.

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, §§ 35, 42, 50 et seq.

C.J.S. — 53 C.J.S., Licenses, §§ 59, 60.

12-5-376.1. Subclassification of category I dams by director; minimum spillway design requirements.

(a) For the purposes of this Code section:

(1) "Acre-feet" means the measurement of the impounding capacity of a dam as described in paragraph (4) of Code Section 12-5-372.

(2) "Height" means the height of a dam determined in the manner described in paragraph (4) of Code Section 12-5-372.

(3) "PMP" means probable maximum precipitation as determined by the United States Weather Service to be the greatest amount of

rainfall of a six-hour duration which would be expected for a given location.

(b) All category I dams identified by the commission pursuant to Code Section 12-5-375 shall be subclassified by the director as follows:

(1) Small dams — Those with a storage capacity not exceeding 500 acre-feet and a height not exceeding 25 feet.

(2) Medium dams — Those with a storage capacity exceeding 500 acre-feet but not exceeding 1,000 acre-feet or a height exceeding 25 feet but not exceeding 35 feet.

(3) Large dams — Those with a storage capacity exceeding 1,000 acre-feet but not exceeding 50,000 acre-feet or a height exceeding 35 feet but not exceeding 100 feet.

(4) Very large dams — Those with a storage capacity exceeding 50,000 acre-feet or a height exceeding 100 feet.

(c) Permits issued pursuant to this part shall require minimum spillway design as follows:

(1) Small dams ..... 25 percent PMP

(2) Medium dams ..... 33.3 percent PMP

(3) Large dams ..... 50 percent PMP

(4) Very large dams ..... 100 percent PMP

Based on visual inspection and detailed hydrologic and hydraulic evaluation, including documentation of competent original design and construction procedures, up to a 10 percent lower requirement (22.5, 30, 45, 90) can be accepted, at the discretion of the director, provided the project is in an acceptable state of maintenance. The design storm may also be reduced if the applicant's engineer can successfully demonstrate to the director by engineering analysis that the dam is sufficient to protect against probable loss of human life downstream at a lesser design storm.

History. — Ga. L. 1982, p. 2339, § 7; Code 1981, § 12-5-376.1, enacted by Ga. L. 1982, p. 2339, § 14; Ga. L. 1983, p. 3, § 9; Ga. L. 1984, p. 22, § 12; Ga. L. 1984, p. 454, § 7; Ga. L. 1985, p. 149, § 12; Ga. L. 1988, p. 269, § 22.

Law reviews. — For survey article on environment, natural resources, and land use, see 34 Mercer L. Rev. 145 (1982).

12-5-377. Dam removal.

(a) It shall be unlawful for the owner or operator of any dam for which a permit is required by this part to remove the dam without the approval of the director.

(b) Prior to the commencement of removing any such dam, such owner or operator shall apply to the director on forms supplied by the division for permission to remove the dam.

(c) Within 60 days after the receipt of a completed application for removal, the director shall approve, or approve subject to appropriate conditions, the applicant's request for removal.

(d) Upon receipt of approval for removal, the removal shall be commenced as soon as practicable; and the impoundment shall be drained and the structure permanently breached.

(e) Nothing in this part shall be construed to prevent the owner or operator of any impoundment from draining such impoundment without authorization from the director.

History. — Ga. L. 1978, p. 795, § 8.

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Waters, § 270.

12-5-378. Inspection of dams and other barriers; administrative orders to enforce compliance; emergency action by director.

(a) The director or any authorized agency with which the director has entered into a contract on behalf of the division is authorized to make a visual inspection of any dam or other artificial barrier for which a permit is or may be required by this part and to enter on any property, public or private, at reasonable times without notice for the purpose of accomplishing such inspection. After any such visual inspection, and upon a finding by the director that a dam is not in compliance with any provision of this part or any rule or regulation promulgated hereunder, the director may issue an administrative order to the owner of such dam requiring such owner to undertake, at the owner's expense, such maintenance, alterations, repairs, reconstruction, change in construction or location, or removal as may be deemed necessary by the director, or the draining or lowering of the water level of the dam, within the time period specified in such administrative order.

(b) Based upon a visual inspection of a dam, if the director determines that the dam is not in compliance with this part or any rule and regulation promulgated hereunder, and there is not sufficient time to issue an administrative order, the director may immediately take such measures as may be necessary to provide emergency protection to life or property, including lowering the reservoir level or destroying in whole or in part the barrier and impoundment. The costs of such emergency

measures may be recovered by the state in an action brought in the superior court of the county in which the dam is located or the county of residence of the dam owner.

History. — Ga. L. 1978, p. 795, § 9.

RESEARCH REFERENCES

Am. Jur. 2d. — 16A Am. Jur. 2d, Constitutional Law, §§ 338, 383 et seq. 42 Am. Jur. 2d, Inspection Laws, §§ 1, 2.

12-5-379. Investigations; right of access by division; right to require statements and reports regarding construction and operation of dams; refusal of access or interference.

(a) The division shall have the right to direct and conduct such investigations as it may reasonably deem necessary to carry out its duties as prescribed in this part. For this purpose, the employees of the division or any authorized representatives shall have the right to enter at reasonable times on any property, public or private, for the purpose of investigating the condition, construction, or operation of any dam or other artificial barrier dealt with in this part. Such employees or representatives shall also have the right to require written statements or the filing of reports with respect to pertinent questions relating to the construction or operation of any dam; provided, however, that no person shall be required to disclose any secret formula, processes, or methods used in any manufacturing operation or any confidential information concerning business activities carried on by him or under his supervision.

(b) It shall be unlawful for any person to refuse entry or access to any authorized representative of the division who requests entry for purposes of inspection and who presents appropriate credentials. It shall also be unlawful to obstruct, hamper, or interfere with any such representative while in the process of carrying out his official duties.

History. — Ga. L. 1978, p. 795, § 10.

OPINIONS OF THE ATTORNEY GENERAL

Requirement of liability waivers restricts state's police power. — Requiring the division personnel to sign waivers of liability for injuries to person or property sustained while on premises for the purpose of carrying out their duties of inspection constitutes an unreasonable restriction on the state's police power. 1976 Op. Att'y Gen. No. 76-121.

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Inspection Laws, §§ 1, 2.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 190.

12-5-380. Administrative and judicial review.

Any person who is aggrieved or adversely affected by an order or action of the director shall be entitled to administrative and judicial review in accordance with subsection (c) of Code Section 12-2-2.

History. — Ga. L. 1978, p. 795, § 11; Ga. L. 1980, p. 922, § 1; Ga. L. 1984, p. 454, § 8.

Law reviews. — For survey article on environment, natural resources, and land use, see 34 Mercer L. Rev. 145 (1982).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 349, 385.

C.J.S. — 73A C.J.S., Public Administrative Law and Procedure, § 366.

12-5-380.1. Orders of director or administrative law judge filed in superior court; effect of filing.

The division may file in the superior court in the county in which the person under order resides or in the county in which the violation occurred or, if the person is a corporation, in the county in which the corporation maintains its principal place of business a certified copy of a final order of the director or the administrative law judge unappealed from, or a final order of the administrative law judge affirmed upon appeal, whereupon the court shall render judgment in accordance therewith and notify the parties. The judgment shall have the same effect as though the judgment had been rendered in an action duly heard and determined by the court.

History. — Code 1981, § 12-5-380.1, enacted by Ga. L. 1992, p. 1314, § 1.

12-5-381. Injunctive relief.

Whenever in the judgment of the director any person has engaged in or is about to engage in any act or practice which constitutes or will constitute an unlawful action under this part, he may make application to the superior court of the county in which the unlawful act or practice has been or is about to be engaged in, or in which jurisdiction is appropriate, for an order enjoining such act or practice, or for an order requiring compliance with this part. Upon a showing by the director that such person has engaged in or is about to engage in any such act or practice, a permanent or temporary injunction, restraining order, or

other order shall be granted without the necessity of showing lack of an adequate remedy at law.

History. — Ga. L. 1978, p. 795, § 15.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 353, 354.
C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 226. 73A C.J.S., Public Administrative Law and Procedure, §§ 575, 577.

12-5-382. Power of commissioner of transportation as to contracts relating to part.

The commissioner of transportation is authorized to enter into contracts on behalf of the Department of Transportation with the division for the purpose of carrying out this part.

History. — Ga. L. 1978, p. 795, § 16; Ga. L. 1984, p. 454, § 9.
Cross references. — State transportation commissioner, Ga. Const. 1983, Art. IV, Sec. IV, Para. I. Commissioner of transportation generally, T. 32.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 236, 251.
C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 184.

12-5-383. Liability for damages.

(a) Nothing in this part shall be construed to constitute a waiver of the sovereign immunity of the state, the board, or the division. No action shall be brought against the state, the board, the division, or any member, officer, or employee of the state, the board, or the division for damages sustained through the partial or total failure of any dam or other artificial barrier dealt with in this part or its maintenance by reason of any supervision or other action taken or not taken pursuant to or under this part, including specifically, but not limited to, any action taken or not taken by the board or its members, the director, the division, its officers or employees, or its representatives pursuant to Code Section 12-5-375. Nothing in this part and no order, action, or advice of the director or the division or any representative thereof shall be construed to relieve a dam owner or operator of the legal duties, obligations, or liabilities incident to the ownership or operation of the dam.

(b) Nothing in this part shall be construed to constitute a waiver of the sovereign immunity of the commission. No action shall be brought against the state, the commission, or any employee of the state or the commission for damages sustained through the partial or total failure

of any dam or other artificial barrier dealt with in this part or its maintenance by reason of any supervision or other action taken or not taken pursuant to former Code Section 12-5-375.

History. — Ga. L. 1978, p. 795, § 4; Ga. L. 1984, p. 454, § 10; Ga. L. 1988, p. 269, § 23.

Cross references. — Liability of persons constructing dams for damages resulting from manner of construction or operation of dam, § 44-8-4.

RESEARCH REFERENCES

Am. Jur. 2d. — 72 Am. Jur. 2d, States, Territories, and Dependencies, §§ 101, 102, 107, 111, 121, 128, 129.

C.J.S. — 81A C.J.S., States, §§ 541 et seq., 560, 562, 565, 567.

ALR. — Applicability of rule of strict or absolute liability to overflow or escape of water caused by dam failure, 51 A.L.R.3d 965.

12-5-384. Conformance to and compliance with part required.

It shall be unlawful for any person to own, construct, operate, or remove a dam or other artificial barrier dealt with in this part, except in such a manner as to conform to and comply with this part and with all rules, regulations, orders, and permits established under this part.

History. — Ga. L. 1978, p. 795, § 5.

12-5-385. Criminal and civil penalties.

(a) Any person who engages in any action made unlawful by this part shall be guilty of a misdemeanor. Each day of continued violation after conviction shall constitute a separate offense.

(b) As an alternative to criminal enforcement pursuant to subsection (a) of this Code section, the director may impose civil penalties in accordance with the following provisions:

(1) Any person violating any provision of this part or any permit condition or limitation established pursuant to this part or negligently or willfully failing or refusing to comply with any final order of the director issued as provided in this part shall be liable for a civil penalty not to exceed $1,000.00 for such violation and an additional civil penalty not to exceed $500.00 for each day during which the violation continues;

(2) Whenever the director has reason to believe that any person has violated any provision of this part or any permit condition or limitation established pursuant to this part or has negligently or willfully failed or refused to comply with any final order of the director, he may, upon written request, cause a hearing to be conducted before a hearing officer appointed by the board. Upon a

finding that such person has violated any provision of this part or any permit condition or limitation established pursuant to this part or has negligently or willfully failed or refused to comply with a final order of the director, the hearing officer shall issue his initial decision imposing such civil penalties as are provided in paragraph (1) of this subsection. Such hearing and any administrative or judicial review thereof shall be conducted in accordance with subsection (c) of Code Section 12-2-2.

History. — Ga. L. 1978, p. 795, § 14.

RESEARCH REFERENCES

Am. Jur. 2d. — 21 Am. Jur. 2d, Criminal Law, § 721. 21A Am. Jur. 2d, Criminal Law, § 844. 73 Am. Jur. 2d, Statutes, § 186.

C.J.S. — 36A C.J.S., Fines, §§ 1, 2, 3, 8, 9. 73 C.J.S., Public Administrative Law and Procedure, § 226.

ALR. — Recovery of cumulative statutory penalties, 71 A.L.R.2d 986.

Part 4

Development of Chattahoochee River Basin

Cross references. — Historic Chattahoochee Compact, § 12-10-80 et seq.

Administrative rules and regulations. — Chattahoochee Basin Downstream Assistance (CBDA) Grant Program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Grant Programs, Sec. 391-3-21-06.

12-5-400. Short title.

This part shall be known and may be cited as the "Chattahoochee River Basin Act."

History. — Ga. L. 1967, p. 805, § 1.

12-5-401. Purpose.

It shall be the purpose of the Department of Natural Resources under this part to encourage and promote the expansion and development of the full economic, industrial, and recreational potential of the Chattahoochee River and its tributaries. By way of illustration and not of limitation, the department shall encourage and promote the development of navigation to Atlanta, trade and other commercial facilities, flood control, water supply, pollution abatement, hydroelectric power generation, recreation, protection and propagation of fish and wildlife, and the proper flow of dam-controlled water discharges.

History. — Ga. L. 1967, p. 805, § 3.

12-5-402. Powers and duties of department.

(a) In carrying out its purposes under this part, the department shall have the following powers:

(1) To administer all funds available to the department under this part;

(2) To accept any grant of funds made by the United States government or any agency thereof for the purpose of carrying out any of its functions under this part;

(3) To accept gifts, bequests, devises, and endowments to be used in carrying out the purposes of this part;

(4) To act either independently or jointly with any other state department or with any commission, board, or institution of the state in order to carry out its powers and duties under this part;

(5) To request from the various state departments and other agencies and authorities of the state and its political subdivisions and their agencies and authorities such available information as it may require in its work. All such agencies and authorities shall within a reasonable time furnish such requested available information to the department;

(6) To make such recommendations and reports to the Governor and to the General Assembly as it deems necessary or advisable, in addition to the annual report required as provided in subsection (b) of this Code section;

(7) To contract with political subdivisions of the State of Georgia and with private persons and corporations pursuant to its functions under this part;

(8) To do all other things necessary and proper to exercise its powers and perform its duties to effectuate the purposes of this part.

(b) The department shall have the following duties under this part:

(1) To formulate, in cooperation with other state agencies, agencies of the United States government, and interested organizations and citizens of the State of Georgia, a comprehensive program and plan for the development of the Chattahoochee River Basin;

(2) To submit an annual report of its activities under this part and recommendations to the Governor and to notify the members of the General Assembly of the availability of the annual report and recommendations in the manner which it deems to be most effective and efficient.

History. — Ga. L. 1967, p. 805, §§ 4, 6; Ga. L. 1972, p. 1015, § 1505; Ga. L. 2005, p. 1036, § 7/SB 49.

Part 5

Development of Altamaha River Basin

12-5-420. Short title.

This part shall be known and may be cited as the "Altamaha River Basin Act."

History. — Ga. L. 1970, p. 632, § 1.

12-5-421. Purpose.

It shall be the purpose of the Department of Natural Resources under this part to encourage and promote the expansion and development of the full economic, industrial, and recreational potential of the Altamaha River Basin, its tributaries, and their basins. By way of illustration and not of limitation, the department shall encourage and promote the development of navigation to Atlanta, trade and other commercial facilities, flood control, water supply, pollution abatement, hydroelectric power generation, recreation, protection and propagation of fish and wildlife, and the proper flow of dam-controlled water discharges.

History. — Ga. L. 1970, p. 632, § 3.

12-5-422. Powers and duties of department.

(a) In carrying out its purposes under this part, the department shall have the following powers:

(1) To administer all funds available to the department under this part;

(2) To accept or decline any grant of funds made by the United States government or any agency thereof for the purpose of carrying out any of its functions under this part;

(3) To accept or decline gifts, bequests, devises, and endowments to be used in carrying out the purposes of this part;

(4) To act either independently or jointly with any other state department or with any commission, board, or institution of the state in order to carry out its powers and duties under this part;

(5) To request from the various state departments, other agencies and authorities of the state and the political subdivisions of the state

and their agencies and authorities such available information as it may require in its work. All such agencies and authorities shall, where practical, within a reasonable time furnish such requested available information to the department;

(6) To make such recommendations and reports to the Governor and to the General Assembly as it deems necessary or advisable, in addition to the annual report required as provided in subsection (b) of this Code section;

(7) To contract with political subdivisions of the State of Georgia and with private persons and corporations pursuant to its functions under this part;

(8) To do all other things necessary and proper to exercise its powers and perform its duties to effectuate the purposes of this part.

(b) The department shall have the following duties under this part:

(1) To formulate, in cooperation with other state agencies, agencies of the United States government, and interested organizations and citizens of the State of Georgia, a comprehensive program and plan for the development of the Altamaha River Basin;

(2) To submit an annual report of its activities under this part and recommendations to the Governor and to notify the members of the General Assembly of the availability of the annual report and recommendations in the manner which it deems to be most effective and efficient.

History. — Ga. L. 1970, p. 632, §§ 4, 6; Ga. L. 1972, p. 1015, § 1506; Ga. L. 2005, p. 1036, § 8/SB 49.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, a semicolon was substituted for a period at the end of paragraph (a)(6).

PART 6

PROTECTION OF METROPOLITAN RIVERS

Cross references. — State-wide water management planning, T. 12, C. 5, A. 8. Metropolitan North Georgia Water Planning District, T. 12, C. 5, A. 10. Population bills, § 28-1-15.

Editor's notes. — Several of the Code sections in this part are based on Ga. L. 1973, p. 128 and Ga. L. 1975, p. 837, which Acts were not codified in the legislative edition of the O.C.G.A.

Law reviews. — For survey article on environment, natural resources, and land use, see 34 Mercer L. Rev. 145 (1982). For annual survey of law on environment, natural resources, and land use, see 35 Mercer L. Rev. 147 (1983). For article, "Hazardous Waste Issues in Real Estate Transactions," see 38 Mercer L. Rev. 581 (1987).

For a note discussing the historical aspects and current law concerning the state's ownership rights in tidelands, see 17 Ga. L. Rev. 851 (1983).

JUDICIAL DECISIONS

Constitutionality. — This part did not constitute zoning within the definition set out in Ga. Const. 1976, Art. IX, Sec. IV, Para. II (see Ga. Const. 1983, Art. IX, Sec. II, Para. IV) but instead fell within the reserved powers of the state to act, along with local governing authorities, with regard to the city water system, and was, therefore, constitutional. Pope v. City of Atlanta, 240 Ga. 177, 240 S.E.2d 241 (1977) (see O.C.G.A. T. 12, C. 5, A. 5, P. 6).

This part and the Chattahoochee Corridor Study, authorized by this part and adopted by the City of Atlanta, were found not to violate the Constitution of the State of Georgia. Pope v. City of Atlanta, 242 Ga. 331, 249 S.E.2d 16 (1978) (see O.C.G.A. T. 12, C. 5, A. 5, P. 6).

Failure to show plan covered by act. — In a drainage dispute involving neighbors, the trial court properly granted the defendants a directed verdict on the plaintiffs' claim asserting a violation of the Metropolitan River Protection Act, O.C.G.A. § 12-5-440 et seq., because the plaintiffs presented no evidence regarding whether a land and water use plan had been adopted by a regional commission covering the area of the river at issue or the requirements under such a plan. Kohler v. Van Peteghem, 330 Ga. App. 230, 767 S.E.2d 775 (2014), overruled on other grounds by Lee v. Smith, 307 Ga. 815, 838 S.E.2d 870 (2020).

12-5-440. Short title.

This part shall be known as and may be cited as the "Metropolitan River Protection Act."

History. — Ga. L. 1973, p. 128, § 1; Code 1981, § 12-5-440, enacted by Ga. L. 1982, p. 2107, § 4.

12-5-441. Definitions.

As used in this part, the term:

(1) "Applicant" means any person who requests the issuance of a certificate under this part.

(2) "Area" means a standard metropolitan statistical area recognized by the United States Department of Commerce, Bureau of the Census, and as set forth in Appendix C, *County and City Data Book 1977: A Statistical Abstract Supplement, U.S. Department of Commerce, Bureau of the Census,* which is located wholly within the State of Georgia and having a population of more than 1,000,000 according to the United States decennial census of 1970 or any future such census.

(3) "Board" means the Board of Natural Resources.

(4) Reserved.

(5) "Certificate" means a building permit or other written authorization issued under this part and shall include, as a part thereof, the application and all documents supplied in support thereof and the

approval by the governing authority together with any conditions thereto.

(5.1) "Commission" means a regional commission established pursuant to Article 2 of Chapter 8 of Title 50, including its predecessor, a "regional development center."

(6) "Director" means the director of the Environmental Protection Division of the Department of Natural Resources.

(7) "Flood plain" means that area adjacent to a major stream which is subject to being flooded with a probable frequency of at least once every 100 years. The regional commission shall delineate the flood plain and in doing so may utilize or adopt studies prepared by the Corps of Engineers, United States Army, or such other studies as the regional commission deems competent.

(8) "Governing authority" means the governing authority of a political subdivision or, except for the purposes of paragraph (2) of subsection (c) of Code Section 12-5-445, a committee of such governing authority.

(9) "Impoundment" means any body of water, formed by a dam, which is less than 25,000 acres in size.

(10) "Land-disturbing activity" means scraping, plowing, clearing, dredging, grading, excavating, transporting, or filling of land or placement of any structure or impervious surface, dam, obstruction, or deposit.

(11) "Major stream" means any stream or river, whether navigable or nonnavigable, which flows through any area and which is the source of at least 40 percent of the public water supply of any such area.

(12) "Owner" means the record title owner, according to the deed records, of the land described in an application for a certificate and may or may not be the same person as the applicant. For purposes of this part, if the owner is a corporation, notice shall be given to the legal representative as delineated by records kept in the office of the Secretary of State.

(13) "Person" means any individual, partnership, corporation, trust, entity, or authority and shall include the State of Georgia, its political subdivisions, and all its departments, boards, bureaus, commissions, or other agencies.

(14) "Plan" means the comprehensive plan or plans prepared by the regional commission pursuant to Code Section 12-5-443.

(15) "Political subdivision" means a county or a municipality in which the section of the river corridor to be affected or any part thereof is located.

(16) "Public notice" means a legal notice in a newspaper of general circulation in the political subdivision at least once a week for two consecutive weeks.

(17) "Stream corridor" means all land in the area in the watercourse, within 2,000 feet of the watercourse, or within the flood plain, whichever is greater.

(18) "Tributary" means any flowing stream which flows into the major stream at a point which is within the stream corridor.

(19) "Watercourse" means the banks of a major stream, including any impoundments thereon, in the area as defined by the low-water mark of such stream and any impoundments and including the entire bed of such stream and any impoundments and all islands therein, from the point where the stream enters the area downstream to the point where the stream leaves the area.

History. — Ga. L. 1973, p. 128, § 2; Ga. L. 1975, p. 837, §§ 1, 2; Code 1981, § 12-5-441, enacted by Ga. L. 1982, p. 2107, § 4; Ga. L. 1983, p. 3, § 9; Ga. L. 1983, p. 1059, § 1; Ga. L. 1989, p. 1317, §§ 6.4, 6.5; Ga. L. 1998, p. 1394, § 1; Ga. L. 2008, p. 181, § 9/HB 1216.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, "Article 2 of Chapter 8 of Title 50" was substituted for "this article" in paragraph (5.1).

JUDICIAL DECISIONS

Judicial review. — Superior court erred by reversing the County Zoning Board of Appeals's decision based on the superior court's assessment that the second stop work order was issued due to electrical utility work because it re-weighed the evidence and then concluded as a matter of fact that the property owner intended to have topsoil delivered to the property in order to lay grass seed to the owner's horse paddock, while discounting conflicting evidence presented by the County that the property owner was stockpiling dirt in an area covered by the provisions of the Metropolitan River Protection Act, O.C.G.A. § 12-5-440 et seq. Forsyth County v. Mommies Props. LLC Four Cases, 855 S.E.2d 126, No. A20A1813, 2021 Ga. App. LEXIS 145 (2021).

Cited in Kohler v. Van Peteghem, 330 Ga. App. 230, 767 S.E.2d 775 (2014).

12-5-442. Legislative findings and purposes.

(a) The General Assembly finds that adequate supplies of clean water for drinking and other purposes constitute the lifeblood of the great metropolitan areas of this state and are, therefore, essential to the health, welfare, and economic progress of the state; that development adjacent to major streams in certain metropolitan areas requires special regulation to provide adequate protection for public water supplies; that siltation and urban runoff threaten such water supplies; that flood plain development unnecessarily exposes life and property to loss by flooding while increasing flood risks for other areas; that

over-intensive development adjacent to major streams increases the frequency and severity of such flooding; that it is in the public interest to avoid future flood damage and possible loss of life, to control erosion and pollution, and to protect the water quality of major streams in certain metropolitan areas.

(b) The General Assembly finds that the stream corridors of major streams in certain metropolitan areas as set forth in this part are vital areas within the meaning of Article III, Section VIII, Paragraph IIIA of the Constitution of the State of Georgia of 1976 and Article III, Section VI, Paragraph II of the Constitution of the State of Georgia of 1983. The purpose of this part is to provide a method whereby political subdivisions in certain metropolitan areas shall utilize the police power of the state, in accordance with a comprehensive plan, to protect consistently the water quality of any major stream, the public water supplies of such political subdivision and of the area, recreational values of the major stream, and private property rights of landowners; to prevent activities which contribute to floods and flood damage; to control erosion, siltation, and intensity of development; to provide for the location and design of land uses in such a way as to minimize the adverse impact of development on the major stream and flood plains; and to provide for comprehensive planning for the stream corridor in such areas.

(c) The General Assembly finds that certain political subdivisions in the included area have in force certain flood plain and sediment control ordinances that afford adequate protection for the aforementioned problems. Nothing in this part shall be construed so as to make those local political subdivision ordinances less stringent than they are now.

(d) The General Assembly intends to authorize and require political subdivisions in any such area to enforce this part so as to protect the watercourse and the adjacent stream corridor. The General Assembly further intends that the state have the authority to enforce this part if the appropriate political subdivisions have failed or refused to do so and if the public interest requires it.

History. — Ga. L. 1973, p. 128, § 3; Code 1981, § 12-5-442, enacted by Ga. L. 1982, p. 2107, § 4; Ga. L. 1983, p. 1059, § 2; Ga. L. 1998, p. 1394, § 2.

12-5-443. Comprehensive land and water use plan; transmittal of plan to political subdivisions; notice and hearing; promulgation of rules and regulations; application fee.

The commission shall, consistent with the purposes of this part:

(1) Prepare, adopt, and keep up to date one or more comprehensive, coordinated land and water use plans for the stream corridor. The plan, as prepared and approved by the commission, shall set land

use criteria for flood and flood damage prevention, erosion and siltation control, water quality protection, and intensity of development in the stream corridor. In preparing, adopting, and updating the plan, the commission shall be authorized to account for the varying characteristics of different sections of the stream corridor and set land use criteria accordingly. At least eight weeks prior to adoption of a plan for all land brought within the stream corridor on or after July 1, 1998, notice that the property is subject to the "Metropolitan River Protection Act," including notice of the process of adoption of the plan to be followed by the commission, shall be provided by United States mail to each property owner within the affected portion of the stream corridor as shown by the prior year's property tax records. The failure of any owner to actually receive such notice shall not affect the applicability of the plan to such owner's property or create any cause of action for damages or equitable relief. The plan, as adopted by the commission, shall be transmitted to each political subdivision by June 16, 1973. The plan as adopted by the commission for any and all land brought within the stream corridor after March 1, 1983, shall be transmitted to each political subdivision and to the director by July 1, 1983. The plan adopted by the commission for any and all land brought within the stream corridor on or after July 1, 1998, shall be transmitted to each political subdivision and to the director by October 1, 1998. The commission may, after hearing, utilize or adopt an existing plan or plans as the plan called for by this part. The commission may from time to time revise the plan or portions thereof, and any such revisions of the plan shall be transmitted promptly after adoption. Prior to the adoption of the plan, or of any substantial portion or any revision of the plan, the commission shall hold a public hearing on the proposed plan, or portion or revision thereof, in each county in which any land affected by the plan or, in the case of a portion or revision of the plan, in which any land affected by such portion or revision lies. The commission shall cause notice of the time and place of each such public hearing to be published once a week for two weeks in one or more newspapers of general circulation in each county in which land to be affected lies. Any such land and water use plan shall be prepared in consultation and with assistance of the county or city governing authority where the land to be affected lies;

(2) Foster and undertake such studies of water and related land resources problems in the stream corridor as are necessary in the preparation or revision of the plan;

(3) Make such rules and regulations as may be necessary to implement the purposes of this part and to administer and implement this part and all rules, regulations, and orders promulgated under this part. A copy of any rules and regulations promulgated pursuant to this paragraph by a commission which is also a metro-

politan area planning and development commission created pursuant to Article 4 of Chapter 8 of Title 50 shall be provided to the Senate Natural Resources and the Environment Committee and the Georgia House of Representatives Natural Resources and Environment Committee; and

(4) Charge a reasonable fee to each applicant for review of any application for a certificate, which fee shall be sufficient to defray all or any portion of the administrative costs of review of the application by the commission and of the cost to the commission of monitoring and inspection of compliance with such certificates.

History. — Ga. L. 1973, p. 128, § 4; Ga. L. 1975, p. 837, § 3; Code 1981, § 12-5-443, enacted by Ga. L. 1982, p. 2107, § 4; Ga. L. 1983, p. 1059, § 3; Ga. L. 1986, p. 321, § 1; Ga. L. 1989, p. 1317, § 6.6; Ga. L. 1998, p. 1394, § 3; Ga. L. 2008, p. 181, § 25/HB 1216; Ga. L. 2009, p. 303, § 13/HB 117.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, "plans" was substituted for "plan" in the first sentence of paragraph (1).

Editor's notes. — Ga. L. 2009, p. 303, § 20/HB 117, not codified by the General Assembly, provides that: "This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act."

JUDICIAL DECISIONS

Constitutionality of notice provisions. — Notice provisions of O.C.G.A. § 12-5-443 do not violate due process and the Atlanta Regional Commission was not required to give personal notice to every landowner possibly affected by the commission's regulations. Threatt v. Fulton County, 266 Ga. 466, 467 S.E.2d 546 (1996).

Regulations held reasonable. — Requiring permits for grading and vegetation clearance, prohibiting cut and fill operations which alter the natural elevation, and limiting the construction of impervious structures are reasonable means of guarding against the dangers of soil erosion, sedimentation, and increased flooding. Pope v. City of Atlanta, 242 Ga. 331, 249 S.E.2d 16 (1978).

The state and the City of Atlanta engaged in valid land use regulation and did not appropriate land for public use without compensation in prohibiting construction of a tennis court within 150 feet of the Chattahoochee River. Pope v. City of Atlanta, 242 Ga. 331, 249 S.E.2d 16 (1978).

12-5-444. Prohibited land and water uses; uses prior to adoption of plan; certificate of compliance with plan; information required of applicant; changes in use; notice and hearing.

(a)(1) Pending adoption of the plan by the commission, it shall be unlawful for any person to erect, maintain, suffer, or permit any structure, dam, obstruction, deposit, clearing, or excavation in or on the stream corridor which will adversely affect the efficiency of or restrict the capacity of the watercourse or flood plain, appreciably

increase runoff or flood heights, adversely affect the control, protection, allocation, or utilization of the water and related land resources of the stream corridor, harmfully obstruct or alter the natural flow of flood waters, or harmfully increase erosion, siltation, or water pollution. In order to prevent undue hardship, the commission may, prior to the adoption of the plan by the commission, issue a letter or written statement signed by the executive director of the commission ruling with respect to any proposed land or water use in any political subdivision that none of the above-listed adverse effects will occur as a result of the proposed use. Nothing in this subsection shall apply to a political subdivision that, on June 30, 1973, has in effect a flood plain ordinance and a sediment control ordinance.

(2) Pending adoption of the plan by the commission as to any land brought within the stream corridor after March 1, 1983, it shall be unlawful for any person to engage in any land-disturbing activity in or on such land within the stream corridor which will adversely affect the efficiency of or restrict the capacity of the watercourse or flood plain, appreciably increase runoff or flood heights, adversely affect the control, protection, allocation, or utilization of the water and related land resources of the stream corridor, harmfully obstruct or alter the natural flow of flood waters, or harmfully increase erosion, siltation, or water pollution. In order to prevent undue hardship, the commission may, prior to the adoption of the plan by the commission as to any land brought within the stream corridor after March 1, 1983, issue a letter or written statement signed by the executive director of the commission, ruling with respect to any proposed land-disturbing activity in or on such land that none of the above-listed adverse effects will occur as a result of the proposed use.

(3) Pending adoption of the plan by the commission as to any land brought within the stream corridor on or after July 1, 1998, it shall be unlawful for any person to engage in any land-disturbing activity in or on such land within the stream corridor which will adversely affect the efficiency of or restrict the capacity of the watercourse or flood plain, appreciably increase runoff or flood heights, adversely affect the control, protection, allocation, or utilization of the water and related land resources of the stream corridor, harmfully obstruct or alter the natural flow of flood waters, or harmfully increase erosion, siltation, or water pollution. In order to prevent undue hardship, the commission may, prior to the adoption of the plan by the commission as to any land brought within the stream corridor on or after July 1, 1998, issue a letter or written statement signed by the executive director of the commission, ruling with respect to any proposed land-disturbing activity in or on such land that none of the above-listed adverse effects will occur as a result of the proposed use.

(b)(1) After adoption by the commission of the plan or any portion thereof or any amendment thereto, it shall be unlawful within those

areas regulated by the plan or any portion thereof or any amendment thereto for any person to engage in any land-disturbing activity in or on the stream corridor which will be incompatible or inconsistent with the plan or any portion thereof or any amendment thereto. A proposed land or water use shall be deemed to be not in compliance with the plan unless and until the governing authority of the political subdivision issues a certificate for the proposed use pursuant to Code Section 12-5-445.

(2) The governing authority shall, before referring the application to the commission pursuant to Code Section 12-5-445, require the applicant to furnish such detailed information on the proposed land or water use as the governing authority shall reasonably request and as required by the plan and rules and regulations adopted pursuant to this part.

(3) Any land-disturbing activity shall be done strictly in accordance with the certificate issued under this part. Any substantial change or modification of a proposed land-disturbing activity for which a certificate has been issued shall require a new certificate, which must be issued in accordance with the requirements of this part.

(4) The governing authority shall adopt ordinances, regulations, or procedures as necessary to assure that any land-disturbing activity is conducted in compliance with the plan and the certificate.

(c) The governing authority shall give public notice of and shall hold a public hearing before issuing or denying any certificate under this Code section. Written notice of the public hearing shall be mailed to the applicant and to the owner at least ten days prior to the hearing. The form and procedure for such hearings shall be determined by the governing authority involved, provided that all interested persons shall be afforded adequate notice of such hearings and an opportunity to be present and express their views. The information required under paragraph (2) of subsection (b) of this Code section shall be filed in final form and be available for public inspection prior to such hearing.

(d) The governing authority shall delineate and clearly label the stream corridor on the zoning map and the official map of such governing authority.

History. — Ga. L. 1973, p. 128, § 5; Ga. L. 1975, p. 837, §§ 4, 5; Code 1981, § 12-5-444, enacted by Ga. L. 1982, p. 2107, § 4; Ga. L. 1983, p. 1059, § 4; Ga. L. 1989, p. 1317, § 6.7; Ga. L. 1998, p. 1394, § 4; Ga. L. 2008, p. 181, § 25/HB 1216.

JUDICIAL DECISIONS

Failure to show plan covered by act. — In a drainage dispute involving neighbors, the trial court properly granted the defendants a directed verdict on the

plaintiffs' claim asserting a violation of the Metropolitan River Protection Act, O.C.G.A. § 12-5-440 et seq., because the plaintiffs presented no evidence regarding whether a land and water use plan had been adopted by a regional commission covering the area of the river at issue or the requirements under such a plan. Kohler v. Van Peteghem, 330 Ga. App. 230, 767 S.E.2d 775 (2014), overruled on other grounds by Lee v. Smith, 307 Ga. 815, 838 S.E.2d 870 (2020).

Cited in Pope v. City of Atlanta, 242 Ga. 331, 249 S.E.2d 16 (1978); Geron v. Calibre Cos., 250 Ga. 213, 296 S.E.2d 602 (1982).

12-5-445. Review of application and supporting documents by commission; effect of inconsistencies; alternatives where modification recommended.

(a) After receipt of a complete application for a certificate, the governing authority shall transmit to the commission a copy of such complete application and all supporting documents.

(b)(1) If, from the application or from its own investigation, the commission finds that there are inconsistencies between the plan and the land-disturbing activity proposed by the application, the commission may do any one of the following:

(A) Recommend modification of the application in such manner as to be consistent with the plan;

(B) Make a finding that the application, while not consistent with the plan in all respects, will provide a level of land and water resource protection equivalent to an application consistent with the plan; or

(C) Recommend modification of the application in such manner that the application as so modified, while not consistent with the plan in all respects, will provide a level of land and water resource protection equivalent to an application consistent with the plan.

(2) If the commission fails to recommend modification of the application within 60 days from submission of such application to the commission and if the governing authority makes a specific finding that the application is consistent with the plan or makes a specific finding that the application, while not consistent with the plan in all respects, will provide a level of land and water resource protection equivalent to an application consistent with the plan, the governing authority shall be deemed to have complied with this Code section and may issue the certificate.

(c) In any case where the commission has recommended modification of an application, the governing authority may:

(1) Adopt such recommendation, incorporate it as a condition of the certificate, and issue a certificate with such conditions, in which

case any land-disturbing activity under the certificate must be strictly in accordance with the recommendation so incorporated;

(2) After making a specific finding that the application is in compliance with the plan or a specific finding that the application, while not consistent with the plan in all respects, will provide a level of land and water resource protection equivalent to an application consistent with the plan, override such recommendation by affirmative vote of a two-thirds' majority of the full membership of the governing body; however, such action by the governing authority is not final unless and until the governing authority:

(A) Following the affirmative vote to override, holds a second public hearing on the application and the proposed override of the commission's recommendation, after giving public notice and after mailing notice to the applicant, the owner, and the commission at least ten days prior to the hearing;

(B) Gives full consideration to all comments made at the second public hearing;

(C) Obtains from the director a written finding that the application is consistent with the plan or, while not consistent with the plan in all respects, will provide a level of land and water resource protection equivalent to an application consistent with the plan; and

(D) Reaffirms the vote to override the commission's recommendation by affirmative vote of a two-thirds' majority of the full membership of the governing authority, after again making a specific finding that the application is in compliance with the plan or a specific finding that the application, while not consistent with the plan in all respects, will provide a level of land and water resource protection equivalent to an application consistent with the plan; or

(3) Request reconsideration of such recommendation by the commission at a public hearing.

If the governing authority fails to take action under either paragraph (1), (2), or (3) of this subsection within 45 days after the submission of the recommendation of the commission to the governing authority, the certificate shall not be issued. Where a public hearing is requested under this subsection, such public hearing shall be held by the commission within 30 days after receipt of such request. Notice stating the time and place of the public hearing shall be mailed at least ten days prior to the hearing to the governing authority, the applicant, and the owner and public notice shall be given. The commission shall make its final determination with respect to such recommendation within 30

days after such public hearing. The request for a public hearing under this subsection may be made by the applicant, the owner, or the governing authority involved.

(d)(1) In making the findings required by subsection (b) or by paragraph (2) of subsection (c) of this Code section, the commission, the governing authority, and the director shall follow the purposes set forth in this part and the goals set forth by the plan, as amended.

(2) Any finding by the director under paragraph (2) of subsection (c) of this Code section shall be appealable under Chapter 13 of Title 50, known as the "Georgia Administrative Procedure Act," as are final decisions in contested cases.

History. — Ga. L. 1973, p. 128, § 6; Ga. L. 1975, p. 837, § 6; Code 1981, § 12-5-445, enacted by Ga. L. 1982, p. 2107, § 4; Ga. L. 1983, p. 1059, § 5; Ga. L. 1986, p. 321, § 2; Ga. L. 1989, p. 1317, § 6.8; Ga. L. 1998, p. 1394, § 5; Ga. L. 2008, p. 181, § 25/HB 1216.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, "commission's" was substituted for "center's" in subparagraphs (c)(2)(A) and (c)(2)(D).

Law reviews. — For annual survey of administrative law, see 38 Mercer L. Rev. 17 (1986).

12-5-446. Prereview by commission of application for certificate; fee where prereview requested by applicant; effectiveness of certificate following prereview; immediate effectiveness of certificate; consultation by commission with governing authority; informal consultation with applicants.

Reserved. Repealed by Ga. L. 1983, p. 1059, § 6, effective March 29, 1983.

Editor's notes. — This Code section was based on Ga. L. 1975, p. 837, § 7 and Ga. L. 1982, p. 2107, § 4.

12-5-447. Minimum standards for certificates and recommendations.

Every certificate issued by a governing authority and every recommendation of the commission, unless the proposed use is not harmful to the water and land resources of the stream corridor, will not significantly impede the natural flow of flood waters, and will not result in significant land erosion, stream bank erosion, siltation, or water pollution, shall comply with the following minimum standards:

(1) No land or water use shall be permitted in the flood plain; and

(2) No land or water use shall be permitted within 150 horizontal feet of the watercourse.

History. — Ga. L. 1973, p. 128, § 8; Code 1981, § 12-5-447, enacted by Ga. L. 1982, p. 2107, § 4; Ga. L. 1983, p. 1059, § 7; Ga. L. 1989, p. 1317, § 6.9; Ga. L. 2008, p. 181, § 25/HB 1216.

JUDICIAL DECISIONS

Cited in Pope v. City of Atlanta, 242 Ga. 331, 249 S.E.2d 16 (1978).

12-5-448. Appeal.

Any person aggrieved by any final determination, cease and desist order, other order, or other final action of the commission or a governing authority under this part and who has exhausted any administrative remedies may take an appeal to the superior court of the county in which all or part of the land affected lies. The appeal shall be filed within 30 days from the date of the final determination, cease and desist order, other order, or other final action of the governing authority or committee of such governing authority or of the commission. Upon failure to file an appeal within 30 days, the decision of the governing authority or committee of such governing authority or of the commission shall be final. The appeal shall be heard by the judge of the superior court without a jury.

History. — Ga. L. 1973, p. 128, § 9; Code 1981, § 12-5-448, enacted by Ga. L. 1982, p. 2107, § 4; Ga. L. 1983, p. 1059, § 8; Ga. L. 1989, p. 1317, § 6.10; Ga. L. 2008, p. 181, § 25/HB 1216.

12-5-449. Other laws not superseded by part.

The requirements of this part are in addition to and do not supersede other requirements of law including the zoning and building regulations of the political subdivision involved.

History. — Ga. L. 1973, p. 128, § 10; Code 1981, § 12-5-449, enacted by Ga. L. 1982, p. 2107, § 4.

12-5-450. Election by counties contiguous to area, and by municipalities within county, to come under part.

Reserved. Repealed by Ga. L. 1983, p. 1059, § 9, effective March 29, 1983.

Editor's notes. — This Code section was based on Ga. L. 1973, p. 128, § 11 and Ga. L. 1982, p. 2107, § 4.

12-5-451. Uses to which part inapplicable.

This part shall not apply to the following uses:

(1) Any land or water use for agriculture or animal husbandry as defined in the ordinances adopted by the governing authority, provided that a buffer of natural vegetation is maintained for a distance of 50 horizontal feet from the bank of the watercourse;

(2) Ordinary maintenance and landscaping operations, except for a distance of 50 horizontal feet from the bank of the watercourse and except for the removal of healthy trees over two inches diameter breast height (DBH) anywhere in the stream corridor;

(3) Any land or water use or project which, on March 16, 1973, is approved, pending, or is completed, actually under construction, or which is zoned for such use and where expenditures in excess of $2,500.00 have been made in preparation for construction in accordance with such zoning; provided, however, that the construction of the project is actually commenced within 36 months of March 16, 1973; otherwise, a certificate for the project must be obtained pursuant to this part;

(4)(A) With regard to any land included in the stream corridor for the first time after March 1, 1983, any land or water use or land-disturbing activity:

(i) Which, on March 1, 1983, is completed, under construction, fully approved by the governing authority, or for which all requests for approval of construction are pending before the governing authority; or

(ii) Which is to be located on land which, on March 1, 1983, is zoned for such use and where expenditures in excess of $2,500.00 have been made in preparation for construction in accordance with such zoning; provided, however, prior to March 1, 1984, construction of such land-disturbing activity must have actually commenced and expenditures must have been made in connection with such construction in excess of 10 percent of the estimated cost of the total projected land-disturbing activity, exclusive of the cost of the land, or in excess of $100,000.00, exclusive of the cost of the land, whichever is less; otherwise a certificate for the project must be obtained pursuant to this part.

(B) Upon request by the owner of any land included in the stream corridor for the first time after March 1, 1983, the commission shall make a determination whether any land or water use or land-disturbing activity on such land satisfies the conditions set forth in this paragraph for exclusion from application of this part.

Any such request shall be accompanied by any information concerning the land or water use or land-disturbing activity as the commission may reasonably request. If the commission determines that the land or water use or land-disturbing activity fails to satisfy the conditions set forth in this paragraph, the commission shall state the reasons therefor. The commission shall be authorized to delegate this authority to its executive director. If such delegation is made, any person aggrieved by any such determination of the executive director may appeal such determination to the commission within 30 days of the issuance of such determination;

(5)(A) With regard to any land included in the stream corridor for the first time on or after July 1, 1998, any land or water use or land-disturbing activity:

(i) Which on July 1, 1998, is completed, under construction, fully approved by the governing authority, or for which all requests for approval of construction are pending before the governing authority; or

(ii) Which is to be located on land which, on July 1, 1998, is zoned for such use and where expenditures in excess of $5,000.00 have been made in preparation for construction in accordance with such zoning; provided, however, that prior to July 1, 1999, construction of such land-disturbing activity must have actually commenced and expenditures must have been made in connection with such construction in excess of 10 percent of the estimated cost of the total projected land-disturbing activity, exclusive of the cost of the land, or in excess of $100,000.00, exclusive of the cost of the land, whichever is less; otherwise a certificate for the project must be obtained pursuant to this part.

(B) Upon request by the owner of any land included in the stream corridor for the first time on or after July 1, 1998, the commission shall make a determination whether any land or water use or land-disturbing activity on such land satisfies the conditions set forth in this paragraph for exclusion from application of this part. Any such request shall be accompanied by any information concerning the land or water use or land-disturbing activity as the commission may reasonably request. If the commission determines that the land or water use or land-disturbing activity fails to satisfy the conditions set forth in this paragraph, the commission shall state the reasons therefor. The commission shall be authorized to delegate this authority to its director. If such delegation is made, any person aggrieved by any such determination of the director may appeal such determination to the commission within 30 days of the issuance of such determination; or

(6) Any land or water use or land-disturbing activity which is undertaken or financed, in whole or in part, by the Department of Transportation of the State of Georgia.

History. — Ga. L. 1973, p. 128, § 12; Code 1981, § 12-5-451, enacted by Ga. L. 1982, p. 2107, § 4; Ga. L. 1983, p. 1059, § 10; Ga. L. 1989, p. 1317, § 6.11; Ga. L. 1990, p. 8, § 12; Ga. L. 1998, p. 1394, § 6; Ga. L. 2008, p. 181, § 25/HB 1216.

Cross references. — Stream buffers, §§ 12-2-8, 12-5-582, 12-7-6.

JUDICIAL DECISIONS

Cited in Pope v. City of Atlanta, 242 Ga. 331, 249 S.E.2d 16 (1978).

12-5-452. Cease and desist orders; injunctions; land-disturbing activities as nuisances; penalty; jurisdiction of actions.

(a) If a governing authority determines that any person is violating any provision of this part, any rule or regulation adopted pursuant to this part, or the terms and conditions of any certificate issued under this part, the appropriate governing authority shall employ any one or any combination of any or all of the following enforcement methods:

(1) The appropriate governing authority may issue a cease and desist order specifying the provision of this part or the rule or the term or condition of a certificate violated and requiring the person so ordered to cease and desist from such activity and to take corrective action within a reasonable period of time as prescribed in the order. Such corrective action may include, but shall not be limited to, requiring that the affected portion of the stream corridor be returned to its condition prior to the violation insofar as practical. Any such order shall become final unless the person named therein requests in writing a hearing before the governing authority no later than 30 days after the issuance of such order. On the basis of such hearing, the governing authority shall be authorized to continue such order in effect, to revoke the order, or to modify it;

(2) Whenever the appropriate governing authority finds that an emergency exists requiring immediate action to protect the watercourse and the public interest, the governing authority may issue an emergency cease and desist order, effective immediately, reciting the existence of such an emergency and requiring that such action be taken as it deems necessary to meet the emergency. Any person against whom such order is directed shall comply therewith immediately but, on application to the governing authority, shall be afforded a hearing within five business days. On the basis of such hearing the governing authority shall be authorized to continue such order in effect, to revoke the order, or to modify it;

(3) The appropriate governing authority may seek injunctive relief pursuant to subsection (b) of this Code section; or

(4) The governing authority shall be authorized to delegate to a responsible official thereof the authority to issue the orders set forth in this subsection.

(b) Any land-disturbing activity in violation of this part, any rule or regulation adopted pursuant to this part, or any certificate issued pursuant to this part shall be a public nuisance; and the creation and maintenance thereof may be enjoined and abated upon an action being filed by the commission, any political subdivision affected, the director, or any person.

(c) Any person who violates this part or any rule or regulation adopted pursuant to this part, any certificate issued pursuant to this part, or any final cease and desist order or emergency order issued pursuant to this part may be fined a civil penalty not to exceed $1,000.00 for each acre or part thereof on which such violation occurs. Each day on which such violation exists is a separate offense.

(d) The superior court having jurisdiction over an action brought pursuant to this Code section shall have the authority to require that the land within the stream corridor be restored to its original condition prior to the unauthorized land-disturbing activity, if possible and if environmentally appropriate. If such restoration is ordered by the court and not carried out within the time limits set forth in a final court order, the governing authority shall be authorized to carry out total or partial restoration within the stream corridor, and the person or persons responsible for the unauthorized land-disturbing activities shall be liable for the amount expended upon restoration. Such amount shall be recoverable by the governing authority in an action against such person or persons.

History. — Ga. L. 1973, p. 128, § 13; Code 1981, § 12-5-452, enacted by Ga. L. 1982, p. 2107, § 4; Ga. L. 1983, p. 1059, § 11; Ga. L. 1989, p. 1317, § 6.12; Ga. L. 2008, p. 181, § 25/HB 1216.

12-5-453. Local regulation of land in drainage basins; enforcement where local regulation inadequate; failure of governing authority to meet requirements.

(a) On or before January 1, 1984, or March 1, 1999, with respect to land brought within the stream corridor on July 1, 1998, each governing authority shall adopt ordinances or regulations governing use of all land which is in the drainage basin of any tributary. Such regulations and ordinances shall, at a minimum, include the following:

(1) Buffer areas of adequate width as determined by local governing authorities along all flowing streams in the drainage basin of any

tributary, in which areas there will be no land-disturbing activity; and

(2) Soil erosion and sediment control regulations consistent with Chapter 7 of this title, the "Erosion and Sedimentation Act of 1975." Requirements of the plan, other than those requirements consistent with Chapter 7 of this title, shall not apply in the drainage basin of any tributary outside the stream corridor.

(b) If the governing authority has failed to adopt and enforce buffer area and erosion and sediment control ordinances or regulations which effectively control erosion and sedimentation in a tributary, the commission shall give written notice to the governing authority of its intent to request the director to undertake enforcement of erosion and sediment control regulations in the drainage basin of such tributary. If, after such notice from the commission, the governing authority fails to demonstrate, to the satisfaction of the commission, its intent and ability to enforce buffer area and erosion and sediment control ordinances or regulations in the drainage basin of such tributary, the commission shall request the director to assume enforcement of erosion and sediment control regulations in the drainage basin of such tributary.

(c) Upon notification by the commission of a governing authority's failure to adopt and enforce buffer area and erosion and sediment control ordinances or regulations in the drainage basin of a tributary or upon a determination by the director, after consultation with the commission, that a governing authority has failed to adopt and enforce buffer area and erosion and sediment control ordinances or regulations in the drainage basin of a tributary, the director may revoke the certification of a governing authority as an issuing authority for permits required by Chapter 7 of this title, known as the "Erosion and Sedimentation Act of 1975," for the land within the drainage basin of such tributary.

History. — Code 1981, § 12-5-453, enacted by Ga. L. 1982, p. 2107, § 4; Ga. L. 1983, p. 1059, § 11; Ga. L. 1984, p. 22, § 12; Ga. L. 1989, p. 1317, § 6.13; Ga. L. 1990, p. 8, § 12; Ga. L. 1998, p. 1394, § 7; Ga. L. 2008, p. 181, § 25/HB 1216.

Cross references. — Stream buffers, §§ 12-2-8, 12-5-582, 12-7-6.

OPINIONS OF THE ATTORNEY GENERAL

Effect of ordinance exemptions on sufficiency of ordinance. — Exemption from a local tributary protection ordinance for any use for which the property is already zoned does not render such local ordinance per se inconsistent with subsection (a) of O.C.G.A. § 12-5-453. Such exemption is merely one factor which may be considered by the appropriate area planning and development commission, and by the director of the Environmental Protection Division if requested to do so by the appropriate area planning and development commission, in determining whether "the governing authority has failed to adopt and enforce buffer area and erosion and sediment control ordinances or regulations which effectively control

erosion and sedimentation in a tributary."
1986 Op. Att'y Gen. No. 86-20.

12-5-454. Removal of sand from watercourse.

Notwithstanding any other provisions of this part to the contrary, nothing contained in this part shall be construed so as to prohibit any person, firm, or corporation from removing sand from any watercourse without restriction when such removal is accomplished in such a manner that no greater effluent is returned to the watercourse than that removed therefrom and no erosion along the banks of the watercourse occurs.

History. — Ga. L. 1973, p. 128, § 15; Code 1981, § 12-5-454, enacted by Ga. L. 1982, p. 2107, § 4; Ga. L. 1984, p. 22, § 12.

12-5-455. Plan and application for certificate open to public inspection.

The plan, every proposed version thereof, every revision thereof, and every application for a certificate under this part shall constitute public documents and shall be freely available for inspection by any person.

History. — Ga. L. 1973, p. 128, § 16; Code 1981, § 12-5-455, enacted by Ga. L. 1982, p. 2107, § 4.

12-5-456. Commission to notify local authorities of violations of this part; director's powers in absence of local action; hearings on violations.

(a) If the commission has reason to believe that any person is carrying out any land-disturbing activity in or on the stream corridor without a certificate pursuant to this part, in violation of the terms and conditions of a certificate issued pursuant to this part, or in any other respect in violation of this part, the commission shall notify the governing authority of the political subdivision in which such illegal activity is taking place and shall recommend action to correct the situation. A copy of such notice to the governing authority shall be furnished to the director. If the commission has determined that the violation requires immediate enforcement action, the notice to the governing authority shall so state.

(b) If, after notice from the commission, pursuant to subsection (a) of this Code section, of a violation which requires immediate enforcement action, a governing authority has failed to initiate an enforcement action or otherwise secure cessation of the violation within three business days of receipt of such notice, the commission shall so advise the director.

(c) Upon notice from the commission pursuant to subsection (b) of this Code section of a violation of this part which requires immediate enforcement action and as to which the governing authority has failed to initiate enforcement action or otherwise secure cessation of the violation or upon a determination by the director, after consultation with the commission, that any person is violating any provision of this part, any rule or regulation adopted pursuant to this part, or the terms and conditions of any certificate issued pursuant to this part and that the public interest requires that the state take immediate action, the director shall have the authority to employ any one or any combination of any or all of the following enforcement methods:

(1) The director may issue a cease and desist order specifying the provision of this part or the rule or the term or condition of a certificate violated and requiring the person so ordered to cease and desist from such activity and to take corrective action within a reasonable period of time as prescribed in the order. Such corrective action may include, but shall not be limited to, requiring that the affected portion of the stream corridor be returned to its condition prior to the violation, insofar as practical. Any such order shall become final unless the person named therein requests in writing a hearing before a hearing officer appointed by the board no later than 30 days after the issuance of such order. Review of such order shall be available as provided in subsection (d) of this Code section;

(2) Whenever the director finds that an emergency exists requiring immediate action to protect the watercourse and the public interest, the director may issue an emergency cease and desist order, effective immediately, reciting the existence of such an emergency and requiring that such action be taken as he deems necessary to meet the emergency. Any person against whom such order is directed shall comply therewith immediately but, on application to the director, shall be afforded a hearing within five business days. On the basis of such hearing, the director shall be authorized to continue such order in effect, to revoke the order, or to modify it. Review of such order shall be available pursuant to subsection (d) of this Code section;

(3) The director may seek injunctive relief pursuant to subsection (b) of Code Section 12-5-452;

(4) Any person who engages in any land-disturbing activity in violation of this part, any rule or regulation adopted pursuant to this part, any certificate issued pursuant to this part, or any final or emergency order of the director shall be subject to a civil penalty not to exceed $1,000.00 for each acre or part thereof on which such violation occurs. Each day on which such violation exists is a separate offense. Whenever the director has reason to believe that any person has violated this part, any rule or regulation adopted pursuant to this

part, any certificate issued pursuant to this part, or any order or emergency order issued pursuant to this part, he may upon written request cause a hearing to be conducted before a hearing officer appointed by the board. Upon finding that such person has violated any provision of this part, any rule or regulation adopted pursuant to this part, any certificate issued pursuant to this part, or any final cease and desist order or emergency order issued pursuant thereto, the hearing officer shall issue his decision imposing civil penalties as provided in this Code section; or

(5) In administrative proceedings or in judicial proceedings, the director may seek, among other relief, the restoration of the affected portion of the stream corridor to its original condition prior to the unauthorized land-disturbing activity, if possible and if environmentally appropriate. If such restoration is ordered by a final order of the Board of Natural Resources or of the superior court and not carried out within the time limit set forth in the final administrative order or final court order, the director shall be authorized to carry out such restoration, and the person responsible for the unauthorized land-disturbing activities shall be liable for the amount expended upon restoration. Such amount shall be recoverable by the director in an action against such person.

(d) All hearings on and review of contested matters, orders, or other enforcement actions initiated by the director under this part shall be provided and conducted in accordance with subsection (c) of Code Section 12-2-2. The hearing and review procedure of this Code section shall be to the exclusion of all other means of hearings or review.

(e) If, pursuant to this Code section, the director determines that the public interest requires initiation of an enforcement action by the director and if the director, after initiation of such enforcement action, secures cessation of the unauthorized activity or achieves the imposition of a civil penalty and the restoration of the land or is otherwise successful in correcting or penalizing the violation of this part, whether by formal legal action or by settlement, the governing authority within whose jurisdiction such violation occurred shall be liable to the state for the costs incurred by the state in such enforcement action, including the reasonable cost of attorneys' services.

History. — Code 1981, § 12-5-456, enacted by Ga. L. 1983, p. 1059, § 12; Ga. L. 1989, p. 1317, § 6.14; Ga. L. 2008, p. 181, § 25/HB 1216.

12-5-457. Environmental Protection Division's powers and duties unaffected by part.

No provision of this part shall repeal, supersede, or preempt any function, power, authority, duty, or responsibility assigned to the

Environmental Protection Division of the Department of Natural Resources by any other provision of this Code.

History. — Code 1981, § 12-5-457, enacted by Ga. L. 1983, p. 1059, § 12.

ARTICLE 6

WATER SUPPLY

Cross references. — Local government water supply projects, T. 36, C. 91, A. 4.

Law reviews. — For note on 1989 enactment of this article, see 6 Ga. St. U.L. Rev. 163 (1989).

12-5-470. Short title.

This article shall be known and may be cited as the "Georgia Water Supply Act of 2008."

History. — Code 1981, § 12-5-470, enacted by Ga. L. 1989, p. 1304, § 1; Ga. L. 2008, p. 644, § 2-1/SB 342.

Law reviews. — For article, "Georgia Wetlands: Values, Trends, and Legal Status," see 41 Mercer L. Rev. 791 (1990).

12-5-470.1. Construction with other provisions.

(a) The exercise of any powers conferred by this article shall be subject to applicable law governing eminent domain and the allocation and distribution of the waters of the state.

(b) Nothing in this article shall alter or abrogate any provisions of this chapter or any rules, regulations, or state-wide or regional water plans pursuant thereto regarding interbasin or intrabasin transfer of waters.

(c) Projects provided for by this article shall comply with Article 8 of this chapter and any rules, regulations, or state-wide or regional water plans pursuant thereto.

(d) Nothing in this article shall be construed to diminish the full authority and responsibility of the director of the Environmental Protection Division of the department for existing statutory reviews and approvals.

History. — Code 1981, § 12-5-470.1, enacted by Ga. L. 2008, p. 644, § 2-1/SB 342.

12-5-471. Definitions.

As used in this article, the term:

(1) "Authority" means the Georgia Environmental Finance Authority created by Code Section 50-23-3.

(1.1) "County" means any county created under the Constitution or laws of this state.

(1.2) "Director" means the director of the division.

(1.3) "Division" means the Water Supply Division of the Georgia Environmental Finance Authority created by Code Section 50-23-26.

(2) "Environmental services" means the provision, collectively or individually, of water facilities or management services.

(3) "Lease" includes a lease or sublease and may, in the discretion of the division, be in form and substance an estate for years, usufruct, license, concession, or any other right or privilege to use or occupy.

(4) "Lessee" includes lessee or sublessee, tenant, licensee, concessionaire, or other person contracting for any estate for years, usufruct, license, concession, or other right or privilege referred to in paragraph (3) of this Code section.

(5) "Local government" or "local governing authority" means any municipal corporation or county, any local water district, or any state or local authority, board, or political subdivision created by the General Assembly or pursuant to the Constitution and laws of this state.

(6) "Management services" means technical, administrative, instructional, or informational services provided to any current or potential recipient in, but not limited to, the areas of service charge structure; accounting, capital improvements budgeting or financing; financial reporting, treasury management, debt structure or administration or related fields of financial management; contract or grant administration; management of water systems; and economic development administration or strategies. Management services may be furnished either directly, on site, or through other written or oral means of communication and may consist of reports, studies, presentations, or other analyses of a written or oral nature.

(7) "May" means permission and not command.

(8) "Municipal corporation" or "municipality" means any city or town in this state.

(9) "Obligation" means any bond, revenue bond, note, lease, contract, evidence of indebtedness, debt, or other obligation of the state or local governments which are authorized to be issued under the Constitution or other laws of this state, including refunding bonds.

(10) "Project" means and includes the acquisition of real property for water reservoirs; the construction and reconstruction or improve-

ment of water reservoirs; the acquisition of real or personal property surrounding water reservoirs or any interest in such property; the acquisition of real or personal property or any interest therein for mitigation of any alteration of environmental resources by the construction of a water reservoir or water supply system; and all necessary and usual water facilities useful for obtaining one or more sources of water supply, the treatment of water, and the distribution and sale of water to users and consumers, including counties and municipalities for the purpose of resale, inside and outside the territorial boundaries of the users and consumers, and the operation, maintenance, additions, improvements, and extensions of such facilities so as to assure an adequate water utility system deemed to be necessary or convenient for the efficient operation of such type of undertaking, including, but not limited to, the development or expansion of water facilities or systems so as to facilitate transitioning households and businesses served by private wells, septic tanks, and other nonreturning water systems to public water or sewerage systems, thereby promoting water conservation, all for the essential public purpose of providing water facilities and services to meet public health and environmental standards and to aid the development of trade, commerce, industry, agriculture, and employment opportunities.

(11) "Water facilities" means any projects, structures, and other real or personal property acquired, rehabilitated, constructed, or planned for the purposes of supplying, distributing, and treating water and diverting, channeling, or controlling water flow and head, including, but not limited to, surface or ground water, canals, reservoirs, channels, basins, dams, aqueducts, standpipes, penstocks, conduits, pipelines, mains, pumping stations, water distribution systems, compensating reservoirs, intake stations, waterworks or sources of water supply, wells, purification or filtration plants or other treatment plants and works, connections, water meters, mechanical equipment, electric generating equipment, rights of flowage or division, and other plant structures, equipment, conveyances, real or personal property or rights therein and appurtenances, furnishings, accessories, and devices thereto necessary or useful and convenient for the collection, conveyance, distribution, pumping, treatment, storing, or disposing of water.

(12) "Waters of the state" has the meaning provided by Code Section 12-5-22.

History. — Code 1981, § 12-5-471, enacted by Ga. L. 1989, p. 1304, § 1; Ga. L. 2008, p. 644, § 2-1/SB 342; Ga. L. 2010, p. 949, § 1/HB 244.

12-5-472. Acquisition, construction, and maintenance of projects authorized; standards and procedures; sites inventory; mitigation banks; costs.

(a) The division may acquire, design, construct, equip, operate, maintain, expand, and improve a project, in whole or in part, directly or under contract with others, including each of the facilities described in paragraph (10) of Code Section 12-5-471, for the purpose of promoting the use of the projects and the use of the industrial, recreational, commercial, and natural resources of the State of Georgia for the public good and general welfare; and, without limitation of the foregoing, the division is authorized to acquire land for such purposes; provided, however, that the division shall not engage in competition for customers for its environmental services with any local government offering or providing similar services.

(b)(1) Any project acquired, designed, constructed, equipped, operated, maintained, expanded, or improved by the division or which is funded in whole or in part by the division shall conform to and meet standards and procedures promulgated by the Board of Natural Resources pursuant to specific statutory authorization and direction for watershed and wetlands protection.

(2) No such project shall include an electrical generation facility unless such facility does not cause the consumption of water from such reservoir for the generation of such power.

(3) The local government or the division shall acquire sufficient land surrounding any reservoir funded in whole or in part by the division or acquired or constructed by the division to protect such reservoir, to provide for future expansion of such reservoir, and to provide passive recreational opportunities on and around such reservoir. No development shall be permitted on any such reservoir or its surrounding lands so acquired other than public development appropriate for such passive uses. The acquisition of such lands shall be a cost of project for purposes of this article, and the division, the authority, and the local government may utilize any funds available to them for such purposes.

(4) Any such surrounding lands transferred to the state shall be part of the state park system under the control of the department pursuant to Code Section 12-3-31, and the management of passive recreational uses of any such surrounding lands controlled by the state shall be vested in the Parks, Recreation and Historic Sites Division; except that, where it is not feasible to manage such land as a state park, then such surrounding lands transferred to the state may be managed as wildlife management areas by the Wildlife Resources Division of the department. Any such surrounding lands acquired by a local government shall be a local government park.

(5) All uses of any reservoirs funded by the division in whole or in part or acquired or constructed by the division and any surrounding lands acquired by the division or local government or transferred to the state shall be subordinate to the use of such reservoirs for water supply purposes.

(6) No motorized vessels other than those being operated by electric motors shall be allowed on any reservoirs funded by the division in whole or in part or acquired or constructed by the division. As used in this paragraph, the term "vessel" has the meaning provided by Code Section 52-7-3.

(c) The division, in cooperation with the department, shall take all reasonable steps at the earliest practicable date to inventory and survey feasible sites for water reservoirs within the State of Georgia. The director shall present a progress report of such inventory and survey to the legislative oversight committee created by Code Section 12-5-484 not later than October 1, 2008, together with a report describing measures undertaken by the division and the authority to expedite the accomplishment of the purposes of this article. The director shall thereafter report quarterly to such committee on the activities of the division and progress toward the accomplishment of such purposes in such format as may be directed by the cochairpersons of such committee. It is the intent of the General Assembly that the division take all reasonable and practicable steps to expedite the accomplishment of such purposes and that the division utilize its reporting responsibilities to apprise the committee promptly of legal, statutory, or other barriers to expedited accomplishment of such purposes, together with recommended measures to mitigate or avoid such barriers.

(d) The division may take all reasonable and practicable steps, in consultation with the Environmental Protection Division of the department, the Department of Transportation, and other appropriate state agencies, to create a wetlands mitigation bank or banks and a stream mitigation bank or banks for the purpose of facilitating the construction of projects. Costs and expenses of such bank or banks shall constitute costs of projects and shall be allocated to projects when appropriate.

(e) Costs of projects and other expenses incurred by the division for purposes of this article may be paid from funds made available to the division for such purposes and may be financed or paid by the authority as provided by Article 1 of Chapter 23 of Title 50.

History. — Code 1981, § 12-5-472, enacted by Ga. L. 1989, p. 1304, § 1; Ga. L. 2008, p. 644, § 2-1/SB 342.

JUDICIAL DECISIONS

Cited in Ware v. Henry County Water & Sewerage Auth., 258 Ga. App. 778, 575 S.E.2d 654 (2002).

12-5-472.1. Procurement of permits, licenses, and permissions; designation of principal state agency.

(a) The division shall be authorized to assume by intergovernmental contract the responsibility for procuring all permits, licenses, and permissions from the United States of America or any agency or instrumentality thereof; the State of Georgia, its departments, agencies, or authorities; or any county or municipality of this state as necessary or required for the purpose of constructing any projects within this state on behalf of local governments seeking to construct such projects. Such contract may provide for the reimbursement of the division for costs and expenses associated with the procurement of such permits, licenses, and permissions, but such reimbursement shall not be a prerequisite to the assumption by the division of such procurement responsibility, and the division is specifically authorized to delay, mitigate, or waive reimbursement when, in the judgment of the director and the authority, the welfare and best interests of the people of this state are served thereby. The terms of such contract shall provide for the assumption by such local government of such permits, licenses, and permissions at such time as appropriate for the construction of such projects.

(b) In discharging its duties and responsibilities pursuant to the terms of this article, and specifically in identifying appropriate sites for projects and procuring permits, licenses, and permissions for projects, whether owned by the division or otherwise, the division shall utilize to the maximum extent practicable the procurement of services from the department and private sector persons and entities qualified to perform such work. It is the intent of General Assembly that the division minimize the hiring of officers and employees for the purposes of this article.

(c) The division shall be designated as the principal state agency to cooperate with the Environmental Protection Division of the department, the United States Army Corps of Engineers, and all other federal agencies or instrumentalities in the planning and execution of projects in this state.

History. — Code 1981, § 12-5-472.1, enacted by Ga. L. 2008, p. 644, § 2-1/SB 342.

12-5-473. Powers of Water Supply Division generally.

The division shall have the following powers:

(1) To acquire real and personal property of every kind and character by purchase, gift, lease, or otherwise and to own, hold, improve, use, sell, convey, exchange, transfer, lease, sublease, and dispose of the same, or any interest therein, for its services, purposes, duties, responsibilities, or functions pursuant to this article; and any local government may grant, sell, or otherwise alienate leaseholds, real and personal property, or any interest therein to the division. Site selection for a project shall be made after consideration of input from local governments to be served by the project;

(2) To make all contracts and to execute all instruments necessary or convenient to its services, purposes, duties, responsibilities, or functions pursuant to this article;

(3) To accept grants of money or materials or property of any kind from the United States of America or any agency or instrumentality thereof; the State of Georgia, its departments, agencies, or authorities; or any county or municipality of this state, upon the terms and conditions as may be imposed thereon to the extent the terms and conditions are not inconsistent with the limitations and laws of this state and are otherwise within the power of the division;

(4) To make and execute contracts, lease agreements, and all other instruments necessary to exercise the powers of the division to further the public purpose for which this article was enacted, such contracts, leases, or instruments to include contracts for construction, operation, management, or maintenance of projects and facilities owned by a local government or by the state or any state authority; and any and all local governments and departments, institutions, authorities, or agencies of the state may enter into contracts, leases, agreements, or other instruments with the division upon such terms and to transfer real and personal property to the state for the use of the division for such consideration and for such purposes as they deem advisable;

(5) To collect fees and charges in connection with its commitments, management services, and servicing, including, but not limited to, reimbursements of costs of financing, as the division shall determine to be reasonable;

(6) To provide advisory, management, technical, consultative, training, educational, and project assistance services to the state and local governments and to enter into contracts with the state and local governments to provide such services. The state and local govern-

ments may enter into contracts with the division for such services and to pay for such services as may be provided them;

(7) To lease to local governments any state owned facilities or property which the division is managing under contract with the state;

(8) To contract with state agencies or any local government for the use by the division of any property or facilities or services of the state or any such state agency or local government or for the use by any state agency or local government of any facilities or services of the division, and such state agencies and local governments may enter into such contracts;

(9) To receive and use the proceeds of any tax levied by a local government to pay all or any part of the cost of any project or for any other purpose for which the division may use its own funds pursuant to this article;

(10) To cooperate and act in conjunction with industrial, commercial, medical, scientific, public interest, or educational organizations; with agencies of the federal government and this state and local governments; with other states and their political subdivisions; and with joint agencies thereof, and such state agencies, local governments, and joint agencies may cooperate and act in conjunction, and to enter into contracts or agreements with the division and local governments to achieve or further the policies of the state declared in this article; and

(11) To do all things necessary or convenient to carry out the powers conferred by this article and to enter into such agreements with the department as are necessary and useful for such purpose. The department is expressly authorized to enter into agreements with the division for such purposes.

History. — Code 1981, § 12-5-473, enacted by Ga. L. 1989, p. 1304, § 1; Ga. L. 2008, p. 644, § 2-1/SB 342.

12-5-474. Rentals, fees, and other charges; deposit of funds; terms and conditions for use of project.

(a) The division may fix rentals, fees, prices, and other charges which any user, concessionaire, franchisee, or vendor shall pay to the division for the use of a project or part thereof or combination thereof, and for the goods and services provided by the division in conjunction with such use, as the division may deem necessary or appropriate to provide in connection with such use, and to charge and collect the same. Such rentals, fees, prices, and other charges shall be so fixed and adjusted in respect to the aggregate thereof from a project or any part thereof so as

to be reasonably expected to provide a fund sufficient with other revenues of such project and funds available to the division, if any, to pay the cost of maintaining, repairing, and operating a project, including the reserves for extraordinary repairs and insurance, unless such cost shall be otherwise provided for, which costs shall be deemed to include the expenses incurred by the division on account of a project for water, light, sewer, and other services furnished by other facilities at such project. Such fees shall be fixed after consideration of input from local governments served by the project to which the fees pertain.

(b) All those funds generated by the operation of the projects and paid to the division shall be deposited in the Georgia Reservoir Fund established by Code Section 50-23-28.

(c) The division may establish the terms and conditions upon which any lessee, sublessee, licensee, user, franchisee, or vendor shall be authorized to use a project as the division may determine necessary or appropriate, subject to the limitations provided for by this article.

History. — Code 1981, § 12-5-474, enacted by Ga. L. 1989, p. 1304, § 1; Ga. L. 2008, p. 644, § 2-1/SB 342.

12-5-475. Rules and regulations.

(a) It shall be the duty of the authority, in consultation with the Environmental Protection Division of the department, to prescribe rules and regulations governing the selection of sites for projects. Such rules and regulations shall include, but shall not be limited to, provisions for:

(1) The division to notify in writing a county or municipality when a preliminary determination has been made for the location of a project within any portion of the territorial boundaries of such county or municipality;

(2) Review and comment by the governing authority of a county or municipality receiving a notice provided for in paragraph (1) of this subsection before the division makes a final determination of the project site; and

(3) At least one public hearing within the territorial boundaries of a county or municipality receiving a notice provided for in paragraph (1) of this subsection before the division makes a final determination of the project site.

(b) It shall be the duty of the authority to prescribe rules and regulations for the operation of and governing the use of each project constructed under the provisions of this article. Such rules shall be

prescribed after consideration of input from local governments served or to be served by the project to which the rules pertain.

History. — Code 1981, § 12-5-475, enacted by Ga. L. 1989, p. 1304, § 1; Ga. L. 2008, p. 644, § 2-1/SB 342.

JUDICIAL DECISIONS

Cited in Ware v. Henry County Water & Sewerage Auth., 258 Ga. App. 778, 575 S.E.2d 654 (2002).

12-5-476. Contracts with local governments for planning, construction, management, and maintenance; coordination.

(a) The division may contract with any local government to exercise on behalf of such local government such responsibility in connection with the planning, design, acquisition, construction, operation, management, and maintenance of a project of such local government, as is now or may be hereafter vested in the local government, and to provide to the local government goods or services of the division in connection with the planning, design, acquisition, construction, operation, management, and maintenance of any project of the local government, all as the parties to the contract may determine appropriate. Any such local government shall be authorized by such contract to delegate to the division all or such goods or services of the division in connection with the planning, design, acquisition, construction, operation, management, and maintenance of a project as the parties may by contract determine appropriate.

(b) Except as otherwise provided in this article, any such contract shall provide that the local government shall reimburse the division for all of the costs, liabilities, and expenses of the division incurred by the division in exercising such powers or providing such goods or services; and the division shall not directly or indirectly be liable for any liability, cost, or expense incurred by such local government in the acquisition, construction, operation, management, or maintenance of a project.

(c) If, in order to accomplish the objectives of this article, it is advisable, in the judgment of the director and the authority, to construct a project that is larger than one which a local government proposes to construct, the division may participate by agreement with such local government in planning, designing, constructing, operating, and maintaining such project and, in so participating, shall finance those costs of the project allocated to the state and such other and further costs as may be agreed upon between the parties, such that the

project shall accomplish the maximum water development objectives at a minimum total expenditure.

(d) The division shall coordinate with the Environmental Protection Division of the department and local governments for the purpose of producing appropriate and necessary needs analyses for projects. In the event that the director, with the approval of the authority, determines that construction of a project is in the best interests of the people of this state but any affected county or municipality is willing but unable to engage in an appropriate needs analysis, the division may conduct such analysis for and on behalf of such county or municipality, and such analysis shall be the needs analysis of such county or municipality with respect to such project for all purposes. Such needs analysis shall be consistent with water demand projections provided by an applicable regional water development and conservation plan developed pursuant to Article 8 of this chapter, if available.

History. — Code 1981, § 12-5-476, enacted by Ga. L. 1989, p. 1304, § 1; Ga. L. 2008, p. 644, § 2-1/SB 342.

12-5-476.1. Fees for services.

(a) The division and the department may enter into agreements with local governments, setting fees to be paid to the division or the department for the purpose of enabling the division or the department to expedite or enhance the state regulatory process and to provide services voluntarily requested under the agreement with respect to projects. Pursuant to such an agreement, the division or the department may hire additional temporary staff members, contract for services, or provide additional services that are within the powers of the division and the department to provide. Such service costs shall constitute a cost of project for purposes of this article and Chapter 23 of Title 50. As part of an agreement entered into under this subsection, the division and the department may waive all or part of a fee imposed for a service. The division and the department shall not require that a local government pay more for a service under an agreement entered into under this subsection than the cost to the division or the department in providing such service to such local government.

(b) The division and the department may enter into agreements with agencies or instrumentalities of the federal government, setting fees to be paid by the division or the department for the purpose of enabling the division or the department to expedite or enhance the federal regulatory process and to provide services requested under the agreement with respect to projects. Pursuant to such agreement, the division and the department may fund the cost of hiring additional temporary staff members, contracts for services, or the provision of additional

services for the purposes of this article. Such fees shall constitute a cost of project for purposes of this article and Chapter 23 of Title 50.

History. — Code 1981, § 12-5-476.1, enacted by Ga. L. 2008, p. 644, § 2-1/SB 342.

12-5-477. Supplemental nature of provisions.

The provisions of this article shall be deemed to provide an additional and alternative method for the doing of things authorized by this article and shall be regarded as supplemental and additional to powers conferred by the Constitution and laws of the State of Georgia and shall not be regarded as in derogation of any powers now existing.

History. — Code 1981, § 12-5-477, enacted by Ga. L. 1989, p. 1304, § 1; Ga. L. 2008, p. 644, § 2-1/SB 342.

12-5-478. Liberal construction.

This article, being for the welfare of this state and its inhabitants, shall be liberally construed to effect the purposes hereof.

History. — Code 1981, § 12-5-478, enacted by Ga. L. 1989, p. 1304, § 1; Ga. L. 2008, p. 644, § 2-1/SB 342.

12-5-479. Contracts with public entities for services or use of facilities or equipment; user agreement for provision of environmental services.

(a) In the exercise of its powers under this article, the division may contract with any public entity which shall include the state or any institution, department, or other agency thereof or any county, municipality, school district, or other political subdivision of the state or with any other public agency, public corporation, or public authority, for joint services, for the provision of services, or for the joint or separate use of facilities or equipment with respect to such activities, services, or facilities which the contracting parties are authorized by law to undertake or provide.

(b) Pursuant to any such contract, in connection with any facility authorized under this article, the division may undertake such facility or provide such services or facilities of the division, in whole or in part, to or for the benefit of the public entity contracting with the division with respect to those activities, services, or facilities which the contracting public entity is authorized by the Constitution and law to provide, including, but not limited to, those set forth in Article IX, Section III,

Paragraph I of the Constitution, and any such contracting public entity may undertake to pay the division for such activities, services, or facilities such amounts and upon such terms as the parties may determine.

(c) The state and each institution, department, or other agency thereof or each county, municipality, school district, or other political subdivision of this state and each public agency, public corporation, or public authority may contract with the division in connection with any activity, service, or facility which such public entity is otherwise authorized to provide to obtain the performance of such activity or provision of such services or facilities through the division.

(d) In connection with its operations, the division may similarly obtain from, and each public entity may provide, such activities, services, or facilities which the division is authorized to provide.

(e) Reserved.

(f) A local government by resolution of its governing body may enter into a user agreement for the provision of environmental services utilizing facilities owned by the state upon such terms and conditions as the division shall determine to be reasonable, including, but not limited to, the reimbursement of all costs of construction and financing and claims arising therefrom.

(g) No user agreement shall be deemed to be a contract subject to any law requiring that contracts shall be let only after receipt of competitive bids.

(h) Any user agreement directly between the state or division and a local government may contain provisions requiring the local government:

(1) To establish and collect rents, rates, fees, and charges so as to produce revenues sufficient to pay all or a specified portion of:

(A) The costs of operation, maintenance, renewal, and repairs of the water facility; and

(B) Outstanding bonds, revenue bonds, notes, or other obligations incurred for the purposes of such water facility and to provide for the payment of all amounts as they shall become due and payable under the terms of such agreement, including amounts for the creation and maintenance of any required reserves;

(2) To create and maintain reasonable reserves or other special funds;

(3) To create and maintain a special fund or funds as additional security for the punctual payment of any rentals due under such user

agreement and for the deposit therein of such revenues as shall be sufficient to pay all user fees and any other amounts becoming due under such user agreements as the same shall become due and payable; or

(4) To perform such other acts and take such other action as may be deemed necessary and desirable by the division to secure the complete and punctual performance by such local government of such lease agreements and to provide for the remedies of the division in the event of a default by such local government in such payment.

History. — Code 1981, § 12-5-479, enacted by Ga. L. 1989, p. 1304, § 1; Ga. L. 2008, p. 644, § 2-1/SB 342.

12-5-480. Use of services of Georgia State Financing and Investment Commission; selection of professional services.

The division shall be authorized to utilize the financial advisory and construction related services of the Georgia State Financing and Investment Commission with respect to the acquisition, design, planning, and construction of any of the projects. Code Section 50-22-9 shall be applicable to the selection of persons to provide professional services for any project or any portion thereof authorized by this article until such time as the director, with the approval of the authority and consistent with any state-wide water plan provided pursuant to Article 8 of this chapter, certifies that this state and its local governments have constructed or otherwise acquired sufficient reservoir capacity to meet current and reasonably projected future needs, taking into account projected population growth and historical and anticipated cycles or incidents of drought, whereupon the whole of Chapter 22 of Title 50 shall be applicable.

History. — Code 1981, § 12-5-480, enacted by Ga. L. 1989, p. 1304, § 1; Ga. L. 2008, p. 644, § 2-1/SB 342.

12-5-481. Legislative findings.

It is found, determined, and declared that the carrying out of the purposes of the division as defined in this article is in all respects for the benefit of the people of this state and that the purposes are public purposes; that the division will be performing an essential governmental function in the exercise of the powers conferred upon it by this article; and that the activities authorized in this article will develop and promote trade, commerce, industry, and employment opportunities to the public good and the general welfare and promote the general welfare of the state.

History. — Code 1981, § 12-5-481, enacted by Ga. L. 1989, p. 1304, § 1; Ga. L. 2008, p. 644, § 2-1/SB 342.

12-5-482. Failure of local government to collect and remit all amounts due; withholding of state funds.

(a) In the event of a failure of any local government to collect and remit in full all amounts due which involve the credit or guarantee of the state or the authority, it shall be the duty of the state treasurer or the duty of the authority to withhold all funds of the state and all funds administered by the state, its agencies, boards, and instrumentalities or all funds of the authority allotted to such local government until such local government has collected and remitted in full all sums due and cured or remedied all defaults, unless such amounts have been waived pursuant to this article.

(b) Nothing contained in this Code section shall mandate the withholding of funds allocated to a local government which would violate contracts to which the state or the authority is a party, the requirements of federal law imposed on the state or the authority, or judgments of any court binding the state or the authority.

History. — Code 1981, § 12-5-482, enacted by Ga. L. 1989, p. 1304, § 1; Ga. L. 1993, p. 1402, § 18; Ga. L. 2008, p. 644, § 2-1/SB 342; Ga. L. 2010, p. 863, § 3/SB 296.

12-5-483. Waiver of costs or fees.

Any waiver by the division or the department of any costs or fees owed by any local government to the division or the department under this article shall constitute a grant in the amount of such waiver to such local government pursuant to Code Section 50-23-6 or Article VII, Section III, Paragraph II of the Constitution.

History. — Code 1981, § 12-5-483, enacted by Ga. L. 2008, p. 644, § 2-1/SB 342.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2008, Code Section 12-5-483, as enacted by Ga. L. 2008, p. 644, § 1-4/SB 342, was redesignated as Code Section 12-5-31.1.

12-5-484. Legislative oversight committee; membership; responsibilities.

There is created as a joint committee of the General Assembly the Georgia Water Supply Act Legislative Oversight Committee, to be composed of the members of the House Committee on Natural Resources and Environment and the Senate Natural Resources and the Environment Committee. The chairpersons of such committees shall serve as cochairpersons of the oversight committee. The oversight

committee shall periodically inquire into and review the operations of the division, as well as periodically review and evaluate the success with which the division is accomplishing its statutory duties and functions as provided in this article. The oversight committee may conduct any independent audit or investigation of the division it deems necessary.

History. — Code 1981, § 12-5-484, enacted by Ga. L. 2008, p. 644, § 2-1/SB 342.

ARTICLE 7

COSTS OF OIL SPILL RESPONSE

Administrative rules and regulations. — Spills, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Oil and Gas and Deep Drilling, Sec. 391-3-13-16.

12-5-500. Definitions.

As used in this article, the term:

(1) "Damages" means damages of any kind for which liability may exist under the laws of this state resulting from, arising out of, or related to the discharge or threatened discharge of oil.

(2) "Discharge" means any emission, other than natural seepage, whether intentional or unintentional, and includes, but is not limited to, spilling, leaking, pumping, pouring, emitting, emptying, or dumping.

(3) "Federal on-scene coordinator" means the federal official designated by the United States Environmental Protection Agency or the United States Coast Guard to coordinate and direct federal responses under subpart D or the official designated by the lead agency to coordinate and direct removal under subpart E of the National Contingency Plan.

(4) "National Contingency Plan" means the National Contingency Plan prepared and published under Section 311(d) of the Federal Water Pollution Control Act, 33 U.S.C. Section 1321(d), as amended by the federal Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484 (1990).

(5) "Oil" means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged spoil.

(6) "Person" means an individual, corporation, partnership, association, state, municipality, commission, political subdivision of a state, or any interstate body.

(7) "Removal costs" means the costs of removal that are incurred after a discharge of oil has occurred or, in any case in which there is a substantial threat of a discharge of oil, the costs to prevent, minimize, or mitigate oil pollution from such an incident.

(8) "Responsible party" means a responsible party as defined under Section 1001 of the federal Oil Pollution Act of 1990, Pub. L. No. 101-380, 104 Stat. 484 (1990).

History. — Code 1981, § 12-5-500, enacted by Ga. L. 1991, p. 1598, § 1; Ga. L. 1992, p. 6, § 12.

12-5-501. Liability for removal costs or damages; exceptions.

(a) Notwithstanding any other provision of law, a person is not liable for removal costs or damages which result from actions taken or omitted to be taken in the course of rendering care, assistance, or advice consistent with the National Contingency Plan or as otherwise directed by the federal on-scene coordinator or by any state official with responsibility for oil spill response.

(b) Subsection (a) of this Code section shall not apply:

(1) To a responsible party;

(2) With respect to personal injury or wrongful death;

(3) If the person is grossly negligent or engages in willful misconduct; or

(4) To a response under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. Section 9601, et seq.).

(c) A responsible party shall be liable for any removal costs and damages that another person is relieved of under subsection (a) of this Code section.

(d) Nothing in this Code section shall affect the liability of a responsible party for oil spill response under any applicable state law.

History. — Code 1981, § 12-5-501, enacted by Ga. L. 1991, p. 1598, § 1.

Law reviews. — For article on CERCLA liability for secured creditors, see 41 Emory L.J. 167 (1992).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — CERCLA Liability of Parent, Subsidiary, and Successor Corporation, 34 POF3d 387.

Citizens' Suit Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the

Emergency Planning and Community Right-To-Know Act (EPCRA), 55 POF3d 155.

ALR. — What constitutes "disposal" for purposes of owner or operator liability under § 107(a)(2) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCS § 9607(a)(2)), 136 A.L.R. Fed 117.

Indemnification or release agreement as covering liability under § 107(A) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCS § 9607(a)), 139 A.L.R. Fed 123.

Application of Statute of Limitations (42 USCS § 9613(g)(2)) in action under § 107 of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCS § 9607) for recovery of costs for removal or remedial action, 142 A.L.R. Fed 115.

Equitable allocation of response costs in contribution action under § 113(f) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USCA § 9613(f): Factors affecting response cost liability of generator, broker or arranger, and transporter in single waste stream cases, 146 A.L.R. Fed. 363.

Amount and characteristics of wastes as equitable factors in allocation of response costs pursuant to § 113(f)(1) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USCA § 9613(f)(1): multiple waste streams, 162 A.L.R. Fed. 371.

ARTICLE 8

COMPREHENSIVE STATE-WIDE WATER MANAGEMENT PLANNING

Cross references. — Protection of Metropolitan rivers, T. 12, C. 5, A. 5, P. 6. Flint River drought protection, T. 12, C. 5, A. 9. Metropolitan North Georgia Water Planning District, T. 12, C. 5, A. 10.

Editor's notes. — Ga. L. 2004, p. 711, § 1, not codified by the General Assembly, provides that: "The General Assembly finds and declares that:

"(1) A comprehensive state-wide water management plan for this state is needed and should be developed by the Environmental Protection Division of the Department of Natural Resources;

"(2) Such plan should support a structured, yet flexible, approach to regional water planning and provide guidance and incentives for regional and local water planning efforts; and

"(3) Regional water planning efforts of the Environmental Protection Division should be coordinated with and not supplant the existing efforts of all state agencies."

Ga. L. 2004, p. 711, § 2, effective May 13, 2004, repealed the Code sections formerly codified at this article and enacted the current article. The former article consisted of Code Sections 12-5-520 through 12-5-525, relating to river basin management plans, and was based on Ga. L. 1992, p. 1896, § 1; Ga. L. 1993, p. 91, § 12.

Administrative rules and regulations. — Preparation of Regional Water Development and Conservation Plans, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Regional Water Planning, Sec. 391-3-32-.01.

Permitting based on regional water development and conservation plans, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Groundwater Use, Sec. 391-3-2-.16.

12-5-520. Short title.

This article shall be known and may be cited as the "Comprehensive State-wide Water Management Planning Act."

History. — Code 1981, § 12-5-520, enacted by Ga. L. 2004, p. 711, § 2.

Law reviews. — For article, "Sharing Water Through Interbasin Transfer and Basis of Origin Protection in Georgia: Issues for Evaluation in Comprehensive State Water Planning for Georgia's Surface Water Rivers and Groundwater Aquifers," see 21 Ga. St. U.L. Rev. 339 (2004).

For note, "The Problem of Reallocation in a Regulated Riparian System: Examining the Law in Georgia," see 40 Ga. L. Rev. 207 (2005).

12-5-521. Definitions.

As used in this article, the term:

(1) "Director" means the director of the Environmental Protection Division of the Department of Natural Resources.

(2) "Division" means the Environmental Protection Division of the Department of Natural Resources.

(3) "Water Council" means the Water Council created by Code Section 12-5-524.

History. — Code 1981, § 12-5-521, enacted by Ga. L. 2004, p. 711, § 2; Ga. L. 2005, p. 60, § 12/HB 95.

12-5-522. Policy statement for comprehensive state-wide water management plan; guiding principles; requirements of plan; regional plans; compliance with plans.

(a) The division shall develop and propose a comprehensive state-wide water management plan not inconsistent with this chapter and in accordance with the following policy statement: "Georgia manages water resources in a sustainable manner to support the state's economy, to protect public health and natural systems, and to enhance the quality of life for all citizens."

(b) The following principles shall guide the work of the division in developing a comprehensive state-wide water management plan:

(1) Effective water resources management protects public health and the safety and welfare of Georgia's citizens;

(2) Water resources are to be managed in a sustainable manner so that current and future generations have access to adequate supplies of quality water that support both human needs and natural systems;

(3) All citizens have a stewardship responsibility to conserve and protect the water resources of Georgia;

(4) Water resources management efforts must have a sound scientific foundation and recognize that economic prosperity and environmental quality are interdependent;

(5) Water quality and quantity and surface and ground water are interrelated and require integrated planning as well as reasonable and efficient use;

(6) A comprehensive and accessible data base must be developed to provide sound scientific and economic information upon which effective water resources management decisions can be based;

(7) Water resources management encourages local and regional innovation, implementation, adaptability, and responsibility for watershed and river basin management;

(8) Sound water resources management involves meaningful participation, coordination, and cooperation among interested and affected stakeholders and citizens as well as all levels of governmental and other entities managing or utilizing water; and

(9) Periodic revisions of the comprehensive state-wide water management plan may be required to accommodate new scientific and policy insights as well as changing social, economic, cultural, and environmental factors.

(c) The proposed comprehensive state-wide water management plan shall set forth state-wide water policies not inconsistent with this chapter which shall guide river basin and aquifer management plans, regional water planning efforts, and local water plans.

(d) The proposed comprehensive state-wide water management plan may include a process for creating draft river basin management plans and draft ground-water management plans and how such plans are finalized and revised, including the designation of persons responsible for developing regional water development and conservation plans, required contents of such plans, and how the public may participate in the creation and revision of such plans.

(e) The division shall make all water withdrawal permitting decisions in accordance with this chapter, the comprehensive state-wide water management plan that has been approved or enacted by the General Assembly as provided by this article, and any applicable regional water development and conservation plan, including, but not limited to, restrictions, if any, on diversion from or reduction of flows in other watercourses. Any political subdivision or local water authority that is not in compliance with the plan shall be ineligible for state grants or loans for water projects, except for those projects designed to bring such political subdivision or local water authority into compliance with the plan.

History. — Code 1981, § 12-5-522, enacted by Ga. L. 2004, p. 711, § 2; Ga. L. 2008, p. 644, § 4-4/SB 342.

12-5-523. Cooperation with Water Council; involvement of stakeholders; initial draft plan.

(a) The division shall work in cooperation, coordination, and communication with the Water Council and any other state, local, regional, or federal agency as appropriate to develop a comprehensive state-wide water management plan.

(b) The division shall solicit extensive stakeholder involvement in the development of the proposed plan. Such stakeholders shall include, without limitation, other state agencies, nonprofit advocacy organizations, business organizations, local government entities and associations of local government entities, and regional commissions.

(c) The division shall submit a draft initial comprehensive state-wide water management plan to the Water Council for review no later than July 1, 2007.

History. — Code 1981, § 12-5-523, enacted by Ga. L. 2004, p. 711, § 2; Ga. L. 2005, p. 60, § 12/HB 95; Ga. L. 2008, p. 181, § 19/HB 1216.

Law reviews. — For article, "Sharing Water Through Interbasin Transfer and Basis of Origin Protection in Georgia: Issues for Evaluation in Comprehensive State Water Planning for Georgia's Surface Water Rivers and Groundwater Aquifers," see 21 Ga. St. U.L. Rev. 339 (2004).

For note, "The Problem of Reallocation in a Regulated Riparian System: Examining the Law in Georgia," see 40 Ga. L. Rev. 207 (2005).

12-5-524. Water Council created; obligations of council.

(a) There shall be a Water Council composed of one member appointed by the Speaker of the House of Representatives who shall not be a member of the General Assembly and who shall serve for a term of four years and until a successor is appointed and qualified; one member appointed by the President Pro Tempore of the Senate who shall not be a member of the General Assembly and who shall serve for a term of four years and until a successor is appointed and qualified; and the following state officials who shall serve ex officio as members of the committee: the director of the division, the commissioner of natural resources, the executive director of the State Soil and Water Conservation Commission, the commissioner of community affairs, the commissioner of public health, the Commissioner of Agriculture, the director of the State Forestry Commission, and the executive director of the Georgia Environmental Finance Authority. In addition, the chairperson of the Senate Natural Resources and the Environment Committee, ex officio, and one additional member of that committee to be selected by its chairperson; and the chairperson of the House Committee on Natural Resources and Environment, ex officio, and one additional member of that committee to be selected by its chairperson, shall each serve in an advisory capacity. Any vacancy among the two appointed

members of the Water Council who are not members of the General Assembly other than for expiration of term shall be filled in the same manner as the original appointment for the unexpired term. The director shall serve as chairperson of the Water Council.

(b) The Water Council shall:

(1) Ensure coordination, cooperation, and communication among state agencies and their water related efforts in the development of a comprehensive state-wide water management plan;

(2) Provide input to the division concerning the development of a comprehensive state-wide water management plan;

(3) Review, modify if necessary, and approve the final draft of the proposed comprehensive state-wide water management plan; and

(4) Recommend such initial proposed plan for consideration by the General Assembly not later than the first day of the regular session of the General Assembly next occurring after such completion but not later than the first day of the 2008 regular session of the General Assembly.

History. — Code 1981, § 12-5-524, enacted by Ga. L. 2004, p. 711, § 2; Ga. L. 2005, p. 60, § 12/HB 95; Ga. L. 2009, p. 453, § 1-6/HB 228; Ga. L. 2010, p. 949, § 1/HB 244; Ga. L. 2011, p. 705, § 6-5/HB 214; Ga. L. 2011, p. 752, § 12/HB 142.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, two punctuation changes were made in subsection (a).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

12-5-525. Approval by General Assembly; alternative to passage by legislature; emergency actions by Water Council in event of imminent peril; review and revision of plan.

(a)(1)(A) No comprehensive state-wide water management plan submitted by the Water Council pursuant to this article shall have any force or effect unless approved by the General Assembly by means of the adoption of a joint resolution ratifying such plan, except as otherwise provided by this subsection. Upon the loss of any such resolution, the Water Council may submit successive alternate plans to the General Assembly not later than the twentieth day of the session for approval during such session.

(B) Subject to the same development process as provided by subsections (a) and (b) of Code Section 12-5-523 and review, modification if necessary, and approval by the Water Council in the same manner provided by subsection (b) of Code Section 12-5-524, the division may subsequently propose to amend or repeal a plan approved under subparagraph (A) of this paragraph; but no such proposed amendment or repeal shall become effective unless an

initial version thereof is submitted to the General Assembly not later than the first day of a session and the amendment or repeal is approved by the General Assembly in the same manner as provided by subparagraph (A) of this paragraph.

(2) In lieu of approving a comprehensive state-wide water management plan in accordance with subparagraph (A) of paragraph (1) of this subsection, the General Assembly may enact a statutory comprehensive state-wide water management plan.

(3) If:

(A) The General Assembly fails to approve a comprehensive state-wide water management plan in accordance with subparagraph (A) of paragraph (1) of this subsection during the session in which such a proposed plan was timely presented by the Water Council to the General Assembly for approval; and

(B) A statutory comprehensive state-wide water management plan provided by an Act of the General Assembly that expressly supersedes any and all comprehensive state-wide water management plans submitted by the Water Council to the General Assembly for approval does not become law on or before July 1 next occurring after the session in which such a proposed plan was timely submitted by the Water Council to the General Assembly for approval,

then the comprehensive state-wide water management plan submitted latest in time but not later than the twentieth day of the session by the Water Council to the General Assembly shall become of full force and effect without the approval of the General Assembly on July 1 next occurring after the session in which such proposed plan was timely presented to the General Assembly for approval.

(b) If at any time after a comprehensive state-wide water management plan has become effective under subsection (a) of this Code section and between the adjournment sine die of a regular session of the General Assembly and prior to the convening date of the next regular session of the General Assembly the director finds that there is an actual or impending emergency or disaster of natural or human origin or a public health emergency within or affecting the state and that strict compliance with any provision or provisions of such plan presents an imminent peril to the public health, safety, or welfare and states in writing his or her reasons for those findings, the Water Council may approve a temporary waiver of such provision or provisions but only to the extent necessary to alleviate the peril. Such waiver shall be effective upon such approval by the Water Council and for not longer than the duration of the emergency or until the twentieth legislative day of the next regular session of the General Assembly, whichever first occurs.

(c) After a comprehensive state-wide water management plan becomes effective pursuant to subsection (a) of this Code section, the division shall review such plan in its current form not later than July 1, 2010, and at least every three years thereafter, for purposes of determining whether revision of such plan is necessary or appropriate for recommendation.

History. — Code 1981, § 12-5-525, enacted by Ga. L. 2004, p. 711, § 2; Ga. L. 2005, p. 60, § 12/HB 95.

Editor's notes. — By resolution (Ga. L. 2008, p. 1), effective February 6, 2008, the General Assembly ratified the comprehensive state-wide water management plan that the Water Council adopted on January 8, 2008, and submitted to the General Assembly on January 14, 2008. The plan was filed with the office of the director of the Environmental Protection Division.

ARTICLE 9

FLINT RIVER DROUGHT PROTECTION

Cross references. — State-wide water management planning, T. 12, C. 5, A. 8. Authority to contract with Georgia Environmental Facilities Authority to implement or operate any drought protection program, § 50-23-5.

Law reviews. — For note on 2000 enactment of this article, see 17 Ga. St. U.L. Rev. 29 (2000).

RESEARCH REFERENCES

Am. Jur. 2d. — 3 Am. Jur. 2d, Agriculture, § 34.
78 Am. Jur. 2d, Waters, § 155.

C.J.S. — 94 C.J.S., Waters, §§ 943 et seq., 965 et seq.

12-5-540. Short title.

This article shall be known and may be cited as the "Flint River Drought Protection Act."

History. — Code 1981, § 12-5-540, enacted by Ga. L. 2000, p. 458, § 1.

Law reviews. — For article, "Special Challenges to Water Markets in Riparian States," see 21 Ga. St. U.L. Rev. 305 (2004).

For note, "The Problem of Reallocation in a Regulated Riparian System: Examining the Law in Georgia," see 40 Ga. L. Rev. 207 (2005).

12-5-541. Legislative intent.

(a) The General Assembly declares its intent and the public policy of this state that the state plans, regulates, and controls the withdrawal and the use of the waters of the state under the laws of Georgia to protect the public health, safety, and welfare; and the granting of any water withdrawal permit allows the permittee to use the water solely for the stated purposes described in the permit so long as such use is

consistent with the public welfare of the state and upon such conditions as the state may prescribe. This declaration of intent shall also apply to all aspects of this article.

(b) The General Assembly finds that the use of water resources for the state for agricultural purposes is of vital importance to Georgia and southwest Georgia in particular; the protection of flows in the Flint River and its tributaries is necessary for a healthy riverine ecosystem and a healthy population of aquatic life; the use of water resources during drought conditions may interfere with public and private rights; the economic well-being of the State of Georgia is dependent on a strong and efficient agricultural industry; the wise use of water, the protection of stream flows, and the economic well-being of the state will be furthered by proper water allocation in periods of drought; and programs to augment stream flows or provide incentives to ensure that certain irrigated lands are temporarily not irrigated during severe droughts will promote the wise use of water resources, and the protection of stream flows for habitat critical for aquatic life, and the economic well-being of the state.

(c) The General Assembly declares its intent to fund the execution of the public policy set forth in subsection (b) of this Code section by and through the authority with appropriated funds for the purposes of this article, grants, and other sources of revenue. The General Assembly intends for the total maximum balance of the unexpended drought protection funds during any fiscal year not to exceed $30 million. In the event the total balance of unexpended drought protection funds at the end of a fiscal year is less than $5 million, it is the intent of the General Assembly that the total balance of unexpended drought protection funds be replenished to at least $10 million at the earliest possible time. Appropriation of funds for inclusion in and as part of the drought protection funds shall be deemed consistent with this declaration of legislative intent.

History. — Code 1981, § 12-5-541, enacted by Ga. L. 2000, p. 458, § 1; Ga. L. 2014, p. 302, § 1/SB 213.

Law reviews. — For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014). For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 9 (2014).

For note, "The Problem of Reallocation in a Regulated Riparian System: Examining the Law in Georgia," see 40 Ga. L. Rev. 207 (2005).

12-5-542. Definitions.

As used in this article, except where otherwise specifically provided, the term:

(1) "Acceptable Flint River basin stream flows" means the quantity of stream flows at one or more specific locations on the Flint River or its tributaries which provides for aquatic life protection and other

needs as established by the director, based on municipal, agricultural, industrial, and environmental needs. Such tributaries shall not include field drainage systems, wet weather ditches, or any other water body:

(A) In which the channel is located above the ground-water table year round;

(B) For which runoff from precipitation is the primary source of water flow; and

(C) For which ground water is not a source of water flow.

(2) "Affected areas" means those specific portions of the state lying within the Flint River basin where ground-water use from the Floridan aquifer can affect stream flow or where drainage into Spring Creek, Ichawaynochaway Creek, Kinchafoonee Creek, and Muckalee Creek occurs.

(2.1) "Augmentation" means the addition of ground water from one or more aquifers underlying the affected areas into a surface water channel within the affected areas for the purpose of maintaining instream flows.

(3) "Authority" means the Georgia Environmental Finance Authority created by Chapter 23 of Title 50.

(4) "Board" means the Board of Natural Resources.

(5) "Director" means the director of the Environmental Protection Division of the Department of Natural Resources.

(6) "Division" means the Environmental Protection Division of the Department of Natural Resources.

(7) "Drought conditions" means any condition which results in a stream flow that is lower than the acceptable Flint River basin stream flows.

(8) "Drought protection funds" means the funds held by the authority as provided in Code Section 12-5-545 for the accomplishment of the purposes of this article.

(9) "Flint River basin" means the area of land which drains into the Flint River or its tributaries.

(10) "Floridan aquifer" means those rocks and sediments described in United States Geological Survey Open-File Report 95-321 (1996) that are capable of yielding ground water to wells or discharging water into the Flint River or its tributaries.

(11) "Irrigated land" means farm land which is irrigated by ground water or surface water pursuant to a water withdrawal permit issued by the director pursuant to Code Section 12-5-31 or 12-5-96.

(11.1) "Irrigation efficiency" means the percentage of the total amount of water withdrawn from a source which is beneficially used to meet crop water requirements or for other agronomic practices in accordance with applicable best management practices.

(12) "Irrigation reduction auction" means the procedure established by subsection (b) of Code Section 12-5-546 pursuant to which permittees submit offers to cease irrigation of a specified number of acres in exchange for a certain sum of money.

(13) "Permittee" means a person holding a valid permit issued before December 1, 2000, pursuant to Code Section 12-5-31 or 12-5-96.

(14) "Stream flow" means the quantity of water passing a given location of the Flint River or its tributaries over a given time period expressed in cubic feet per second.

History. — Code 1981, § 12-5-542, enacted by Ga. L. 2000, p. 458, § 1; Ga. L. 2010, p. 949, § 1/HB 244; Ga. L. 2014, p. 302, § 2/SB 213.

Law reviews. — For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014). For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 9 (2014).

12-5-543. Establishment of drought abatement program; rules and regulations.

(a) The board is authorized and directed to establish by rule and regulation for a drought abatement program for the Flint River basin in accordance with this article.

(b) In the performance of its duties, the board shall have and may exercise the power to adopt, promulgate, modify, amend, and repeal rules and regulations to implement and enforce the provisions of this article as the board may deem necessary. The rules and regulations may include, but shall not be limited to, the following:

(1) Prescribing eligibility requirements for permittees of irrigation systems located in the affected areas to receive payments from the drought protection funds in accordance with Code Section 12-5-546. Such eligibility requirements shall include, without limitation, the following requirements:

(A) The permittee must have applied to the division for a surface-water or ground-water withdrawal permit prior to December 1, 1999, and must have received a surface-water or ground-water withdrawal permit from the division prior to December 1, 2000; provided, however, that, if the director fails to act on a permit application by December 1, 2000, the time for receipt of a permit shall be extended until such time as the director makes a

decision on the application. If the director's decision is to deny the permit and that decision is reversed on appeal, the date of receipt of a permit shall be deemed to be the date of the director's decision; and

(B) The permittee must have demonstrated, in a manner to be defined by the director, actual previous irrigation by the permitted irrigation system on the same acres of land which the permittee agrees not to irrigate in a given year;

(2) Establishing documentation requirements for nonuse of an irrigation system pursuant to an agreement entered into pursuant to Code Section 12-5-546 or an order issued by the director in accordance with Code Section 12-5-547;

(3) Establishing rules and procedures to be followed in connection with the irrigation reduction auction conducted pursuant to subsection (b) of Code Section 12-5-546;

(4) Establishing rules and procedures to be followed in connection with payments to permittees from the drought protection funds pursuant to Code Section 12-5-547; or

(5) Establishing rules and procedures for the conduct of meetings and hearings.

(c) Any rules and regulations promulgated by the board shall be submitted by the board to the Speaker of the House of Representatives and the President of the Senate for distribution to the members of the General Assembly at the next regular session and shall become effective upon the expiration of that session unless during that session a resolution disapproving such regulations shall have been adopted by both houses.

History. — Code 1981, § 12-5-543, enacted by Ga. L. 2000, p. 458, § 1.

12-5-544. Powers of director.

In the performance of his or her duties, the director shall have and may exercise the power to:

(1) Exercise general supervision over the enforcement of this article and all rules, regulations, and orders promulgated pursuant to this article;

(2) Establish acceptable Flint River basin stream flows at one or more locations;

(3) Establish those geographical areas in or adjacent to the lower Flint River basin where the division's studies indicate that

ground-water use from the Floridan aquifer may affect stream flow in the Flint River or its tributaries;

(4) Predict or declare when severe drought conditions exist or are expected to exist during a given year based on historical, mathematical, meteorological, or other scientific considerations which may be published by the director and which may be developed in consultation with the state climatologist, the state geologist, or other appropriate experts;

(5) Establish criteria necessary to prove actual previous irrigation of lands for which a permittee seeks payment from drought protection funds;

(6) Make investigations and inspections to ensure compliance with this article, the rules and regulations issued pursuant to this article, and any agreement or order that the division or director enters into or issues pursuant to this article;

(7) Institute, in the name of the division, proceedings of mandamus, injunction, or other proper administrative or civil proceedings to enforce this article, the rules and regulations promulgated under this article, or any agreements or orders entered into or issued under this article;

(8) Contract with the authority for implementing and carrying out, in whole or in part, the purposes of a drought abatement program for the Flint River basin in accordance with this article and direct the authority to make expenditures from the drought protection funds in accordance with this article;

(9) Receive and collect all repayment penalties paid pursuant to this article and to transfer same to the authority for inclusion in the drought protection funds;

(9.1) Conduct and participate in studies related to management of the water resources in the Flint River basin;

(10) Encourage voluntary cooperation by persons and affected groups to achieve the purposes of this article; and

(11) Perform any and all acts and exercise all incidental powers necessary to carry out the purposes and requirements of this article.

History. — Code 1981, § 12-5-544, enacted by Ga. L. 2000, p. 458, § 1; Ga. L. 2014, p. 302, § 3/SB 213.

Law reviews. — For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014). For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 9 (2014).

12-5-545. Administration of fund.

The authority shall administer the drought protection funds provided to it for purposes of this article and shall make expenditures from said funds in accordance with and at the direction of the director pursuant to Code Sections 12-5-546 and 12-5-547. With the prior consent and approval of the director, the authority is authorized to expend a portion of the drought protection funds for incidental costs and expenses reasonably incurred by the authority in connection with its administration of the drought protection funds for such things as postage, office supplies, and prorated salaries and wages of personnel assigned the tasks associated with management of the drought protection funds. The authority is further authorized and directed to invest the unexpended balance of the drought protection funds in the same manner as other funds under its control. Any interest or other revenues earned on the principal of the drought protection funds shall be added to the unexpended balance of the drought protection funds and become a part thereof. Upon request of the director, the authority shall provide such accounting information to the director as may be reasonably necessary for the director to perform his or her duties and functions pursuant to this article. All moneys deposited in the drought protection funds shall be deemed to be contractually obligated and shall not lapse to the general fund.

History. — Code 1981, § 12-5-545, enacted by Ga. L. 2000, p. 458, § 1.

12-5-546. Prediction of drought; irrigation reduction auction; agreement.

(a) On or before March 1 of each year, the division may issue a prediction as to whether severe drought conditions are expected during the year. If the division predicts a severe drought during any particular year, it shall issue such prediction before March 1 of that year. Prediction of severe drought may be based on consideration of historical, mathematical, or meteorological information, including, but not limited to, stream flows, ground-water levels, and precipitation forecasts. Such prediction may also be based on scientific analyses, including, but not limited to, the Palmer Drought Severity Index administered by the National Oceanographic and Atmospheric Administration.

(b) If severe drought conditions are predicted or otherwise declared in accordance with subsection (a) of this Code section, the division may determine the total number of acres of irrigated land, serviced by irrigation systems located within one or more of the affected areas, that must not be irrigated that year in order to maintain the acceptable Flint River basin stream flows. Upon such determination, the division

may conduct an irrigation reduction auction whereby a permittee of an irrigation system located within the affected areas is given an opportunity to enter into an agreement with the division, agreeing that in exchange for a certain sum of money per acre of irrigated land serviced by the irrigation system, the permittee will not irrigate those particular acres for the remainder of that calendar year. The authority shall pay the sum so agreed upon when so directed by the director from the unexpended balance of the drought protection funds. In conducting the irrigation reduction auction, the division may establish a maximum dollar amount per acre to be expended from the drought protection funds for such purposes.

(c) An agreement entered into in accordance with subsection (b) of this Code section shall be upon such terms and conditions as the division may deem necessary. The agreement shall provide for payment of the agreed upon sum within 30 days of the date of execution of the agreement by the parties. Failure of a permittee to comply with all terms of the agreement for the duration thereof shall be deemed a violation of such agreement and this article and shall be subject to enforcement by the director as provided in this article.

(d) A permittee who enters into an agreement in accordance with subsection (b) of this Code section shall not irrigate during the period covered by the agreement on those acres that the owner has agreed not to irrigate. If the permittee irrigates said acres during the period covered by the agreement, such action shall be deemed a violation of the agreement and this article and shall be subject to a penalty as determined by the director as provided in this article.

(e) The expenditure of funds under this article as an incentive to permittees not to irrigate lands is deemed by the legislature as a valid use of state moneys to promote valid land use policies that result in the protection of the riverine environment by ensuring that such lands not be irrigated for specified periods of time. No expenditure of funds under this article shall be considered full or partial compensation for any losses, financial or otherwise, experienced due to nonirrigation; a lease or repurchase of any irrigation permit issued by the director; or an acknowledgment by the State of Georgia of a property right in any permit issued by the director.

History. — Code 1981, § 12-5-546, enacted by Ga. L. 2000, p. 458, § 1; Ga. L. 2012, p. 775, § 12/HB 942; Ga. L. 2014, p. 302, § 4/SB 213.

Law reviews. — For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014). For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 9 (2014).

For note, "The Problem of Reallocation in a Regulated Riparian System: Examining the Law in Georgia," 40 Ga. L. Rev. 207 (2005).

12-5-546.1. Enhancement of programming and incentives; scheduling irrigation efficiencies; modifying water withdrawal permits; coordination of efforts.

(a) The Department of Agriculture and the State Soil and Water Conservation Commission shall coordinate with the division in examining current practices, programs, policies, rules, and regulations to identify opportunities to enhance programming and incentives that will:

(1) Support implementation of the agricultural water efficiency measures in water conservation or management plans prepared in accordance with Code Sections 12-5-31, 12-5-96, and 12-5-522;

(2) Support implementation of pilot projects demonstrating the efficacy of emerging innovative irrigation technologies where appropriate and affordable;

(3) Identify ways the State Soil and Water Conservation Commission's program for measuring agricultural uses of water as authorized under Code Section 12-5-105 can further enhance efforts to improve agricultural water use efficiency; and

(4) Encourage a scheduled program for the voluntary retirement of unused surface-water and ground-water farm use permits in accordance with Code Sections 12-5-31 and 12-5-105.

(b) The director may modify all active surface-water and ground-water withdrawal permits for farm use in the affected areas to require all irrigation systems applying water withdrawn pursuant to such permits to achieve irrigation efficiencies of 80 percent or greater by the year 2020. The schedule for achieving the irrigation efficiencies provided in this subsection shall be as follows:

(1) Irrigation systems applying water withdrawn pursuant to all active permits issued after 2005 shall achieve a minimum irrigation efficiency of 80 percent by January 1, 2016;

(2) Irrigation systems applying water withdrawn pursuant to all active permits issued from 1991 through 2005 shall achieve a minimum irrigation efficiency of 80 percent by January 1, 2018; and

(3) Irrigation systems applying water withdrawn pursuant to all active permits issued before 1991 shall achieve a minimum irrigation efficiency of 80 percent by January 1, 2020.

(c) Notwithstanding subsection (b) of this Code section, the director may modify specified active surface-water and ground-water withdrawal permits for farm use in the affected areas to require all mobile irrigation systems and solid-set irrigation sprinklers operating under

such permits to achieve irrigation efficiencies of 60 percent or greater by the year 2020. The schedule for achieving such efficiencies shall be as follows:

(1) Irrigation systems applying water withdrawn pursuant to all active permits issued after 2005 shall achieve a minimum irrigation efficiency of 60 percent by January 1, 2016;

(2) Irrigation systems applying water withdrawn pursuant to all active permits issued from 1991 through 2005 shall achieve a minimum irrigation efficiency of 60 percent by January 1, 2018; and

(3) Irrigation systems applying water withdrawn pursuant to all active permits issued before 1991 shall achieve a minimum irrigation efficiency of 60 percent by January 1, 2020.

(d) Notwithstanding the irrigation efficiency rates required in subsection (c) of this Code section or any other provision of this Code section to the contrary, the minimum irrigation efficiency rate for mobile irrigation systems and solid-set irrigation sprinklers applying water withdrawn pursuant to new permits shall be 60 percent.

(e) When issuing any permit application for a new surface-water or ground-water withdrawal for farm use in the affected areas, the division shall require that the irrigation system applying water withdrawn pursuant to any such permit has an irrigation efficiency of at least 80 percent.

(f) The division shall, in cooperation with other state and federal agencies, universities, the Georgia Water Planning and Policy Center, the Lower Flint-Ochlockonee Regional Water Council, and other appropriate entities, provide to the board for consideration for adoption in its rules requirements pertaining to methods an applicant may utilize to demonstrate that the required irrigation efficiency has been achieved. Requirements shall consider current technologies, best management practices, and the effects of soil type and topography, among other factors deemed necessary.

(g) The division shall coordinate with any federal or state agencies offering incentive programs that support the purposes of this article, to identify opportunities to refine and target relevant programs as practicable and to assist permittees with achieving irrigation efficiency requirements.

History. — Code 1981, § 12-5-546.1, enacted by Ga. L. 2014, p. 302, § 5/SB 213.

Administrative rules and regulations. — Management of augmented flows, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Flint River Drought Protection, Sec. 391-3-28-.16.

Law reviews. — For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014). For article on the 2014 enact-

ment of this Code section, see 31 Ga. St. U.L. Rev. 9 (2014).

12-5-546.2. Notification in advance of any state funded augmentation projects.

(a) As used in this Code section, "permittee" means any person holding a valid permit issued pursuant to Code Section 12-5-31 which provides for the withdrawal of surface water from within the affected areas.

(b) The director shall notify specified permittees downstream of any state funded augmentation project, which shall be operated for the sole purpose of maintaining the minimum stream flows sufficient to protect habitat critical for vulnerable aquatic life within the affected areas. The director may notify specified downstream permittees that, during specified periods of the project's operation for the sole purpose of maintaining such minimum stream flows, the permittee shall let the flow provided by the augmentation project pass his or her point of withdrawal. When specifying those permittees subject to such notification, the director shall also establish, in accordance with the factors that may be considered under paragraph (e) of this Code section, those permittees that shall not be subject to the requirements of this Code section.

(c) Such notification shall be provided in accordance with rules promulgated by the board, shall be based on the best available science, and shall, at a minimum, inform the permittees that the upstream project is delivering augmented flows for the sole purpose of maintaining the minimum stream flows sufficient to protect habitat critical for vulnerable aquatic life within the affected areas.

(d) The director's notification shall contain notice of opportunity for a hearing and shall be served by certified mail, return receipt requested, to the most recent address provided by the permittee. Any permittee to whom such notification is directed shall comply therewith immediately, but shall be afforded a hearing within five business days of the director's receipt of a petition filed by such permittee. Such hearing shall be before an administrative law judge of the Office of State Administrative Hearings and shall be conducted in accordance with subsection (c) of Code Section 12-2-2. Based upon findings adduced at such hearing, the notification shall be modified, reversed, or continued by the director.

(e) In preparing such notification, the director may consider:

(1) The best available modeling and monitoring data for relevant locations and stream reaches;

(2) The appropriate duration of protection of augmented flows;

(3) The distance downstream for which protection of augmented flows is appropriate;

(4) The degree to which protection of augmented flows will assist in mitigating the effects of droughts, provide ecological or other environmental benefits, and ensure sustainable, long-term access to water resources for existing and future water users; and

(5) Any other data or information the director deems relevant.

(f) Nothing in this Code section shall provide authority for the interbasin transfer of any water.

History. — Code 1981, § 12-5-546.2, enacted by Ga. L. 2014, p. 302, § 5/SB 213; Ga. L. 2015, p. 5, § 12/HB 90.

Law reviews. — For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014). For article on the 2014 enactment of this Code section, see 31 Ga. St. U.L. Rev. 9 (2014).

12-5-547. Director's orders.

If the director determines that the total number of nonirrigated acres needed during a given year cannot be sufficiently obtained through the irrigation reduction auction held in accordance with Code Section 12-5-546, the director is authorized to issue an order, in accordance with rules adopted by the board, requiring certain permittees not to irrigate a specified number of acres of irrigated land until the end of the calendar year. When issuing such orders, the director shall begin with the permittees whose withdrawal permits were issued most recently and then work chronologically backward with each order issued. A permittee who is issued such an order shall be compensated for such restriction if such permittee applied to the division for a surface-water or ground-water withdrawal permit prior to December 1, 1999, received a surface-water or ground-water withdrawal permit from the division prior to December 1, 2000, and is able to demonstrate actual previous irrigation on the same acres of land which the owner has been ordered not to irrigate. The per acre dollar amount received by a permittee pursuant to this Code section shall be equal to the average agreed upon sum per acre paid pursuant to the irrigation reduction auction during the same year.

History. — Code 1981, § 12-5-547, enacted by Ga. L. 2000, p. 458, § 1.

Law reviews. — For note, "The Problem of Reallocation in a Regulated Riparian System: Examining the Law in Georgia," see 40 Ga. L. Rev. 207 (2005).

12-5-548. Investigations and inspections.

(a) The division shall have the right, in accordance with rules adopted by the board, to conduct such investigations and inspections as

may reasonably be necessary to carry out its duties prescribed in this article and to ensure compliance with this article, the rules and regulations issued pursuant to this article, and any agreement or order that the division or director enters into or issues pursuant to this article. For these purposes, the division shall have the right to enter at reasonable times any property, public or private, and conduct such investigations or inspections.

(b) No person shall refuse entry or access to any authorized representative of the division who requests entry for the purposes of a lawful inspection and who presents appropriate credentials, nor shall any person obstruct, hamper, or interfere with any such representative while in the process of carrying out his or her official duties consistent with the provisions of this article.

History. — Code 1981, § 12-5-548, enacted by Ga. L. 2000, p. 458, § 1.

12-5-549. Compliance; violations.

(a) Except as may otherwise be provided in this article, whenever the director has reason to believe that a violation of any provision of this article or any rule or regulation adopted pursuant to this article has occurred, he or she shall attempt to obtain compliance therewith by conference, conciliation, or persuasion, if the making of such an attempt is appropriate under the circumstances. If he or she fails to obtain compliance in this manner, the director may order the violator to take whatever corrective action the director deems necessary in order to obtain such compliance within a period of time to be prescribed in such order.

(b) Except as may otherwise be provided in this article, any order issued by the director under this article shall become final unless the person or persons named therein file with the director a written request for a hearing within 30 days after such order or permit is served on such person or persons.

(c) Except as may otherwise be provided in this article, hearings on contested matters and judicial review of final orders and other enforcement actions under this article shall be provided and conducted in accordance with subsection (c) of Code Section 12-2-2.

(d) The director may file in the superior court of the county wherein the person under order resides, or if the person is a corporation, in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred or in which jurisdiction is appropriate, a certified copy of a final order of the director unappealed from or a final order of the director affirmed upon appeal, whereupon the court shall render judgment in accordance therewith

and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though the judgment had been rendered in an action duly heard and determined by such court.

(e) For purposes of this Code section, a violation of an agreement entered into in accordance with Code Section 12-5-546 or an order issued by the director in accordance with Code Section 12-5-547 shall be prima facie established upon a showing that:

(1) During the effective period of the agreement or order, the irrigation system was observed in person or via remote sensing or otherwise established by representatives of the division or others to have been operating and disbursing water; or

(2) During the effective period of the agreement or order, a seal, lock, or other device placed by the division on the system to prevent operation of the system has been broken or otherwise tampered with.

History. — Code 1981, § 12-5-549, enacted by Ga. L. 2000, p. 458, § 1; Ga. L. 2014, p. 302, § 6/SB 213.

Law reviews. — For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014). For article on the 2014 amendment of this Code section, see 31 Ga. St. U.L. Rev. 9 (2014).

12-5-550. Repayment penalty; notice of violation; time limit to respond to notice of violation; failure to respond to notice of violation.

(a) A repayment penalty in the amount of three times the dollar amount of payments received from the drought protection funds shall be paid by any person who irrigates in violation of an agreement entered into in accordance with Code Section 12-5-546 or in violation of an order issued by the director in accordance with Code Section 12-5-547. Such penalties shall be assessed on a per violation basis. A violation shall be deemed to have occurred each time a person irrigates in violation of an agreement or order.

(b) Within 30 days after discovery that a permittee violated an agreement entered into pursuant to Code Section 12-5-546 or an order issued by the director in accordance with Code Section 12-5-547, the director shall send via certified mail or statutory overnight delivery a notice of violation to the permittee stating:

(1) The date on which the violation occurred;

(2) The facts constituting the violation and a statement that such facts will be deemed admitted unless denied by petition for hearing; and

(3) The total dollar amount of repayment penalties owed by the permittee, together with a demand that said amount be paid in full within 30 days of the permittee's receipt of the notice.

(c) A permittee receiving a notice of violation pursuant to this Code section shall have 30 days from receipt thereof either to pay in full the total amount of repayment penalties set forth in the notice or to submit a petition challenging such notice to the director. If a petition is filed within the required time, then a hearing shall be conducted with respect to same in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and the rules and regulations applicable thereto.

(d) If a permittee receiving a notice of violation pursuant to this Code section does not either pay the total amount of repayment penalties or submit a petition challenging the notice, then the facts set out in the notice shall be deemed admitted and the director shall issue an order to the permittee, assessing the total repayment penalties due from the permittee as set forth in the notice of violation and requiring payment of same within 30 days of issuance of the order. Any order issued by the director pursuant to this subsection shall be deemed final, and no hearing or appeal may be taken.

History. — Code 1981, § 12-5-550, enacted by Ga. L. 2000, p. 458, § 1; Ga. L. 2001, p. 1212, § 3.

Editor's notes. — Ga. L. 2001, p. 1212, § 7, not codified by the General Assembly, provides that this Act is applicable with respect to notices delivered on or after July 1, 2001.

ARTICLE 10

METROPOLITAN NORTH GEORGIA WATER PLANNING DISTRICT

Cross references. — Protection of Metropolitan rivers, T. 12, C. 5, A. 5, P. 6. State-wide water management planning, T. 12, C. 5, A. 8. Population bills, § 28-1-15.

12-5-570. Short title.

This article shall be known and may be cited as the "Metropolitan North Georgia Water Planning District Act."

History. — Code 1981, § 12-5-570, enacted by Ga. L. 2001, p. 115, § 1.

Law reviews. — For note on the 2001 enactment of O.C.G.A. §§ 12-5-570 to 12-5-586, see 18 Ga. St. U.L. Rev. (2001).

OPINIONS OF THE ATTORNEY GENERAL

Compliance by state with post development stormwater runoff regulations not required. — State and the state's departments, agencies, and authorities, including the Georgia Department of Transportation and DOT construction projects, are not subject to the "post-development stormwater runoff" regulations or other ordinances adopted by a local government, local authority, or regional authority, including the model ordinance promulgated by the Metropoli-

tan North Georgia Water Planning District. 2009 Op. Att'y Gen. No. 2009-6.

12-5-571. Legislative intent.

(a) The General Assembly recognizes the value of the metropolitan North Georgia area watersheds for water supply, recreation, habitat for fish and wildlife, economic prosperity, and quality of life. The General Assembly finds that adequate supplies of clean water for drinking and other purposes constitute the lifeblood of the metropolitan North Georgia area and are, therefore, essential to the health, welfare, and economic progress of the area. The purpose of this article is to create a planning entity dedicated to developing comprehensive regional and watershed-specific plans to be implemented by local governments in the district. These plans will protect water quality and public water supplies in and downstream of the region, protect recreational values of the waters in and downstream of the region, and minimize potential adverse impacts of development on waters in and downstream of the region.

(b) The General Assembly finds that the waters and watersheds of the district are natural resources, environments, and vital areas within the meaning of Article III, Section VI, Paragraph II of the Constitution of the State of Georgia.

History. — Code 1981, § 12-5-571, enacted by Ga. L. 2001, p. 115, § 1.

12-5-572. Creation; purpose.

(a) There is created the Metropolitan North Georgia Water Planning District.

(b) The general purposes of the district shall be to establish policy, create plans, and promote intergovernmental coordination for all water issues in the district; to facilitate multijurisdictional water related projects; and to enhance access to funding for water related projects among local governments in the district area.

(c) It is the primary purpose of the district to develop regional and watershed-specific plans for storm-water management, waste-water treatment, water supply, water conservation, and the general protection of water quality, which plans will be implemented by local governments in the district.

History. — Code 1981, § 12-5-572, enacted by Ga. L. 2001, p. 115, § 1.

12-5-573. Definitions.

As used in this article, the term:

(1) "Board" means the Metropolitan North Georgia Water Planning District Governing Board created under Code Section 12-5-575.

(2) "Director" means the director of the Environmental Protection Division of the Department of Natural Resources.

(3) "District" means the entity established by this article that shall have planning responsibility for watershed and storm-water management, waste-water management, and water supply and conservation management within the district area.

(4) "District area" means any county which has a population of 500,000 or more according to the 2000 United States decennial census or any future such census and all counties geographically contiguous to any such county; provided, however, that any such contiguous county having population of 100,000 or less according to the 2000 United States decennial census or any future such census may, by majority vote of the governing authority thereof and with the written approval of the director, remove itself from the district area. The district area may be expanded from time to time as provided in this article.

(5) "Local government" means any county or municipality of this state lying in whole or in part within the district area.

History. — Code 1981, § 12-5-573, enacted by Ga. L. 2001, p. 115, § 1.

12-5-574. Powers; approval of plan non-binding on finances; extension of time for preparing plan.

(a) The district shall promote regional coordination and cooperation through the exercise of the following powers:

(1) Development of regional and watershed-specific plans for storm-water management taking into account recommendations developed by the basin advisory councils;

(2) Development of regional and watershed-specific plans for waste-water management taking into account recommendations developed by the basin advisory councils;

(3) Development of regional and watershed-specific plans for water supply and water conservation taking into account recommendations developed by the basin advisory councils;

(4) Development of regionally consistent policies, model ordinances, and minimum standards of performance for local govern-

ments relating to the creation and implementation of the plans developed by the district;

(5) Development and coordination of an effective regional and watershed-specific water quality monitoring program and development and maintenance of a corresponding data base reflecting available monitoring data;

(6) Establishment of education programs on water quality issues and promotion of water conservation;

(7) Identification of funding sources, including without limitation federal funding sources for the creation and implementation of plans provided for under this article;

(8) Entry into contracts with both public and private parties in connection with the exercise of the powers and duties of the district;

(9) Development of measurable short-term and long-term goals for water quality and conservation improvement;

(10) Development of a program to identify and implement structural controls and nonstructural controls needed to achieve the goals for water quality and conservation improvement; and

(11) Reviewing and reporting on the progress of implementation of the water plans and achievement of the water goals developed pursuant to this article.

(b) Approval by the district of any storm-water management plan, waste-water management plan, water supply and conservation plan, or other plan pursuant to this article shall not obligate any governing authority comprising a part of the district to provide funding for facilities planned or constructed pursuant to such plans which do not provide services to all or a portion of the population of such governing authority proportionate to any cost allocation.

(c) No extension of time by the board for preparation of a plan provided for under this article shall exceed six months, nor shall more than one extension be granted for any such plan.

History. — Code 1981, § 12-5-574, enacted by Ga. L. 2001, p. 115, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, "advisory" was substituted for "advisors" in paragraphs (a)(1), (a)(2), and (a)(3).

12-5-575. Board created; appointments; vacancies; terms.

(a) There is established for the management of the business and affairs of the district a Metropolitan North Georgia Water Planning District Governing Board to consist of:

(1) The chairperson of the county commission or the chief executive officer of each county in the district area having a population of 200,000 or more according to the 2000 United States decennial census or any future such census;

(2) The mayor of each municipality in the district area having a population of 200,000 or more according to the 2000 United States decennial census or any future such census;

(3) A member appointed from each county in the district area not represented pursuant to paragraph (1) of this subsection by a caucus of the county commissioners together with the mayors of municipalities, the majority of the population of which reside within such county and which have water withdrawal permits or waste-water discharge permits, which caucus shall select either one of such mayors or the chairperson of the county commission or chief executive officer of the county; provided, however, that if one or more mayors participate in such selection and said initial appointee is a mayor, the successor must be the chairperson of the county commission or chief executive officer of the county, and if said initial appointment is the chairperson of the county commission or chief executive officer of the county, the successor must be one of such mayors, and the succession shall accordingly alternate in the future;

(4) Six members to be appointed by the Governor;

(5) Two members to be appointed by the Lieutenant Governor; and

(6) Two members to be appointed by the Speaker of the House of Representatives.

(b) Of the initial appointments of the Governor, two shall be for a term of one year, two for a term of two years, and two for a term of three years, and their successors shall serve for terms of three years. Of the initial appointments of the Lieutenant Governor and the Speaker, one shall be for a term of one year and one for a term of three years, and their successors shall serve for terms of three years. The terms of members serving pursuant to paragraphs (1) and (2) of subsection (a) of this Code section shall be concurrent with their terms of office in their respective counties and municipalities. Of the members initially appointed pursuant to paragraph (3) of subsection (a) of this Code section, one-half, or one more than one-half in the event of an odd number of appointments, shall be selected by lot to serve a two-year term, and the remainder shall serve a three-year term. Their successors shall serve terms of three years. All members of the board shall serve until their successors are appointed and qualified. At no time shall more than one member of the governing authority or executive branch of any county or municipality serve on the board.

(c) Any vacancy on the board shall be filled for the remainder of the unexpired term in the same manner as the original appointment to the

vacated position. No vacancy on the board shall impair the right of the quorum of the remaining members then in office to exercise all rights and perform all duties of the board.

(d) The executive committee of the district shall consist of a chairperson, a vice chairperson, a secretary-treasurer, the members serving pursuant to paragraphs (1) and (2) of subsection (a) of this Code section, and such other members as the board may determine are appropriate from time to time.

(e)(1) The initial chairperson and vice chairperson of the board shall be appointed by the Governor from among the membership of the board for a term of three years, and thereafter the chairperson and vice chairperson shall be appointed by majority vote of the board for a term of three years.

(2) As a qualification for office of chairperson, except for the initial chairperson, he or she shall have served at least one year as a member of the board. No chairperson shall serve in that capacity in excess of two consecutive terms.

(3) The chairperson shall preside at all meetings of the district. He or she shall be the chief executive officer of the district.

(4) The vice chairperson shall serve in the absence of the chairperson and, in addition, shall assist the chairperson and shall perform such other duties as may be assigned by the board.

(5) The secretary-treasurer shall be the custodian of the books and records of the district, shall keep the minutes of all meetings, shall be the chief fiscal officer of the district, and shall perform such other duties as may be assigned by the board.

History. — Code 1981, § 12-5-575, enacted by Ga. L. 2001, p. 115, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, a semicolon was substituted for a period at the end of paragraph (a)(3).

12-5-576. Open meetings; quorum; voting; executive sessions.

(a) The board shall meet at least three times per year at a time and place set forth in the minutes of the district and at such other times as the chairperson may direct. All such meetings shall be open to the public.

(b) A majority of the members to which the board is entitled shall constitute a quorum.

(c) Once a quorum has been established, a majority of the members to which the board is entitled shall be required to adopt any matter before the district.

(d) Each member of the board shall have one vote to be cast in person, and there shall be no voting by proxy; provided, however, that each member serving on the board pursuant to the provisions of paragraphs (1), (2), and (3) of subsection (a) of Code Section 12-5-575 shall be entitled to designate in writing to the chairperson of the board an alternate who may exercise any of the powers and discharge any of the duties of such member provided for in this article, including voting, in the absence of such member, other than serving as chairperson, vice chairperson, or secretary-treasurer of the board.

(e) The district, by a majority vote of those members of the board present, may go into executive session for the purposes of discussing personnel matters, meeting with attorneys representing the district in adversarial or potentially adversarial situations, and for any other purpose authorized by and consistent with Chapter 14 of Title 50.

History. — Code 1981, § 12-5-576, enacted by Ga. L. 2001, p. 115, § 1; Ga. L. 2004, p. 470, § 1.

12-5-577. Operating budget; sources of funding; power to enter into contracts and to expend funds; depositing.

(a) Prior to July 1 each year, the officers of the board shall submit to the district for adoption a preliminary budget required for the operation of the district during the ensuing calendar year, which shall also be the fiscal year.

(b) Funding for the district operations shall be derived from the following sources:

(1) Dues paid by cities and counties within the district such that the aggregate total of all such dues from all such cities and counties shall be no less than $500,000.00 annually. Such fees shall be raised on a per capita assessment or water-usage fee basis or based on a formula adopted and approved by the local government members of the district; and

(2) Appropriated or contracted state funds.

(c) The district is specifically empowered to contract or otherwise participate in and to accept grants, funds, gifts, or services from any federal, state, or local government or its agencies or instrumentalities and from private and civic sources and to expend funds received therefrom under provisions as may be required and agreed upon by the district in connection with any program or purpose for which the district exists.

(d) All funds of the district not otherwise employed shall be deposited from time to time to the credit of the district in such banks, trust companies, or other depositories as the district may select.

History. — Code 1981, § 12-5-577, enacted by Ga. L. 2001, p. 115, § 1; Ga. L. 2004, p. 470, § 2; Ga. L. 2006, p. 72, § 12/SB 465.

12-5-578. Adjoining counties or municipalities application to be added to the district area.

Any county or municipality adjoining a member county or municipality shall be added to the district area upon the application of such entity to be included in the district by resolution of its governing authority and upon approval of the director.

History. — Code 1981, § 12-5-578, enacted by Ga. L. 2001, p. 115, § 1.

12-5-579. Staffing; cooperation among agencies.

(a) The district staff shall consist initially of the existing staff of the Environmental Planning Division of the Atlanta Regional Commission. Additional staff may be added or the staffing modified as necessary to fulfill the responsibilities of the district. The district may contract for such additional staff and consulting services as the board in its discretion may determine to be necessary from time to time.

(b) Any commission, as defined by Code Section 50-8-31, falling within the geographic boundaries of the district shall cooperate with the district and shall assist it in its efforts.

History. — Code 1981, § 12-5-579, enacted by Ga. L. 2001, p. 115, § 1; Ga. L. 2008, p. 181, § 10/HB 1216.

12-5-580. Coordinating committees; finance committees.

(a) The board shall create one or more technical coordinating committees comprised primarily of water and waste-water officials from counties, cities, and authorities in the district. Such committees shall provide additional support to the board and staff for specific areas and issues such as water treatment, waste-water treatment, and storm-water management.

(b) The board shall create a finance committee which shall meet with the boards and staffs of the Georgia Environmental Finance Authority, the Department of Community Affairs, and the Department of Natural Resources for the purpose of developing recommendations for a funding structure for the district and for projects included in the district plans developed pursuant to this article, and that authority and those departments, their boards, and staffs are directed to cooperate with the district in developing such recommendations. The board shall consider the recommendations of the finance committee and forward them as

adopted or amended to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, and the chairpersons of the Senate Natural Resources and the Environment Committee and the House Committee on Natural Resources and Environment not later than December 1, 2001. Such recommendations may be updated and revised from time to time thereafter.

History. — Code 1981, § 12-5-580, enacted by Ga. L. 2001, p. 115, § 1; Ga. L. 2009, p. 303, § 13/HB 117; Ga. L. 2010, p. 949, § 1/HB 244.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, "House Committee on Natural Resources and Environment" was substituted for "House Natural Resources and Environment Committee" in subsection (b).

Editor's notes. — Ga. L. 2009, p. 303, § 20/HB 117, not codified by the General Assembly, provides that: "This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act."

12-5-581. Advisory councils.

(a) The board shall create separate advisory councils for the Chattahoochee, Etowah, Flint, Oconee, and Ocmulgee river basins and the Lake Lanier Basin. The Etowah River Basin Advisory Council shall include the Lake Allatoona Preservation Authority as a member. The Lake Lanier Basin Advisory Council shall include at least one member appointed by the Lake Lanier Association, Inc. Each basin advisory council shall be comprised of a minimum of 20 individuals. These individuals shall be from within the district area as well as from outside the district area, upstream and downstream of the district; provided, however, that such persons shall reside within the river basin. Each river basin shall be defined as those lands lying between the ridgelines dividing each river drainage from another. These representatives shall be selected and shall serve based upon procedures and rules established by the board.

(b) The director shall create two additional basin advisory councils each comprised of a minimum of 20 individuals. One council shall consist of individuals representing the watersheds upstream of the district and one council shall consist of individuals representing the watersheds downstream of the district. The director shall solicit the recommendation of the House Committee on Natural Resources and the Environment and the Senate Natural Resources and the Environment Committee as to the membership of such councils.

(c) Each basin advisory council shall have a chairperson and such other officers as necessary and convenient. Each chairperson shall be entitled to attend and comment at any meeting of the board.

(d) The basin advisory councils shall advise the district in the development and implementation of policy, provide input to the director

concerning the development of minimum elements and standards for plans provided for under this article, and provide input on the content of plans provided for under this article as such plans are developed.

(e) The board chairperson shall appoint one or more board members to convene meetings of the basin advisory councils on a regular schedule established by the board; provided, however, that there shall be a minimum of four scheduled meetings per year. The district shall provide advance drafts of such plans or recommendations as it may make pursuant to this article to basin advisory councils for review and input, and the basin advisory councils shall prepare reports and recommendations for consideration by the district in formulating any plan or taking any other action provided for under this article. Each basin advisory council shall further provide input to the district concerning the development of minimum elements and standards for plans provided for under this article relating to its specific river basin.

History. — Code 1981, § 12-5-581, enacted by Ga. L. 2001, p. 115, § 1; Ga. L. 2009, p. 303, § 13/HB 117.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, "basin advisory" was substituted for "advisory basin" in subsection (e).

Editor's notes. — Ga. L. 2009, p. 303, § 20/HB 117, not codified by the General Assembly, provides that: "This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act."

12-5-582. Model ordinances for effective storm-water management and for a district-wide watershed management plan; annual review; public meetings; certification by director; local compliance.

(a) Within one year after May 1, 2001, unless such time period is extended by majority vote of the board, the district shall prepare for public comment one or more model ordinances for local governments designed to provide for effective storm-water management. Such model ordinances shall also include minimum design and development standards for local development as it may affect storm-water run-off quality and storm-water conveyance and infrastructure standards applicable to local governments. Upon receipt of public comment, the district shall finalize the model ordinances and publish the same.

(b) Within two years after May 1, 2001, unless such time period is extended by majority vote of the board, the district shall prepare for public comment a district-wide watershed management plan containing elements common to all watersheds within the district and containing within it watershed-specific components for watershed management. The plan shall build upon and be coordinated with existing watershed planning efforts undertaken by local governments and other

entities in the district area and plans otherwise developed under this title. After receipt of public comment, the district shall approve the plan which shall meet all standards established by the director and shall include the following elements:

(1) Appropriate standards and methodologies for monitoring water quality and maintaining and organizing an inventory of collected water quality data;

(2) Descriptions of current pollutant loads by source categories, subsource categories, and specific sources where identifiable;

(3) Forecasts of potential future pollutant load increases by virtue of new development, growth, or other changes in watershed activities;

(4) Identification of streams or bodies of water within the applicable watershed having or requiring total maximum daily loads under applicable federal regulations; provisions for incorporating into the watershed-specific plan any implementation plan for total maximum daily loads as established by the director; and provisions to ensure that the watershed-specific plan conforms to requirements for implementation plans for streams requiring total maximum daily loads, such that said watershed-specific plan could be readily utilized by the director to meet applicable federal requirements for implementation plans for total maximum daily loads;

(5) Establishment of priorities for protecting watershed resources and for obtaining pollutant load reductions or preventing future pollutant load increases, or both, and an explanation of the rationale for such priorities;

(6) Identification of specific effective control programs and strategies including specific regulatory or voluntary actions to attain and maintain applicable water quality standards, including any pollutant load reductions mandated by implementation plans for total maximum daily loads; identification of specific public or private organizational responsibility for carrying out such control programs or voluntary actions, including without limitation instances where control programs require coordination among multiple jurisdictions, such that there are reasonable assurances that applicable water quality standards will be attained or maintained, or both;

(7) The model ordinances established under subsection (a) of this Code section and any recommended additions or modifications to such model ordinances, if appropriate, to provide additional measures to improve storm-water run-off quality, including without limitation, requirements to retrofit or modify existing developments in order to improve storm-water run-off quality;

(8) Recommended changes to state or local laws, regulations, or ordinances necessary to implement the plans;

(9) A timetable for implementation of necessary elements of the plans for each jurisdiction including description of annual, measurable milestones for determining whether identified measures are being implemented;

(10) Estimates of costs and identification of potential sources of funding necessary for implementation of the plans;

(11) Education and public awareness measures regarding watershed protection; and

(12) Establishment of short-term and long-term goals to be accomplished by the plan and measures for the assessment of progress in accomplishing such goals and plan.

(c) The district shall review the watershed management plan and its implementation annually to determine whether there is a need to update such plan and shall report to the director the progress of implementation of its goals, and in any case the district shall prepare an updated watershed management plan no less frequently than every five years after finalization of the initial plan.

(d) The district shall hold public meetings concerning any plan or updated plan developed by the district under subsection (a), (b), or (c) of this Code section and shall publish in print or electronically for public notice and comment any proposed approval, disapproval, or conditional approval of any such plan.

(e)(1) Local governments within the district shall implement the provisions of the district plans that apply to them. Should any jurisdiction fail to do so, the director shall exercise his or her powers pursuant to this chapter.

(2) Upon the district's approval of the plan, the director may modify all existing permits under Code Sections 12-5-29, 12-5-30, 12-5-31, 12-5-96, 12-5-97, and 12-5-179 and any National Pollutant Discharge Elimination System Phase I or Phase II General Stormwater permits to make them consistent with the plan. The director may include as a condition in any issued, modified, or renewed permit to any local government under Code Section 12-5-29, 12-5-30, 12-5-31, 12-5-96, 12-5-97, or 12-5-179 or any National Pollutant Discharge Elimination System Phase I or Phase II General Stormwater permit the applicable contents of the district plan.

(3) The director shall not approve any application by a local government in the district to issue, modify, or renew a permit under Code Section 12-5-29, 12-5-30, 12-5-31, 12-5-96, 12-5-97, or 12-5-179,

if such permit would allow an increase in the permitted water withdrawal, public water system capacity, or waste-water treatment system capacity of such local government, or any National Pollutant Discharge Elimination System Phase I or Phase II General Stormwater permit, unless such local government is in compliance with the applicable provisions of the plan or the director certifies to the board that such local government is making good faith efforts to come into such compliance.

(4) Any local government that fails to adopt substantially the applicable model storm-water ordinance developed by the district under subsection (a) of this Code section, or something at least as effective as said model ordinance, and any local government that fails to adopt and implement the applicable plans developed by the district under this Code section shall be ineligible for state grants or loans for storm-water related projects determined by the director to be inconsistent with the terms of such model ordinance or such plans. The determination of the director may be appealed by the local government to the board, whose decision by majority vote shall be final.

(f) The watershed management plan shall be approved by the district only after certification by the director that the proposed plan is consistent with standards established by the director for such plan.

(g) Upon publication of the model ordinance of subsection (a) of this Code section, the district will coordinate a program to be administered by the Environmental Protection Division of the Department of Natural Resources to train local elected officials and other local personnel in uniform standards for the reduction or elimination of nonpoint source pollution. To the extent authorized by law, the Environmental Protection Division of the Department of Natural Resources shall ensure local government compliance with the model ordinance or equally effective ordinances.

History. — Code 1981, § 12-5-582, enacted by Ga. L. 2001, p. 115, § 1; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2012, p. 775, § 12/HB 942.

Cross references. — Stream buffers, §§ 12-2-8, 12-5-451, 12-5-453, 12-7-6.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, "May 1, 2001," was substituted for "the effective date of this article" in subsections (a) and (b).

12-5-583. Short-term and long-term plans for waste-water management plan; annual review; public meetings; certification by director.

(a) Within one year after May 1, 2001, unless such time period is extended by majority vote of the board, the district shall develop a short-term plan to ease immediate waste-water capacity constraints and to reduce the need for sewer tap moratoria.

(b) Within two years after May 1, 2001, unless such time period is extended by majority vote of the board, the district shall develop a long-term waste-water management plan for the district covering a period of time of no less than 20 years. The plan shall be coordinated with and address any existing waste-water planning efforts undertaken by local governments in the district area and plans otherwise developed under this title. After receipt of public comments, the district shall approve the plan which shall meet all standards established by the director, and the plan shall consist of the following minimum elements:

(1) Identification of anticipated waste-water treatment capacity requirements over the life of the plan;

(2) Recommended future upgrades and expansions of existing waste-water treatment facilities;

(3) Measures to maximize efficiency through multijurisdictional approaches to avoid duplication of efforts and unnecessary costs;

(4) A timetable for phasing out existing plants if appropriate; upgrading or expanding existing plants; and construction of new plants;

(5) An inspection and maintenance program for sewer collection systems with timetables for any necessary upgrades or replacement of substandard segments of such systems;

(6) An inspection and maintenance program for septic tanks in critical areas and recommendations for effective management of decentralized waste-water systems;

(7) Identification of appropriate opportunities for gray-water reuse or the implementation of other technologies to increase waste-water treatment capacity or efficiency;

(8) Education and public awareness measures regarding waste-water management; and

(9) Establishment of short-term and long-term goals to be accomplished by the plan and measures for the assessment of progress in accomplishing such goals and plan.

(c) The district shall review the waste-water management plan developed under subsection (b) of this Code section and its implementation annually to determine whether there is a need to update such plan and shall report to the director the progress of implementation of its goals, and in any case the district shall prepare an updated waste-water management plan no less frequently than every five years after the director's approval of the initial plan.

(d) The district shall hold public meetings concerning any plan or updated plan developed by the district under this Code section and

shall publish in print or electronically for public notice and comment any proposed approval, disapproval, or conditional approval of any such plan.

(e)(1) Local governments within the district shall implement the provisions of the district plans that apply to them. Should any jurisdiction fail to do so, the director may exercise his or her powers pursuant to this chapter.

(2) Upon the district's approval of the plan, the director may modify all existing permits under Code Sections 12-5-29, 12-5-30, 12-5-31, 12-5-96, 12-5-97, and 12-5-179 to make them consistent with the plan. The director may include as a condition in any issued, modified, or renewed permit to any local government under Code Section 12-5-29, 12-5-30, 12-5-31, 12-5-96, 12-5-97, or 12-5-179 the applicable contents of the district plan.

(3) The director shall not approve any application by a local government in the district to issue, modify, or renew a permit under Code Section 12-5-29, 12-5-30, 12-5-31, 12-5-96, 12-5-97, or 12-5-179, if such permit would allow an increase in the water withdrawal, public water system capacity, or waste-water treatment system capacity of such local government, unless such local government is in compliance with the applicable provisions of the plan or the director certifies that such local government is making good faith efforts to come into compliance.

(4) Any local government that fails to adopt and implement the applicable plans developed by the district under this Code section shall be ineligible for state grants or loans for waste-water related projects determined by the director to be inconsistent with the terms of such plan. The determination of the director may be appealed by the local government to the board, whose decision by majority vote shall be final.

(f) The waste-water management plan shall be approved by the district only after certification by the director that the proposed plan is consistent with the standards established by the director for such plan.

History. — Code 1981, § 12-5-583, enacted by Ga. L. 2001, p. 115, § 1; Ga. L. 2002, p. 415, § 12; Ga. L. 2010, p. 838, § 10/SB 388.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, "waste-water systems" was substituted for "wastewater system" in paragraph (b)(6).

12-5-584. Water supply and water conservation management plan; interbasin transfers.

(a) Within two years after May 1, 2001, unless such time period is extended by majority vote of the board, the district shall prepare a water supply and water conservation management plan. The plan shall

build upon and be coordinated with existing watershed planning efforts undertaken by local governments in the district area and plans otherwise developed by the state. After receipt of public comments, the district shall approve the plan which shall meet all standards established by the director, and the plan shall include the following minimum elements:

(1) A description of current water supply resources within the district and potential limitations on such supply resources;

(2) Projected water supply requirements over a 20 year period for the district, including projections given differing population, consumption, and conservation scenarios;

(3) Identification of opportunities to expand water supply resources which are found within the district as it was defined on May 1, 2001;

(4) An accounting of existing transfers of surface waters in excess of 100,000 gallons per day on an annualized basis across natural basins within the district;

(5) A water conservation program including voluntary measures, best management practices, and measures enforceable through local ordinances;

(6) Education and public awareness measures regarding water conservation; and

(7) Establishment of short-term and long-term goals to be accomplished by the plan and measures for the assessment of progress in accomplishing such goals and plan.

(b) The district shall review the water supply and water conservation management plan developed under this Code section and its implementation annually to determine whether there is a need to update such plan and shall report to the director the progress of implementation of its goals, and in any case the district shall prepare an updated water supply and water conservation management plan no less frequently than every five years after approval of the initial plan.

(c) The district shall hold public meetings concerning any plan developed by the district under subsection (a) of this Code section and shall publish in print or electronically for public notice and comment any proposed approval, disapproval, or conditional approval of any such plan.

(d)(1) Local governments within the district shall implement the provisions of the district plans that apply to them. Should any jurisdiction fail to do so, the director may exercise his or her powers pursuant to this chapter.

(2) Upon the district's approval of the plan, the director may modify all existing permits under Code Sections 12-5-29, 12-5-30, 12-5-31, 12-5-96, 12-5-97, and 12-5-179 to make them consistent with the plan. The director may include as a condition in any issued, modified, or renewed permit to any local government under Code Section 12-5-29, 12-5-30, 12-5-31, 12-5-96, 12-5-97, or 12-5-179 the applicable contents of the district plan.

(3) The director shall not approve any application by a local government in the district to issue, modify, or renew a permit under Code Section 12-5-29, 12-5-30, 12-5-31, 12-5-96, 12-5-97, or 12-5-179, if such permit would allow an increase in the water withdrawal, public water system capacity, or waste-water treatment system capacity of such local government, unless such local government is in compliance with the applicable provisions of the plan or the director certifies that such local government is making good faith efforts to come into compliance.

(4) Any local government that fails to adopt and implement the applicable plans developed by the district under this Code section shall be ineligible for state grants or loans for water supply and conservation projects determined by the director to be inconsistent with such plans. The determination of the director may be appealed by the local government to the board, whose decision by majority vote shall be final.

(e) The water supply and water conservation management plan shall be approved by the district only after certification by the director that the proposed plan is consistent with the standards established by the director for such plan.

(f) The district shall neither study nor include in any plan any interbasin transfer of water from outside the district area.

History. — Code 1981, § 12-5-584, enacted by Ga. L. 2001, p. 115, § 1; Ga. L. 2002, p. 415, § 12; Ga. L. 2010, p. 838, § 10/SB 388.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, "on May 1, 2001" was substituted for "at the time of the effective date of this Act" in paragraph (a)(3).

Law reviews. — For article, "Sharing Water Through Interbasin Transfer and Basis of Origin Protection in Georgia: Issues for Evaluation in Comprehensive State Water Planning for Georgia's Surface Water Rivers and Groundwater Aquifers," see 21 Ga. St. U.L. Rev. 339 (2004).

12-5-585. Education and public awareness.

Any district plan required to include an element of education and public awareness shall describe those measures to be taken by the district and recommendations for measures to be taken by other state agencies or local governments, by public education institutions, or by

any other public or semi-public entity. The district shall make these recommendations known to the affected entities and strive to coordinate educational and public awareness efforts. The district's efforts shall be designed to reach 75 to 90 percent of the population in the district within five years.

History. — Code 1981, § 12-5-585, enacted by Ga. L. 2001, p. 115, § 1.

12-5-586. Annual report detailing activities and progress.

The district shall submit a written report not later than December 31 of each year to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the chairperson of the House Committee on Natural Resources and Environment, and the chairperson of the Senate Natural Resources and the Environment Committee, which report shall contain a detailed account of the activities and progress of the district throughout the previous year and an accurate accounting of all funds received and expended by the district and of the implementation of plans and attainment of goals.

History. — Code 1981, § 12-5-586, enacted by Ga. L. 2001, p. 115, § 1; Ga. L. 2009, p. 303, § 13/HB 117.

Editor's notes. — Ga. L. 2009, p. 303, § 20/HB 117, not codified by the General Assembly, provides that: "This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act."

CHAPTER 6

FOREST RESOURCES AND OTHER PLANT LIFE

Article 1

Forest Resources

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12-6-53. Licenses — Eligibility of foresters with 12 years' experience [Repealed].
12-6-54. Licenses — Reciprocity for nonresidents.
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12-6-251. Legislative findings.
12-6-252. Certificates of harvest.
12-6-253. Required recordkeeping and retention.
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12-6-255. Seizure of berries for noncompliance.
12-6-256. Exemption for personal use.
12-6-257. Unlawful activities associated with saw palmetto berries; making of false statements; restitution.

Cross references. — Agricultural seeds, vegetable seeds, and other seeds, T. 2, C. 11. Regulation of timber products, § 2-14-80 et seq. Preservation of sea oats, § 12-5-310 et seq. Trimming of trees and vegetation on state's rights of way, § 32-6-75.1 et seq. Provision that planting and growing of trees and fruits and products thereof shall be considered an agricultural pursuit, § 44-14-100. Consent of state to acquisition by United States of lands for forest and wildlife purposes, § 50-2-25.

Administrative rules and regulations. — Grant Programs, Official Compilation of the Rules and Regulations of the State of Georgia, Rules of Georgia Forestry Commission, Chapter 224-1.

ARTICLE 1
FOREST RESOURCES

PART 1
STATE FORESTRY COMMISSION

JUDICIAL DECISIONS

Cited in Georgia Forestry Comm'n v. Harrell, 98 Ga. App. 238, 105 S.E.2d 461 (1958).

RESEARCH REFERENCES

ALR. — Constitutionality of reforestation or forest conservation legislation, 13 A.L.R.2d 1095.

12-6-1. Definitions.

As used in this part, the term:

(1) "Commission" means the State Forestry Commission.

(2) "Director" means the director of the State Forestry Commission.

12-6-2. Creation of State Forestry Commission; members; terms of office; ineligibility of Governor for membership; vacancies; effect of appointment when Senate not in session.

(a) There is created and established a State Forestry Commission.

(b) The commission shall be composed of seven members. Four of the members shall be owners, or representatives of owners, of 50 acres or more of forest land within the State of Georgia. Two members shall be manufacturers or processors of forest products, or representatives thereof. One additional member shall be a person other than a member of either such identified group. The members of the commission shall be appointed by the Governor and confirmed by the Senate and shall hold office until their successors are appointed and qualified.

(c) The term of office of all members appointed to the commission shall be for seven years each and until their successors are duly appointed and qualified.

(d) The Governor shall not be a member of the commission.

(e) Any vacancy on the commission shall be filled by appointment by the Governor for the unexpired term, subject to confirmation by the Senate. Any appointment, whether for a full term or to fill a vacancy, made when the Senate is not in session shall be effective until the appointment is acted upon by the Senate.

History. — Ga. L. 1921, p. 192, § 1; Ga. L. 1925, p. 199, § 1; Ga. L. 1931, p. 7, § 21; Ga. L. 1937, p. 264, § 9; Ga. L. 1943, p. 180, §§ 1, 3; Ga. L. 1949, p. 1079, §§ 1, 2, 5; Ga. L. 1955, p. 309, §§ 12-14; Ga. L. 2002, p. 1082, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Board is not obligated to select appointee from among two nominations recommended to the Governor by the Georgia Chapter of the Society of American Foresters in the event that the Governor fails to make an appointment to fill a vacancy in the board of registration and the board seeks to fill such vacancy. 1962 Op. Att'y Gen. p. 245.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 20, 31, 23. 63C Am. Jur. 2d, Public Officers and Employees, §§ 22, 36 et seq., 42 et seq., 88, 105, 109, 128 et seq.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 17 et seq., 73.

12-6-3. Chairman; reimbursement of members for expenses; meetings.

(a) The commission shall elect a chairman annually.

(b) The members of the commission, including the chairman, shall receive such per diem subsistence allowances for each day of actual attendance at the meetings of the commission, as well as mileage to and from the place of meeting and their respective homes by the nearest practical route, as may be authorized by the commission. The per diem and mileage allowances received shall not exceed those authorized by law for other state commissions and boards. Such per diem and travel expense shall be paid from funds of the commission.

(c) The commission shall meet at such times at the state capitol or at other points as it may determine, and it shall convene in all sessions upon call by the chairman or by a majority of the members of the commission.

History. — Ga. L. 1949, p. 1079, § 6; Ga. L. 1955, p. 309, § 15.

Cross references. — Legal mileage allowance, § 50-19-7.

OPINIONS OF THE ATTORNEY GENERAL

Statute refers to 21¢ mileage allowance. — Ga. L. 1955, p. 309, § 15 (see O.C.G.A. § 12-6-3), by reference to the mileage allowances authorized by law, does, in effect, refer to the statutory amount per mile found in Ga. L. 1978, p. 1786, § 1 (see O.C.G.A. § 50-19-7). 1978 Op. Att'y Gen. No. 78-26.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 85 et seq., 336, 337.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 17 et seq, 73.

12-6-4. Dismissal of members for failure to attend meetings.

If any member of the commission, for any cause, fails to attend three successive meetings of the commission without good and valid cause or excuse or without leave of absence from the chairman his office shall be declared vacant by the commission. The chairman shall notify the Governor of a vacancy on the commission, and the Governor shall fill the vacancy as provided by Code Section 12-6-2.

History. — Ga. L. 1949, p. 1079, § 7; Ga. L. 1955, p. 309, § 16.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 153, 159 et seq., 258 et seq.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 71, 72, 183.

12-6-5. Powers and duties of commission generally; volunteer services.

(a) The commission shall have power and authority:

(1) To take all action appropriate to foster, improve, and encourage reforestation;

(2) To engage in research and other projects for the ascertainment and promulgation of better forestry practices;

(3) To offer aid, assistance, and technical advice to landowners relative to the preservation and culture of forests;

(4) To receive gifts or donations made to it and to expend the same under the terms of such gifts or donations;

(5) To conduct and direct fire prevention work and maintain equipment, personnel, and installations for the detection, prevention, and combating thereof;

(6) To publish in print or electronically and distribute the results of its research and investigations;

(7) To cooperate and contract with other agencies and instrumentalities of government, either county, municipal, state, or national, and with private persons or concerns for the advancement of the forests of this state; and

(8) To engage in land conservation projects as provided by Chapter 6A of this title.

(b)(1) The director is authorized to accept the services of individuals without compensation as volunteers for or in aid of fire tower operation, urban tree planting and inventories, seedling deliveries, insect surveys and evaluations, tours and field days, staffing exhibits, facility maintenance, beautification projects, and any other activity in and related to the objectives, powers, duties, and responsibilities of the commission.

(2) The director is authorized to provide for reimbursement of volunteers for incidental expenses such as transportation, uniforms, lodging, and subsistence. The director is also authorized to provide general liability coverage and fidelity bond coverage for such volunteers while they are rendering service to or on behalf of the commission.

(3) Except as otherwise provided in this Code section, a volunteer shall not be deemed to be a state employee and shall not be subject to the provisions of law relating to state employment including, without limitation, those relating to hours of work, rates of compensation, leave, unemployment compensation, retirement, and state employee benefits.

(4) Volunteers performing work under the terms of this Code section may be authorized by the department to operate state owned vehicles. They may also be treated as employees of the state for the purposes of inclusion in any automobile liability insurance or self-insurance, general liability insurance or self-insurance, or fidelity bond coverage provided by the commission for its employees while operating state owned vehicles.

(5) No volunteer shall be authorized or allowed to enter privately owned or operated lands, facilities, or properties, except for emergency fire fighting purposes, without the express prior written permission of the owner or operator of such privately owned or operated lands, facilities, or properties; provided, however, that such prohibition shall not apply to lands, facilities, or properties leased to the State of Georgia.

(c) The commission shall have the power and authority to create, establish, and operate a program or programs to facilitate, amplify, or

supplement the objectives and functions of the commission through the use of volunteer services including, but not limited to, the recruitment, training, and use of volunteers.

(d) The enumeration of specific powers in this Code section shall not be construed as a denial of others not specified in this Code section.

History. — Ga. L. 1921, p. 192, § 4; Ga. L. 1925, p. 199, §§ 3, 5, 6; Ga. L. 1931, p. 7, § 21; Code 1933, §§ 43-201, 43-202, 43-205, 43-206; Ga. L. 1937, p. 264, § 9; Ga. L. 1943, p. 180, §§ 1, 3; Ga. L. 1949, p. 1079, §§ 1, 2, 5; Ga. L. 1955, p. 309, §§ 12, 17; Ga. L. 1993, p. 423, § 1; Ga. L. 2008, p. 90, § 2-2/HB 1176; Ga. L. 2009, p. 745, § 2/SB 97; Ga. L. 2010, p. 838, § 10/SB 388; Ga. L. 2012, p. 446, § 2-7/HB 642.

Cross references. — Grants by commission to counties in which are located 20,000 acres of state land from which such counties receive no tax revenue, § 48-14-1.

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

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Commission may market agricultural products produced upon the lands and premises utilized by the commission. 1976 Op. Att'y Gen. No. U76-40.

Purchase of uniforms for fire prevention work authorized. — Although the commission is not specifically authorized by this section to purchase uniforms, this section should be construed to authorize the purchase of uniforms inasmuch as the purchase of uniforms is to be considered a part of the forestry program to conduct and direct fire prevention work. 1963-65 Op. Att'y Gen. p. 398 (see O.C.G.A. § 12-6-5).

Commission may acquire surplus federal property at no cost to issue as equipment for fire fighting including protective clothing. 1960-61 Op. Att'y Gen. p. 455.

Employment of youth with federal agency authorized. — Commission is authorized to employ certain members of the Neighborhood Youth Corps under a subcontractual agreement with an agency of the federal government. 1965-66 Op. Att'y Gen. No. 66-145.

Publication of legal manual for timber owners unauthorized. — Georgia Forestry Commission does not have the authority to publish a legal manual dealing with the rights of timberland owners. 1983 Op. Att'y Gen. No. 83-44.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 45, 52. 35A Am. Jur. 2d, Fires, § 1. 63C Am. Jur. 2d, Public Funds, § 28 et seq.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 147, 226. 81A C.J.S., States, §§ 392 et seq., 404 et seq.

12-6-5.1. Legislative findings; reforestation incentives program authorized; powers of commission.

(a) The General Assembly finds that 433,000 acres of trees were planted in Georgia in 1984, while 640,000 acres were harvested during that year for a net loss of over 200,000 planted acres. The General Assembly further finds that the forest industry is of fundamental importance to the economy of the State of Georgia and that increased reforestation is necessary to meet future demands for forest products and to promote economic development and additional employment opportunities within this state. The General Assembly further finds that many acres of farm land and other open land in Georgia are not currently being used to the best advantage and that a program to provide incentives to encourage reforestation on these lands would be of great benefit to the people of Georgia. The General Assembly further finds that increased reforestation would substantially reduce soil erosion, which continues to be a serious problem in Georgia, and would be of other value in preserving and protecting wildlife and other natural resources of this state. It is determined, therefore, that it is in the interest of the public health, safety, and welfare and would serve an important public purpose for the State Forestry Commission to establish a reforestation incentives program for the State of Georgia.

(b) In accordance with the findings set forth in subsection (a) of this Code section, the State Forestry Commission is authorized to establish a reforestation incentives program to encourage the planting of trees on lands within this state which are suitable for that purpose but which are currently not being utilized or are not being properly utilized for that purpose. In establishing and maintaining the reforestation incentives program, the commission may:

(1) Provide technical advice and assistance on reforestation to landowners and encourage such landowners to participate in the reforestation incentives program;

(2) Provide seedlings or equipment to landowners for reforestation purposes pursuant to such terms, conditions, and requirements as the commission shall determine;

(3) Define the types of land eligible for participation in the reforestation incentives program and establish limitations on such participation;

(4) Define the class or classes of landowners who shall be eligible for participation in the reforestation incentives program; and

(5) Provide for any other matters reasonably necessary for the commission to establish and maintain an effective reforestation incentives program.

(c) The powers of the commission provided by this Code section are cumulative of other powers possessed by the commission pursuant to any other provisions of this part or pursuant to any other law and are not in lieu of such other powers.

History. — Code 1981, § 12-6-5.1, enacted by Ga. L. 1986, p. 402, § 1; Ga. L. 2006, p. 72, § 12/SB 465.

12-6-6. Management, conservation, and protection of forest lands; sale of forest products from land managed by commission; production and sale of seedlings.

(a) Any other provision of law to the contrary notwithstanding, the State Forestry Commission is authorized to manage, conserve, and protect any forest lands or forest properties belonging to or under the jurisdiction and control of any department, board, commission, bureau, agency, or authority of state government. The State Forestry Commission shall manage such forest lands or forest properties subject to the special needs of the department, board, commission, bureau, agency, or authority and the use of such lands or properties by such department, board, commission, bureau, agency, or authority. Such management shall conform to the principles of sound forest management where consistent with the use of such lands or properties. Management of forest lands or forest properties shall be undertaken by the State Forestry Commission only upon the written request of the department, board, commission, bureau, agency, or authority to which the lands or properties belong or which exercise control and jurisdiction over such lands or properties.

(b) The State Forestry Commission is authorized to sell, contract for the sale of, offer, and accept bids for the sale of timber and other forest products grown or produced on lands subject to the management of the commission under this Code section. Such actions may be taken by the State Forestry Commission without the prior approval of any other department, board, commission, bureau, agency, or authority. The sale of such timber or forest products shall be made in the same manner as the sale of timber or forest products grown or produced on lands belonging to or under the jurisdiction and control of the State Forestry Commission. Any funds derived from the sale of any such timber or forest products shall be paid into the general fund of the state or to the department, board, commission, bureau, agency, or authority to which the forest lands or forest properties belong or which has jurisdiction and control over such lands or properties in the same manner as if such timber or forest products had been sold directly by the department, board, commission, bureau, agency, or authority.

(c) In order to foster, improve, and encourage reforestation and in furtherance of its other duties and powers, the commission is autho-

rized to contract for the production of seedlings, for the purchase of such seedlings for resale to Georgia forest owners or for fulfilling contractual obligations to Georgia forest owners, or for the sale of seedlings to other states and to the United States.

(d) In order to carry out the provisions of subsection (c) of this Code section, the commission is authorized to enter into contracts with other agencies and instrumentalities of the state and local governments of Georgia, with other states, with the United States, with private persons, with corporations, or with other entities. Such actions may be taken by the commission without the prior approval of any other department, board, commission, bureau, agency, or authority of the state. The purchase or sale of such seedlings shall be made in the same manner as the purchase or sale of such seedlings grown or produced on land belonging to or under the jurisdiction and control of the commission.

History. — Ga. L. 1974, p. 458, § 1; Ga. L. 1980, p. 561, § 1; Ga. L. 1981, p. 1385, § 1.

Cross references. — Sale and treatment of timber products generally, § 2-14-80 et seq. Grants by commission to counties in which are located 20,000 acres of state land from which such counties receive no tax revenue, § 48-14-1.

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Commission may market agricultural products produced upon the lands and premises utilized by those governmental entities. 1976 Op. Att'y Gen. No. U76-40.

12-6-7. Federal financial aid — Participation in rural fire prevention and control program; contributions by counties and fire departments.

(a) The commission may enter into agreements with the secretary of agriculture of the United States in order to participate in the rural fire prevention and control program authorized by the Cooperative Forestry Assistance Act of 1978, Public Law 95-313.

(b) With respect to the formulation of projects relating to fire protection of livestock, wildlife, crops, pastures, orchards, range land, woodland, farmsteads, or other improvements, and other values in rural areas, for which such federal matching funds are available, any participating county or fire department may contribute to the nonfederal matching share and may also contribute such other nonfederal cooperation as may be deemed necessary by the commission.

History. — Ga. L. 1974, p. 559, § 1.

U.S. Code. — The federal Cooperative Forestry Assistance Act of 1978, referred to in subsection (a), is codified principally at 16 U.S.C. § 2101 et seq.

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 194.

12-6-8. Federal financial aid — Expenditure of funds for forest farming and marketing of forest products.

The commission shall be the designated agency to expend through the department all federal-aid funds available under the Cooperative Forestry Assistance Act of 1978, Public Law 95-313, for fire prevention and nursery work and for farm forestry or forest farming and nursery work. The commission shall also be the designated agency to expend through the department all other federal funds now in existence or to be created for the purpose of assisting private timber landowners in Georgia in the planting, management, and protection of their forests, and in the marketing of their forest products. All such funds shall be expended through regular Office of Planning and Budget channels, provided that those federal funds that may be appropriated or allocated to the Georgia Cooperative Extension Service under the Cooperative Forestry Assistance Act of 1978, or any other act of Congress, or any other source or allocation of federal funds for the purpose of carrying on agricultural or forestry extension work shall be made available directly to the Georgia Cooperative Extension Service.

History. — Ga. L. 1931, p. 7, § 24; Code 1933, § 43-104; Ga. L. 1937, p. 264, § 9; Ga. L. 1945, p. 390, § 1; Ga. L. 1946, p. 28, § 1; Ga. L. 1955, p. 309, § 27; Ga. L. 1982, p. 3, § 12; Ga. L. 2001, p. 4, § 12.

U.S. Code. — The federal Cooperative Forestry Assistance Act of 1978, referred to in this Code section, is codified principally at 16 U.S.C. § 2101 et seq.

12-6-9. Acquisition of land; gifts of land for use as lookout tower sites; abandoned tower sites; improvements on land subject to reversionary clause.

(a) The commission shall have the right to acquire, in the name of the state, by purchase, lease, agreement, or condemnation, such land within the state as may be deemed necessary and proper. Condemnation proceedings shall be subject to the applicable provisions of law relating to the condemnation of property by the State of Georgia. The acquisition by the commission of any land, either by purchase or by condemnation, shall be construed as transferring a fee simple interest, unless the instrument conveying such interest, or the condemnation petition, clearly indicates otherwise.

(b) The director, provided for in Code Section 12-6-11, is authorized to acquire in the name of the state, where the grantor makes a gift thereof to the state, small tracts of land not in excess of five acres, to be

used as forest fire lookout tower sites. Title to such land may be conveyed by deeds containing reversionary clauses. Upon abandonment by the commission of such site after the site is no longer of use to it, the director is authorized to reconvey title by quitclaim deed to the grantor, his successors, or assigns, and the director is authorized to reconvey all tower sites subject to reversionary clauses which sites were acquired by the commission as gifts prior to March 3, 1955. However, in case of any abandonment or reconveyance under this subsection, the commission shall have the unqualified right to remove any improvements or fixtures, either temporary or permanent, placed on such property without regard to whether same would have, under general principles of law, become part of the realty, which right may be exercised any time before or a reasonable time after abandonment.

(c) The director is authorized to improve with funds appropriated to the commission any real estate under its control or management which may be held under a deed containing a reversionary clause conditioned on the discontinuation of use for the purpose for which conveyed.

History. — Ga. L. 1925, p. 199, § 5; Ga. L. 1931, p. 7, § 21; Code 1933, § 43-205; Ga. L. 1937, p. 264, § 9; Ga. L. 1955, p. 309, § 18; Ga. L. 1956, p. 377, § 1; Ga. L. 1963, p. 615, § 1.

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Use of property conveyed to state limited. — When property is conveyed to the state for use as a state forest, the property may not be used or leased by the state for any other purpose. 1945-47 Op. Att'y Gen. p. 324.

State may accept lease on property when no valuable permanent improvements are to be placed on the land, and a policy of title insurance is procured. 1954-56 Op. Att'y Gen. p. 655.

Commission may accept and improve two-acre tract of land if the deed of gift conveying the land provides that title will revest in the grantor upon abandonment of the property for forestry purposes. 1967 Op. Att'y Gen. No. 67-398.

Commission may market agricultural products produced upon the lands and premises utilized by the commission. 1976 Op. Att'y Gen. No. U76-40.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Property, §§ 17, 18. 63C Am. Jur. 2d, Public Funds, § 33 et seq. 63C Am. Jur. 2d, Public Lands, § 40 et seq.

C.J.S. — 36A C.J.S., Fixtures, §§ 55, 56. 67 C.J.S., Officers and Public Employees, §§ 363 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 184. 73B C.J.S., Public Lands, § 294. 81A C.J.S., States, § 274.

ALR. — Condemnation of premises or part thereof as affecting rights of landlord and tenant inter se, 163 A.L.R. 679.

Condemner's waiver, surrender, or limitation, after award, of rights or part of property acquired by condemnation, 5 A.L.R.2d 724.

Compensation for, or extent of rights acquired by, taking of land, as affected by condemner's promissory statements as to character of use or undertakings to be performed by it, 7 A.L.R.2d 364.

Admissibility, in eminent domain proceeding, of evidence as to price paid for condemned real property during pendency of the proceeding, 55 A.L.R.2d 781.

Admissibility, in eminent domain proceeding, of evidence as to price paid for condemned real property on sale prior to the proceeding, 55 A.L.R.2d 791.

Eminent domain: right of owner of land not originally taken or purchased as part of adjacent project to recover, on enlargement of project to include adjacent land, enhanced value of property by reason of proximity to original land-state cases, 95 A.L.R.3d 752.

Eminent domain: recovery of value of improvements made with knowledge of impending condemnation, 98 A.L.R.3d 504.

Eminent domain: possibility of overcoming specific obstacles to contemplated use as element in determining existence of necessary public use, 22 A.L.R.4th 840.

State statute of limitations applicable to inverse condemnation or similar proceedings by landowner to obtain compensation for direct appropriation of land without the institution or conclusion of formal proceedings against specific owner, 26 A.L.R.4th 68.

12-6-10. Reports to General Assembly.

It shall be the duty of the commission, in cooperation with the director provided for in Code Section 12-6-11, to:

(1) Annually submit reports to each regular session of the General Assembly together with such information as is necessary to show the condition of the forest resources of the state, with particular reference to the protection, preservation, and propagation of timber growth, and all other matters pertaining to the forest resources, and with recommendations for necessary legislation as to protection, reforestation, and management; and

(2) Quinquennially submit reports to the General Assembly verifying the ability of forest resources in this state to meet the needs of the present without compromising the ability to meet the needs of future generations. The first such report shall be due not later than July 1, 2008. The director shall prescribe the manner, procedures, and data necessary to produce such report.

History. — Ga. L. 1925, p. 199, § 3; Ga. L. 1931, p. 7, § 21; Code 1933, § 43-204; Ga. L. 1949, p. 1079, § 10; Ga. L. 1955, p. 309, § 19; Ga. L. 2007, p. 82, § 1/SB 176.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 98. 63C Am. Jur. 2d, Public Officers and Employees, § 121.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 65. 98 C.J.S., Woods and Forests, § 5 et seq.

12-6-11. Director — Appointment; qualifications; salary; reimbursement for expenses; term.

The commission shall appoint, by and with the advice and consent of the Governor, a director, who shall be the executive secretary and administrative officer of the commission. When seeking candidates for the position of director, emphasis shall be placed on identifying individuals who hold a Bachelor of Science degree in forestry or who have

significant experience in forest management. The director shall receive a salary fixed by the commission plus actual expenses as provided for other state officials and employees and shall hold office at the pleasure of the commission. The present director shall continue to serve until removed by the commission.

History. — Ga. L. 1949, p. 1079, § 8; Ga. L. 1955, p. 309, § 20; Ga. L. 2007, p. 63, § 1/SB 116.

Cross references. — Inclusion of director in classified service of the State Merit System Personnel Administration, § 45-20-2.

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Governor's advice and consent not required for director's removal. — Although the commission can appoint a director only with the advice and consent of the Governor, it is not necessary for the commission to obtain the advice and consent of the Governor to remove the director. 1971 Op. Att'y Gen. No. 71-137.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 42 et seq., 87 et seq., 153 et seq., 258 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 18, 22, 46, 47, 137 et seq., 375 et seq., 382 et seq.

12-6-12. Director — Duty of director to devote full time to office; power and duty of director to act for commission when commission not in session.

The director shall devote his full time to the duties of his office; and when the commission is not in session, the director shall have power, and it shall be his duty, to act in all matters as fully as the commission is authorized, except in such matters where the approval of the commission is specifically required by this part.

History. — Ga. L. 1949, p. 1079, § 8; Ga. L. 1955, p. 309, § 21.

12-6-13. Director — Oath; bond; location of office.

The director shall take oath of office and give bond in the sum of $10,000.00 in the usual form required of state officials. The director shall have offices at the site of the state capitol or at such other place as may be recommended by the commission and approved by the Governor. The office of the director shall be the office of the commission.

History. — Ga. L. 1949, p. 1079, § 8; Ga. L. 1955, p. 309, § 22.

RESEARCH REFERENCES

Am. Jur. 2d. — 12 Am. Jur. 2d, Bonds, §§ 1, 2. 58 Am. Jur. 2d, Oath and Affirmation, §§ 1, 2.
C.J.S. — 67 C.J.S., Oaths and Affirmations, § 1. 67 C.J.S., Officers and Public Employees, § 70 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 26 et seq.

12-6-14. Director — Eligibility of commission members for directorship or for employment under commission or director.

No member of the commission during his tenure of office or within two years thereafter shall be eligible for appointment as director or for any employment under the commission or the director.

History. — Ga. L. 1949, p. 1079, § 8; Ga. L. 1955, p. 309, § 23.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 76.
C.J.S. — 67 C.J.S., Officers and Public Employees, § 36.

12-6-15. Director — Adoption of rules, regulations, and methods of administration.

The director, with the approval of the commission, shall have the power to adopt all rules, regulations, and methods of administration necessary for the efficient operation of the activities of the commission as created and established by this part.

History. — Ga. L. 1949, p. 1079, § 9; Ga. L. 1955, p. 309, § 24.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 237 et seq.
C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 323 et seq. 98 C.J.S., Woods and Forests, § 3.

12-6-16. Director — Control of tree diseases and insect infestation.

(a) Whenever the director or his agents determine that there exists an infestation of forest insect pests or an infection of forest tree diseases, injurious or potentially injurious to the timber or forest trees within the state, and that the infestation or infection is of such a character as to be a menace to the timber or forest growth of the state, the director shall declare the existence of a zone of infestation or infection and shall declare and fix boundaries so as to definitely

describe and identify such zone of infestation or infection. The director or his agents shall give notice in writing by mail or otherwise to each forest landowner within the designated control zone advising him of the nature of the infestation or infection and the recommended control measures and offering him technical advice on methods of carrying out controls.

(b) The director shall have the power, by rule or regulation, to declare and define areas of quarantine and to prescribe all needful rules and regulations relating thereto. Any person violating any such rule or regulation shall be guilty of a misdemeanor. The director or any other person is empowered to institute action in his name to enjoin any practice in violation of such rules or regulations, without regard to whether such practices would under general law constitute a nuisance and without regard to whether an adequate remedy exists at law. The commission or any of its duly authorized agents or anyone acting at their direction shall have authority at all times to enter upon any lands for the purposes of making investigations and otherwise carrying out this Code section, without incurring liability for trespassing.

History. — Ga. L. 1955, p. 309, § 25.

Cross references. — Control of plant diseases, pests, and pesticides, generally, T. 2, C. 7. Power of Commissioner of Agriculture to declare quarantine against nurseries, groves, and other locations, because of infestation of dangerous insect pests or plant diseases, § 2-7-20.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 237 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 323 et seq. 73 C.J.S., Public Administrative Law and Procedure, §§ 147, 191. 98 C.J.S., Woods and Forests, § 3.

12-6-17. Director — Regulation of controlled burning where drought or other conditions exist.

(a) Whenever in the judgment of the director, because of drought or other conditions, controlled burning of woods, lands, marshes, refuse, or other combustible materials in any county or counties or in any area within a county constitutes an unusual hazard to property, the director may by order, rule, or regulation prohibit the setting on fire of any woods, lands, marshes, refuse, or other combustible materials within any county or counties or within any area within a county, or may permit such burning only upon such conditions and under such regulations as in his judgment are necessary and proper to prevent the destruction of property. Where by rule or regulation the setting on fire of any woods, lands, marshes, refuse, or other combustible material has been prohibited, no person shall set or cause to be set any backfire, except under the direct supervision or permission of a state or federal forest officer, unless it can be established that the setting of such

backfire was necessary for the purpose of saving life or valuable property, the burden of proving which shall rest on such person claiming same as a defense. Any order, rule, or regulation promulgated by the director under the authority of this Code section shall have the force and effect of law.

(b) Any person violating a lawful order or regulation promulgated under the authority of this Code section shall be guilty of a misdemeanor.

History. — Ga. L. 1955, p. 309, § 26.

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Fires, §§ 1, 16. 63C Am. Jur. 2d, Public Officers and Employees, §§ 231, 239.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 325. 98 C.J.S., Woods and Forests, § 5.

12-6-18. Director — Expenditure of funds for benefit of lands under commission's control; sale and disposal of products from controlled lands.

When lands are acquired or leased under this part, the director, with the approval of the commission, is authorized to make expenditures of funds, not otherwise obligated, for the management, development, and utilization of such areas and to sell and otherwise dispose of the products from such lands.

History. — Ga. L. 1937, p. 264, § 9; Ga. L. 1955, p. 309, § 28.

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Commission may market agricultural products produced upon the lands and premises utilized by the commission. 1976 Op. Att'y Gen. No. U76-40.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Funds, § 42 et seq.

C.J.S. — 81A C.J.S., States, §§ 274, 404 et seq. 98 C.J.S., Woods and Forests, §§ 14, 15.

12-6-19. Director — Promulgation of rules and regulations as to lands under commission's control; sale, lease, or exchange of controlled lands.

The director, with the approval of the commission, is authorized to establish and from time to time alter rules and regulations governing the use, occupancy, and protection of the land and property under the commission's control and to preserve the peace therein. The director,

with the approval of the commission, shall have full power and authority to exchange, sell, or lease lands under its jurisdiction when in the judgment of the director and the commission it is advantageous to the state to do so in the highest orderly development and management of state forests, provided that such lease, sale, or exchange shall not be contrary to the terms of any contract which the commission has entered into.

History. — Ga. L. 1937, p. 264, § 9; Ga. L. 1955, p. 309, § 29.

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Cooperative agreement sufficient for timber sale on authority's property. — Cooperative agreement between the commission and the Georgia Ports Authority would be sufficient to authorize the sale of timber located on property under the direct control of the Georgia Ports Authority. 1963-65 Op. Att'y Gen. p. 694.

Commission may market agricultural products produced upon the lands and premises utilized by the commission. 1976 Op. Att'y Gen. No. U76-40.

Disposal of commission materials. — Any commission property of the nature of supplies, materials, and equipment, in other words, those things that would not be fixtures and thereby part of the realty, is to be disposed of by the Supervisor of Purchases (now Department of Administrative Services) under Ga. L. 1960, p. 1098, § 1 (see O.C.G.A. § 50-5-51). 1960-61 Op. Att'y Gen. p. 381.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Lands, §§ 25 et seq., 64 et seq.

C.J.S. — 81A C.J.S., States, §§ 274, 289. 98 C.J.S., Woods and Forests, §§ 14, 15.

12-6-20. Investigation and enforcement of forestry laws; powers of forestry investigators.

(a) As used in this Code section, the term "forestry laws" means laws relating to forestry or timber resources and the protection, security, conservation, or sale of such resources.

(a.1) The director, with the approval of the commission, may appoint investigators to enforce the forestry laws of this state.

(b) The investigators so appointed and any fire-fighting crews under their direction may enter upon any land for the purpose of preventing and suppressing fires and enforcing the fire and other forestry laws of this state.

(c) Investigators who have been so appointed shall be certified by the Georgia Peace Officer Standards and Training Council after having successfully completed the course of training required by Chapter 8 of

Title 35, the "Georgia Peace Officer Standards and Training Act," and thereafter shall be authorized and empowered to:

(1) Make summary arrests for violations of the fire and other forestry laws of this state; and, in case of such arrests, the investigator shall as soon as possible deliver the arrested person or persons to the custody of the sheriff of the county wherein the offense was committed;

(2) Arrest persons accused of violating any law which such investigators are empowered to enforce by the issuance of a citation, provided that the offense is committed in the presence of the investigator or information concerning the offense constituting a basis for arrest was received by the arresting investigator from a law enforcement officer, commission firefighter, or forester who observed the offense being committed. The arresting investigator may issue to the accused person a citation which shall enumerate the specific charges against such person and the date upon which such person is to appear and answer such charges. Whenever an arrest is made by the arresting investigator on the basis of information received from another law enforcement officer, commission firefighter, or forester who observed the offense being committed, such citation shall list the name of each officer, firefighter, or forester and each officer, firefighter, or forester shall be present when the charges against the offender are heard;

(3) Execute search warrants and arrest warrants for criminal violations relating to the forestry laws of this state and to arrest, upon probable cause and without warrant, any person the investigator observes violating any criminal law of this state while carrying out his or her duties, provided that such person shall immediately be delivered to the sheriff of the county where the violation occurred; and

(4) Carry weapons in order to execute their enforcement authority under this Code section.

(d)(1) Upon initiating any investigation regarding the potential theft or conversion of timber, the investigator shall promptly notify the sheriff or other law enforcement agency exercising jurisdiction within the county or municipality in which the investigator is conducting such investigation. No investigator shall request any other state law enforcement agency to render assistance in any investigation relating to the theft or conversion of timber without the consent of the sheriff or other law enforcement agency exercising jurisdiction within the county or municipality in which the investigation is conducted.

(2) The director may, and in the case of a request by the Governor shall, authorize and direct investigators to cooperate with and render

assistance to any law enforcement agency of this state or of any political subdivision of this state in any criminal case, in the prevention or detection of violations of any law, or in the apprehension or arrest of any person who violates the criminal laws of this state, any other state, or the United States, upon a request by the sheriff or chief law enforcement officer of any political subdivision of this state or by the Governor.

(3) Nothing in this Code section shall repeal, supersede, alter, affect, or otherwise usurp the power of any other law enforcement officer of this state or of any political subdivision of this state.

(e) If any person charged by citation as provided in paragraph (2) of subsection (c) of this Code section shall fail to appear in court as specified in the citation, the judge having jurisdiction of the offense may issue a warrant ordering the apprehension of such person and commanding that he or she be brought before the court to answer the charge contained within such citation and the charge of his or her failure to appear as required. Such person shall then be allowed to make a reasonable bond to appear on a given date before the court.

History. — Ga. L. 1925, p. 199, § 8; Ga. L. 1931, p. 7, § 21; Code 1933, § 43-208; Ga. L. 1937, p. 264, § 9; Ga. L. 1952, p. 211, § 1; Ga. L. 1955, p. 309, § 30; Ga. L. 2008, p. 444, § 1/SB 400; Ga. L. 2009, p. 8, § 12/SB 46; Ga. L. 2014, p. 695, § 2/HB 790.

Cross references. — Forest fire prevention and control generally, § 12-6-80 et seq.

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Purpose of statute is to merely define the authority of forestry investigators to enter upon land to combat fires, but in so doing the statute also necessarily confers upon private fire forces the right to enter upon land under the direction of a forestry investigator. 1954-56 Op. Att'y Gen. p. 349 (see O.C.G.A. § 12-6-20).

Forestry investigators are employees of the state and not public officers. 1952-53 Op. Att'y Gen. p. 95.

RESEARCH REFERENCES

Am. Jur. 2d. — 5 Am. Jur. 2d, Arrest, §§ 30, 31. 35A Am. Jur. 2d, Fires, § 5.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 197, 226. 94 C.J.S., Weapons, § 7 et seq. 98 C.J.S., Woods and Forests, § 5.

12-6-21. Uncontrolled fire as constituting a public nuisance; duties and liabilities of person or entity responsible.

Any fire burning uncontrolled on any forested or cut-over brush land or grassland is declared to be a public nuisance by reason of its menace to life and property. Any person, firm, or corporation responsible either for the starting or for the existence of such fire is required to control or extinguish it immediately. If such person, firm, or corporation shall

refuse or neglect to do so, any organized fire suppression force may suppress the nuisance thus constituted by controlling and extinguishing the fire; and the cost thereof may be recovered from the responsible person, firm, or corporation.

History. — Ga. L. 1937, p. 264, § 9; Ga. L. 1955, p. 309, § 31.

Cross references. — Authority of commission to enter lands for purposes of preventing, controlling, or suppressing forest fires, § 12-6-84. Burning of woodlands, brush, fields, or other lands; destruction of or damage to material or device used in detection or suppression of wildfires; penalties for violations, § 16-7-63.

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"Refuse" and "neglect" defined. — Word "refuse" implies existence of a knowledge of the fire and an arbitrary refusal to try to control the fire. "Neglect" indicates the omission of proper attention or disregard of duty from indifference or willfulness. 1954-56 Op. Att'y Gen. p. 349 (see O.C.G.A. § 12-6-21).

Applicability of section limited. — Use of the words "neglect" and "refuse," together with the fact that the landowner can be recovered against for costs of fighting the fire, necessarily limits application of this section. 1954-56 Op. Att'y Gen. p. 349 (see O.C.G.A. § 12-6-21).

Any person can enter upon land to combat fire which landowner refuses or neglects to combat. 1954-56 Op. Att'y Gen. p. 349 (see O.C.G.A. § 12-6-21).

Entry onto land to fight fire requires no commission authority. — It is not necessary for one entering upon another's land, for the purpose of combatting a fire, to be under the direction or acting under direct authority from the commission. 1954-56 Op. Att'y Gen. p. 349 (see O.C.G.A. § 12-6-21).

Landowner's knowledge of unauthorized entry suggested as safety measure. — Insofar as this section is concerned, a private person not previously authorized by the commission would not be safe in entering upon land to combat a fire unless the owner at least knew thereof and failed to take action to combat the fire which was reasonably within the landowner's power. 1954-56 Op. Att'y Gen. p. 349 (see O.C.G.A. § 12-6-21).

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Fires, § 1 et seq. 58 Am. Jur. 2d, Nuisances, §§ 26, 105, 131, 370, 392.

C.J.S. — 66 C.J.S., Nuisances, §§ 27, 32 et seq., 36, 60, 63, 66, 69, 81, 86, 96, 97 et seq. 98 C.J.S., Woods and Forests, §§ 3, 5, 6.

ALR. — Liability of property owner for damages from spread of accidental fire originating on his property, 111 A.L.R. 1140; 17 A.L.R.5th 547.

Validity and application of statutes imposing upon the owner or occupant liability for expense of fighting fire starting on his land or property, 90 A.L.R.2d 873.

12-6-22. Investigation of tree diseases or insect infestation; notification of landowner; recommendations; effect of landowner's failure to act; disposition of proceeds derived from sale of trees.

(a) The commission shall have the authority to enter upon any land on which the commission believes the trees are suffering from an

infestation or infection for the purpose of determining whether such infestation or infection exists, the location thereof, and the extent and cause thereof. If an infestation or infection is found to exist by the commission, it shall notify the landowner of such condition and recommend a course of action by the landowner to prevent the spreading of the infestation or disease. If the landowner, within a reasonable period of time following such notification, fails to take action to prevent the spreading of the infestation or disease, then the commission may:

(1) Fell and remove infested or diseased trees;

(2) Fell and chemically treat infested or diseased trees;

(3) Chemically treat standing infested or diseased trees; or

(4) Take such other effective control methods as the commission deems appropriate.

(b) Any proceeds derived from any sale of such trees shall be paid to the landowner.

History. — Ga. L. 1974, p. 426, §§ 1, 2.
Cross references. — Authority of commission to enter lands for purposes of preventing, controlling, or suppressing forest fires, § 12-6-84.

RESEARCH REFERENCES

Am. Jur. 2d. — 16A Am. Jur. 2d, Constitutional Law, § 239.
C.J.S. — 16 C.J.S., Constitutional Law, §§ 394, 398, 400. 98 C.J.S., Woods and Forests, § 3.

12-6-22.1. Control of aviation; power of commission.

(a)(1) The commission shall be authorized to acquire, operate, maintain, house, and dispose of all state aviation assets assigned to the commission, to provide aviation services and oversight of such state aircraft and aviation operations for the mission of the commission and legitimate state business purposes, to achieve policy objectives through aviation missions, and to provide for the efficient operation of such state aircraft.

(2) All aircraft under the custody and control of the Georgia Aviation Authority as of June 30, 2012, which were previously transferred to the authority by the commission and associated parts and equipment and any budgeted operating funds associated with such aircraft shall be transferred on July 1, 2012, back to the custody and control of the commission.

(3) Any persons who as of June 30, 2012, were employed by the Georgia Aviation Authority pursuant to previous transfer from the commission to the authority shall be transferred back to the commis-

sion on July 1, 2012, and shall no longer be under the administration or direction of the authority.

(4) All airfields and appurtenances, including hangars, previously transferred to the Georgia Aviation Authority by the commission and all accounts receivable, budgeted operating funds, other funds, contracts, liabilities, and obligations associated with the aircraft being transferred back to the commission as of July 1, 2012, shall become the property, accounts receivable, budgeted operating funds, other funds, contracts, liabilities, and obligations of the commission on such date.

(5) The commission shall be responsible for providing aviation services in support of the mission of the commission. The commission shall be authorized to dispose of any state aircraft assigned to the commission and apply the proceeds derived therefrom to the purchase of replacement aviation assets.

(b) The commission shall have the power to:

(1) Hire, organize, and train personnel to operate, maintain, house, purchase, and dispose of aviation assets;

(2) Purchase, lease, maintain, develop, and modify facilities to support aviation assets and operations;

(3) Develop operating, maintenance, safety, security, training, education, and scheduling standards for commission aviation operations and conduct inspections, audits, and other similar oversight to determine practices and compliance with such standards;

(4) Develop an accountability system for commission aviation operations and activities;

(5) Identify the costs associated with training, education, and the purchase, operation, maintenance, and administration of state aircraft assigned to the commission and aviation operations and related facilities;

(6) In conjunction with the Georgia Aviation Authority, develop an appropriate joint billing structure for passenger transportation where the aircraft is designated and operated as a "civil aircraft" under Part 91 of the Federal Aviation Regulations and charge agencies and other state entities for the full variable hourly costs for the operation of each type of aircraft, evaluated annually and adjusted as necessary based upon the price of fuel, maintenance, and other fees that are a direct result of flying the aircraft on that specific trip; provided, however, that any billing to an agency by the commission shall be suspended whenever the Governor declares a state of emergency on any cost associated with aircraft used during and in response to such state of emergency;

(7) Retain appropriate external consulting and auditing expertise;

(8) Engage aviation industry representatives to ensure best practices for commission aviation assets;

(9) Delegate certain powers pursuant to this article to other state entities;

(10) Otherwise implement appropriate and efficient management practices for commission aviation operations; and

(11) Enter into agreements with the Georgia Aviation Authority for mutual use of state airfields and appurtenances, including aircraft hangars.

History. — Code 1981, § 12-6-22.1, enacted by Ga. L. 2012, p. 1082, § 3/SB 339.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2012, Code Section 12-6-25, enacted by Ga. L. 2012, p. 1082, § 3/SB 339, was redesignated as Code Section 12-6-22.1.

Part 1A

Timber Harvesting and Removal Requirements

12-6-23. Scale load ticket required for wood removal; form; exceptions.

(a) Any person, company, corporation, or others purchasing timber from lands in Georgia shall, within 20 days of removal of such timber, furnish the seller of timber a scale ticket for each and every load of wood removed, when such load is sold by weight, cord, or measure of board feet. A scale ticket shall include information clearly understandable to the seller as follows:

(1) Ticket number;

(2) Name and location of the person or company and its facility where the load of wood is received and weighed or measured;

(3) Date wood was received at such facility;

(4) Tract name;

(5) County and state of origin;

(6) Dealer name (if any);

(7) Producer or logging company name;

(8) Species of wood;

(9) Weight or scale information. If the load is measured by weight, the gross, tare, and net weights shall be shown. If the load is measured by scale, the total volume shall be shown;

(10) Weight, scale, or amount of wood deducted and the deduction classification (cull, undersize, metal, knots, etc.); and

(11) Name of the person receiving, weighing, or scaling the wood.

(b) Subsection (a) of this Code section shall not apply to the following:

(1) The sale of wood for firewood only;

(2) Any landowner harvesting and processing his own timber; and

(3) Bulk or lump sum sales wherein the landowner and the purchaser agree on a total price for all of said timber purchased.

(c) Any person, company, or corporation which violates any provision of subsection (a) of this Code section shall be guilty of a misdemeanor.

History. — Code 1981, § 12-6-23, enacted by Ga. L. 1985, p. 1077, § 1; Ga. L. 1986, p. 402, § 2; Ga. L. 2002, p. 1126, § 1; Ga. L. 2014, p. 695, § 3/HB 790.

Cross references. — Sale of forest products, T. 2, C. 14, A. 5, P. 1. Sale and measurement of pulpwood, sawtimber, poles, and other types of timber, § 10-2-23.

RESEARCH REFERENCES

ALR. — Determinations Whether Federal Agency Actions Relating to Timber Harvesting Constituted Major Federal Actions for Purposes of § 102(2)(C) of National Environmental Policy Act (NEPA) (42 U.S.C.A. § 4332(2)(C)), 32 A.L.R. Fed. 3d 7.

12-6-24. Notice of timber harvesting operations; standing timber notification website; rules and regulations; bonds and letters of credit.

(a)(1) A county governing authority may by ordinance or resolution require all persons or firms harvesting standing timber in any unincorporated area of such county for delivery as pulpwood, logs, poles, posts, or wood chips to any woodyard or processing plant located inside or outside this state to provide notice of such harvesting operations to the county governing authority or the designated agent thereof prior to entering onto the property if possible, but in no event later than 24 hours after entering onto the property. Further, such persons shall give notice of cessation of cutting within 24 hours after the job is completed.

(2) A municipal governing authority may by ordinance or resolution require all persons or firms harvesting standing timber in any incorporated area of such municipality for delivery as pulpwood, logs, poles, or wood chips to any woodyard or processing plant located inside or outside this state to provide notice of such harvesting operations to the municipal governing authority or the designated

agent thereof prior to entering onto the property if possible, but in no event later than 24 hours after entering onto the property. Further, such persons shall give notice of cessation of cutting within 24 hours after the job is completed.

(b) Any ordinance or resolution adopted pursuant to subsection (a) of this Code section shall conform to and shall not exceed the following requirements:

(1) Prior written notice shall be required of any person or firm harvesting such timber for each separate tract to be harvested thereby, shall be made only in such form as prescribed by rule or regulation of the director, and shall be limited to the following:

(A) A map of the area which identifies the location of the tract to be harvested and, as to those trucks which will be traveling to and from such tract for purposes of picking up and hauling loads of cut forest products, the main point of ingress to such tract from a public road and, if different, the main point of egress from such tract to a public road;

(B) A statement as to whether the timber will be removed pursuant to a lump sum sale, per unit sale, or owner harvest for purposes of ad valorem taxation under Code Section 48-5-7.5;

(C) The name, address, and daytime telephone number of the timber seller if the harvest is pursuant to a lump sum or per unit sale or of the timber owner if the harvest is an owner harvest; and

(D) The name, business address, business telephone number, and nighttime or emergency telephone number of the person or firm harvesting such timber;

(2) Notice may be submitted in person, by transmission of an electronic record via telefacsimile, email, or such other means as approved by the governing authority, or by mail;

(3)(A) Effective October 1, 2020, the State Forestry Commission shall commence construction of a website to provide a state-wide notification platform for persons or firms harvesting standing timber to utilize as a uniform system of notification to local governing authorities.

(B) Following an initial notification by the State Forestry Commission that the website is operational, utilization of the website by local governing authorities and persons or firms harvesting standing timber will be optional.

(C) No later than the first day of the nineteenth month following such initial notification, the State Forestry Commission shall provide a subsequent notification of a date upon which utilization

of such website shall be mandatory for local governing authorities and persons or firms harvesting standing timber. On and after that date, notification procedures under paragraph (2) of this subsection shall cease and notification of harvesting of standing timber shall be conducted solely through such website.

(D) The director of the State Forestry Commission shall promulgate such rules and regulations as are reasonable and necessary for purposes of designing, implementing, and enforcing utilization of such website;

(4)(A) The governing authority may require persons or firms subject to such notice requirement to deliver a bond or letter of credit as provided by this subparagraph, in which case notice shall not be or remain effective for such harvesting operations unless and until the person or firm providing such notice has delivered to the governing authority or its designated agent a valid surety bond, executed by a surety corporation authorized to transact business in this state, protecting the county or municipality, as applicable, against any damage caused by such person or firm in an amount specified by the governing authority not exceeding $5,000.00 or, at the option of the person or firm harvesting timber, a valid irrevocable letter of credit issued by a bank or savings and loan association, as defined in Code Section 7-1-4, in the amount of and in lieu of such bond. Such bonds or letters of credit shall be subject to the conditions set forth in subparagraph (D) of this paragraph. Each county or municipality shall require no more than one bond from each person or firm harvesting timber regardless of the number of tracts harvested in such county or municipality by each such person or firm so long as the bond remains in effect. For purposes of this subparagraph, any such surety bond or letter of credit shall be valid only for the calendar year in which delivered.

(B) Such bond or letter of credit shall protect the county or municipality against any damage requiring re-ditching or repair of existing ditch structure or the removal of any harvesting residue, including tree tops, debris logs, pulpwood, and other materials, placed in or around rights of way caused by such person or firm tendering the bond or letter of credit, and the proceeds of such bond or letter of credit shall be available to reimburse the county or municipality for any cost incurred to repair such damages in or around county or municipal rights of way. The proceeds of such bond or letter of credit shall also be available to reimburse the county or municipality for any cost incurred to maintain or repair county or municipal roads damaged by the ingress or egress of motor vehicles engaged in harvest operations located within 500 feet of any point of ingress or egress of the timber harvesting

operation. The right of a county or municipality to call such bond or letter of credit in accordance with the provisions of this Code section shall be in addition to any other remedies available to such county or municipality at law or in equity for damage to county or municipal roads or rights of way.

(C) When damage results from a person or firm's harvesting activities, the governing authority shall make a written claim to the person or firm causing the damage within 30 business days after the governing authority becomes aware of the damage. Such claim may be given in person, by transmission of an electronic record via telefacsimile or email, or by mail. Such claim shall describe the damage in detail and give the person or firm the opportunity to repair such damage within 30 days of the notification. The county or municipality shall be authorized to repair the damage immediately if the governing authority determines the conditions present a threat to public safety, health, or welfare and, upon making such repairs, shall present to the person or firm an itemized list of expenses incurred as a claim against the responsible party and the issuer of its bond or letter of credit. If the damage in question has not been repaired by or on behalf of the person or firm, then the governing authority shall be authorized to call such bond or letter of credit for payment of any cost the county or municipality incurs or will incur to repair such damages, and additional remedies set forth in this paragraph shall remain available. Within 30 days of the receipt of the written notification from the county or municipality required by this subparagraph, the person or firm may:

(i) Repair such damage at their own expense with the approval and supervision of the governing authority. When repairs are completed to the satisfaction of the governing authority, the governing authority shall provide the person or firm with written notification of such satisfactory completion within five business days;

(ii) In the event of inclement weather or other factors preventing repair of the damage, request a 30 day extension to repair the damage from the governing authority, provided that no such extension shall exceed 90 days. Approval of such extensions shall be in the discretion of the governing authority; or

(iii) Appeal any adverse decision of the governing authority to the magistrate court of the county in which the damage occurred. The magistrate court will hear arguments within 30 days of the written appeal and render a ruling within ten days of such hearing. Any such appeal shall toll the 30 day period, or any extension thereof, provided for in subparagraph (C) of this

paragraph. Should the person or firm receive a favorable ruling from the magistrate court, the governing authority shall have no claim against the bond or letter of credit. Should the person or firm in question receive an unfavorable ruling from the magistrate court, the governing authority shall be authorized to call the bond or letter of credit for reimbursement, not to exceed the bond or letter of credit amount, of costs incurred in repairing the damage.

(D) If a person or firm tendering the bond or letter of credit, or any agent, employee, or contractor of such person or firm, causes a bond or letter of credit to be revoked, then a valid replacement bond or letter of credit shall be obtained by the person or firm and delivered to the governing authority, or the designated agent thereof, no later than the close of business five business days after the date of revocation of the prior bond or letter of credit. The governing authority shall be authorized to increase such bond or letter of credit by $2,500.00 after each instance of revocation of a bond or letter of credit, provided that the total bond amount shall not exceed $10,000.00 as to any original bond or letter of credit;

(5) Notice shall be effective for such harvesting operation on such tract within such unincorporated area of the county or incorporated area of the municipality upon receipt of the same by the applicable governing authority or its designated agent and, if applicable, compliance with the requirements of paragraph (4) of this subsection and until such time as the person or firm giving such notice has completed the harvesting operation for such tract; provided, however, that any subsequent change in the facts required to be provided for purposes of such notice shall be reported to the governing authority or its designated agent within three business days after such change;

(6) Notice requirements shall be applicable to any such timber harvested on or after the effective date of the ordinance or resolution adopted pursuant to this Code section; and

(7) Violation of the notice requirements of any ordinance or resolution adopted pursuant to this Code section shall be punishable by a fine not exceeding $1,500.00 for each violation.

(c) The director shall promulgate such rules and regulations as are reasonable and necessary for purposes of the standard form required by paragraph (1) of subsection (b) of this Code section.

(d) Any municipal governing authority or designated agent thereof which receives a notice required by ordinance or resolution adopted pursuant to this Code section regarding timber harvesting operations to be conducted in whole or in part within the corporate limits of such municipality shall transmit a copy of such notice to the governing authority of the county or the designated agent thereof.

(e)(1) No county, municipality, or other political subdivision in this state shall require any person or firm harvesting standing timber therein for delivery as pulpwood, logs, poles, posts, or wood chips to any woodyard or processing plant located inside or outside this state to provide any notice of or plan or security for such harvesting or hauling of forest products except as provided by this Code section.

(2) No county, municipality, or other political subdivision in this state shall require any person or firm harvesting standing timber therein for delivery as pulpwood, logs, poles, posts, or wood chips to any woodyard or processing plant located inside or outside this state to obtain any permit for such harvesting or hauling of forest products, including without limitation any permit for any new driveway in connection with timber harvesting operations; provided, however, that this paragraph shall not otherwise limit the authority of a county or municipality to regulate roads or streets under its jurisdiction in accordance with Title 32.

(3) The provisions of paragraphs (1) and (2) of this subsection shall not preclude counties, municipalities, and other political subdivisions from enacting and enforcing tree ordinances, landscape ordinances, or streamside buffer ordinances; provided, however, such ordinances shall not apply to timber harvesting as described in subparagraph (A) of paragraph (4) of this subsection or in unzoned tracts as described in subparagraph (B) of paragraph (4) of this subsection.

(4)(A) The limitations on the regulatory authority of counties, municipalities, or other political subdivisions provided by paragraphs (1), (2), and (3) of this subsection shall apply only to timber harvesting operations which qualify as forestry land management practices or agricultural operations under Code Section 12-7-17, not incidental to development, on tracts which are zoned for or used for forestry, silvicultural, or agricultural purposes.

(B) The limitations on the regulatory authority of counties, municipalities, or other political subdivisions provided by paragraphs (1), (2), and (3) of this subsection shall also apply to tracts which are unzoned.

(5) No county or municipality shall require a fee of any kind for receiving a notification of a timber harvest.

History. — Code 1981, § 12-6-24, enacted by Ga. L. 2002, p. 1126, § 1; Ga. L. 2003, p. 578, § 1; Ga. L. 2015, p. 879, § 1/HB 199; Ga. L. 2020, p. 250, § 1/HB 897; Ga. L. 2021, p. 922, § 12/HB 497.

The 2020 amendment, effective July 22, 2020, inserted "and shall not exceed" near the end of subsection (b); added paragraph (b)(3); redesignated former paragraphs (b)(3) through (b)(6) as present paragraphs (b)(4) through (b)(7), respectively; in subparagraph (b)(4)(A), substituted "subparagraph" for "paragraph" in the middle of the first sentence, added the second sentence, substituted "For purposes of this subparagraph," for "Other-

wise, a valid replacement bond must be obtained and delivered to the governing authority of such county or municipality or its designated agent no later than the close of business on the fifth business day following the day that such governing authority filed a claim to recover damages against the then existing bond. Upon filing such claim, such governing authority shall immediately provide notice thereof, including the date such claim was filed, to the person or firm causing the damage. Such notice may be given in person, by transmission of an electronic record via telefacsimile, or by e mail. For purposes of this paragraph,", and substituted a period for a semicolon at the end; added subparagraphs (b)(4)(B) through (b)(4)(D); substituted "paragraph (4)" for "paragraph (3)" in the middle of the first sentence of paragraph (b)(5); and substituted "$1,500.00 for each violation" for "$500.00" at the end of paragraph (b)(7).

The 2021 amendment, effective May 10, 2021, part of an Act to revise, modernize, and correct the Code, substituted "email" for "e-mail" in paragraph (b)(2).

Law reviews. — For annual survey of local government law, see 56 Mercer L. Rev. 351 (2004).

JUDICIAL DECISIONS

Statute did not preempt local ordinance. — O.C.G.A. § 12-6-24, which related to commercial timber harvesting, did not preempt a local tree ordinance since the legislature made it clear that § 12-6-24 did not preclude counties from enacting and enforcing tree ordinances. Greater Atlanta Homebuilders Ass'n v. DeKalb County, 277 Ga. 295, 588 S.E.2d 694 (2003).

Part 2

Practice of Professional Forestry

Administrative rules and regulations. — Organization, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Registration for Foresters, Chapter 220-1 et seq.

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Prosecution for unlicensed practice of professional forestry. — Any unlicensed person, except those who are exempted from the registration requirements, shall be prosecuted for practicing professional forestry as defined in this part or for holding oneself out as being engaged in such practice. 1965-66 Op. Att'y Gen. No. 66-111 (see O.C.G.A. T. 12, C. 6, A. 1, P. 2).

Activities of franchisee or employee. — Franchisee who grows trees on land owned, leased, rented, or held by the franchisee or on lands owned, leased, rented, or held by a person, corporation, agency, or other entity to which the person bears the relationship of employee would not be violating the provisions of this part. 1968 Op. Att'y Gen. No. 68-242 (see O.C.G.A. T. 12, C. 6, A. 1, P. 2).

12-6-40. Legislative purpose.

It is the purpose of this part to protect the public by improving the standards relative to the practice of professional forestry.

History. — Ga. L. 1951, p. 581, § 1; Ga. L. 1959, p. 161, § 1.

12-6-41. Definitions.

As used in this part, the term:

(1) "Board" means the State Board of Registration for Foresters provided for by this part.

(2) "Professional forestry" or "practice of professional forestry" means any professional service relating to forestry, such as investigation, evaluation, development of forest management plans or responsible supervision of forest management, forest protection, silviculture, forest utilization, forest economics, or other forestry activities in connection with any public or private lands, provided that forestry instructional and educational activities shall be exempted. The board shall issue licenses only to those applicants who meet the requirements of this Code section, provided that no person shall be eligible for registration as a registered forester who is not of good character and reputation; provided, further, that employees of the state and federal governments assisting farmers in agricultural programs shall be exempt from this part.

(3) "Registered forester" means a person who has registered and qualified under this part to engage in professional forestry practices as defined in this Code section.

History. — Ga. L. 1951, p. 581, § 2; Ga. L. 1959, p. 161, § 2; Ga. L. 1988, p. 953, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, §§ 6, 21, 30, 31 et seq. 58 Am. Jur. 2d, Occupations, Trades, and Professions, § 1.

C.J.S. — 53 C.J.S., Licenses, § 8.

12-6-42. State Board of Registration for Foresters — Creation; appointment of members; certificate of appointment; oath; term of office.

(a) A State Board of Registration for Foresters is created whose duty it shall be to administer this part.

(b) The board shall consist of five foresters who shall be selected and appointed by the Governor and who shall have the qualifications required by Code Section 12-6-43.

(c) In addition to the five members provided for in subsection (b) of this Code section, the board shall consist of a sixth member who shall be appointed by the Governor from the public at large and who shall

have no connection whatsoever with the practice of professional forestry. The initial term of appointment for the additional member provided for by this subsection shall expire June 30, 1985; thereafter, the Governor shall appoint successors for terms of five years each.

(d) Every member of the board shall receive a certificate of his appointment from the Governor and before beginning his term of office shall file with the Secretary of State his written oath or affirmation for the faithful discharge of his official duty.

(e) The five members of the board shall be appointed for terms of five years. On the expiration of the term of any member of the board, the Governor shall in the manner provided in this Code section appoint for a term of five years a registered forester having the qualifications required by Code Section 12-6-43 to take the place of the member whose term on the board is expiring. Each member shall hold office until the expiration of the term for which that member is appointed or until a successor shall have been duly appointed and shall have qualified.

History. — Ga. L. 1951, p. 581, § 3; Ga. L. 1980, p. 54, § 1; Ga. L. 1988, p. 953, § 2; Ga. L. 1992, p. 6, § 12.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 20. 58 Am. Jur. 2d, Oath and Affirmation, §§ 1, 16, 17, 20 et seq. 63C Am. Jur. 2d, Public Officers and Employees, §§ 42 et seq., 48 et seq., 85 et seq., 137 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 18, 22, 47, 66 et seq., 71, 72,136 et seq., 141, 188. 73 C.J.S., Public Administrative Law and Procedure, §§ 17 et seq., 73.

12-6-43. State Board of Registration for Foresters — Qualifications of members.

Each member of the board shall be a citizen of the United States and a resident of Georgia and shall have been engaged in the practice of forestry for at least ten years, provided that only the citizenship and residency requirements of this Code section shall apply to the member appointed pursuant to subsection (c) of Code Section 12-6-42.

History. — Ga. L. 1951, p. 581, § 4; Ga. L. 1988, p. 953, § 3.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 48 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 21, 22.

12-6-44. State Board of Registration for Foresters — Compensation of members.

Each member of the board shall be reimbursed as provided for in subsection (f) of Code Section 43-1-2.

History. — Ga. L. 1951, p. 581, § 5.

12-6-45. State Board of Registration for Foresters — Removal of members; vacancies.

The Governor may remove any member of the board for misconduct, incompetency, or neglect of duty. Vacancies in the membership of the board shall be filled for the unexpired term by appointment only as provided in this part.

History. — Ga. L. 1951, p. 581, § 6.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 169 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 228 et seq., 264.

12-6-46. State Board of Registration for Foresters — Meetings; officers.

The board shall hold meetings as necessary. The board shall elect or appoint annually a chairman and a vice-chairman. The division director of the professional licensing boards division, as provided in Chapter 1 of Title 43, shall serve as secretary of the board in the same manner as provided by Code Sections 43-1-1 and 43-1-2.

History. — Ga. L. 1951, p. 581, § 7; Ga. L. 1988, p. 953, § 4; Ga. L. 2000, p. 1706, § 20; Ga. L. 2001, p. 4, § 12.

Cross references. — General duties of division director, authority of division director to determine expiration, renewal, and penalty dates of licenses, §§ 43-1-3, 43-1-4.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 79, 86.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 34 et seq.

12-6-47. State Board of Registration for Foresters — Rules and regulations; seal.

(a) The board shall have the power to promulgate rules and regulations, not inconsistent with the Constitution and laws of this state, which may be reasonably necessary for the proper performance of its duties and the regulation of the proceedings before it.

(b) The board shall adopt and have an official seal.

History. — Ga. L. 1951, p. 581, § 8; Ga. L. 1959, p. 161, § 3; Ga. L. 1988, p. 953, § 5.

Administrative rules and regulations. — Organization, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Registration of Foresters, Chapters 220-1 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 107, 109, 114, 115, 123, 124.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 97, 99 et seq., 105, 190, 207, 212 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 278.

12-6-48. State Board of Registration for Foresters — Record of proceedings.

The board shall keep a record of its proceedings. The records of the board shall be prima-facie evidence of the proceedings of the board set forth therein, and a transcript thereof, duly certified by the secretary of the board under seal, shall be admissible in evidence with the same force and effect as if the original were produced.

History. — Ga. L. 1951, p. 581, § 10; Ga. L. 1988, p. 953, § 6.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 198.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 47 et seq. 73A C.J.S., Public Administrative Law and Procedure, §§ 356, 433, 434.

12-6-49. Qualifications and requirements for registered foresters.

(a) The minimum qualifications and requirements for registration as a registered forester shall be as follows:

(1) Graduation with a baccalaureate degree from a school, college, or department of forestry approved by the board, passage of a board approved examination after graduation, and a specific record of an additional two years' or more experience in forestry work of a character satisfactory to the board indicating that the applicant is competent to practice forestry. Such two years' experience need not be obtained on lands owned, leased, rented, or held by the applicant or by any person, corporation, agency, entity, or institution by which such applicant is employed, so long as the applicant works under supervision of a registered forester or under other supervision acceptable to the board; or

(2) Graduation from a school of forestry not approved by the board or completion of a curriculum approved by the board in which the applicant has acquired a minimum of 40 quarter hours' credit, or its equivalent, in forestry subjects, provided that such applicant may be licensed only after acquiring two years' experience of a character satisfactory to the board and under the supervision of a registered forester or under other supervision acceptable to the board, and only after passing a board approved examination; provided, however, that an applicant who graduates on or after July 1, 1993, from a school of forestry not approved by the board or who, on or after July 1, 1993, completes a curriculum approved by the board in which the applicant has acquired a minimum of 40 quarter hours' credit, or its equivalent, in forestry subjects, may be licensed only after completing three years' experience of a character satisfactory to the board and under the supervision of a registered forester or under other supervision acceptable to the board and only after passing a board approved examination.

(b) The board shall issue licenses only to those applicants who meet the requirements of this Code section, provided that no person shall be eligible for registration as a registered forester who is not of good moral character and reputation.

(c) It shall be the duty of the board by rule or regulation to define "supervision" and "experience" as used in this part, and in so doing the board shall consider and give effect to the directness, immediacy, scope, extent, quality, and constancy of such supervision, and, as to experience, the nature, quality, and extent thereof.

History. — Ga. L. 1951, p. 581, § 12; Ga. L. 1959, p. 161, § 4; Ga. L. 1989, p. 352, § 1; Ga. L. 1993, p. 481, § 1.

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Examination is not required by this section unless the applicant for registration as a registered forester is a graduate of a school of forestry not approved by the State Board of Registration for Foresters. 1968 Op. Att'y Gen. No. 68-395 (decided prior to 1993 amendment; see O.C.G.A. § 12-6-49).

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, §§ 32, 49 et seq. 58 Am. Jur. 2d, Occupations, Trades, and Professions, § 6.

C.J.S. — 53 C.J.S., Licenses, §§ 9 et seq., 50, 52, 59, 60.

ALR. — Right to enjoin business competitor from unlicensed or otherwise illegal acts or practices, 90 A.L.R.2d 7.

12-6-49.1. Denial or suspension of license for noncompliance with child support order.

(a) As used in this Code section, the term:

(1) "Agency" means the agency within the Department of Human Services which is responsible for enforcing orders for child support pursuant to Article 1 of Chapter 11 of Title 19, the "Child Support Recovery Act."

(2) "Compliance with an order for child support" means, as set forth in a court order, administrative order, or contempt order for child support, the obligor is not more than 60 calendar days in arrears in making payments in full for current support, periodic payments on a support arrearage, or periodic payments on a reimbursement for public assistance.

(3) "Proof of compliance" means the notice of release issued by the agency or a court of competent jurisdiction stating that the delinquent obligor is in compliance with an order for child support.

(b) The board shall suspend, as provided for in Code Sections 19-6-28.1 and 19-11-9.3, the license of any registered forester upon receipt of a record from the agency or a court of competent jurisdiction stating that such licensee is not in compliance with an order for child support.

(c) The board shall deny the application or renewal, as provided for in Code Sections 19-6-28.1 and 19-11-9.3, of any applicant or licensee upon receipt of a record that such applicant or licensee is not in compliance with an order for child support from the agency or court of competent jurisdiction.

(d) Notwithstanding any other provisions of law, the hearings and appeals procedures provided for in Code Section 19-6-28.1 or 19-11-9.3, where applicable, shall be the only such procedures required to suspend a license or deny the issuance or renewal of an application for a license under this part.

History. — Code 1981, § 12-6-49.1, enacted by Ga. L. 1996, p. 453, § 4; Ga. L. 2009, p. 453, § 2-2/HB 228.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, "as provided for in" was substituted for "as provided in for" in subsection (c).

12-6-49.2. Suspension of registered forester license; borrowers in default.

(a) As used in this Code section, the term:

(1) "Agency" means the Georgia Higher Education Assistance Corporation created in Code Section 20-3-263 which is responsible for

administering a program of guaranteed educational loans to eligible students and eligible parents known as the Georgia Higher Education Loan Program.

(2) "Borrower" means an individual who borrowed a guaranteed educational loan under the Georgia Higher Education Loan Program.

(3) "Default" means default as defined by federal law under the Higher Education Act of 1965.

(4) "Satisfactory repayment status" means the borrower has agreed to repay the defaulted loan to the agency and has made a payment in the most recent prior 60 days.

(b) The board shall not suspend the license of any registered forester because he or she is a borrower in default who is not in satisfactory repayment status as determined by the agency or who has been certified by any entity of the federal government for nonpayment or default or breach of a repayment or service obligation under any federal educational loan, loan repayment, or service conditional scholarship program.

(c) The board shall not deny the application for renewal of any applicant or licensee because he or she is a borrower in default who is not in satisfactory repayment status as determined by the agency or who has been certified by any entity of the federal government for nonpayment or default or breach of a repayment or service obligation under any federal educational loan, loan repayment, or service conditional scholarship program.

History. — Code 1981, § 12-6-49.2, enacted by Ga. L. 1998, p. 1094, § 5; Ga. L. 2019, p. 462, § 1-5/SB 214.

The 2019 amendment, effective July 1, 2019, rewrote subsections (b) and (c), which read: "(b) The board shall suspend, as provided for in Code Section 20-3-295, the license of any registered forester upon receipt of a record from the agency stating that such licensee is a borrower in default who is not in satisfactory repayment status.

"(c) The board shall deny the application for renewal, as provided for in Code Section 20-3-295, of any applicant or licensee upon receipt of a record from the agency stating that such licensee is a borrower in default who is not in satisfactory repayment status."; and deleted former subsection (d), which read: "Notwithstanding any other provisions of law, the hearings and appeals procedures provided for in Code Section 20-3-295, where applicable, shall be the only such procedures required to suspend a license or deny the issuance or renewal of an application for a license under this part."

12-6-50. Applications for registration; fee.

(a) Applications for registration shall be made on forms prescribed and furnished by the board; shall contain statements made under oath, showing the applicant's education and a detailed summary of the applicant's technical work; and shall contain not fewer than five

references, of whom three or more shall be registered foresters having personal or professional knowledge of the applicant's forestry experience.

(b) The registration fee for a license as a registered forester shall be an amount established by the board. Should the board deny the issuance of a license to any applicant, the initial fee deposited shall be retained by the board as an application fee.

History. — Ga. L. 1951, p. 581, § 13; Ga. L. 1993, p. 481, § 2.

Administrative rules and regulations. — Fees and renewals, Official Compilation of the Rules and Regulations of the State of Georgia, State Board of Registration for Foresters, Chapter 220-3.

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, §§ 38 et seq., 52, 53.

C.J.S. — 53 C.J.S., Licenses, §§ 59, 60, 112.

12-6-51. Examinations.

When written examinations are required, they shall be held at such time and place as the division director of the professional licensing boards division, as provided in Chapter 1 of Title 43, shall determine. The methods of procedure shall be prescribed by the division director of the professional licensing boards division, as provided in Chapter 1 of Title 43. A candidate failing on examination may apply for reexamination in the manner provided for by the division director of the professional licensing boards division, as provided in Chapter 1 of Title 43. Subsequent examination will be granted upon payment of a fee to be determined by the board.

History. — Ga. L. 1951, p. 581, § 14; Ga. L. 2000, p. 1706, § 20; Ga. L. 2001, p. 4, § 12.

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, §§ 52, 53.

C.J.S. — 53 C.J.S., Licenses, § 65.

12-6-52. Licenses — Issuance generally; endorsement by registrant of plans, maps, specifications, and reports issued by registrant.

The board shall issue a license upon payment of a registration fee as provided for in this part to any applicant who, in the opinion of the board, has satisfactorily met all of the requirements of this part. The issuance of a license by the board shall be evidence that the person named therein is entitled to all the rights and privileges of a registered

forester while the license remains unrevoked or unexpired. Plans, maps, specifications, and reports issued by a registrant shall be endorsed with his name and license number during the life of the registrant's license.

History. — Ga. L. 1951, p. 581, § 15; Ga. L. 1988, p. 953, § 7.

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, §§ 52, 53.

C.J.S. — 53 C.J.S., Licenses, §§ 59, 60.

12-6-53. Licenses — Eligibility of foresters with 12 years' experience.

Reserved. Repealed by Ga. L. 1988, p. 953, § 8, effective July 1, 1988.

Editor's notes. — This Code section was based on Ga. L. 1964, p. 409, § 2.

12-6-54. Licenses — Reciprocity for nonresidents.

(a) Any person who is licensed as a registered forester under the laws of another state may be licensed and registered under the laws of Georgia by reciprocity without having to qualify under the other provisions of this part, subject to the following conditions:

(1) That the requirements and qualifications for licensing and registration under the laws of the state in which such person is licensed are substantially equivalent to those of Georgia, such substantial equivalency to be determined by the board; and

(2) That such state permits licensing of foresters registered in Georgia on terms substantially equivalent to those of this Code section, such substantial equivalency to be determined by the board.

(b) Notwithstanding the foregoing provisions of this Code section, the board may decline to license by reciprocity any person on an individual basis where the board determines that such applicant does not possess good character or has been guilty of fraud in making application under the laws of Georgia or of any other state, or where the board determines by examination or otherwise that such applicant is not in fact qualified to become licensed as a registered forester.

(c) Any person desiring to become registered under this Code section shall make application under oath on blanks to be furnished by the board, shall accompany such application with the same fee required for licensing and registration under Code Section 12-6-50, and shall cause to be sent to the board a certificate from the proper authority of the state under which such person is already registered certifying thereto.

(d) Any license issued under this Code section shall be subject to all provisions of this part governing expiration, renewal, renewal fees, revocation, and any and all other provisions of law governing or relating to registered foresters.

History. — Ga. L. 1951, p. 581, § 18; Ga. L. 1959, p. 161, § 6; Ga. L. 1982, p. 3, § 12; Ga. L. 1993, p. 481, § 3.

Cross references. — Cooperation between Georgia and other states, T. 28, C. 6.

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Conditions for grant of license by reciprocity. — Under this section the granting of a license by reciprocity has no relation to the state in which the licensee resides; the only question for consideration when a licensee from another state has made application for registration in this state is whether or not the state in which the licensee is licensed permits "licensing of foresters registered in Georgia on terms substantially equivalent to those of this section." 1958-59 Op. Att'y Gen. p. 266 (see O.C.G.A. § 12-6-54).

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, §§ 31 et seq.

C.J.S. — 53 C.J.S., Licenses, §§ 59, 60. 81A C.J.S., States, § 71 et seq.

12-6-55. Licenses — Only individuals may be licensed.

Registration shall be determined upon a basis of individual personal qualifications. No firm, company, partnership, or corporation can be licensed.

History. — Ga. L. 1951, p. 581, § 17.

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, § 42.

C.J.S. — 53 C.J.S., Licenses, §§ 59, 60.

12-6-56. Licenses — Expiration and renewal generally; continuing forestry education requirement.

(a) Licenses shall be valid for up to two years and shall be renewable biennially on the renewal date established by the division director of the professional licensing boards division, as provided in Chapter 1 of Title 43.

(b) The board shall require persons who are licensed under this part to complete not less than six hours and not more than 20 hours of continuing forestry education as a condition of license renewal. The board shall be authorized to approve continuing forestry education courses offered by professional organizations, institutions of higher

learning, qualified individuals, or specialty societies. In addition, the board shall be authorized to approve credit for meetings, presentations, or other activities considered by the board to be a form of continuing education.

(c) The board shall be authorized to waive the continuing forestry education requirement in cases of hardship or illness.

(d) The board shall be authorized to promulgate rules and regulations to ensure compliance with the requirements of this Code section.

History. — Ga. L. 1951, p. 581, § 16; Ga. L. 1956, p. 691, § 2; Ga. L. 1957, p. 169, § 1; Ga. L. 1958, p. 656, § 1; Ga. L. 1989, p. 352, § 2; Ga. L. 2000, p. 1706, § 20.

Cross references. — Duties of the division director generally, T. 43, C. 1.

Editor's notes. — Ga. L. 1989, p. 352, § 3, not codified by the General Assembly, provides: "This Act shall become effective January 1, 1990, and the continuing education requirements imposed by this Act shall apply for those persons who are applying for renewal of licenses which expire on or after December 31, 1991."

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, § 56 et seq.

C.J.S. — 53 C.J.S., Licenses, §§ 59, 60.

12-6-57. State Board of Registration for Foresters — Denial or revocation of license; discipline of licensee; code of ethics.

The board shall have the authority to refuse to grant a license to an applicant, to revoke the license of a person licensed by the board, or to discipline a person licensed by the board upon a finding by a majority of the board that the licensee or applicant has violated the provisions of Code Section 43-1-19. The board shall have the authority to adopt, by regulation, a code of professional ethics for foresters and thereby define unethical conduct or practice by applicants or licensees of the board for purposes of Code Section 43-1-19.

History. — Ga. L. 1951, p. 581, § 19; Ga. L. 1988, p. 953, § 9; Ga. L. 1998, p. 183, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, § 56 et seq.

C.J.S. — 53 C.J.S., Licenses, §§ 87, 139.

12-6-58. State Board of Registration for Foresters — Duplicate license for lost, destroyed, or mutilated license.

A duplicate license to replace any lost, destroyed, or mutilated license may be issued, subject to the rules of the board, upon payment of a fee established by the board.

History. — Ga. L. 1964, p. 409, § 1; Ga. L. 1988, p. 953, § 10.

12-6-59. Receipts and disbursements.

Reserved. Repealed by Ga. L. 1988, p. 953, § 11, effective July 1, 1988.

Editor's notes. — This Code section was based on Ga. L. 1951, p. 581, § 9.

12-6-60. Injunctive relief.

In addition to any other remedy or criminal prosecution, whenever it shall appear to the board that any person, firm, company, partnership, association, or corporation, or their agents, officers, or directors, is or has been holding himself, itself, or themselves out to the public as a registered forester when not so registered, the board may, on its own motion or on the verified complaint in writing of any person, file an equitable petition in its own name in the superior court in any county of this state having jurisdiction of the parties, alleging the facts and praying for a temporary restraining order, a temporary injunction, or a permanent injunction against such person, firm, company, partnership, association, or corporation, or their agents, officers, and directors, restraining him, it, or them from violating such law. Upon proof of the facts as alleged, the court shall issue such restraining order, temporary injunction, or permanent injunction without requiring allegation or proof that the petitioner therefor has no adequate remedy at law.

History. — Ga. L. 1964, p. 409, § 3.

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Sections affect only Georgia resident foresters. — Provisions of Ga. L. 1959, p. 161, § 1 and Ga. L. 1964, p. 409, § 3 (see O.C.G.A. §§ 12-6-60 and 12-6-61) affect only Georgia resident foresters or those doing actual business in this state. 1965-66 Op. Att'y Gen. No. 66-258.

12-6-61. Prohibited acts.

(a) No person shall use in connection with his name or otherwise assume, use, or advertise any title or description tending directly or

indirectly to convey the impression that he is a registered forester without first having been licensed and registered as a registered forester as provided in this part.

(b) Except as specifically authorized under this part, no person shall engage in the practice of professional forestry, as defined in this part, or in any manner advertise or hold himself out as engaged in such practice without first being licensed as a registered forester under this part.

(c) Notwithstanding subsection (b) of this Code section or any other provisions of this part, nothing in this part shall be construed as preventing or prohibiting any person from managing or otherwise conducting forestry practices on land owned, leased, rented, or held by such person; nor shall anything in this part prohibit any regular employee or official of any person, corporation, agency, institution, or other entity from engaging in professional or other forestry practices on lands owned, leased, rented, or held by such person, corporation, agency, or other entity; nor shall anything in this part prohibit any graduate of a school of forestry from practicing forestry under supervision as authorized in Code Section 12-6-49 so as to qualify for licensing as provided in that Code section.

History. — Ga. L. 1951, p. 581, § 1; Ga. L. 1959, p. 161, § 1.

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Applicability of this part. — Provisions of subsection (b) of Ga. L. 1959, p. 161, § 1 (see O.C.G.A. § 12-6-61) and Ga. L. 1964, p. 409, § 3 (see O.C.G.A. § 12-6-60) affect only Georgia resident foresters or those doing actual business in this state. 1965-66 Op. Att'y Gen. No. 66-258.

Activities of franchisee or employee. — Franchisee who grows trees on land owned, leased, rented, or held by the franchisee or on lands owned, leased, rented, or held by a person, corporation, agency, or other entity to which the person bears the relationship of employee would not be violating the provisions of this part. 1968 Op. Att'y Gen. No. 68-242 (see O.C.G.A. T. 12, C. 6, A. 1, P. 2).

Any unlicensed person may be prosecuted for practicing professional forestry as defined in this part or for holding oneself out as being engaged in such practice, except those who are exempted from the registration requirements. 1965-66 Op. Att'y Gen. No. 66-111 (see O.C.G.A. T. 12, C. 6, A. 1, P. 2).

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, § 44 et seq. 58 Am. Jur. 2d, Occupations, Trades, and Professions, § 1.

C.J.S. — 53 C.J.S., Licenses, §§ 135, 139.

12-6-62. Penalty; authority to prefer charges; immunity of person bringing charges from liability; duty to enforce part; legal assistance by Attorney General.

(a) Any person, firm, or partnership violating any provision of this part shall be guilty of a misdemeanor.

(b) Any person who:

(1) Refuses upon request to surrender to the board or any duly authorized agent thereof any license held by such person;

(2) Presents or attempts to use as his own the license of another;

(3) Gives any false or forged evidence of any kind to the board or any member thereof in obtaining a license;

(4) Attempts to use an expired or revoked license; or

(5) Endorses any documents with his name and license number as provided in Code Section 12-6-52 after the license of the registrant named thereon has expired or has been revoked, unless the license has been renewed or reissued,

shall be guilty of a misdemeanor.

(c) Any registered forester who endorses any plan, specification, estimate, or map without having actually prepared such plan, specification, estimate, or map or without having been in the actual charge of the preparation thereof shall be guilty of a misdemeanor.

(d) The board or such person or persons as may be designated by the board to act in its stead is empowered to prefer charges for any of the violations of this part in any court of competent jurisdiction. Where reasonable ground existed to believe or suspect the guilt of the accused, such person bringing charges shall be immune from liability in damages or otherwise, notwithstanding that the accused was acquitted thereof.

(e) It shall be the duty of all duly constituted officers of the law of this state or of any political subdivision thereof to enforce the provisions of this part and to prosecute any persons, firms, or partnerships violating the same. The Attorney General of the state and his assistants shall act as legal advisor to the board and render such legal assistance as may be necessary in carrying out this part.

History. — Ga. L. 1951, p. 581, §§ 15, 20; Ga. L. 1959, p. 161, § 5.

OPINIONS OF THE ATTORNEY GENERAL

Any unlicensed person may be prosecuted for practicing professional forestry as defined in this chapter or for holding oneself out as being engaged in such practice, except those who are exempted from the registration requirements. 1965-66 Op. Att'y Gen. No. 66-111 (see O.C.G.A. T. 12. C. 6).

RESEARCH REFERENCES

Am. Jur. 2d. — 21 Am. Jur. 2d, Criminal Law, § 18 et seq. 51 Am. Jur. 2d, Licenses and Permits, § 44 et seq.

C.J.S. — 22 C.J.S., Criminal Law, §§ 12 et seq., 8, 19, 23. 53 C.J.S., Licenses, § 84.

12-6-63. Termination.

Repealed by Ga. L. 1992, p. 3137, § 41, effective July 1, 1992.

Editor's notes. — This Code section was based on Ga. L. 1982, p. 984, § 2; Ga. L. 1984, p. 445, § 1; and Ga. L. 1988, p. 953, § 12.

PART 3

FOREST FIRE PREVENTION AND CONTROL

Cross references. — Southeastern Interstate Forest Fire Protection Compact, § 12-10-60 et seq. Burning of woodlands, brush, fields, or other lands; destruction of or damage to material or device used in detection or suppression of wildfires; penalties for violations, § 16-7-63.

12-6-80. Short title.

This part shall be known and may be cited as the "Georgia Forest Fire Protection Act."

History. — Ga. L. 1949, p. 937, § 1; Ga. L. 1996, p. 6, § 12.

12-6-81. Legislative purpose.

The General Assembly, recognizing that the forest lands and resources of the state are a natural resource of great economic value to the citizens of the state, comprising two-thirds of the state's area, or 24 million acres, and giving employment to over 177,000 Georgia citizens and bringing to the state a $19.5 billion economic impact; that uncontrolled forest fires threaten not only lands on which they occur, but also the health of the lands and the citizens of the state; that the present and potential production of forest products are materially menaced and reduced through recurring uncontrolled forest fires, thereby resulting in loss to owners of forest lands, industries, workers, and communities; that it is of vital importance to the state to protect and develop forest lands for the continuous production of forest products; and that this

cannot be accomplished without organized and coordinated state-wide protection, declares that protection against uncontrolled fire and preservation of the forest lands and forest resources of the state are essential for the economic welfare of the state and its people and further declares that prescribed burning is an effective method of reducing fuel loads and the potential hazards and impact associated with uncontrolled fires.

History. — Ga. L. 1949, p. 937, § 2; Ga. L. 2000, p. 1285, § 1.

12-6-82. Definitions.

As used in this part, the term:

(1) "Forest fire" means any fire burning uncontrolled on any forest land covered wholly or in part by timber, brush, grass, or other flammable material.

(2) "Forest lands" means all lands which are situated outside of corporate limits and which have enough forest growth, either standing or down, or have sufficient flammable debris or grass, to constitute, in the judgment of the State Forestry Commission, a menace to such lands or adjoining lands.

History. — Ga. L. 1949, p. 937, §§ 7, 8.

12-6-83. Direction and supervision by State Forestry Commission of forest fire protection work; making and enforcing rules and regulations.

All forest fire protection work shall be under the direction and supervision of the State Forestry Commission, through the director of the commission, subject to this part and the laws of this state relative to forestry and forest fire prevention and suppression. The commission shall have power to make and enforce all rules and regulations necessary for the administration of forest fire protection.

History. — Ga. L. 1925, p. 199, § 3; Ga. L. 1931, p. 7, § 21; Code 1933, § 43-206; Ga. L. 1949, p. 937, § 4.

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Volunteer firefighters are not entitled to workers' compensation from commission. 1954-56 Op. Att'y Gen. p. 351.

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Fires, §§ 1, 16.
C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 207, 212 et seq.

12-6-84. Entry upon land for fire-prevention purposes or investigations.

The members of the State Forestry Commission and any of its authorized agents or anyone acting at their direction shall have the right at any or all times to go upon any land for the purpose of preventing, controlling, or suppressing forest fires, as defined in Code Section 12-6-82, or for the purpose of making investigations, without incurring liability for trespassing.

History. — Ga. L. 1949, p. 937, § 13; Ga. L. 1955, p. 309, § 33.
Cross references. — Right of organized fire suppression force to suppress nuisance as constituted by uncontrolled fire on forested or cut-over brush land or grassland, § 12-6-21. Authority of commission to enter upon lands to investigate, suppress, and control tree diseases or insect infestation, § 12-6-22.

OPINIONS OF THE ATTORNEY GENERAL

Commission personnel not required to accompany firefighters' entry onto lands. — In view of the phrase, "at any or all times," it is not essential that private firefighters enter lands only when accompanied by, or in the presence of, State Forestry Commission personnel. 1954-56 Op. Att'y Gen. p. 349.

RESEARCH REFERENCES

Am. Jur. 2d. — 42 Am. Jur. 2d, Inspection Laws, §§ 1, 2.
C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 190.

12-6-85. Fire protection units.

The State Forestry Commission shall divide the state into fire protection units which will provide efficient and economical fire protection within the unit area. Such units will comprise one or more counties or portions of counties.

History. — Ga. L. 1949, p. 937, § 9.

12-6-86. Unit forestry boards — Creation; appointment; qualifications; terms of office; vacancies; service by members without compensation.

(a) In the discretion of the State Forestry Commission, there may be set up in each fire protection unit a board to be known as the unit

forestry board, consisting of five members who shall be appointed by the State Forestry Commission.

(b) The State Forestry Commission shall determine the number of members from each county within the fire protection unit to be appointed to the board in accordance with the percentage of forest land acreage for each county within the unit.

(c) The members of the board shall be residents of the county from which they are appointed and shall be owners of forest land or representatives of such owners. Change of residence from the county shall terminate the appointment.

(d) The initial term of the members of all of the unit forestry boards shall be one member for one year, one member for two years, one member for three years, one member for four years, and one member for five years, each member holding office until his successor is appointed. After the expiration of the first term, one member shall be appointed annually for a term of five years.

(e) In case of a vacancy on the unit forestry board by reason of death, resignation, or otherwise, such vacancy shall be filled for the unexpired term in the same manner as provided for the appointment of members thereof.

(f) The members of the unit forestry boards shall serve without compensation.

History. — Ga. L. 1949, p. 937, § 10; Ga. L. 1955, p. 309, § 36.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 20, 28, 31, 32. 63C Am. Jur. 2d, Public Officers and Employees, §§ 1 et seq., 42 et seq., 85 et seq., 137 et seq., 153 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 18, 35, 46, 47, 55 et seq., 140 et seq., 161 et seq., 214, 374 et seq. 73 C.J.S., Public Administrative Law and Procedure, §§ 17 et seq., 73.

12-6-87. Unit forestry boards — Duties.

The duties of the unit forestry board shall be to assist in the efficient performance of this part and in the general conduct of the forestry program in the fire protection unit.

History. — Ga. L. 1949, p. 937, § 11.

12-6-88. Unit forestry boards — Annual forest fire protection plans appropriation of funds for public information campaign.

The State Forestry Commission shall prepare for each unit forestry board a plan for forest fire protection for the fiscal year and shall present such plan at a meeting of the board prior to July 1 of each year. It is the intent of the General Assembly that funds be appropriated to the State Forestry Commission each year to provide a public information campaign as provided in Code Section 12-6-149 and for prescribed fire training throughout the state.

History. — Ga. L. 1949, p. 937, § 12; Ga. L. 2000, p. 1285, § 2.

12-6-89. "Extreme forest fire emergency" defined; authority of Governor, forestry investigators, and peace officers in emergency; advice by director to Governor as to existence of emergency.

(a) As used in this Code section, "extreme forest fire emergency" means a condition whereby forest fires within the state are of such number, size, severity, and intensity that they cannot be controlled by the existing facilities of the State Forestry Commission and are endangering life and property.

(b) The Governor shall have authority to declare and determine the existence and termination of such emergency and, by order, rule, or regulation, to prohibit hunting, fishing, camping, or picnicking in any woods or lands of the state, or to prohibit the entering of such woods or lands for any other purposes which might cause a fire hazard or endanger the life or property of any person within such area. The Governor may direct and commandeer all state agencies and personnel to assist the State Forestry Commission in such emergency by executive order.

(c) Forestry investigators and any and all other peace officers of this state, or of any county or municipality thereof, shall have authority to make arrests for violation of any order, rule, or regulation made pursuant to a declaration of extreme forest fire emergency. Any person who violates any such order, rule, or regulation shall be guilty of a misdemeanor.

(d) The director of the State Forestry Commission will notify the Governor from time to time what situation, in his judgment, constitutes an extreme forest fire emergency.

History. — Ga. L. 1949, p. 968; Ga. L. 1955, p. 309, §§ 37, 38; Ga. L. 1959, p. 72, § 2.

Cross references. — Emergency powers of Governor generally, §§ 38-3-22, 38-3-51, 45-12-29 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Fires, §§ 1, 36.

12-6-90. Permit required for burning woods, lands, marshes, or other flammable vegetation; exceptions.

(a) Except as provided in subsections (b) and (c) of this Code section, any person, firm, corporation, or association lawfully entitled to burn any woods, lands, marshes, or any other flammable vegetation, whether in cultivated or uncultivated areas, shall prior to such burning obtain a permit therefor from the forest ranger of the county wherein such burning is to be made or from another employee of the forestry unit serving such county who is authorized by the chief forester of such unit to grant such permits. An applicant for a permit shall provide the county forest ranger or other authorized employee of the forestry unit serving the county with the location and the recommended time of the proposed burn. Such information may be provided and the permit may be obtained by a telephone call to the county forest ranger or to another authorized employee of the forestry unit serving the county. The permit shall be given by providing the applicant therefor with a permit number which will grant permission for a controlled burn to take place at the location specified by the applicant at a time approved by the county forest ranger or by the other authorized employee of the forestry unit serving the county.

(b) It shall not be necessary to obtain a permit otherwise required by subsection (a) of this Code section if a sudden emergency requires a firing in order to render one's premises safe. In any prosecution under this Code section, a necessary firing in a sudden emergency shall constitute an affirmative defense, but the burden of proving such necessity shall rest upon the person asserting it as a defense.

(c)(1) It shall not be necessary to obtain a permit otherwise required by subsection (a) of this Code section to burn improved pastures or residue on cultivated crop land if the person, firm, corporation, or association intending to burn such residue shall, prior to such burning, give notice of the approximate time and location thereof to the forest ranger of the county wherein such burning is to be made or to an employee of the forestry unit serving such county who is authorized to grant permits under subsection (a) of this Code section.

(2) Unless otherwise provided by local ordinance, or where prohibited by general law or regulation, it shall not be necessary to obtain

a permit otherwise required by subsection (a) of this Code section to burn leaf piles, yard debris, or hand-piled natural vegetation on the premises at which they occur, provided that the:

(A) Burning takes place between the official sunrise and the official sunset for the location where the burning is taking place;

(B) Location of the burning is no less than 25 feet from any woodlands, forestland, and/or open field that contains brush, grass, or other flammable material;

(C) Location of the burning is no less than 50 feet from any structure, including outbuildings, sheds, barns, and homes;

(D) Person responsible shall attend the burning at all times until completely extinguished and there is no risk for the burning to escape control;

(E) Person responsible shall take necessary precautions to prevent escape or spread from the original location; and

(F) Person responsible shall be liable for any resulting damage to adjacent properties.

(d) The notice or permit required by this Code section shall be in addition to any other notice or permit or other requirement for burning provided for by law or by ordinance, resolution, or regulation of any county or municipality of this state; provided, however, that no additional restrictions provided by local ordinance shall prohibit burning the understory for the health of the forest and wildlife or prohibit the landowner's ability to reduce fuel loads on the forest floor for the safety of the community; provided, further, that the foregoing exception shall not apply to the burning of leaf or brush piles not necessary to accomplish the purposes of prescribed burning.

(e) Any person who fails to give any notice required by subsection (c) of this Code section or who makes a burn described by subsection (a) of this Code section without obtaining the permit required by said subsection shall be guilty of a misdemeanor.

History. — Ga. L. 1956, p. 382, §§ 1-3; Ga. L. 1981, p. 895, § 1; Ga. L. 1988, p. 477, § 1; Ga. L. 2000, p. 1285, § 3; Ga. L. 2001, p. 4, § 12; Ga. L. 2021, p. 598, § 1/SB 119.

The 2021 amendment, effective July 1, 2021, in subsection (c), designated the existing provisions as paragraph (c)(1), substituted "pastures or residue on cultivated crop land" for "pastures, residue on cultivated crop land, or leaf piles" near the middle of paragraph (c)(1), and added paragraph (c)(2).

Cross references. — Burning of woodlands, brush, fields, or other lands; destruction of or damage to material or device used in detection or suppression of wildfires; penalties for violations, § 16-7-63.

Code Commission notes. — Pursuant

to Code Section 28-9-5, in 2001, "foregoing" was substituted for "forgoing" near the end of subsection (d).

JUDICIAL DECISIONS

Purpose of section. — Purpose of O.C.G.A. § 12-6-90 is to enable the forestry service to supervise fires for the safety of the public, particularly of people who pass on a nearby highway or who have trees or houses nearby. Butler v. McCleskey, 208 Ga. App. 341, 430 S.E.2d 631 (1993).

Failure to notify forestry agents of intent to burn a field was negligence per se. Butler v. McCleskey, 208 Ga. App. 341, 430 S.E.2d 631 (1993).

Landowner not required to obtain separate permit for days following prescribed burn. — Landowner's failure to obtain a separate permit for the days following a prescribed burn pursuant to O.C.G.A. § 12-6-90 did not strip the landowner of the protections provided by the Georgia Prescribed Burning Act, O.C.G.A. § 12-6-148. Morgan v. Horton, 308 Ga. App. 192, 707 S.E.2d 144 (2011), cert. denied, No. S11C1028, 2011 Ga. LEXIS 533 (Ga. 2011).

OPINIONS OF THE ATTORNEY GENERAL

Purpose of this section is twofold, to-wit: (1) to permit the State Forestry Commission, through the Commission's communication and weather reporting facilities, to advise the landowner as to whether or not conditions are safe for burning, and to mobilize the Commission's equipment on a standby basis; and (2) to prevent the State Forestry Commission, upon spotting unreported smoke in any part of the county, from sending out valuable equipment to investigate, only to discover a controlled fire, thereby avoiding serious expense by giving notice of the controlled burning. 1954-56 Op. Att'y Gen. p. 345 (see O.C.G.A. § 12-6-90).

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Fires, §§ 11, 12, 15, 36. 38 Am. Jur. 2d, Grand Jury, § 30.

C.J.S. — 36A C.J.S., Fires, § 2. 38 C.J.S., Grand Juries, § 34. 82 C.J.S., Statutes, §§ 182 et seq., 201.

ALR. — Validity and application of statutes imposing upon the owner or occupant liability for expense of fighting fire starting on his land or property, 90 A.L.R.2d 873.

Liability for spread of fire intentionally set for legitimate purpose, 25 A.L.R.5th 391.

12-6-91. Controlled burning by owners over own forest land.

Unless prohibited by the director of the State Forestry Commission pursuant to the provisions of Code Section 12-6-17, the owners of any forest land may accomplish controlled burning over their own land when a permit therefor is obtained pursuant to the requirements of Code Section 12-6-90 and the fire is not allowed to spread onto or over the land of another or others.

History. — Ga. L. 1949, p. 937, § 15; Ga. L. 1988, p. 477, § 2.

Cross references. — Burning of woodlands, brush, fields, or other lands; destruction of or damage to material or device used in detection or suppression of

wildfires; penalties for violations, § 16-7-63.

OPINIONS OF THE ATTORNEY GENERAL

Construed with other laws. — Ga. L. 1949, p. 937, § 15 (see O.C.G.A. § 12-6-91) does not conflict with Ga. L. 1955, p. 309, § 26 (see O.C.G.A. § 12-6-17). 1954-56 Op. Att'y Gen. p. 343.

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Fires, § 1. 63C Am. Jur. 2d, Public Lands, § 7.

C.J.S. — 36A C.J.S., Fires, § 2. 73A C.J.S., Public Lands, § 2.

ALR. — Validity and application of statutes imposing upon the owner or occupant liability for expense of fighting fire starting on his land or property, 90 A.L.R.2d 873.

12-6-92. Vesting of title to property in State Forestry Commission.

The title to all property already acquired or which may be acquired incidental to carrying out this part shall be vested in the State Forestry Commission.

History. — Ga. L. 1949, p. 937, § 14.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Property, § 29.

C.J.S. — 73 C.J.S., Property, §§ 48, 49.

12-6-93. Appropriations; agreements between State Forestry Commission and counties; taxation by counties for fire protection.

(a) The funds required to carry out this part and provide for the coordinated protection of uncontrolled fire on all forest lands in the State of Georgia may be provided from annual appropriations made by the General Assembly for this purpose.

(b) In the event any county desires forest fire protection, the county shall enter into an agreement with the State Forestry Commission, and such agreement shall provide for the payment to the commission of an amount reasonably related to the actual cost of providing forest fire protection. Such amount shall be calculated per forest acre of privately owned forest land. Forest acres of privately owned land shall be based upon the most recent United States Forest Service survey for Georgia.

(c) Any agreement in existence on July 1, 2010, between a county and the commission providing for a different percentage or amount of

payment shall be changed so as to provide for the payment of an amount reasonably related to the actual cost of providing forest fire protection. Such amount shall be calculated per forest acre.

(d) Any county may levy a tax to provide the additional funds required for fire protection under this part.

History. — Ga. L. 1949, p. 937, § 3; Ga. L. 1950, p. 101, § 1; Ga. L. 1955, p. 309, § 34; Ga. L. 1967, p. 29, § 1; Ga. L. 2010, p. 9, § 1-33/HB 1055.

Cross references. — Purposes for which counties may exercise power of taxation, Ga. Const. 1983, Art. IX, Sec. IV, Para. I-III.

OPINIONS OF THE ATTORNEY GENERAL

Commission may agree to payment of nonmerit system personnel by county if the county so desires to make such payment. 1962 Op. Att'y Gen. p. 65.

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Fires, §§ 1, 16. 63C Am. Jur. 2d, Public Funds, § 33 et seq. 71 Am. Jur. 2d, State and Local Taxation, § 95.

C.J.S. — 81A C.J.S., States, §§ 340 et seq. 84 C.J.S., Taxation, § 14.

Part 4

Forestry Research

OPINIONS OF THE ATTORNEY GENERAL

Commission's policies fall within exclusions of § 50-13-2(6). — Georgia Forest Research Council (now State Forestry Commission) and its policies fall within the exclusions itemized by Ga. L. 1964, p. 338, § 2 (see O.C.G.A. § 50-13-2 (6)) in that they specifically deal with internal operational activities and contracts with other state agencies for the purpose of forestry research as an agency of the state government; therefore, policies of the commission do not come under the provisions of Ga. L. 1964, p. 338, § 1 et seq. (see O.C.G.A. § 50-13-1 et seq.). 1963-65 Op. Att'y Gen. p. 772.

12-6-110. Powers and duties of State Forestry Commission as to forestry research.

The State Forestry Commission shall have the following duties and powers:

(1) To investigate subjects or methods, means, and ways of carrying out such forestry research as it may determine most desirable or necessary in any phase of forestry, or any research which would benefit the promotion of forestry in the State of Georgia, or which would be for the benefit of any industry either privately owned or owned by federal or state governments, or any subdivision thereof;

(2) To promote and assist in the publicizing of the result of any research connected with any phase of forestry. The commission shall cooperate with, and is specifically authorized to counsel and advise, any entity having duties, powers, or objectives similar to or related to those of the commission, including but not limited to any private industry, any agency or agencies of the federal government, this state, other states, and any local governments;

(3) To coordinate all forestry research in the State of Georgia and to see that there is no duplication of research by any agency of the state with any research by the federal government, any county, municipality, or local government, any board, bureau, commission, or any other organization, public or private. The commission shall investigate and determine what forestry research is being carried on by any of the entities listed in this paragraph and shall use the results of this investigation to advise and furnish information to any other entity engaged in forestry research; and

(4) To designate any agency of the state or federal government, or any subdivision thereof, or any other organization which is organized for the purpose of and engaged in forestry research, to carry out any research or experiment in connection with forestry which the commission deems to have the best facilities or to be otherwise best suited for carrying out the particular research or experiment. The commission may, from its funds provided for in this part, allocate to such agency or organization such amount as it deems necessary for such particular research or experiment.

History. — Ga. L. 1953, Nov.-Dec. Sess., p. 45, §§ 9, 10; Ga. L. 1978, p. 2056, § 1.

12-6-111. Employment by State Forestry Commission of assistants and other employees.

The State Forestry Commission shall have the power to employ such assistants, technical, clerical, or otherwise, and such other employees as the commission in the exercise of its discretion shall deem necessary or proper to the effectual discharge of the duties and the exercise of the powers of the commission enumerated in this part. The commission shall have the power to fix, prescribe, and change the compensation and duties of any such employees.

History. — Ga. L. 1953, Nov.-Dec. Sess., p. 45, § 8; Ga. L. 1978, p. 2056, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 99, 100. 63C Am. Jur. 2d, Public Officers and Employees, § 258 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 374 et seq., 383 et seq., 396 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 79.

12-6-112. Appropriations, grants, or gifts to State Forestry Commission for forestry research.

(a) For carrying out any of the objectives stated in Code Section 12-6-110, the State Forestry Commission may accept appropriations, grants, or gifts from the federal government; the state government; any county, municipal, or local government; any board, bureau, commission, agency, or establishment of any such government; any other organizations, public or private; and any individual or groups of individuals or corporations. Such grants or gifts shall be held and administered subject to this part.

(b) Appropriations for research conducted by or through the State Forestry Commission for the purposes stated in this part shall be specified in the "General Appropriations Act" as a separate line item appropriation under the State Forestry Commission. Any funds in such line item appropriation shall be allocated to research projects selected by the State Forestry Commission and the director of the State Forestry Commission.

History. — Ga. L. 1953, Nov.-Dec. Sess., p. 45, § 11; Ga. L. 1978, p. 2056, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 81, 86, 98. 63C Am. Jur. 2d, Public Funds, § 33 et seq. 63C Am. Jur. 2d, Public Officers and Employees, § 256 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 323 et seq. 73 C.J.S., Public Administrative Law and Procedure, §§ 34 et seq. 81A C.J.S., States, §§ 387, 398 et seq., 404 et seq., 422 et seq.

12-6-113 through 12-6-118.

Repealed by Ga. L. 2001, p. 873, § 4, effective July 1, 2001.

Editor's notes. — These Code sections, relating to forest resources and other plant life, were based on Ga. L. 1953, Nov.-Dec. Sess., p. 45, §§ 1-7; Ga. L. 1978, p. 2056, § 1.

PART 5

HERTY ADVANCED MATERIALS DEVELOPMENT CENTER

12-6-130 through 12-6-139.

Reserved. Redesignated by Ga. L. 2012, p. 375, § 1/SB 396, effective July 1, 2012.

Editor's notes. — Former Code Sections 12-6-130 through 12-6-139, concerning the Herty Advanced Materials Development Center, were based on Ga. L. 1937-38, Ex. Sess., p. 191, §§ 1-6; Ga. L. 1972, p. 1015, § 1526; Ga. L. 1978, p. 2055, § 1; Ga. L. 1986, p. 362, §§ 1-4; Ga. L. 2005, p. 1036, § 9/SB 49; Ga. L. 2006, p. 304, §§ 1-8/HB 1184. For present comparable provisions, see Code Section 20-3-73.3.

Ga. L. 2012, p. 375, § 1/SB 396, effective July 1, 2012, redesignated former Code Sections 12-6-130 through 12-6-131 as present Code Section 20-3-73.3.

Ga. L. 2012, p. 375, § 2/SB 396, effective July 1, 2012, reserved the designation of this part.

PART 6

PRESCRIBED BURNING

12-6-145. Short title.

This part shall be known and may be cited as the "Georgia Prescribed Burning Act."

History. — Code 1981, § 12-6-145, enacted by Ga. L. 1992, p. 2405, § 1.

12-6-146. Legislative findings and purpose.

(a) It is declared by the General Assembly that prescribed burning is a resource protection and land management tool which benefits the safety of the public, Georgia's forest resources, the environment, and the economy of the state. The General Assembly finds that:

(1) Prescribed burning reduces naturally occurring vegetative fuels within forested areas. Reduction of such fuels by burning reduces the risk and severity of major wildfire, thereby lessening the threat of fire and the resulting loss of life and property;

(2) Georgia's ever-increasing population situates urban development directly adjacent to fire prone forest lands. The use of prescribed fire to manage fuels in interface areas would substantially reduce the threat of damaging wildfire in urban communities;

(3) Forest land constitutes significant economic, biological, and aesthetic resources of state-wide importance. Prescribed burning on forest land serves to reduce hazardous accumulations of fuels, pre-

pare sites for both natural and artificial forest regeneration, improve wildlife habitat, control insects and disease, and perpetuate fire dependent ecosystems;

(4) State and federally owned public use lands such as state parks, state and national forests, and wildlife refuges receive resource enhancement through use of prescribed burning;

(5) As Georgia's population continues to grow, pressures from liability issues and smoke nuisance complaints cause prescribed burn practitioners to limit prescribed burn activity, thus reducing the above-mentioned benefits to the state;

(6) Public misunderstanding of the benefit of prescribed burning to the ecological and economic welfare of the state exerts unusual pressures that prevent uninhibited use of this valuable forest resource management tool; and

(7) Fire benefits rare, threatened, and endangered plants, deer, turkey, quail, dove, and other game as well as numerous songbirds and other nongame species by the increased growth and yields of herbs and legumes. It also allows openings for feeding and travel.

(b) It is the purpose of this part to authorize and promote the continued use of prescribed burning for community protection, silvicultural, environmental, and wildlife management purposes.

History. — Code 1981, § 12-6-146, enacted by Ga. L. 1992, p. 2405, § 1; Ga. L. 2000, p. 1285, § 4.

JUDICIAL DECISIONS

Purpose behind the Act should not be undermined. — Landowner was entitled to the protections from liability provided by the Georgia Prescribed Burning Act, O.C.G.A. § 12-6-148, because even assuming there was evidence sufficient to create a jury issue as to whether the landowner was negligent in some way while starting, controlling, or completing a prescribed burn, there was no evidence from which a jury could reasonably conclude that the landowner failed to exercise slight diligence and was, therefore, grossly negligent. Morgan v. Horton, 308 Ga. App. 192, 707 S.E.2d 144 (2011), cert. denied, No. S11C1028, 2011 Ga. LEXIS 533 (Ga. 2011).

12-6-147. Definitions.

As used in this part, the term:

(1) "Commission" means the State Forestry Commission.

(2) "Prescribed burning" means the controlled application of fire to existing vegetative fuels under specified environmental conditions and following appropriate precautionary measures, which causes the

fire to be confined to a predetermined area and accomplishes one or more planned land management objectives or to mitigate catastrophic wildfires.

History. — Code 1981, § 12-6-147, enacted by Ga. L. 1992, p. 2405, § 1; Ga. L. 2000, p. 1285, § 5.

JUDICIAL DECISIONS

Cited in Morgan v. Horton, 308 Ga. App. 192, 707 S.E.2d 144 (2011).

12-6-148. Requirements for prescribed burning; limitation on liability.

(a) Prescribed burning conducted under the requirements of this part shall:

(1) Be accomplished only when an individual with previous prescribed burning experience or training is in charge of the burn and is present on site until the fire is adequately confined to reasonably prevent escape of the fire from the area intended to be burned;

(2) Be considered in the public interest and shall not create a public or private nuisance;

(3) Be considered a property right of the landowner; and

(4) Be conducted in accordance with a permit issued under Part 3 of this article.

(b) No property owner or owner's agent conducting an authorized prescribed burn under this part shall be liable for damages or injury caused by fire or resulting smoke unless it is proven that there was gross negligence in starting, controlling, or completing the burn.

History. — Code 1981, § 12-6-148, enacted by Ga. L. 1992, p. 2405, § 1; Ga. L. 2000, p. 1285, § 6.

JUDICIAL DECISIONS

Individual with burning experience in charge of prescribed burn. — Landowner was entitled to the protections from liability provided by the Georgia Prescribed Burning Act, O.C.G.A. § 12-6-148, because the landowner did not fail to ensure that an individual with previous prescribed burning experience or training was in charge of a prescribed burn the landowner conducted on a tract of land for the purposes of O.C.G.A. § 12-6-148(a)(1); the landowner was assisted by the chief ranger with the local office of forestry service, and the ranger had extensive prescribed burning training and experience, evaluated the landowner's circumstances and made the critical decisions about the timing, permitting,

and location of the burn and the methods to be used, and directed and supervised forestry employees and the landowner. Morgan v. Horton, 308 Ga. App. 192, 707 S.E.2d 144 (2011), cert. denied, No. S11C1028, 2011 Ga. LEXIS 533 (Ga. 2011).

Landowner not required to obtain separate permit for days following prescribed burn. — Landowner's failure to obtain a separate permit for the days following a prescribed burn pursuant to O.C.G.A. § 12-6-90 did not strip the landowner of the protections provided by the Georgia Prescribed Burning Act, O.C.G.A. § 12-6-148, because the chief ranger with the local office of the forestry service who assisted the landowner never told the landowner that the fire had to be completely out by 4:00 P.M. since the permit would expire, nor did the ranger tell the landowner that the landowner had to stop the burn or put the fire out due to the possibility of smoke combining with fog; although an expert witness stated in an affidavit that according to the State Forestry Commission Policy and Procedure Manual, no active flames were permitted outside of the permitted time, the manual upon which the expert relied for that conclusion was not a part of the record, and thus, the expert's assertion regarding the manual's contents was inadmissible hearsay and without probative value. Morgan v. Horton, 308 Ga. App. 192, 707 S.E.2d 144 (2011), cert. denied, No. S11C1028, 2011 Ga. LEXIS 533 (Ga. 2011).

Defendant shielded from liability in controlled burn. — After the plaintiff was injured when the truck the plaintiff was riding in struck a fallen power cable in the roadway, summary judgment was granted in favor of the defendant as the Prescribed Burning Act, O.C.G.A. § 12-6-145 et seq., shielded the defendant from liability because the defendant's employees did not fail to ensure that the fire was adequately confined before leaving the area; and, even if the controlled burn was the source of the fire that burned the power pole, that did not establish that the defendant's employees were grossly negligent as the employees exercised at least slight diligence in handling the controlled burn because the employees cut firebreaks; patrolled the area; doused hot spots; and returned later that evening and extinguished a nearby fire. Patton v. Cumberland Corp., 347 Ga. App. 501, 819 S.E.2d 898 (2018), cert. denied, No. S19C0341, 2019 Ga. LEXIS 428 (Ga. 2019).

12-6-149. Fire manager program authorized; record-keeping requirements; public information campaign.

(a) The commission may promulgate a certified prescribed fire manager program whereby practitioners may become qualified and registered under this part.

(b) The commission shall utilize the same or similar record-keeping requirements of Part 3 of this article, the "Georgia Forest Fire Protection Act," to reflect the use of prescribed burning under this part.

(c) The commission shall, subject to sufficient funding, institute a public information campaign in an effort to reveal the benefits of prescribed burning to the general public.

History. — Code 1981, § 12-6-149, enacted by Ga. L. 1992, p. 2405, § 1; Ga. L. 2000, p. 1285, § 7.

ARTICLE 2

GINSENG PROTECTION

OPINIONS OF THE ATTORNEY GENERAL

Fingerprinting of offenders not required. — Offenses under the Ginseng Protection Act, O.C.G.A. § 12-6-150 et seq., are not ones for which those charged with a violation are to be fingerprinted. 1996 Op. Att'y Gen. No. 96-17.

12-6-150. Short title.

This article shall be known and may be cited as the "Ginseng Protection Act of 1979."

History. — Ga. L. 1979, p. 919, § 1; Ga. L. 1996, p. 327, § 1.

12-6-151. Definitions.

As used in this article, the term:

(1) "Commissioner" means the commissioner of natural resources.

(2) "Ginseng (Panax quinquefolium L.)" means a single stemmed plant arising from a cylindrical root, with prongs (compound leaves) attached to the stem. Each prong is divided into three to seven leaflets. The flower of the plant is green and is located at the leaf petiole. The fruit is a cluster of red berries.

(3) "Ginseng dealer" means any person who purchases ginseng for the purpose of resale.

(4) "Grower" means any person who cultivates ginseng for purposes of sale or export from this state or both.

(5) "Harvest" means to cut, dig, pull up, or otherwise remove a plant or its seed from its habitat.

(6) "Person" means any individual, partnership, firm, corporation, association, or other entity.

(7) "Purchase" means to acquire, obtain, or receive, or to attempt to acquire, obtain, or receive, by exchange of money or other valuable consideration. This term specifically includes barter or exchange.

(8) "Sell" means to dispose of, transfer, or convey, or to attempt to dispose of, transfer, or convey, by exchange of money or other valuable consideration. This term specifically includes barter or exchange.

History. — Ga. L. 1979, p. 919, § 2; Ga. L. 1996, p. 327, § 1.

12-6-152. Prohibited acts regarding harvesting ginseng.

It shall be unlawful for any person to harvest ginseng in this state except from September 1 through December 31 and with the written permission of the owner of the property on which the ginseng is located. It shall also be unlawful for any person to harvest ginseng that has fewer than three prongs. Further, it shall also be unlawful for any person to fail to plant, immediately after harvest, the ripe berries of the harvested ginseng at the same location at which such ginseng was harvested.

History. — Ga. L. 1979, p. 919, § 3; Ga. L. 1996, p. 327, § 1; Ga. L. 2013, p. 564, § 1/SB 81.

12-6-153. Reports concerning disposal of ginseng.

It shall be unlawful for any person disposing of any ginseng harvested in Georgia to fail to report such disposition by January 31 of each year to the Department of Natural Resources. Such report shall be certified by the department and shall include, but shall not be limited to, the amount, by weight, of the ginseng exported; the Georgia county or counties from which the ginseng was harvested; whether the harvested roots were taken from wild or cultivated ginseng; and the location, by state, in which such person disposed of the harvested roots.

History. — Ga. L. 1979, p. 919, § 4; Ga. L. 1996, p. 327, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Commerce, §§ 39, 42, 43.

C.J.S. — 15 C.J.S., Commerce, § 54.

12-6-154. Registration and reports required of dealers or growers.

It shall be unlawful for any ginseng dealer or grower to fail to register with the department, on a form provided by the department, by July 15 of each year. It shall also be unlawful for any ginseng dealer or grower to fail to submit to the department by January 31 of each year certain information on forms provided by the department. Such information shall include, but shall not be limited to, the amount, by weight, of ginseng purchased or grown and sold during the season; the county or counties from which the ginseng was harvested; and whether the harvested roots were taken from wild or cultivated ginseng.

History. — Ga. L. 1979, p. 919, § 5; Ga. L. 1996, p. 327, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, § 31 et seq. 58 Am. Jur. 2d, Occupations, Trades, and Professions, § 1.

C.J.S. — 53 C.J.S., Licenses, §§ 1, 2, 4.

12-6-155. Determination by department concerning continuing necessity of article; report to General Assembly.

Upon a determination by the department that this article is no longer necessary for the protection of ginseng in this state, the department shall report such determination to the next session of the General Assembly following such determination.

History. — Ga. L. 1979, p. 919, § 6; Ga. L. 1996, p. 327, § 1.

12-6-156. Registration forms and reporting forms.

The department is authorized to prescribe the form and content of the registration forms and the reporting forms required by this article.

History. — Ga. L. 1979, p. 919, § 7; Ga. L. 1996, p. 327, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 55, 57.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 165 et seq.

12-6-157. Penalty.

Any person who engages in any action made unlawful by this article shall be guilty of a misdemeanor.

History. — Ga. L. 1868, p. 194, § 1; Code 1873, § 4626; Code 1882, § 4626; Penal Code 1895, § 726; Penal Code 1910, § 778; Code 1933, § 43-9901; Ga. L. 1979, p. 919, § 8; Ga. L. 1996, p. 327, § 1.

ARTICLE 3

WILDFLOWER PRESERVATION

Administrative rules and regulations. — Protection of endangered, threatened, rare, or unusual species, Official Compilation of the Rules and Regula-

tions of the State of Georgia, Georgia Department of Natural Resources, Wildlife Resource Division, Subject 391-4-10.

12-6-170. Short title.

This article shall be known and may be cited as the "Wildflower Preservation Act of 1973."

History. — Ga. L. 1973, p. 333, § 1.

12-6-171. Definitions.

As used in this article, the term:

(1) "Person" means any natural person, firm, corporation, partnership, proprietorship, or other legal entity.

(2) "Protected species" means a species of plant life which the department shall have designated as such and shall have made subject to the protection of this article.

(3) "Public lands" means all those lands within this state which are owned by the state or which are subject to the dominion and control of this state and which are not owned and controlled by any private person.

History. — Ga. L. 1973, p. 333, § 2.

12-6-172. Powers and duties of Department and Board of Natural Resources as to wildflower preservation.

(a) The Department of Natural Resources shall from time to time designate as a protected species any species of plant life within this state which it may determine to be rare, unusual, or in danger of extinction, and upon such designation such species will become subject to the protection of this article.

(b) The Board of Natural Resources shall issue such rules and regulations as it may deem necessary and proper for the enforcement of this article.

(c) The department may delegate the powers and duties which this article grants to it to any official or officials of the department.

History. — Ga. L. 1973, p. 333, § 3; Ga. L. 1982, p. 3, § 12.

Cross references. — Protection of sea oats, § 12-5-310 et seq.

12-6-173. Cutting, pulling up, digging, or removing protected species.

No person within this state shall cut, dig, pull up, or otherwise remove any protected species from any public land unless such person has secured written authorization from the department.

History. — Ga. L. 1973, p. 333, § 4.

12-6-174. Sale of protected species.

No person within this state shall sell or offer for sale, for any purpose, any protected species unless such species was grown on private land and is being sold by the landowner or with the permission of the landowner.

History. — Ga. L. 1973, p. 333, § 5.

12-6-175. Transporting, carrying, or conveying protected species without tag and written document.

No person within this state shall transport, carry, or otherwise convey any protected species from the land of another unless each shipment thereof has affixed thereto a tag supplied by the department showing that the person so transporting, carrying, or conveying such protected species has removed such specimen from the private lands of another person with the permission of such other person and has a written document in his possession evidencing such permission and further evidencing that such specimen has not been sold in violation of Code Section 12-6-174.

History. — Ga. L. 1973, p. 333, § 6.

12-6-176. Penalty.

Any person who violates any provision of this article or a rule or regulation promulgated by the Board of Natural Resources pursuant to this article shall be guilty of a misdemeanor.

History. — Ga. L. 1973, p. 333, § 7.

ARTICLE 4

HARVEST AND SALE OF PINE STRAW

12-6-200. Definitions.

As used in this article, the term:

(1) "Director" means the director of the State Forestry Commission.

(2) "Harvesting" means the various methods or processes of gathering pine straw for preservation, storage, use, or sale.

(3) "Landowner" means the person who owns land on which pine straw is harvested or the person having possession, control, or use of such land who has lawful authority to grant permission to harvest pine straw from the land.

(4) "Person" means an individual, partnership, corporation, association, or any other legal entity.

(5) "Pine straw" means the dead needles of coniferous evergreen trees which have separated from the trees to which they were originally attached.

(6) "Pine straw dealer" means a person who purchases or otherwise obtains pine straw from a seller for the purpose of selling such pine straw at retail or for the purpose of selling such pine straw to another pine straw dealer or for both such purposes. "Pine straw dealer" also includes any person who purchases pine straw directly from a landowner for the purpose of selling such pine straw at retail.

(7) "Seller" means a person who exchanges pine straw for money or for any other valuable consideration.

History. — Code 1981, § 12-6-200, enacted by Ga. L. 1989, p. 386, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1989, quotation marks were added to "Pine straw dealer" at the beginning of the last sentence of paragraph (6).

12-6-201. Legislative findings.

The General Assembly finds that:

(1) The natural occurrence of pine straw constitutes a significant economic resource for owners of timbered property;

(2) Such owners have been victimized by continuous and repeated trespasses onto their lands by persons engaged in harvesting pine

straw and have been deprived of the economic benefit of such resources; and

(3) The repeated trespasses onto private property by certain persons engaged in the harvesting and baling of pine straw constitute an organized and methodical deprivation of the rights of others, necessitating the enactment of this article.

History. — Code 1981, § 12-6-201, enacted by Ga. L. 1989, p. 386, § 1.

12-6-202. Certificate of harvest.

(a) As a condition of selling pine straw to a pine straw dealer within the State of Georgia, the seller shall obtain and present to the pine straw dealer a certificate of harvest. A certificate of harvest shall be a written or printed document signed by the landowner where the pine straw was harvested granting permission for the harvest of the pine straw. A certificate of harvest shall be valid for one year. In addition to the permission of the landowner to harvest pine straw, a certificate of harvest shall include the following information:

(1) The name, address, and telephone number of the landowner who granted permission to harvest the load of pine straw;

(2) The name, address, and telephone number of the person who was authorized to harvest the load of pine straw; and

(3) The date and location of the harvest, which shall include the state and county where harvested.

(b) A pine straw dealer who purchases pine straw directly from a landowner shall obtain a landowner's certificate of harvest. A landowner's certificate of harvest shall show the name, address, and telephone number of the landowner and the date and location of the harvest, including the state and county where harvested. A landowner's certificate of harvest shall be signed by the landowner.

History. — Code 1981, § 12-6-202, enacted by Ga. L. 1989, p. 386, § 1.

12-6-203. Prohibited acts.

(a) It shall be unlawful for any person to sell or offer to sell pine straw to a pine straw dealer or seller within the State of Georgia without presenting to the pine straw dealer or seller a certificate of harvest or landowner's certificate of harvest.

(b) It shall be unlawful for any pine straw dealer or seller within the State of Georgia to purchase pine straw without first obtaining a

certificate of harvest or landowner's certificate of harvest from the seller.

History. — Code 1981, § 12-6-203, enacted by Ga. L. 1989, p. 386, § 1.

12-6-204. Stop sale, stop use, or removal orders to owners or custodians of pine straw.

The director may issue and enforce written or printed stop sale, stop use, or removal orders to the owners or custodians of any pine straw ordering them to hold the same at a designated place, when the director finds that such pine straw is being offered or exposed for sale in violation of this article, until the law has been complied with and such pine straw has been released, in writing, by the director, or until such violations have been otherwise legally disposed of by written authority. The director shall release pine straw products when the requirements of this article have been complied with.

History. — Code 1981, § 12-6-204, enacted by Ga. L. 1989, p. 386, § 1.

12-6-205. Seizure of pine straw obtained or offered for sale in violation of article.

Any pine straw obtained or offered for sale in violation of this article shall be subject to seizure on the complaint of the director to the superior court of the county in which the pine straw is found. If the court finds the pine straw to be in violation of this article, and orders its condemnation, the pine straw shall be disposed of in any manner consistent with its quantity, the interests of the parties, and the laws of this state, provided that in no instance shall the pine straw be ordered by the court to be disposed of without first giving the person claiming the pine straw an opportunity to apply to the court for release of the pine straw in such manner as to bring it into compliance with this article.

History. — Code 1981, § 12-6-205, enacted by Ga. L. 1989, p. 386, § 1.

12-6-206. Harvesting or handling pine straw for home or personal use.

This article shall not be construed so as to affect any farmer or other person harvesting or handling pine straw for home or personal use.

History. — Code 1981, § 12-6-206, enacted by Ga. L. 1989, p. 386, § 1.

12-6-207. Penalty.

Any person violating any provisions of this article shall be guilty of a misdemeanor.

History. — Code 1981, § 12-6-207, enacted by Ga. L. 1989, p. 386, § 1.

ARTICLE 5

CARBON SEQUESTRATION REGISTRY

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, Code Sections 12-6-220 through 12-6-232, as enacted by Ga. L. 2004, p. 354, § 1, were redesignated as Code Sections 12-6-240 through 12-6-247.

Editor's notes. — Ga. L. 2004, p. 343, § 5, provides that the enactment of this article becomes effective only upon the effective date of a specific appropriation of funds for purposes of that Act as expressed in a line item of an appropriations Act enacted by the General Assembly. Funds were appropriated at the 2006 session of the General Assembly.

12-6-220. Short title.

This article shall be known and may be cited as the "Georgia Carbon Sequestration Registry Act."

History. — Code 1981, § 12-6-220, enacted by Ga. L. 2004, p. 343, § 1; Ga. L. 2021, p. 589, § 1/HB 355.

Editor's notes. — Ga. L. 2021, p. 589, § 1/HB 355, reenacted this Code section without change.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of state greenhouse gas reduction acts and regulations, 80 A.L.R.6th 203.

12-6-221. Definitions.

As used in this article, the term:

(1) "Building embodied carbon" means the global warming potential results from a whole-building life cycle assessment covering all life cycle stages, such as extraction, transportation, manufacturing, construction, and end-of-life, except operational, as further explained in International Standards Organization 21930: 2017: Sustainability in buildings and civil engineering works- Core rules for environmental product declarations of construction products and services as in existence on January 1, 2021.

(2) "Carbon sequestration results" means the participant's applicable data on the removal of carbon dioxide from the atmosphere by sinks resulting from:

(A) Direct human induced land use change or forestry activities in this state;

(B) Additional human induced activities in this state related to removal by sinks in land use change and forestry categories;

(C) Additional human induced activities in this state related to removal by sinks in agricultural soils;

(D) Additional human induced activities in this state related to removals by sinks in products in use from harvested timber or agricultural crops;

(E) Other human induced activities in this state related to removals by sinks; and

(F) Construction of buildings in this state that store additional carbon dioxide in building products relative to the building baseline established by the Sustainable Building Material Technical Advisory Committee pursuant to Code Section 12-6-224.1.

(3) "Certification" means the determination of whether a given participant's carbon sequestration result or embodied carbon result has met a minimum quality standard and complied with an appropriate set of approved procedures and protocols for submitting carbon sequestration or embodied carbon information.

(4) "Commission" means the State Forestry Commission.

(5) "Director" means the director of the State Forestry Commission.

(6) "Embodied carbon results" means the participant's applicable data on the reduction in building embodied carbon emissions resulting from the construction of buildings in this state that have less with lower building embodied carbon relative to the building baseline established by the Sustainable Building Material Technical Advisory Committee pursuant to Code Section 12-6-224.1.

(7) "Forest" means lands that support, or can support, at least 10 percent tree canopy cover and that allow for management of one or more forest resources including but not limited to timber, fish and wildlife, biodiversity, water quality, air quality, soil conservation, recreation, aesthetics, or other benefits.

(8) "Global warming potential" means a factor describing the radiative forcing impact of one mass-based unit of a given greenhouse gas relative to an equivalent unit of carbon dioxide over a given period of time, as described in International Standards Organization 14064-1:2006 Greenhouse gases- Part 1: Specification with guidance at the organization level for quantification and reporting of greenhouse gas emissions and removals in effect on January 1, 2021.

(9) "Greenhouse gases" means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride, and nitrogen trifluoride.

(10) "Native forest" means a forest type, natural or artificially regenerated, composed of any one or more tree species identified as native to this state in G. Norman Bishop, *Native Trees of Georgia* (State Forestry Commission 2000 revised edition), including without limitation improved stock of such tree species developed through breeding programs.

(11) "Participant" or "registry participant" means a registrant of carbon sequestration results with the registry.

(12) "Registry" means the Georgia Carbon Sequestration Registry provided for by this article.

(13) "Sink" means an ecosystem or crop or product, including building materials, that absorbs or has absorbed carbon, thereby removing it from the atmosphere and offsetting emissions of carbon dioxide.

(14) "Whole building life cycle assessment" means life cycle assessment, compliant with International Standards Organization (ISO) 14040-14044 series methodology in effect on January 1, 2021, for a building or part of a building, including the foundation and structural skeleton, building envelope, including insulation, external walls, glazing, and roof. The purpose is to assess the environmental impacts of building-related materials and processes within an appropriate functional unit, scope, and boundary.

History. — Code 1981, § 12-6-221, enacted by Ga. L. 2004, p. 343, § 1; Ga. L. 2021, p. 589, § 1/HB 355.

The 2021 amendment, effective July 1, 2021, substituted "human induced" for "human-induced" throughout subparagraphs (2)(A) through (2)(E); added paragraph (1); redesignated former paragraphs (1) through (4) as present paragraphs (2) through (5), respectively; deleted "and" at the end of subparagraph (2)(D); substituted "; and" for a period at the end of subparagraph (2)(E); added subparagraph (2)(F); in paragraph (3), inserted "or embodied carbon result" in the middle, and inserted "or embodied carbon" near the end; added paragraph (6); redesignated former paragraph (5) as present paragraph (7); added paragraph (8); redesignated former paragraphs (6) through (10) as present paragraphs (9) through (13), respectively; substituted "sulfur hexafluoride, and nitrogen trifluoride" for "and sulfur hexafluoride" in paragraph (9); substituted "State Forestry" for "Georgia Forestry" in the middle of paragraph (10); substituted ", including building materials" for "thereof" in paragraph (13); and added paragraph (14).

12-6-222. Establishment of Carbon Sequestration Registry; uniform automated electronic information system.

(a)(1) The commission shall establish a Georgia Carbon Sequestration Registry, which shall be in operation not later than one year after the effective date of this article.

(2) The commission may contract with the Georgia Superior Court Clerks' Cooperative Authority to develop and implement a state-wide uniform automated electronic information system for purposes of the registry.

(b) After its establishment, the state-wide uniform automated electronic information system for purposes of the registry shall be maintained by the Georgia Superior Court Clerks' Cooperative Authority or its designated agent in accordance with Code Section 15-6-97.2.

History. — Code 1981, § 12-6-222, enacted by Ga. L. 2004, p. 343, § 1; Ga. L. 2021, p. 589, § 1/HB 355.

Cross references. — Role of Georgia Superior Court Clerks' Cooperative Authority in uniform automated electronic information system, § 15-6-97.2.

Editor's notes. — Ga. L. 2021, p. 589, § 1/HB 355, reenacted this Code section without change.

12-6-223. Purpose of registry.

The purpose of the Georgia Carbon Sequestration Registry shall be to do all of the following:

(1) Encourage voluntary actions to reduce greenhouse gas emissions, including, but not limited to, the construction of buildings made out of materials that sequester carbon dioxide;

(2) Enable participants to voluntarily record carbon sequestrations made after January 1, 1990, or such other beginning date as may be established by rule or regulation of the commission, in a consistent format that is certified;

(3) Ensure that sources in the state receive appropriate consideration for certified carbon sequestration results under any future federal or international regulatory regime relating to greenhouse gas emissions;

(4) Recognize, publicize, and promote participants in the registry; and

(5) Recruit broad participation in the process from all economic sectors and regions of the state.

History. — Code 1981, § 12-6-223, enacted by Ga. L. 2004, p. 343, § 1; Ga. L. 2021, p. 589, § 1/HB 355.

The 2021 amendment, effective July 1, 2021, inserted ", including, but not limited to, the construction of buildings

made out of materials that sequester carbon dioxide" in paragraph (1).

12-6-224. Role of the commission.

For purposes of the registry, the commission shall:

(1)(A) Adopt rules or regulations specifying acceptable types of carbon sequestration results consistent with paragraph (1) of Code Section 12-6-221 and this paragraph and providing procedures and protocols for the monitoring, estimating, calculating, reporting, and certification of carbon sequestration results for purposes of participation in the registry.

(B) Procedures and protocols relative to forestry activities that are reported as a participant's carbon sequestration results under subparagraph (A) of paragraph (1) of Code Section 12-6-221 shall require, at a minimum, that those forestry activities meet the following criteria in order to be reported as any part of a participant's carbon sequestration results:

(i) Forestry activities shall be based on forest management practices within a defined project area that meet or exceed *Georgia's Best Management Practices for Forestry* as published by the commission and that are not the subject of any ongoing remediation or penalty pursuant to judicial or administrative judgment or order for violation of any applicable requirements of federal, state, or local land use laws, regulations, or ordinances. Best management practices and federal, state, or local land use laws, regulations, or ordinances shall be those in effect each time a participant registers a defined project area in the registry;

(ii) Forestry activities reported as carbon sequestration results shall reflect the amount of time that net carbon gains are stored; and

(iii) Forestry activities shall maintain and promote native forests.

(C) Procedures and protocols relative to sinks in agricultural soils that are reported as a participant's carbon sequestration results under subparagraph (C) of paragraph (1) of Code Section 12-6-221 shall be adopted by the commission in accordance with the recommendation of the Commissioner of Agriculture.

(D) The commission shall consider the availability and suitability of simplified techniques and tools when adopting procedures and protocols for the certification of carbon sequestration results.

(E) The procedures and protocols adopted by the commission shall include a uniform format for reporting carbon sequestration

results to facilitate their recognition in any future regulatory regime;

(2) Qualify third-party organizations that have the capability to certify reported baseline carbon sequestration results and that are capable of certifying the participant reported results as provided in this article; and

(3) Encourage organizations and individuals from various sectors of the state's economy, and those from various geographic regions of the state, to report carbon sequestration results.

History. — Code 1981, § 12-6-224, enacted by Ga. L. 2004, p. 343, § 1; Ga. L. 2012, p. 775, § 12/HB 942; Ga. L. 2021, p. 589, § 1/HB 355.

Editor's notes. — Ga. L. 2021, p. 589, § 1/HB 355, reenacted this Code section without change.

12-6-224.1. Sustainable Building Material Technical Advisory Committee; operation and role; abolishment.

(a) The director shall establish the Sustainable Building Material Technical Advisory Committee. The advisory committee shall consist of:

(1) One representative from the Georgia Institute of Technology with expertise in engineering and architecture;

(2) One representative with extensive knowledge of and expertise in the Georgia State Minimum Standard Codes;

(3) One representative who is a real estate developer or builder;

(4) One representative who works in the field of or has expertise in carbon offset protocol development, including carbon accounting rules such as additionality, baseline, leakage, and permanence, and requirements for monitoring and reporting;

(5) One representative who has whole building life cycle assessment expertise; and

(6) Up to three at-large representatives.

(b) The director shall determine the chairperson of the committee.

(c) Prior to the first meeting of the advisory committee, the director shall hold a listening session open to members of the public for the purpose of seeking external input on the rules for the Georgia Carbon Sequestration Registry for building materials.

(d) The advisory committee shall serve the director in an advisory capacity in the rule-making process for the establishment of two baselines: 1) one from which carbon sequestration of building materials shall be measured; and 2) one from which the building embodied carbon

shall be measured. The committee shall use the United States Department of Energy's Commercial Prototype Building Models in effect on January 1, 2021, to establish baseline categories using prototype building occupancies and structural systems.

(e) A primary objective of the advisory committee shall be to ensure the interoperability, general alignment, and compatibility of credits derived from the carbon sequestration results of building materials and embodied carbon results with global carbon credit and offset markets, including establishing guidelines for establishing a carbon baseline, additionality, validation, verification, permanence, and co-benefits.

(f) The chairperson shall be responsible for calling all meetings of the advisory committee. The committee may conduct such meetings at such places and at such times as it may deem necessary and convenient to enable it to exercise fully and effectively its powers, perform its duties, and accomplish the objectives and purposes of this article.

(g) A majority of the voting members of the advisory committee shall constitute a quorum. The committee shall take no action except by affirmative vote of the majority of those present and voting.

(h) Any vacancies on the advisory committee shall be filled in the same manner as the original appointment.

(i) Any member of the committee who, during his or her term of appointment, ceases to meet the qualifications required for the original appointment shall be immediately removed from his or her office.

(j) The advisory committee shall stand abolished no later than one year from the date upon which the first meeting of the committee takes place. The committee may be reestablished, at the calling of the director, within five years of its creation in order to make recommendations to the director for updating or amending the rules and regulations of the commission. The director shall appoint new members to the reestablished committee in accordance with subsection (a) of this Code section.

(k) Appointed members of the advisory committee shall receive a daily expense allowance in an amount the same as that specified in subsection (b) of Code Section 45-7-21, as well as the mileage or transportation allowance authorized for state employees.

History. — Code 1981, § 12-6-224.1, enacted by Ga. L. 2021, p. 589, § 1/HB 355.

Effective date. — This Code section became effective July 1, 2021.

12-6-225. Procedures and protocols.

The procedures and protocols for monitoring, estimating, calculating, reporting, and certifying carbon sequestration results established by, or approved pursuant to, this article shall be the only procedures and protocols recognized by the state for the purposes of the registry as described in Code Section 12-6-223.

History. — Code 1981, § 12-6-225, enacted by Ga. L. 2004, p. 343, § 1; Ga. L. 2021, p. 589, § 1/HB 355.

Editor's notes. — Ga. L. 2021, p. 589, § 1/HB 355, reenacted this Code section without change.

12-6-226. Procedures and protocols are not condition for ongoing use of forest land.

Procedures and protocols adopted pursuant to subparagraph (B) of paragraph (1) of Code Section 12-6-224 shall not be interpreted or construed as a condition for any lease, permit, license, certificate, or other entitlement for an ongoing use of forest land.

History. — Code 1981, § 12-6-226, enacted by Ga. L. 2004, p. 343, § 1; Ga. L. 2021, p. 589, § 1/HB 355.

Editor's notes. — Ga. L. 2021, p. 589, § 1/HB 355, reenacted this Code section without change.

12-6-227. Voluntary participation; right of withdrawal.

Participation in the registry shall be voluntary, and participants may withdraw at any time.

History. — Code 1981, § 12-6-227, enacted by Ga. L. 2004, p. 343, § 1; Ga. L. 2021, p. 589, § 1/HB 355.

Editor's notes. — Ga. L. 2021, p. 589, § 1/HB 355, reenacted this Code section without change.

12-6-228. Reporting of results; basic unit of participation in registry; filing of reports.

(a)(1) Participants shall initially report their certified carbon sequestration results for the most recent year for which they have complete data as specified in this article. This shall include sequestration of carbon dioxide from standing trees. After establishing baseline results, participants shall report their certified carbon sequestration results in each subsequent year in order to show changes with respect to their baseline year. Participants may report carbon sequestration results without establishing a baseline for such results or for emissions. Certified carbon sequestration results reported to the registry by a participant shall be credited in carbon mass units to an account established for the participant in the registry.

(2) For the reporting of embodied carbon results arising from construction of buildings in this state, upon completion of the project, developers shall seek the review of a certified third-party organization that will verify the building embodied carbon from a baseline of standard buildings established by the advisory committee. The commission shall publish and maintain a list of approved certified third-party organizations. Only projects that have been completed after January 1, 2019, shall be considered. After such projects have been verified and validated by a certified third-party organization, the director shall be authorized to determine, charge, and retain an administrative fee from developers for awarding carbon credits to provide for the cost of administering the provisions of this article.

(b)(1) Registry credits for certified carbon sequestration results may be sold, purchased, or otherwise transferred in whole or in part without any regard to or effect on or being affected by ownership of other personal property or any real property, and such credits may be retained in whole or in part without any regard to or effect on or being affected by any sale, purchase, or other transfer of other personal property or any real property.

(2) In addition to annual reports submitted pursuant to subsection (a) of this Code section, participants shall report to the registry any sales, purchases, or other transfers of registry credits for certified carbon sequestration results, in whole or in part, within ten days after the completion of such transaction, and participants' registry accounts shall be updated to reflect such transfers.

(c) The basic unit of participation in the registry shall be a natural person or a legal entity in its entirety such as a corporation or other legally constituted body, a city or county, or a state government agency.

(d) Reports to the registry by participants may be filed in the office of the clerk of the superior court in any county of this state.

History. — Code 1981, § 12-6-228, enacted by Ga. L. 2004, p. 343, § 1; Ga. L. 2021, p. 589, § 1/HB 355.

The 2021 amendment, effective July 1, 2021, in subsection (a), designated the existing provisions as paragraph (a)(1), and, in paragraph (a)(1), added the second sentence, and deleted the former second sentence, which read: "Participants that have complete data for earlier years that can be certified may establish their baseline as any year beginning on or after January 1, 1990, or such other beginning date as may be established by rule or regulation of the commission.", and added paragraph (a)(2).

12-6-229. Adoption of standardized forms.

To support the estimation, calculation, reporting, and certification of carbon sequestration results in a consistent format, the commission, in consultation with the Georgia Superior Court Clerks' Cooperative

Authority, shall adopt standardized forms that all participants shall use to calculate, report, and certify emissions results.

History. — Code 1981, § 12-6-229, enacted by Ga. L. 2004, p. 343, § 1; Ga. L. 2021, p. 589, § 1/HB 355.

Cross references. — Role of Georgia Superior Court Clerks' Cooperative Authority in uniform automated electronic information system, § 15-6-97.2.

Editor's notes. — Ga. L. 2021, p. 589, § 1/HB 355, reenacted this Code section without change.

12-6-230. Certification of methodologies and results; approval of competent third-party organizations for certifying results; requirements of organizations; review, evaluation and reporting to Governor; review of standards.

(a) Participants registering baseline carbon sequestration results in the registry shall provide certification of their methodologies and results. The commission may, upon recommendation of the director, following a public process, adopt simplified procedures to certify carbon sequestration results as appropriate. Participants shall follow commission approved procedures and protocols in determining carbon sequestration results and supply the quantity and quality of information necessary to allow an independent ex post certification of the baseline results reported under this program.

(b) The commission shall provide a list of approved third-party organizations recognized as competent to certify carbon sequestration results as provided in this article. The commission shall reopen the qualification process periodically in order for new organizations to be added to the approved list.

(c) Where required for certification, organizations approved pursuant to subsection (b) of this Code section shall do all of the following:

(1) Evaluate whether the participant has a program, consistent with commission approved procedures and protocols, in place for preparation and submittal of the information reported under this article;

(2) Check, during certification, the reasonableness of the carbon sequestration information being reported for a random sample of estimates or calculations; and

(3) Summarize its review in a report to the board of directors, or equivalent governing body, of the participating legal entity or to the participating natural person, attesting to the existence of a program that is consistent with commission approved procedures and protocols and the reasonableness of the reported carbon sequestration results and noting any exceptions, omissions, limitations, or other qualifications to their representations.

(d) In conducting certification for a participant under this program, the approved organization shall schedule any meeting or meetings with the participant with a minimum of one week's notice at one or more representative locations and allow the participant to control property access. The meetings shall be conducted in accordance with a protocol that is agreed upon in advance by the participant and the approved organization. The approved organization shall not perform property inspection, direct measurement, monitoring, or testing unless authorized by the participant.

(e) To ensure the integrity and constant improvement of the registry program and for the sequestration of carbon dioxide from standing trees, the commission shall perform on a random basis an occasional review and evaluation of participants' carbon sequestration reporting, certifications, and the reasonableness of the information being reported for analysis of estimates or calculations. The director shall report any findings in writing. The director shall include a summary of these findings in the biennial report to the Governor and the General Assembly required by Code Section 12-6-231.

(f) As it relates to the registry program for building products that sequester carbon dioxide, the commission shall engage in a review of the standards two years and five years after such registry is established.

(g) As is related to the registry program for building embodied carbon, the commission shall engage in a review of the standards two years and five years after such registry is established.

History. — Code 1981, § 12-6-230, enacted by Ga. L. 2004, p. 343, § 1; Ga. L. 2012, p. 775, § 12/HB 942; Ga. L. 2021, p. 589, § 1/HB 355.

The 2021 amendment, effective July 1, 2021, inserted "and for the sequestration of carbon dioxide from standing trees" near the middle of the first sentence of subsection (e); and added subsections (f) and (g).

12-6-231. Reporting to Governor by director.

Not later than two years after the effective date of this article and biennially thereafter, the director shall report to the Governor and the General Assembly on the number of participants in the registry, the amounts of carbon sequestered by those participants, and ways to make the registry more workable for participants that are consistent with the goals and intent of this article.

History. — Code 1981, § 12-6-231, enacted by Ga. L. 2004, p. 343, § 1; Ga. L. 2021, p. 589, § 1/HB 355.

Editor's notes. — Ga. L. 2021, p. 589, § 1/HB 355, reenacted this Code section without change.

12-6-232. Obligation of commission.

The commission shall do all of the following:

(1) Develop a process for qualifying third-party organizations recognized by the state as competent to certify the carbon sequestration results of the types of natural persons or legal entities that may choose to participate in this registry, by doing all of the following:

(A) Developing a list of the minimum technical and organizational capabilities and other qualification standards that approved third-party organizations shall meet. Those qualifications shall include the ability to sign an opinion letter, for which they may be held financially at risk, and certifying the participant-reported carbon sequestration results as provided in this article. Such capabilities and standards for third-party organizations related to certification of carbon sequestration results achieved by sinks in agricultural soils under subparagraph (C) of paragraph (1) of Code Section 12-6-221 shall be adopted by the commission in accordance with the recommendation of the Commissioner of Agriculture;

(B) Publicizing an applications process or otherwise encouraging interested organizations to submit their qualifications for review;

(C) Evaluating applicant organizations according to the list of qualifications described in subparagraph (A) of this paragraph;

(D) Determining specific third-party organizations as qualified to certify participants' actual carbon sequestration results in accordance with this article; and

(E) Periodically updating the list of approved third-party organizations by doing any of the following:

(i) Reviewing the capabilities of approved organizations;

(ii) Reviewing applications of organizations seeking to become approved; and

(iii) Determining specific organizations to be added to the approved list and specific organizations no longer qualified to perform the duties of this article;

(2) Occasionally, and on a random basis, provide for commission employees to accompany third-party organizations on scheduled visits to observe and evaluate, during any certification visit, both the following:

(A) Whether the participant has a program, consistent with commission approved procedures and protocols, in place for the preparation and submittal of the information required under this article; and

(B) The reasonableness of the carbon sequestration information being reported for a sample of estimates or calculations; and

(3) Review future international or federal programs related to greenhouse gas emissions and make reasonable efforts to promote consistency between the state program and these programs and to reduce the reporting burden on participants.

History. — Code 1981, § 12-6-232, enacted by Ga. L. 2004, p. 343, § 1; Ga. L. 2012, p. 775, § 12/HB 942; Ga. L. 2021, p. 589, § 1/HB 355.

Editor's notes. — Ga. L. 2021, p. 589, § 1/HB 355, reenacted this Code section without change.

ARTICLE 6

FOREST HERITAGE TRUST

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2004, Code Sections 12-6-220 through 12-6-232, as enacted by Ga. L. 2004, p. 354, § 1, were redesignated as Code Sections 12-6-240 through 12-6-247.

12-6-240. Short title.

This article shall be known and may be cited as the "Forest Heritage Trust Act of 2004."

History. — Code 1981, § 12-6-240, enacted by Ga. L. 2004, p. 354, § 1.

12-6-241. Legislative findings.

(a) The General Assembly finds that certain real property in Georgia, because it exhibits unique natural characteristics, special historical significance, or particular recreational value, constitutes a valuable heritage which should be protected to provide benefits to all Georgians, now and in the future. The General Assembly specifically recognizes that the forest lands and resources of the state are a natural resource of great economic value to the citizens of the state, not only for the potential production of forest products which they can provide, but also for the enormously valuable natural benefits they impart to the citizens of Georgia, such as air and water quality improvements, water storage, control of erosion, temperature moderation, habitat for native plants and wildlife, and opportunities for recreation in a natural, historic Georgia environment. Natural forested lands also allow present and future citizens to gain an understanding of the prehistoric and early culture of this region. Commercial forests provide traditional jobs, support our economy, and reflect the importance this industry has had in the development of Georgia. The General Assembly further finds that many of the forest resources of the state are under pressure to be

converted to other uses because of Georgia's rapid progress and increased population over the past decades. As forest lands are converted to other uses and irreparably altered, a valuable part of our cultural heritage is lost as well as the natural benefits those forest lands provide.

(b) The General Assembly declares, therefore, that there is a compelling public need to preserve forest lands as an element of Georgia's heritage. The General Assembly asserts the public interest in the state's heritage by creating the Forest Heritage Trust Program, which shall be the responsibility of the Governor and the State Forestry Commission and which shall seek to protect this heritage through the acquisition of fee simple title or lesser interests in valuable properties and by utilization of other available methods.

History. — Code 1981, § 12-6-241, enacted by Ga. L. 2004, p. 354, § 1; Ga. L. 2006, p. 72, § 12/SB 465.

12-6-242. Definitions.

As used in this article, the term:

(1) "Commission" means the State Forestry Commission.

(2) "Forest heritage area" means an area of land, marsh, or water which has been identified by the commission as having significant historical, natural, or cultural value.

(3) "Forest heritage preserve" means a heritage area to which the state holds fee simple title or some lesser estate and which has been dedicated under this article.

History. — Code 1981, § 12-6-242, enacted by Ga. L. 2004, p. 354, § 1; Ga. L. 2005, p. 60, § 12/HB 95.

12-6-243. Role of the commission.

The commission shall serve as an advisory body to the Governor on all matters concerning the Forest Heritage Trust Program and shall make recommendations to the Governor concerning the identification, designation, and acquisition of forest heritage areas; the dedication of forest heritage preserves; and the annual budget for the Forest Heritage Trust Program. The commission shall consider recommendations from the director of the State Forestry Commission before making its recommendations on these matters.

History. — Code 1981, § 12-6-243, enacted by Ga. L. 2004, p. 354, § 1; Ga. L. 2006, p. 72, § 12/SB 465.

12-6-244. Powers and duties of commission.

The commission shall have the following powers and duties with regard to the Forest Heritage Trust Program:

(1) To adopt and promulgate all policies, rules, and regulations necessary for the identification and acquisition of forest heritage areas and for the selection, dedication, management, and use of forest heritage preserves;

(2) To acquire forest heritage areas in the name of the State of Georgia as otherwise provided by law;

(3) To advocate and approve the dedication of forest heritage preserves; and

(4) To provide general supervision and direction in the protection, management, operation, and use of forest heritage preserves.

History. — Code 1981, § 12-6-244, enacted by Ga. L. 2004, p. 354, § 1.

12-6-245. Dedication as forest heritage preserve.

A forest heritage area which has been acquired by the commission for the Forest Heritage Trust Program may become dedicated as a forest heritage preserve after written recommendation of the commission and approval by Executive Order of the Governor. Any other real property owned by the State of Georgia and under the custody of the commission may be similarly dedicated. The written recommendation shall contain a provision that designates the best and most important use or uses to which the land is to be put. The dedication as a forest heritage preserve shall become effective when the written recommendation and the approval of the Governor are filed with the office of the Secretary of State. The written recommendation and the approval of the Governor shall be filed in the office of the clerk of the superior court of the county or counties in which the forest heritage preserve is located.

History. — Code 1981, § 12-6-245, enacted by Ga. L. 2004, p. 354, § 1.

12-6-246. Use of forest heritage preserves.

Forest heritage preserves shall be held by the state in trust for the benefit of present and future generations of people of the State of Georgia. Each forest heritage preserve shall be put to the designated

use or uses that confer the best and most important benefit to the public. Forest heritage preserves shall not be put to any use other than the dedicated use or uses except pursuant to the following procedure:

(1) A state agency, department, or authority with a direct interest in the use of a forest heritage preserve must submit in writing a petition to the commission that an imperative and unavoidable necessity for such other use exists;

(2) Upon receipt of such petition, the commission shall give public hearing thereon in the county or counties in which the forest heritage preserve is located;

(3) The commission shall consider fully all testimony relative to the proposed use and submit a recommendation to the General Assembly; and

(4) The General Assembly shall then determine if such use is in the public interest and may by statute approve such other use of the forest heritage preserve.

History. — Code 1981, § 12-6-246, enacted by Ga. L. 2004, p. 354, § 1; Ga. L. 2005, p. 60, § 12/HB 95.

12-6-247. Impact of dedication as forest heritage preserve on other protected status.

Neither the dedication of a piece of property as a forest heritage preserve nor any action taken by the commission pursuant to this article shall operate to void, preempt, or dilute any protected status which that property had or would have had but for its dedication as a forest heritage preserve.

History. — Code 1981, § 12-6-247, enacted by Ga. L. 2004, p. 354, § 1.

ARTICLE 7

PALMETTO BERRIES

Effective date. — This article became effective August 5, 2020.

12-6-250. Definitions.

As used in this article, the term:

(1) "Director" means the director of the State Forestry Commission.

(2) "Harvest" or "harvesting" means the various methods or processes of gathering saw palmetto berries for preservation, storage, use, or sale.

(3) "Landowner" means the person that owns land from which saw palmetto berries are harvested or the person having possession, control, or use of such land that has lawful authority to grant permission to harvest saw palmetto berries from the land.

(4) "Person" means an individual, partnership, corporation, association, or any other legal entity.

(5) "Saw palmetto berries" means the fruit of the plant species Serenoa repens, commonly known as the saw palmetto.

(6) "Saw palmetto berry dealer" means a person that purchases or otherwise obtains saw palmetto berries from a seller for the purpose of selling such saw palmetto berries at retail or for the purpose of selling such saw palmetto berries to another saw palmetto berry dealer or for both such purposes. This term also includes any person that purchases saw palmetto berries directly from a landowner for the purpose of selling such saw palmetto berries at retail.

(7) "Seller" means a person that exchanges or offers to exchange saw palmetto berries for money or for any other valuable consideration.

History. — Code 1981, § 12-6-250, enacted by Ga. L. 2020, p. 680, § 1/HB 966.

12-6-251. Legislative findings.

The General Assembly finds that:

(1) The natural occurrence of saw palmetto berries constitutes a significant economic resource for landowners;

(2) Such landowners have been victimized by continuous and repeated trespasses onto their lands by persons engaged in harvesting saw palmetto berries and have thus been deprived of the economic benefit of such resources; and

(3) The repeated trespasses onto private property by certain persons engaged in the harvesting of saw palmetto berries constitute an organized and methodical deprivation of the rights of others, necessitating the addition of this article.

History. — Code 1981, § 12-6-251, enacted by Ga. L. 2020, p. 680, § 1/HB 966.

12-6-252. Certificates of harvest.

(a) As a condition of selling saw palmetto berries to a saw palmetto berry dealer within this state, the seller shall obtain and present to the saw palmetto berry dealer a certificate of harvest. A certificate of harvest shall be a written or printed document signed by the landowner from which the saw palmetto berries were harvested granting permission for the harvest of the saw palmetto berries and shall include a harvest start date and end date, which harvest period shall not exceed one year. A certificate of harvest shall be valid for one year. In addition to the permission of the landowner to harvest saw palmetto berries, a certificate of harvest shall include:

(1) The name, address, and telephone number of the landowner that granted permission to harvest the saw palmetto berries;

(2) The name, address, and telephone number of the person authorized to harvest the saw palmetto berries; and

(3) The start date, end date, and location, including county, of the harvest.

(b) A saw palmetto berry dealer that purchases saw palmetto berries directly from a landowner or a person harvesting saw palmetto berries from another's property shall obtain a landowner's certificate of harvest. A landowner's certificate of harvest shall include:

(1) The name, address, and telephone number of the landowner;

(2) The start date, end date, and location, including county, of the harvest; and

(3) The landowner's signature.

History. — Code 1981, § 12-6-252, enacted by Ga. L. 2020, p. 680, § 1/HB 966.

12-6-253. Required recordkeeping and retention.

(a) A person who participates in the procurement of palmetto berries shall maintain a legible record of all activities and purchase transactions of saw palmetto berries. Such record shall include the following information:

(1) The names and addresses of such person and of the landowner;

(2) The date or dates of harvesting;

(3) The weight, quantity, or volume and a description of the type of saw palmetto berries harvested;

(4) The amount of consideration given for the harvested saw palmetto berries and a copy of the check or voucher or documentation

evidencing the electronic funds transfer given as consideration for such harvesting;

(5) A signed statement from such person that he or she has the landowner's permission to harvest saw palmetto berries; and

(6) A scanned or photocopied copy of a valid personal identification card of such person and of the landowner.

(b) A person required to record information as set forth in subsection (a) of this Code section shall maintain such records for not less than two years from the date of harvest.

History. — Code 1981, § 12-6-253, enacted by Ga. L. 2020, p. 680, § 1/HB 966.

12-6-254. Penalty for violations.

When the director or law enforcement finds that any saw palmetto berries are being harvested or offered or exposed for sale in violation of this article, the director or law enforcement may issue and enforce written or printed stop harvest, stop sale, stop use, or removal orders to the owners or custodians of such saw palmetto berries, ordering such individuals to hold the same at a designated location until a certificate of harvest or a landowner's certificate of harvest has been provided and such saw palmetto berries have been released, in writing, by the director or law enforcement, or until such saw palmetto berries have been otherwise legally disposed of by written authority. The director or law enforcement or both shall release saw palmetto berries when the requirements of this article are met.

History. — Code 1981, § 12-6-254, enacted by Ga. L. 2020, p. 680, § 1/HB 966.

12-6-255. Seizure of berries for noncompliance.

Any saw palmetto berries obtained or offered for sale in violation of this article shall be subject to seizure on the complaint of the director or law enforcement to the superior court of the county in which the saw palmetto berries are found. If the court finds the status of the saw palmetto berries to be in violation of this article, and orders condemnation of such saw palmetto berries, the saw palmetto berries shall be disposed of in any manner consistent with their quantity, the interests of the parties, and the laws of this state; provided, however, that in no instance shall the saw palmetto berries be ordered by the court to be disposed of without first giving the person claiming to own the saw palmetto berries an opportunity to apply to the court for release of the saw palmetto berries in such manner as to bring the matter into compliance with this article.

History. — Code 1981, § 12-6-255, enacted by Ga. L. 2020, p. 680, § 1/HB 966.

12-6-256. Exemption for personal use.

This article shall not be construed so as to affect any landowner that harvests or handles saw palmetto berries for home or personal use.

History. — Code 1981, § 12-6-256, enacted by Ga. L. 2020, p. 680, § 1/HB 966.

12-6-257. Unlawful activities associated with saw palmetto berries; making of false statements; restitution.

(a) Except as otherwise provided in subsection (b) of this Code section, the following individuals shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than $500.00:

(1) A person that exchanges or offers to exchange saw palmetto berries for money or any other valuable consideration with a saw palmetto berry dealer or seller without first obtaining and presenting to the saw palmetto dealer or seller a certificate of harvest as required by subsection (a) of Code Section 12-6-252;

(2) A person that harvests saw palmetto berries without first obtaining a landowner's certificate of harvest as required by subsection (b) of Code Section 12-6-252; and

(3) A saw palmetto berry dealer or seller that purchases saw palmetto berries without first obtaining a landowner's certificate of harvest as required by subsection (b) of Code Section 12-6-252.

(4) A person who knowingly possesses saw palmetto berries harvested in violation of this article.

(b)(1) Except as otherwise provided in paragraph (2) of this subsection, when an individual knowingly engages in any of the activities prohibited in paragraphs (1) through (3) of subsection (a) of this Code section and the value of the saw palmetto berries exchanged, sold or offered for sale, harvested, or purchased is less than $1,500.00, such individual shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine not less than the value of the saw palmetto berries exchanged, sold or offered for sale, harvested, or purchased, but no more than $1,000.00, or confinement for up to 12 months in jail, or both.

(2) When an individual knowingly engages in any of the activities prohibited in paragraphs (1) through (3) of subsection (a) of this Code section and the value of the saw palmetto berries exchanged, sold or

offered for sale, harvested, or purchased is $1,500.00 or more, such individual shall be guilty of a felony and, upon conviction thereof, shall be punished by not less than the greater of $1,500.00 or the value of the saw palmetto berries exchanged, sold or offered for sale, harvested, or purchased, but neither less than $1,500.00 nor more than $5,000.00, or by imprisonment for not more than three years, or both.

(c) When a person who knowingly provides false information in executing the statement required by paragraph (5) of subsection (a) of Code Section 12-6-253, the person commits the offense of false swearing within the meaning of Code Section 16-10-71. Such person shall be punished by a fine of not more than $1,000.00 or by imprisonment for not less than one nor more than five years, or both.

(d) A person convicted pursuant to this Code section may, in addition to any fines levied against such person, be ordered to make restitution to the landowner in an amount equal to the value of the saw palmetto berries unlawfully harvested.

History. — Code 1981, § 12-6-257, enacted by Ga. L. 2020, p. 680, § 1/HB 966.

CHAPTER 6A

OUTDOOR STEWARDSHIP

Sec.
12-6A-1. Short title.
12-6A-2. Purpose of funding protection of conservation land.
12-6A-3. Legislative intent.
12-6A-4. Definitions.
12-6A-5. (Effective until July 1, 2022.) Establishment of the Georgia Outdoor Stewardship Trust Fund.
12-6A-5. (Effective July 1, 2022.) Establishment of the Georgia Outdoor Stewardship Trust Fund.
12-6A-6. Grants; conditions of eligibility; loans; funds for administration.
12-6A-7. Establishment of the Board of Trustees of the Georgia Outdoor Stewardship Trust Fund; membership; role; priorities.
12-6A-8. Applications and proposals for funding; quarterly review and approval of proposals; final approvals; disbursement of funds.
12-6A-9. Agreements as to acceptance, administration, ownership, and operation of properties.
12-6A-10. Annual report by department.
12-6A-11. Authority to promulgate rules and regulations.
12-6A-12. Annual grant when state owns property; calculations.

Effective date. — This chapter became effective July 1, 2019.

Editor's notes. — Ga. L. 2018, p. 541, § 1/HB 332, not codified by the General Assembly, provides that: "This Act shall become effective on July 1, 2019, only if an amendment to the Constitution authorizing the General Assembly to provide by law for allocation of up to 80 percent of the revenue derived from the state sales and use tax collected by establishments classified under the 2007 North American Industry Classification Code 451110, sporting goods stores, to a trust fund to be used for the protection of conservation land is ratified by the voters at the November, 2018, state-wide general election. If such an amendment is not so ratified, then this Act shall not become effective and shall stand repealed on January 1, 2019." The constitutional amendment was approved by a majority of the qualified voters voting at the general election held on November 6, 2018.

Ga. L. 2018, p. 541, § 2/HB 332, not codified by the General Assembly, provides: "The Georgia Outdoor Stewardship Trust Fund established by this chapter shall be a successor to the former Georgia Land Conservation Trust Fund and the Georgia Land Conservation Revolving Loan Fund. On July 1, 2019, all funds in the Georgia Land Conservation Trust Fund and the Georgia Land Conservation Revolving Loan Fund shall be transferred into the Georgia Outdoor Stewardship Trust Fund."

Administrative rules and regulations. — Georgia Outdoor Stewardship Program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Historic Preservation, State and Federal Grants Program, Sec. 391-5-13-.11.

Law reviews. — For annual survey on state and local taxation: a two-year survey, see 71 Mercer L. Rev. 279 (2019).

12-6A-1. Short title.

This chapter shall be known and may be cited as the "Georgia Outdoor Stewardship Act."

History. — Code 1981, § 12-6A-1, enacted by Ga. L. 2018, p. 541, § 1/HB 332.

12-6A-2. Purpose of funding protection of conservation land.

This chapter is enacted pursuant to Article III, Section IX, Paragraph VI(p) of the Constitution, which authorizes up to 80 percent of all moneys received by the state from the sales and use tax collected by outdoor recreation equipment establishments classified under the 2007 North American Industry Classification Code 451110, sporting goods stores in the immediately preceding fiscal year to be dedicated to the Georgia Outdoor Stewardship Trust Fund for the purpose of funding the protection of conservation land.

History. — Code 1981, § 12-6A-2, enacted by Ga. L. 2018, p. 541, § 1/HB 332.

12-6A-3. Legislative intent.

The intent of this chapter is to provide stewardship for state parks, state lands, and wildlife management areas; support local parks and trails; and protect critical conservation land.

History. — Code 1981, § 12-6A-3, enacted by Ga. L. 2018, p. 541, § 1/HB 332.

12-6A-4. Definitions.

As used in this chapter, the term:

(1) "Conservation land" means land and water, or interests therein, that are in their undeveloped, natural states or that have been developed only to the extent consistent with, or are restored to be consistent with, at least one of the following environmental values or conservation benefits:

(A) Water quality protection for wetlands, rivers, streams, or lakes;

(B) Protection of wildlife habitats;

(C) Protection of cultural sites, heritage corridors, and archeological and historic resources;

(D) Protection of land around Georgia's military installations to ensure that missions are compatible with surrounding communities and that encroachment on military installations does not impair future missions;

(E) Support of economic development through conservation projects; or

(F) Provision for recreation in the form of boating, hiking, camping, fishing, hunting, running, jogging, biking, walking, or similar outdoor activities.

(2) "Costs of acquisition" means all direct costs of activities which are required by applicable state laws and local ordinances or policies in order to convey a conservation easement, or to obtain fee simple or other lesser interests in real property, to a holder who will ensure the permanent protection of the property as conservation land; provided, however, that such costs shall not include any costs for services provided in violation of Chapter 40 of Title 43.

(3) "Nongovernmental entity" means a nonprofit organization primarily concerned with the protection and conservation of land and natural resources, as evidenced by its organizational documents.

(4) "Outdoor recreation equipment establishments" means places of business classified under the 2007 North American Industry Classification Code 451110, sporting goods stores.

(5) "Permanently protected conservation areas" means those resources:

(A) Owned by the federal government and dedicated for recreation or conservation or as a natural resource;

(B) Owned by the State of Georgia and dedicated for recreation or conservation or as a natural resource;

(C) Owned by a state or local unit of government or authority and subject to:

(i) A conservation easement ensuring that the property will be maintained in a manner consistent with conservation land;

(ii) Contractual arrangements ensuring that, if the protected status is discontinued on a parcel, such property will be replaced by other conservation land which at the time of such replacement is of equal or greater monetary and resource protection value; or

(iii) A permanent restrictive covenant as provided in subsection (c) of Code Section 44-5-60; or

(D) Owned by any person or entity and subject to a conservation easement ensuring that the property will be maintained in a manner consistent with conservation land.

(6) "Project proposal" means any application seeking moneys from the Georgia Outdoor Stewardship Trust Fund.

History. — Code 1981, § 12-6A-4, enacted by Ga. L. 2018, p. 541, § 1/HB 332; Ga. L. 2020, p. 493, § 12/SB 429.

The 2020 amendment, effective July 29, 2020, part of an Act to revise, modernize, and correct the Code, substituted "habitats" for "habitat" at the end of subparagraph (1)(B).

12-6A-5. (Effective until July 1, 2022.) Establishment of the Georgia Outdoor Stewardship Trust Fund.

(a) There is established the Georgia Outdoor Stewardship Trust Fund as a separate fund in the state treasury. Except as provided in subsections (c) and (d) of this Code section, the state treasurer shall credit to the trust fund 40 percent of all moneys received by the state from the sales and use tax collected by establishments classified under the 2007 North American Industry Classification Code 451110, sporting goods stores, in the immediately preceding year.

(b) Such funds shall not lapse to the general fund. Such funds shall be used to support the protection and conservation of land and shall be used to supplement, not supplant, department resources.

(c)(1) In the event that, in any current year, the immediately preceding year's total moneys received from the levy of a sales and use tax fall at least 1 percent below the total moneys received from the levy of the tax in the year prior to the immediately preceding year, then the amount that the state treasurer shall credit to the trust fund during the current year shall be reduced by 20 percent of the trust fund credit, which amount shall instead be paid into the state general fund.

(2) In the event that, in a year following the year of an initial trust fund credit reduction pursuant to paragraph (1) of this subsection, the immediately preceding year's total moneys received from the levy of a sales and use tax fall at least 1 percent below the total moneys received from the levy of the tax in the year prior to the immediately preceding year, then the amount that the state treasurer shall credit to the trust fund during the current year shall be reduced by 50 percent of the trust fund credit, which amount shall instead be paid into the state general fund.

(d) In any current year following a year for which the amount paid to the trust fund is reduced in accordance with subsection (c) of this Code section, the same percentage shall be paid into the state general fund as in the immediately preceding year unless the total moneys received from the levy of the sales and use tax in the immediately preceding year equal or exceed the total moneys received from the levy of the sales and use tax in the most recent year in which no reduction in the amount paid to the trust fund occurred pursuant to subsection (c) or (d) of this Code section.

History. — Code 1981, § 12-6A-5, enacted by Ga. L. 2018, p. 541, § 1/HB 332.

Delayed effective date. — Code Section 12-6A-5 is set out twice in this Code. This version is effective until July 1, 2022. For version effective July 1, 2022, see the following version.

12-6A-5. (Effective July 1, 2022.) Establishment of the Georgia Outdoor Stewardship Trust Fund.

(a) There is established the Georgia Outdoor Stewardship Trust Fund as a separate fund in the state treasury. Except as provided in subsections (c) and (d) of this Code section, the General Assembly shall appropriate to the trust fund 40 percent of all moneys received by the state from the sales and use tax collected by establishments classified under the 2007 North American Industry Classification Code 451110, sporting goods stores, in the most recently completed fiscal year.

(b) Such funds shall not lapse to the general fund. Such funds shall be used to support the protection and conservation of land and shall be used to supplement, not supplant, department resources.

(c)(1) In the event that, in any current fiscal year, the most recently completed fiscal year's total moneys received from the levy of a sales and use tax fall at least 1 percent below the total moneys received from the levy of the tax in the year prior to the most recently completed fiscal year, then the amount that the General Assembly shall appropriate to the trust fund for the following fiscal year shall be reduced by 20 percent.

(2) In the event that, in a fiscal year following the fiscal year of an initial trust fund appropriation reduction pursuant to paragraph (1) of this subsection, the most recently completed fiscal year's total moneys received from the levy of a sales and use tax fall at least 1 percent below the total moneys received from the levy of the tax in the year prior to the most recently completed fiscal year, then the amount that the General Assembly shall appropriate to the trust fund for the following fiscal year shall be reduced by 50 percent.

(d) In any current fiscal year following a year for which the amount appropriated to the trust fund is reduced in accordance with subsection (c) of this Code section, the same percentage reduction shall continue unless the total moneys received from the levy of the sales and use tax in the most recently completed fiscal year equal or exceed the total moneys received from the levy of the sales and use tax in the most recent fiscal year in which no reduction in the amount appropriated to the trust fund occurred pursuant to subsection (c) or (d) of this Code section.

History. — Code 1981, § 12-6A-5, enacted by Ga. L. 2018, p. 541, § 1/HB 332; Ga. L. 2021, p. 761, § 1/HB 511.

Delayed effective date. — Code Section 12-6A-5 is set out twice in this Code. This version is effective July 1, 2022. For version effective until July 1, 2022, see the preceding version.

The 2021 amendment, effective July 1, 2022, substituted "most recently completed fiscal" for "immediately preceding" throughout this Code section; substituted "General Assembly shall appropriate" for "state treasurer shall credit" near the middle of the second sentence of subsection (a); substituted the present provisions of paragraph (c)(1) for the former provisions, which read: "In the event that, in any current year, the immediately preceding year's total moneys received from the levy of a sales and use tax fall at least 1 percent below the total moneys received from the levy of the tax in the year prior to the immediately preceding year, then the amount that the state treasurer shall credit to the trust fund during the current year shall be reduced by 20 percent of the trust fund credit, which amount shall instead be paid into the state general fund."; substituted the present provisions of paragraph (c)(2) for the former provisions, which read: "In the event that, in a year following the year of an initial trust fund credit reduction pursuant to paragraph (1) of this subsection, the immediately preceding year's total moneys received from the levy of a sales and use tax fall at least 1 percent below the total moneys received from the levy of the tax in the year prior to the immediately preceding year, then the amount that the state treasurer shall credit to the trust fund during the current year shall be reduced by 50 percent of the trust fund credit, which amount shall instead be paid into the state general fund."; and, in subsection (d), inserted "fiscal" near the beginning and near the end, substituted "appropriated" for "paid" twice, and substituted "reduction shall continue" for "shall be paid into the state general fund as in the immediately preceding year" in the middle.

Editor's notes. — Ga. L. 2021, p. 761, § 23/HB511, not codified by the General Assembly, provides: "In accordance with the requirements of Article III, Section IX, Paragraph VI(r) of the Constitution of Georgia, this Act shall not become law unless it receives the requisite two thirds' majority vote in both the Senate and the House of Representatives and the amount of the funds dedicated by this Act do not equal or exceed 1 percent of the previous fiscal year's state revenues subject to appropriations."

12-6A-6. Grants; conditions of eligibility; loans; funds for administration.

(a) From within the Georgia Outdoor Stewardship Trust Fund, moneys shall be made available in each fiscal year for grants to any qualified local government as defined in paragraph (18) of subsection (a) of Code Section 50-8-2, any constituted recreation authority registered with the Department of Community Affairs, any state agency, or any nongovernmental entity of this state having a project proposal which has been approved by the department. As a condition of eligibility for any such grant, a project proposal shall have as its primary purpose one of the following conservation objectives:

(1) To support state parks and trails. Funds disbursed for the purposes of this paragraph shall be used to aid in the improvement and maintenance of currently owned state parks and trails;

(2) To support local parks and trails of state and regional significance. Funds disbursed for purposes of this paragraph shall be grants to such applicants to acquire and improve parks and trails;

(3) To provide stewardship of conservation land. Funds disbursed for purposes of this paragraph shall be used for maintenance or restoration projects of the department to enhance public access, use, or safe enjoyment of permanently protected conservation land; or

(4)(A) To acquire critical areas for the provision or protection of clean water, wildlife, hunting, or fishing, for military installation buffering, or for natural resource-based outdoor recreation. Real property shall only be acquired pursuant to this chapter under the following circumstances:

(i) Where such property is, at the time of acquisition, being leased by the state as a wildlife management area;

(ii) Where such property adjoins state wildlife management areas, state parks, or would provide better public access to such areas;

(iii) Lands identified in any wildlife action plan developed by any agency of the state;

(iv) Riparian lands so as to protect any drinking water supply; or

(v) Lands surrounding any military base or military installation.

(B) Acquisitions of real property or any interests therein pursuant to this chapter shall not be made through condemnation.

(b) From within the Georgia Outdoor Stewardship Trust Fund, moneys may also be made available in each fiscal year for loans to any city, county, or nongovernmental entity to defray the costs of conservation land or of conservation easements placed upon property that ensure its permanent protection as conservation land. Any such loan shall bear interest at a rate established by the Georgia Environmental Finance Authority.

(c) From within the Georgia Outdoor Stewardship Trust Fund, moneys shall also be made available in each fiscal year for grants as authorized by Code Section 12-6A-12.

(d) From within the Georgia Outdoor Stewardship Trust Fund, moneys shall also be made available in each fiscal year for costs incurred by the state in administering the program, but in an amount not to exceed 5 percent of the total moneys received by the state.

History. — Code 1981, § 12-6A-6, enacted by Ga. L. 2018, p. 541, § 1/HB 332; Ga. L. 2019, p. 648, § 1/HB 382.

The 2019 amendment, effective July 1, 2019, substituted "qualified local government as defined in paragraph 18 of subsection (a) of Code Section 50-8-2, any constituted recreation authority registered with the Department of Community Affairs, any state agency, or any nongovernmental" for "city, county, department, agency, or nongovernmental" in the middle of the first sentence of subsection (a); in paragraph (a)(2), in the second sentence, substituted "such applicants" for "local governments" in the middle, and deleted "within the jurisdiction and under the control of such local governments" following "trails" at the end; and added subsection (d).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2018, "area" was substituted for "areas" at the end of division (a)(4)(A)(i).

Pursuant to Code Section 28-9-5, in 2019, "(18)" was substituted for "18" in the middle of the first sentence of subsection (a).

12-6A-7. Establishment of the Board of Trustees of the Georgia Outdoor Stewardship Trust Fund; membership; role; priorities.

(a) There is hereby established the Board of Trustees of the Georgia Outdoor Stewardship Trust Fund, which shall consist of 11 members as follows:

(1) The commissioner of the Georgia Department of Natural Resources, who shall also serve as chairperson of the board;

(2) The director of the State Forestry Commission;

(3) The director of the Environmental Protection Division of the Department of Natural Resources;

(4) The commissioner of Transportation;

(5) The director of the Coastal Resources Division of the Department of Natural Resources, as an ex officio, nonvoting member;

(6) The director of the Wildlife Resources Division of the Department of Natural Resources, as an ex officio, nonvoting member;

(7) The director of state parks of the Department of Natural Resources, as an ex officio, nonvoting member; and

(8)(A) Two members appointed by the Speaker of the House of Representatives; and

(B) Two members appointed by the President of the Senate.

The members appointed pursuant to this paragraph may be selected from any of the following private and public sectors: forestry, conservation, hunting, fishing, and local government. Such members shall serve four-year terms, provided that three of the initial appointees shall each serve an initial two-year term. Such members shall be and shall remain Georgia residents during their tenure on the board

and shall possess a demonstrated knowledge of and commitment to land conservation and recreation.

(b) The board shall meet at least quarterly each year for the transaction of its business and to review the progress of the Georgia Outdoor Stewardship Trust Fund. Three-fifths of the members of the board present at any board meeting shall constitute a quorum in order to conduct business; provided, however, that in the absence of a quorum, a majority of the members present may adjourn the meeting from time to time until a quorum shall attend. Any board action or recommendation must be approved by a simple majority of the members of the entire board then in office, unless specified otherwise in this Code section.

(c) The board shall accept applications from qualified local governments as defined in paragraph (18) of subsection (a) of Code Section 50-8-2, constituted recreation authorities registered with the Department of Community Affairs, state agencies, or nongovernmental entities annually for project proposals eligible for funding. The board shall evaluate the proposals received pursuant to priorities established by the board.

(d) In reviewing applications, the board shall give increased priority to projects:

(1) For which matching funds are available;

(2) That support and promote hunting, fishing, and wildlife viewing;

(3) That contribute to improving the quality and quantity of surface water and ground water;

(4) That contribute to improving the water quality and flow of springs; and

(5) For which the state's land conservation plans overlap with the United States military's need to protect lands, water, and habitats so as to ensure the sustainability of military missions including:

(A) Protecting habitats on nonmilitary land for any species found on United States military land that is designated as threatened or endangered, or is a candidate for such designation under the federal Endangered Species Act of 1973, as amended, 16 U.S.C. Section 1531, et seq. or state law;

(B) Protecting areas underlying low-level United States military air corridors or operating areas; and

(C) Protecting areas identified as clear zones, accident potential zones, and air installation compatible use buffer zones delineated

by the United States military, and for which federal or other funding is available to assist with the project.

History. — Code 1981, § 12-6A-10, enacted by Ga. L. 2018, p. 541, § 1/HB 332; Ga. L. 2019, p. 648, § 2/HB 382; Ga. L. 2019, p. 1056, § 12/SB 52.

The 2019 amendments. — The first 2019 amendment, effective July 1, 2019, substituted the present provisions of the first sentence of subsection (c) for the former provisions, which read: "Beginning no later than July 1, 2019, and annually thereafter, the board shall accept applications from state agencies, local governments, nonprofit and for-profit organizations, private land trusts, and individuals for project proposals eligible for funding." The second 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, substituted "in the absence of a quorum" for "in absence of a quorum" in the second sentence of subsection (b).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2018, Code Section 12-6A-10, as enacted by Ga. L. 2018, p. 541, § 1/HB 332, was redesignated as Code Section 12-6A-7.

Pursuant to Code Section 28-9-5, in 2019, "(18)" was substituted for "18" in the first sentence of subsection (c).

12-6A-8. Applications and proposals for funding; quarterly review and approval of proposals; final approvals; disbursement of funds.

(a) The Board of Trustees of the Georgia Outdoor Stewardship Trust Fund shall accept applications from qualified local governments as defined in paragraph (18) of subsection (a) of Code Section 50-8-2, constituted recreation authorities registered with the Department of Community Affairs, state agencies, or nongovernmental entities for project proposals eligible for funding. The board shall evaluate the proposals received in accordance with this chapter and pursuant to priorities established by the board.

(b)(1) The board, at their first meeting of each calendar year and working in conjunction with the board of the Department of Natural Resources, shall prepare and approve a proposal containing approved conservation projects and shall revise said proposal at each subsequent quarterly meeting held during the year.

(2) The board shall not approve any proposal for which the total cost at the end of the year violates the estimated revenue available under this chapter.

(c) Upon approval of each quarterly proposal by the board, the board of the Department of Natural Resources shall review and approve the proposal of the Board of Trustees of the Georgia Outdoor Stewardship Trust Fund.

(d)(1) Upon approval of each quarterly proposal by the board of the Department of Natural Resources, the proposal of the Board of Trustees of the Georgia Outdoor Stewardship Trust Fund shall be transmitted for final review and approval to the chairpersons of the

appropriations subcommittees of the House of Representatives and the Senate maintaining oversight authority over the Department of Natural Resources and the Georgia Environmental Finance Authority.

(2) Each year's initial proposal shall be submitted by January 31 to the chairpersons of the appropriations subcommittees of the House of Representatives and the Senate maintaining oversight authority over the Department of Natural Resources and the Georgia Environmental Finance Authority.

(3) Proposals submitted to such subcommittees outside of a session of the General Assembly shall be reviewed at a public meeting called at the discretion of the chairpersons of the appropriations subcommittees of the House of Representatives and the Senate maintaining oversight authority over the Department of Natural Resources and the Georgia Environmental Finance Authority.

(4) Should projects included in a proposal be subject to time constraints for completion as determined by the Board of Trustees of the Georgia Outdoor Stewardship Trust Fund, such board shall immediately provide written notice of same to the chairpersons of the appropriations subcommittees of the House of Representatives and the Senate maintaining oversight authority over the Department of Natural Resources and the Georgia Environmental Finance Authority.

(e) Upon approval of a proposal of the Board of Trustees of the Georgia Outdoor Stewardship Trust Fund by the appropriations subcommittees of the House of Representatives and the Senate maintaining oversight authority over the Department of Natural Resources and the Georgia Environmental Finance Authority, the proposal and projects included therein shall be deemed approved.

(f) Such approved project shall become eligible for funding consistent with this chapter. The Georgia Environmental Finance Authority shall be responsible for the disbursement of funds following project approval.

History. — Code 1981, § 12-6A-7, enacted by Ga. L. 2018, p. 541, § 1/HB 332; Ga. L. 2019, p. 648, § 3/HB 382; Ga. L. 2019, p. 1056, § 12/SB 52.

The 2019 amendments. — The first 2019 amendment, effective July 1, 2019, substituted the present provisions of the first sentence of subsection (a) for the former provisions, which read: "The Board of Trustees of the Georgia Outdoor Stewardship Trust Fund shall accept applications from state agencies, local governments, nonprofit and for-profit entities, private land trusts, and individuals for project proposals eligible for funding." The second 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, substituted "and the Senate" for "and Senate" in subdivisions (d)(1) through (d)(4) and in subsection (e).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2018, Code Section 12-6A-7, as enacted by Ga. L. 2018, p. 541, § 1/HB 332, was redesignated as Code Section 12-6A-8.

Pursuant to Code Section 28-9-5, in 2019, "(18)" was substituted for "18" in the first sentence of subsection (a).

12-6A-9. Agreements as to acceptance, administration, ownership, and operation of properties.

The department may, by agreement with a city, county, or nongovernmental entity, accept and administer property acquired by such city, county, or nongovernmental entity pursuant to this chapter or may make such other agreements for the ownership and operation of the property as are outlined in Code Sections 12-3-32 and 27-1-6.

History. — Code 1981, § 12-6A-8, enacted by Ga. L. 2018, p. 541, § 1/HB 332.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2018, Code Section 12-6A-8, as enacted by Ga. L. 2018, p. 541, § 1/HB 332, was redesignated as Code Section 12-6A-9.

12-6A-10. Annual report by department.

Following the close of each state fiscal year, the department shall submit an annual report of its activities and program administration expenditures for the preceding year pursuant to this chapter to the Governor, the Lieutenant Governor, the Speaker of the House of Representatives, the chairperson of the Ways and Means Committee of the House of Representatives, the chairperson of the Senate Finance Committee, the chairpersons of the Appropriations Committee of the House of Representatives and the Appropriations Committee of the Senate, and the chairpersons of the Natural Resources and Environment Committee of the House of Representatives and the Natural Resources and the Environment Committee of the Senate, and make such report available to the General Assembly.

History. — Code 1981, § 12-6A-9, enacted by Ga. L. 2018, p. 541, § 1/HB 332; Ga. L. 2019, p. 648, § 4/HB 382.

The 2019 amendment, effective July 1, 2019, inserted "and program administration expenditures" near the middle of this Code section.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2018, Code Section 12-6A-9, as enacted by Ga. L. 2018, p. 541, § 1/HB 332, was redesignated as Code Section 12-6A-10.

12-6A-11. Authority to promulgate rules and regulations.

The department shall promulgate rules and regulations as necessary to implement the provisions of this chapter.

History. — Code 1981, § 12-6A-11, enacted by Ga. L. 2018, p. 541, § 1/HB 332.

12-6A-12. Annual grant when state owns property; calculations.

(a) Each county in which is located 20,000 acres or more of unimproved real property belonging to the state and under the custody or control of the department, in which such state-owned property exceeds 10 percent of the taxable real property in the county, and in which such property represents 10 percent or more of the assessed tax digest of the county may receive from the department an annual grant as provided in this Code section.

(b) For each county eligible to receive a grant pursuant to subsection (a) of this Code section, the department shall calculate the approximate value of public services which the county provides the department each year; provided, however, that such sum shall not exceed the amount the county would charge any other landowner for such services. The department shall request funds in its annual operating budget each year to reimburse all eligible counties for the provision of such services. In the event the amount appropriated in any year is less than the amount requested, each eligible county shall receive a pro rata share based on the estimated value of services provided.

(c) The department is directed to make an annual calculation of the amount of unimproved state-owned real property under its custody or control and determine which counties are eligible for a grant pursuant to subsection (a) of this Code section. The first such determination shall be completed not later than December 31, 2020, and each subsequent determination shall be made not later than December 31 of each year. The department is further directed to calculate the approximate value of public services provided by each eligible county as provided in subsection (a) of this Code section.

(d) Only land acquired with Outdoor Stewardship Trust Fund moneys shall be used in the calculation of this grant.

(e) No more than 10 percent of Outdoor Stewardship Trust Fund moneys shall be allocated to grants to offset local taxes during any fiscal year.

(f) No county shall be authorized to receive a grant of funds pursuant to both this Code section and Code Section 48-14-1.

History. — Code 1981, § 12-6A-12, enacted by Ga. L. 2018, p. 541, § 1/HB 332.

CHAPTER 7

CONTROL OF SOIL EROSION AND SEDIMENTATION

Sec.
12-7-1. Short title.
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12-7-7. Permit or notice of intent required for land-disturbing activities; approval of application and issuance of permit; denial of permit; bond requirement.
12-7-7.1. Erosion and sediment control plan prepared; completion; implementation.
12-7-8. Certification of locality as local issuing authority; periodic review; procedure for revoking certification; enforcement actions.
12-7-9. Applications for permits; erosion and sediment control plans and data; time for issuance or denial.
12-7-10. Referral of application and plan to district; time for action.
12-7-11. Statement of reasons for denial of permit required; conditions for approval; suspension, revocation, or modification of permit.
12-7-12. Orders directed to violators; stop work order procedures.
12-7-13. Injunctions.
12-7-14. Actions to restrain imminent danger; emergency orders; duration of effectiveness of orders.
12-7-15. Civil penalty.
12-7-16. Hearings and review.
12-7-17. Exemptions.
12-7-18. Effect of chapter on requirements of the "Georgia Water Quality Control Act."
12-7-19. Education and training requirements; required programs; instructor qualifications; expiration of certification.
12-7-20. Creation of Stakeholder Advisory Board; responsibilities; procedures.
12-7-21. Appointment of panel to study controls implemented pursuant to chapter; procedure and operation of panel [Repealed].
12-7-22. Electronic filing and reporting system.

Cross references. — Duties of Cooperative Extension Service of the University of Georgia with regard to conservation of soil used for agricultural purposes, § 2-6-1 et seq. Shore protection, T. 12, C. 5, A. 4, P. 2.

Administrative rules and regulations. — Erosion and sedimentation control, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-7.

Law reviews. — For article discussing regulation of selected activities to effect environmental planning, see 10 Ga. L. Rev. 53 (1975). For article discussing nuisances as "hidden liens," see 14 Ga. St. B.J. 32 (1977). For article surveying recent legislative and judicial developments in zoning, planning, and environmental

law, see 31 Mercer L. Rev. 89 (1979). For survey article on environment, natural resources, and land use, see 34 Mercer L. Rev. 145 (1982). For article surveying 1999 Eleventh Circuit cases involving environmental law, see 51 Mercer L. Rev. 1151 (2000).

For note on 1995 amendments of Code sections in this chapter, see 12 Ga. St. U.L. Rev. 39 (1995). For note on the 2003 amendments of Code sections in this chapter, see 20 Ga. St. U.L. Rev. 244 (2003).

RESEARCH REFERENCES

ALR. — Validity and construction of statutes regulating strip mining, 86 A.L.R.3d 27.

12-7-1. Short title.

This chapter shall be known and may be cited as the "Erosion and Sedimentation Act of 1975."

History. — Ga. L. 1975, p. 994, § 1; Ga. L. 2003, p. 224, § 5.

Law reviews. — For article, "From Marshes to Mountains, Wetlands Come Under State Regulation," see 41 Mercer L. Rev. 865 (1990). For article, "Local Government Litigation: Some Pivotal Principles," see 55 Mercer L. Rev. 1 (2003). For annual survey of zoning and land use law, see 58 Mercer L. Rev. 477 (2006).

JUDICIAL DECISIONS

Construction with other law. — When a landowner made no effort to comply with the Georgia Erosion and Sedimentation Act, O.C.G.A. § 12-7-1 et seq., until the landowner covenanted to maintain the property in agricultural use for a period of ten years, and the record did not show that the landowner fulfilled the necessary regulatory requirements as was necessary for the landowner to have a valid permit under the rule, the trial court erred in granting summary judgment in the landowner's favor and ruling that the landowner's subsequent use of the property as a landfill was grandfathered as a non-conforming use under the applicable zoning ordinance. Flippen Alliance for Cmty. Empowerment, Inc. v. Brannan, 267 Ga. App. 134, 601 S.E.2d 106 (2004).

Organization lacked standing to appeal consent order. — Trial court erred by concluding that an organization had standing to appeal a consent order between a property owner and the Director of the Environmental Protection Division (EPD) with regard to soil erosion as it lacked standing to appeal based upon its inability to demonstrate redressability as it failed to identify a procedural requirement the EPD violated, and the consent order did not fall within the categories of orders that required provision of notice and opportunity for comment. Ctr. for a Sustainable Coast, Inc. v. Turner, 324 Ga. App. 762, 751 S.E.2d 555 (2013).

OPINIONS OF THE ATTORNEY GENERAL

Post development regulatory framework not mandated. — Erosion and Sedimentation Act, O.C.G.A. § 12-7-1 et seq., does not mandate a post-development regulatory framework and it cannot serve as a basis for local

governments to assert regulatory authority over the state in a post-development capacity. 2013 Op. Att'y Gen. No. 13-3.

RESEARCH REFERENCES

Am. Jur. 2d. — 78 Am. Jur. 2d, Waters, § 324.

C.J.S. — 93 C.J.S., Waters, § 187.

12-7-2. Legislative findings; policy of state and intent of chapter.

It is found that soil erosion and sediment deposition onto lands and into waters within the watersheds of this state are occurring as a result of widespread failure to apply proper soil erosion and sedimentation control practices in land clearing, soil movement, and construction activities and that such erosion and sediment deposition result in pollution of state waters and damage to domestic, agricultural, recreational, fish and wildlife, and other resource uses. It is therefore declared to be the policy of this state and the intent of this chapter to strengthen and extend the present erosion and sediment control activities and programs of this state and to provide for the establishment and implementation of a state-wide comprehensive soil erosion and sediment control program to conserve and protect the land, water, air, and other resources of this state.

History. — Ga. L. 1975, p. 994, § 2; Ga. L. 2003, p. 224, § 5.

JUDICIAL DECISIONS

Exclusion of evidence for violations. — Trial court did not err in denying the defendant's motion in limine to exclude evidence relating to the defendant's violations of the Georgia Water Quality Control Act, O.C.G.A. § 12-5-20 et seq., and the Sedimentation Control Act, O.C.G.A. §§ 12-7-2 and 12-7-6(a), because the evidence was relevant to the plaintiffs' negligence per se claims. Pulte Home Corp. v. Simerly, 322 Ga. App. 699, 746 S.E.2d 173 (2013).

12-7-3. Definitions.

As used in this chapter, the term:

(1) "Board" means the Board of Natural Resources.

(2) "Buffer" means the area of land immediately adjacent to the banks of state waters in its natural state of vegetation, which facilitates the protection of water quality and aquatic habitat.

(2.1) "Coastal marshlands" shall have the same meaning as in Code Section 12-5-282.

(3) "Commission" means the State Soil and Water Conservation Commission.

(4) "Director" means the director of the Environmental Protection Division of the Department of Natural Resources.

(5) "District" means any one of the soil and water conservation districts of this state.

(6) "Division" means the Environmental Protection Division of the Department of Natural Resources.

(7) "Drainage structure" means a device composed of a virtually nonerodible material such as concrete, steel, plastic, or other such material that conveys water from one place to another by intercepting the flow and carrying it to a release point for storm-water management, drainage control, or flood control purposes.

(8) "Erosion and sediment control plan" or "plan" means a plan for the control of soil erosion and sediment resulting from a land-disturbing activity.

(9) "Land-disturbing activity" means any activity which may result in soil erosion from water or wind and the movement of sediments into state water or onto lands within the state, including, but not limited to, clearing, dredging, grading, excavating, transporting, and filling of land but not including agricultural practices as described in paragraph (5) of Code Section 12-7-17.

(9.1) "Larger common plan of development or sale" means a contiguous area where multiple separate and distinct construction activities are occurring under one plan of development or sale. For purposes of this paragraph, "plan" means an announcement; piece of documentation such as a sign, public notice or hearing, sales pitch, advertisement, drawing, permit application, zoning request, or computer design; or physical demarcation such as boundary signs, lot stakes, or surveyor markings, indicating that construction activities may occur on a specific plot.

(10) "Local issuing authority" means the governing authority of any county or municipality which is certified pursuant to subsection (a) of Code Section 12-7-8. Such term shall also include any water authority or water and sewer authority which has been authorized by local law to be responsible for storm-water management and to implement and enforce all related ordinances and regulations and, pursuant to an intergovernmental agreement with each governing authority of an applicable county or municipality, operates a storm-water utility and maintains the storm-water management system and soil erosion and sedimentation control permitting, inspection, and enforcement of such county or municipality.

(10.1) "Maintenance" means actions necessary or appropriate for retaining or restoring a currently serviceable improvement to the specified operable condition to achieve its maximum useful life. Maintenance includes emergency reconstruction of recently damaged parts of a currently serviceable structure so long as it occurs within a reasonable period of time after damage occurs. Maintenance does not include any modification that changes the character, scope, or size of the original design.

(10.2) "Manual for Erosion and Sediment Control in Georgia" or "manual" means the published guidance of the commission governing the design and practices to be utilized in the protection of this state's natural resources from erosion and sedimentation which shall be based foremost upon sound engineering principles and repeatable bench and field testing of structural and vegetative best management practices and which shall have the annual approval of the Erosion and Sediment Control Overview Council established pursuant to Code Section 12-7-7.1.

(10.3) "Operator" means the party or parties that have:

(A) Operational control of construction project plans and specifications, including the ability to make modifications to those plans and specifications; or

(B) Day-to-day operational control of those activities that are necessary to ensure compliance with a storm-water pollution prevention plan for the site or other permit conditions, such as a person authorized to direct workers at a site to carry out activities required by the storm-water pollution prevention plan or to comply with other permit conditions.

(11) "Person" means any individual, partnership, firm, association, joint venture, public or private corporation, trust, estate, commission, board, public or private institution, utility, cooperative, state agency, municipality or other political subdivision of this state, any interstate body, or any other legal entity.

(12) "Qualified personnel" means any person who meets or exceeds the education and training requirements of Code Section 12-7-19.

(13) "Roadway drainage structure" means a device, such as a bridge, culvert, or ditch, composed of a virtually nonerodible material such as concrete, steel, plastic, or other such material that conveys water under a roadway by intercepting the flow on one side of a traveled way consisting of one or more defined lanes, with or without shoulder areas, and carrying water to a release point on the other side.

(13.1) "Serviceable" means usable in its current state or with minor maintenance but not so degraded as to essentially require reconstruction.

(14) "Soil and water conservation district approved plan" means an erosion and sediment control plan approved in writing by a soil and water conservation district.

(15) "State general permit" means the National Pollution Discharge Elimination System general permit or permits for storm-water runoff from construction activities as is now in effect or as may be amended or reissued in the future pursuant to the state's authority to implement the same through federal delegation under the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251, et seq., and subsection (f) of Code Section 12-5-30.

(16) "State waters" includes any and all rivers, streams, creeks, branches, lakes, reservoirs, ponds, drainage systems, springs, wells, and other bodies of surface or subsurface water, natural or artificial, lying within or forming a part of the boundaries of the state, which are not entirely confined and retained completely upon the property of a single individual, partnership, or corporation.

History. — Ga. L. 1975, p. 994, § 3; Ga. L. 1980, p. 942, §§ 1, 2; Ga. L. 1982, p. 3, § 12; Ga. L. 1988, p. 269, § 24; Ga. L. 1989, p. 1295, § 1; Ga. L. 1994, p. 1650, § 1; Ga. L. 2000, p. 1430, § 1; Ga. L. 2003, p. 224, § 5; Ga. L. 2015, p. 35, § 3/HB 397; Ga. L. 2015, p. 1051, § 1/SB 101; Ga. L. 2020, p. 488, § 1/SB 445; Ga. L. 2021, p. 922, § 12/HB 497.

The 2020 amendment, effective July 29, 2020, added the second sentence in paragraph (10).

The 2021 amendment, effective May 10, 2021, part of an Act to revise, modernize, and correct the Code, substituted "Such term" for "Said term" at the beginning of the second sentence of paragraph (10).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, in paragraph (9) (now paragraph 11)), a comma was inserted following "firm".

Pursuant to Code Section 28-9-5, in 1996, "State" was substituted for "state" in paragraph (2) (now paragraph (3)).

Pursuant to Code Section 28-9-5, in 2015, paragraphs (10.1) and (10.2), as added and redesignated by Ga. L. 2015, p. 35, § 3/HB 397, were redesignated as paragraphs (10.2) and (10.3), respectively.

Editor's notes. — Ga. L. 2015, p. 1051, § 4/SB 101, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval for purposes of promulgating rules and regulations and shall become effective on December 31, 2015, for all other purposes." This Act was signed by the Governor on May 6, 2015.

Law reviews. — For survey article on environment, natural resources, and land use, see 34 Mercer L. Rev. 145 (1982). For article, "Georgia Wetlands: Values, Trends, and Legal Status," see 41 Mercer L. Rev. 791 (1990). For survey article on real property law, see 67 Mercer L. Rev. 193 (2015).

For comment, "'Wrest' in Peace: The Effect of the Georgia Environmental Protection Division's 'Wrested Vegetation Rule' on Coastal Salt Marshes," see 32 Georgia St. U.L. Rev. 953 (2016).

JUDICIAL DECISIONS

Organization lacked standing to appeal consent order. — Trial court erred by concluding that an organization had standing to appeal a consent order between a property owner and the Director of the Environmental Protection Division (EPD) with regard to soil erosion as it lacked standing to appeal based upon its inability to demonstrate redressability as it failed to identify a procedural requirement the EPD violated, and the consent order did not fall within the categories of orders that required provision of notice and opportunity for comment. Ctr. for a Sustainable Coast, Inc. v. Turner, 324 Ga. App. 762, 751 S.E.2d 555 (2013).

12-7-4. Adoption of comprehensive ordinances relating to land-disturbing activities; delegation of responsibility to planning and zoning commission; other local ordinances relating to land development; effect of chapter on design professionals.

(a) The governing authority of each county and each municipality shall adopt a comprehensive ordinance establishing the procedures governing land-disturbing activities which are conducted within their respective boundaries. Such ordinances shall be consistent with the standards provided by this chapter. Local governing authorities shall have the authority, by such ordinance, to delegate in whole or in part the responsibilities of the governing authorities, as set forth in this chapter, to any constitutional or statutory local planning and zoning commission. Where the local governing authority deems it appropriate, it may integrate such provisions with other local ordinances relating to land development including but not limited to tree protection, flood plain protection, stream buffers, or storm-water management; and the properties to which any of the types of ordinances identified in this Code section shall apply, whether or not such ordinances are integrated, shall include without limitation property owned by the local governing authority or by a local school district, except as otherwise provided by Code Section 12-7-17.

(b) Nothing in this chapter shall be construed as to limit or exclude any design professional, including but not limited to any professional engineer or registered land surveyor, or Natural Resource Conservation Service employee, within any county, municipality, or consolidated government in this state from performing such professional services as may be incidental to the practice of his or her profession, including any and all soil erosion and sedimentation control plans, storm-water management reports including hydrological studies, and site plans, when such professional has demonstrated competence through such qualifications, education, experience, and licensing as required for practice in this state by applicable provisions of Title 43 related to such profession; provided, however, that any such person shall be subject to the requirements of Code Section 12-7-19.

History. — Ga. L. 1975, p. 994, § 5; Ga. L. 1980, p. 942, § 4; Ga. L. 2003, p. 224, § 5; Ga. L. 2003, p. 270, § 1.

Code Commission notes. — The amendment of subsection (a) of this Code section by Ga. L. 2003, p. 224, § 5, irreconcilably conflicted with and was treated as superseded by Ga. L. 2003, p. 270, § 1. See County of Butts v. Strahan, 151 Ga. 417 (1921).

JUDICIAL DECISIONS

City required to enforce regulations against county building projects within city limits. — County government is exempt from all municipal regulation of construction projects undertaken by the county with respect to county-owned property located within the city and used for governmental purposes, but the county is subject to other municipal regulations as indicated by the Georgia General Assembly such as fire safety standards, O.C.G.A. § 25-2-12, or compliance with the Erosion and Sedimentation Act, O.C.G.A. § 12-7-1 et seq. City of Decatur v. DeKalb County, 256 Ga. App. 46, 567 S.E.2d 376 (2002).

OPINIONS OF THE ATTORNEY GENERAL

Regulation of activities excluded from regulation by § 12-7-17 prohibited. — Local ordinances may not regulate land disturbing activities which are expressly excluded from regulation under O.C.G.A. § 12-7-17. 1987 Op. Att'y Gen. No. 87-20.

12-7-5. Adoption of rules and regulations for localities without ordinances.

The board, by appropriate rules and regulations, shall adopt the procedures governing land-disturbing activities which are conducted in those counties and municipalities which do not have in effect an ordinance conforming to this chapter. Such rules and regulations shall be developed by the division in consultation with the commission and shall contain provisions which meet those minimum requirements set forth in Code Section 12-7-6.

History. — Ga. L. 1975, p. 994, § 6; Ga. L. 1988, p. 269, § 25; Ga. L. 1989, p. 1295, § 2; Ga. L. 2003, p. 224, § 5.

Cross references. — Powers of the commission generally, § 2-6-27. Powers of districts generally, § 2-6-33.

Administrative rules and regulations. — Erosion and sedimentation control, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-7.

12-7-6. Best management practices; compliance with federal law; minimum requirements for rules, regulations, ordinances, or resolutions.

(a)(1) Best management practices as set forth in subsection (b) of this Code section shall be required for all land-disturbing activities. Proper design, installation, and maintenance of best management practices shall constitute a complete defense to any action by the director or to any other allegation of noncompliance with paragraph

(2) of this subsection or any substantially similar terms contained in a permit for the discharge of storm water issued pursuant to subsection (f) of Code Section 12-5-30. As used in this subsection, the terms "proper design" and "properly designed" mean designed in accordance with the hydraulic design specifications contained in the "Manual for Erosion and Sediment Control in Georgia" specified in subsection (b) of this Code section.

(2) A discharge of storm-water runoff from disturbed areas where best management practices have not been properly designed, installed, and maintained shall constitute a separate violation of any land-disturbing permit issued by a local issuing authority or of any state general permit issued by the division pursuant to subsection (f) of Code Section 12-5-30 for each day on which such discharge results in the turbidity of receiving waters being increased by more than 25 nephelometric turbidity units for waters supporting warm water fisheries or by more than ten nephelometric turbidity units for waters classified as trout waters. The turbidity of the receiving waters shall be measured in accordance with guidelines to be issued by the director. This paragraph shall not apply to any land disturbance associated with the construction of single-family homes which are not part of a larger common plan of development or sale unless the planned disturbance for such construction is equal to or greater than five acres.

(3) Failure properly to design, install, or maintain best management practices shall constitute a violation of any land-disturbing permit issued by a local issuing authority or of any state general permit issued by the division pursuant to subsection (f) of Code Section 12-5-30 for each day on which such failure occurs.

(4) The director may require, in accordance with regulations adopted by the board, reasonable and prudent monitoring of the turbidity level of receiving waters into which discharges from land-disturbing activities occur.

(b) The rules and regulations, ordinances, or resolutions adopted pursuant to this chapter for the purpose of governing land-disturbing activities shall require, as a minimum, protections at least as stringent as the state general permit; and best management practices, including sound conservation and engineering practices to prevent and minimize erosion and resultant sedimentation, which are consistent with, and no less stringent than, those practices contained in the "Manual for Erosion and Sediment Control In Georgia" published by the State Soil and Water Conservation Commission as of January 1 of the year in which the land-disturbing activity was permitted, as well as the following:

(1) Stripping of vegetation, regrading, and other development activities shall be conducted in such a manner so as to minimize erosion;

(2) Cut and fill operations must be kept to a minimum;

(3) Development plans must conform to topography and soil type, so as to create the lowest practicable erosion potential;

(4) Whenever feasible, natural vegetation shall be retained, protected, and supplemented;

(5) The disturbed area and the duration of exposure to erosive elements shall be kept to a practicable minimum;

(6) Disturbed soil shall be stabilized as quickly as practicable;

(7) Temporary vegetation or mulching shall be employed to protect exposed critical areas during development;

(8) Permanent vegetation and structural erosion control measures must be installed as soon as practicable;

(9) To the extent necessary, sediment in run-off water must be trapped by the use of debris basins, sediment basins, silt traps, or similar measures until the disturbed area is stabilized. As used in this paragraph, a disturbed area is stabilized when it is brought to a condition of continuous compliance with the requirements of this chapter;

(10) Adequate provisions must be provided to minimize damage from surface water to the cut face of excavations or the sloping surfaces of fills;

(11) Cuts and fills may not endanger adjoining property;

(12) Fills may not encroach upon natural watercourses or constructed channels in a manner so as to adversely affect other property owners;

(13) Grading equipment must cross flowing streams by the means of bridges or culverts, except when such methods are not feasible, provided, in any case, that such crossings must be kept to a minimum;

(14) Land-disturbing activity plans for erosion and sedimentation control shall include provisions for treatment or control of any source of sediments and adequate sedimentation control facilities to retain sediments on site or preclude sedimentation of adjacent waters beyond the levels specified in subsection (a) of this Code section;

(15)(A) There is established a 25 foot buffer along the banks of all state waters, as measured horizontally from the point where

vegetation has been wrested by normal stream flow or wave action, except:

(i) As provided by paragraphs (16) and (17) of this subsection;

(ii) Where the director determines to allow a variance that is at least as protective of natural resources and the environment;

(iii) Where otherwise allowed by the director pursuant to Code Section 12-2-8;

(iv) Where a drainage structure or a roadway drainage structure must be constructed, provided that adequate erosion control measures are incorporated in the project plans and specifications and are implemented;

(v) Along any ephemeral stream. As used in this division, the term "ephemeral stream" means a stream:

(I) That under normal circumstances has water flowing only during and for a short duration after precipitation events;

(II) That has the channel located above the ground-water table year round;

(III) For which ground water is not a source of water; and

(IV) For which runoff from precipitation is the primary source of water flow; or

(vi) Where shoreline stabilization is installed; provided, however, that this exception shall be limited to the construction of bulkheads and sea walls only to the extent required to prevent the erosion of the shoreline. This exception shall be limited to Lake Oconee and Lake Sinclair and shall be limited to the duration of such construction.

Unless exempted under division (v) of this subparagraph, buffers of at least 25 feet established pursuant to Part 6 of Article 5 of Chapter 5 of this title shall remain in force unless a variance is granted by the director as provided in this paragraph.

(B) No land-disturbing activities shall be conducted within any such buffer; and a buffer shall remain in its natural, undisturbed state of vegetation until all land-disturbing activities on the construction site are completed, except as otherwise provided by this paragraph. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; provided, however, that any person constructing a single-family residence, when such residence is

constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed.

(C) On or before December 31, 2004, the board shall adopt rules which contain specific criteria for the grant or denial by the director of requests for variances. After such date, no variance shall be granted by the director which is not consistent with the criteria contained in such rules. Such rules shall provide, at a minimum, that the director shall consider granting a variance in the following circumstances:

(i) Where a proposed land-disturbing activity within the buffer would require the landowner to acquire a permit from the United States Army Corps of Engineers under Section 404 of the federal Water Pollution Control Act Amendment of 1972, 33 U.S.C. Section 1344, and the Corps of Engineers has approved a mitigation plan to be implemented as a condition of such a permit;

(ii) Where the landowner provides a plan satisfactory to the director that shows that, even with the proposed land-disturbing activity within the buffer, the completed project will result in maintained or improved water quality downstream of the project; or

(iii) Where a project with a proposed land-disturbing activity within the buffer is located in or upstream and within ten linear miles of a stream segment listed as impaired under Section 303(d) of the federal Water Pollution Control Act Amendment of 1972, 33 U.S.C. Section 1313(d) and the landowner provides a plan satisfactory to the director that shows that the completed project will result in maintained or improved water quality in such listed stream segment and that the project has no adverse impact relative to the pollutants of concern in such stream segment.

All projects covered under divisions (i), (ii), and (iii) of this subparagraph shall meet all criteria set forth in rules for specific variance criteria adopted by the board by December 31, 2004.

(D) The buffer shall not apply to the following land-disturbing activities, provided that they occur at an angle, as measured from the point of crossing, within 25 degrees of perpendicular to the stream; cause a width of disturbance of not more than 50 feet within the buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented:

(i) Stream crossings for water lines; or

(ii) Stream crossings for sewer lines;

(16) There is established a 50 foot buffer, as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action, along the banks of any state waters classified as "trout streams" pursuant to Article 2 of Chapter 5 of this title except where a roadway drainage structure must be constructed; provided, however, that small springs and streams classified as trout streams which discharge an average annual flow of 25 gallons per minute or less shall have a 25 foot buffer or they may be piped, at the discretion of the landowner, pursuant to the terms of a rule providing for a general variance promulgated by the board providing for notice to the division or local issuing authority of the location and extent of the piping and prescribed methodology for minimizing the impact of such piping and for measuring the volume of water discharged by the stream. Any such pipe must stop short of the downstream landowner's property, and the landowner must comply with the buffer requirement for any adjacent trout streams. The director may grant a variance from such buffer to allow land-disturbing activity, provided that adequate erosion control measures are incorporated in the project plans and specifications and are implemented. The following requirements shall apply to any such buffer:

(A) No land-disturbing activities shall be conducted within a buffer and a buffer shall remain in its natural, undisturbed state of vegetation until all land-disturbing activities on the construction site are completed. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation as long as a protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed; provided, however, that any person constructing a single-family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a buffer at any time as long as protective vegetative cover remains to protect water quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep shade on the stream bed;

(B) On or before December 31, 2000, the board shall adopt rules which contain specific criteria for the grant or denial by the director of requests for variances. After such date, no variance shall be granted by the director which is not consistent with the criteria contained in such rules; provided, however, that, should the board fail to adopt rules which contain specific criteria for the grant or denial of requests for variances by the director on or before December 31, 2000, the authority of the director to issue such variances shall be suspended until the board adopts such rules; and

(C) The buffer shall not apply to the following land-disturbing activities, provided that they occur at an angle, as measured from the point of crossing, within 25 degrees of perpendicular to the stream; they cause a width of disturbance of not more than 50 feet within the buffer; and adequate erosion control measures are incorporated into the project plans and specifications and are implemented:

(i) Stream crossings for water lines; or

(ii) Stream crossings for sewer lines; and

(17)(A) There is established a 25 foot buffer along coastal marshlands, as measured horizontally from the coastal marshland-upland interface, as determined in accordance with Part 4 of Article 4 of Chapter 5 of this title, the "Coastal Marshlands Protection Act of 1970," and the rules and regulations promulgated thereunder, except:

(i) Where the director determines to allow a variance that is at least as protective of natural resources and the environment;

(ii) Where otherwise allowed by the director pursuant to Code Section 12-2-8;

(iii) Where an alteration within the buffer area has been authorized pursuant to Code Section 12-5-286;

(iv) For maintenance of any currently serviceable structure, landscaping, or hardscaping, including bridges, roads, parking lots, golf courses, golf cart paths, retaining walls, bulkheads, and patios; provided, however, that if such maintenance requires any land-disturbing activity, adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented;

(v) Where a drainage structure or roadway drainage structure is constructed or maintained; provided, however, that adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented;

(vi) On the landward side of any currently serviceable shoreline stabilization structure; and

(vii) For the maintenance of any manmade storm-water detention basin, golf course pond, or impoundment that is located entirely within the property of a single individual, partnership, or corporation; provided, however, that adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented.

(B) No land-disturbing activity shall be conducted within any such buffer and a buffer shall remain in its current, undisturbed state of vegetation until all land-disturbing activities on the construction site are completed, except as otherwise provided by this paragraph. Once the final stabilization of the site is achieved, a buffer may be thinned or trimmed of vegetation so long as a protective vegetative cover remains to protect water quality and aquatic habitat; provided, however, that any person constructing a single-family residence, when such residence is constructed by or under contract with the owner for his or her own occupancy, may thin or trim vegetation in a buffer at any time so long as a protective vegetative cover remains to protect water quality and aquatic habitat.

(C) On or before December 31, 2015, the board shall promulgate rules and regulations that:

(i) Contain criteria for the grant or denial by the director of requests for variances pursuant to this paragraph, including where an alteration within the buffer area has been authorized pursuant to a permit issued by the United States Army Corps of Engineers under Section 404 of the Federal Water Pollution Control Act of 1972, as amended, or Section 10 of the Rivers and Harbors Act of 1899; provided, however, that adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented; and

(ii) Provide for variances by rule, subject to specified conditions, for certain categories of activities within the buffer that will have minimal impact on the water quality or aquatic habitat of the adjacent marsh, including where the area within the buffer is not more than 500 square feet; provided, however, that adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented.

(D) The board may adopt rules and regulations that provide for an expedited process for certain categories of activities within the buffer based on the size, scope, location, and character of the proposed activity within the buffer.

(E) The buffer requirements of this paragraph shall not apply to crossings for utility lines that cause a width of disturbance of not more than 50 feet within the buffer; provided, however, that adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented.

(F) The buffer shall not apply to:

(i) Any land-disturbing activity conducted pursuant to and in compliance with a valid and effective land-disturbing permit issued subsequent to April 22, 2014, and prior to December 31, 2015; provided, however, that adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented; or

(ii) Any lot for which the preliminary plat has been approved prior to December 31, 2015, if roadways, bridges, or water and sewer lines have been extended to such lot prior to December 31, 2015, and if the requirement to maintain a 25 foot buffer would consume at least 18 percent of the high ground of the platted lot otherwise available for development; provided, however, that adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented.

(b.1) On or before June 30, 2022, the board shall promulgate rules and regulations that contain specific criteria for the approval or denial by the director of requests for variances for road construction and maintenance projects undertaken by the Department of Transportation when:

(1) An alteration within the buffer area has been authorized pursuant to a permit issued by the United States Army Corps of Engineers under Section 404 of the Federal Water Pollution Control Act of 1972, as amended, or Section 10 of the Rivers and Harbors Act of 1899; provided, however, that adequate erosion control measures are incorporated into the project plans and specifications and such measures are fully implemented; or

(2) The land-disturbing activity is not eligible for a permit issued by the United States Army Corps of Engineers under Section 404 of the Federal Water Pollution Control Act of 1972, as amended, and involves the piping, filling, or rerouting of waters that are not jurisdictional waters of the United States regardless as to whether or not such waters have been classified as primary or secondary trout waters.

(c) Nothing contained in this chapter shall prevent any local issuing authority from adopting rules and regulations, ordinances, or resolutions which contain stream buffer requirements that exceed the minimum requirements in subsection (b) of this Code section.

(d) The fact that land-disturbing activity for which a permit has been issued results in injury to the property of another shall neither constitute proof of nor create a presumption of a violation of the standards provided for in this Code section or the terms of the permit.

History. — Ga. L. 1975, p. 994, § 4; Ga. L. 1980, p. 942, § 3; Ga. L. 1989, p. 1295, § 3; Ga. L. 1990, p. 8, § 12; Ga. L. 1994, p. 1650, § 2; Ga. L. 1995, p. 10, § 12; Ga. L. 1995, p. 150, § 2; Ga. L. 2000, p. 1430, § 2; Ga. L. 2003, p. 224, § 5; Ga. L. 2004, p. 352, § 1; Ga. L. 2006, p. 72, § 12/SB 465; Ga. L. 2009, p. 619, § 1/SB 155; Ga. L. 2010, p. 523, § 1/HB 1359; Ga. L. 2012, p. 775, § 12/HB 942; Ga. L. 2015, p. 1051, §§ 2, 3/SB 101; Ga. L. 2016, p. 864, § 12/HB 737; Ga. L. 2017, p. 774, § 12/HB 323; Ga. L. 2021, p. 526, § 1/HB 577.

The 2021 amendment, effective July 1, 2021, added subsection (b.1).

Cross references. — Establishment of land-use regulations within districts generally, § 2-6-35. Prohibition against cutting, harvesting, and other uses of sea oats, § 12-5-310 et seq. Stream buffers, §§ 12-2-8, 12-5-451, 12-5-453, 12-5-582.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, a misspelling of "vegetation" was corrected in paragraph (8) (now paragraph (b)(8)).

Pursuant to Code Section 28-9-5, in 1996, "State Soil and Water Conservation Commission" was substituted for "Georgia Soil and Water Conservation Commission" near the end of subsection (b) and a comma was substituted for a semicolon following "are not feasible" in paragraph (b)(13).

Pursuant to Code Section 28-9-5, in 2015, "December 31, 2015" was substituted for "the effective date of this Act" in division (b)(17)(F)(i), and "December 31, 2015," was twice substituted for "the effective date of this Act" in division (b)(17)(F)(ii).

Pursuant to Code Section 28-9-5, in 2016, a comma was removed following "natural, undisturbed" in subparagraph (b)(16)(A).

Editor's notes. — Ga. L. 2015, p. 1051, § 4/SB 101, not codified by the General Assembly, provides: "This Act shall become effective upon its approval by the Governor or upon its becoming law without such approval for purposes of promulgating rules and regulations and shall become effective on December 31, 2015, for all other purposes." This Act was signed by the Governor on May 6, 2015.

U.S. Code. — Section 404 of the Federal Water Pollution Control Act of 1972, as referred to in subsection (b.1), is codified as 33 U.S.C.S. § 1344.

Section 10 of the Rivers and Harbors Act of 1899, as referred to in subsection (b.1), is codified as 33 U.S.C.S. § 403.

Law reviews. — For article on the 2004 amendment of this Code section, see 21 Ga. St. U.L. Rev. 8 (2004). For survey article on real property law, see 67 Mercer L. Rev. 193 (2015).

JUDICIAL DECISIONS

Exclusion of evidence for violations. — Trial court did not err in denying defendant's motion in limine to exclude evidence relating to the defendant's violations of the Georgia Water Quality Control Act, O.C.G.A. § 12-5-20 et seq., and the Sedimentation Control Act, O.C.G.A. §§ 12-7-2 and 12-7-6(a), because the evidence was relevant to the plaintiffs' negligence per se claims. Pulte Home Corp. v. Simerly, 322 Ga. App. 699, 746 S.E.2d 173 (2013).

Organization lacked standing to appeal consent order. — Trial court erred by concluding that an organization had standing to appeal a consent order between a property owner and the Director of the Environmental Protection Division (EPD) with regard to soil erosion as it lacked standing to appeal based upon its inability to demonstrate redressability as it failed to identify a procedural requirement the EPD violated, and the consent order did not fall within the categories of orders that required provision of notice and opportunity for comment. Ctr. for a Sustainable Coast, Inc. v. Turner, 324 Ga. App. 762, 751 S.E.2d 555 (2013).

Cited in Hughey v. JMS Dev. Corp., 78 F.3d 1523 (11th Cir. 1996); Coastal Marshlands Prot. Comm. v. Ctr. for a Sustainable Coast, 286 Ga. App. 518, 649 S.E.2d 619 (2007).

OPINIONS OF THE ATTORNEY GENERAL

Approving variances in vegetation buffer. — City or county approved as an "issuing authority" for land-disturbing permits may not approve variances O.C.G.A. § 12-7-6. Only the Georgia Environmental Protection Division may approve vegetation buffer variances under the Erosion and Sedimentation Act, O.C.G.A. § 12-7-1 et seq. 1990 Op. Att'y Gen. No. 90-40.

Vegetative buffer for state waters. — The 25 foot undisturbed natural vegetative buffer referenced in paragraph (16) (now paragraph (b)(15)) of O.C.G.A. § 12-7-6 is normally to be retained adjacent to any state waters including, but not limited to, ponds, lakes, reservoirs, and coastal marshes. 1993 Op. Att'y Gen. No. 93-7.

Stormwater handling. — State is not required to seek and obtain permits for post-development stormwater handling and that a local government, even if certified as a local issuing authority, may not condition the issuance of a land disturbance permit to the state, or the state's contractors, on compliance with any requirements, including local post-development stormwater regulations, other than the requirements set forth in O.C.G.A. § 12-7-6(b) and the state general permit. Further, a local government may not require the state to enter into a stormwater facility maintenance agreement, either as a condition for issuance of a permit or for connecting to the local storm sewer. A local government may, however, require payment of a local stormwater management fee from the state before allowing a state construction project to connect to the local sewer system. 2013 Op. Att'y Gen. No. 13-3.

12-7-7. Permit or notice of intent required for land-disturbing activities; approval of application and issuance of permit; denial of permit; bond requirement.

(a) No land-disturbing activities shall be conducted in this state, except those land-disturbing activities provided for in Code Section 12-7-17, without the operator first securing a permit from a local issuing authority or providing notice of intent to the division as required by this Code section.

(b) In those counties, municipalities, and service areas for water or water and sewer authorities which are certified as local issuing authorities pursuant to subsection (a) of Code Section 12-7-8:

(1) The application for such permit shall be made to and the permit shall be issued by the governing authority of the county wherein such land-disturbing activities are to occur, in the event that such activities will occur outside the corporate limits of a municipality;

(2) In those instances where such activities will occur within the corporate limits of any municipality, the application for such permit shall be made to and the permit shall be issued by the governing authority of the municipality in which such land-disturbing activities are to occur;

(3) In those instances where such activities will occur within the service area of a water authority or water and sewer authority, the application of such permit shall be made to and the permit shall be

issued by such authority in which such land-disturbing activities are to occur within the authority's service area; and

(4) The local issuing authority shall conduct inspections and enforce the permits it issues.

(c) In those counties, municipalities, and service areas for water or water and sewer authorities which are not certified pursuant to subsection (a) of Code Section 12-7-8, the terms of the state general permit shall apply, those terms shall be enforced by the division, and no individual land-disturbing activity permit under this Code section will be required; provided, however, that notice of intent shall be submitted to the division prior to commencement of any land-disturbing activities under the state general permit in any of such uncertified counties, municipalities, and service areas for water or water and sewer authorities.

(d)(1) Fees assessed pursuant to paragraph (5) of subsection (a) of Code Section 12-5-23 shall be calculated and paid by the primary permittee as defined in the state general permit for each acre of land-disturbing activity included in the planned development or each phase of development.

(2) In a jurisdiction that is certified pursuant to subsection (a) of Code Section 12-7-8, half of any such fees levied shall be submitted by the applicant to the local issuing authority and half of such fees shall be submitted to the division; except that any and all fees due from an entity which is required to give notice pursuant to paragraph (9) or (10) of Code Section 12-7-17 shall be submitted in full to the division, regardless of the existence of a local issuing authority in the jurisdiction. In a jurisdiction where there is no local issuing authority, the full fee shall be submitted to the division.

(e) Except as provided in this subsection, no permit shall be issued pursuant to subsection (b) of this Code section unless the erosion and sediment control plan has been approved by the appropriate district as is required by Code Section 12-7-10. When the jurisdiction or entity that is certified pursuant to subsection (a) of Code Section 12-7-8 lying within the boundaries of the district demonstrates capabilities to review and approve an erosion and sediment control plan and requests an agreement with the district to conduct such review and approval, the district, with the concurrence of the commission, shall enter into an agreement which allows the jurisdiction or entity that is certified pursuant to subsection (a) of Code Section 12-7-8 to conduct review and approval without referring the application and plan to the district, if such jurisdiction or entity that is certified pursuant to subsection (a) of Code Section 12-7-8 meets the conditions specified by the district as set forth in the agreement. A district may not enter into an agreement

authorized in this Code section with any jurisdiction or entity that is not certified pursuant to subsection (a) of Code Section 12-7-8.

(f)(1) If a permit applicant has had two or more violations of previous permits or this Code section within three years prior to the date of filing of the application under consideration, the local issuing authority may deny the permit application.

(2) The local issuing authority may require the permit applicant to post a bond in the form of government security, cash, irrevocable letter of credit, or any combination thereof up to, but not exceeding, $3,000.00 per acre of the proposed land-disturbing activity, prior to issuing the permit. If the applicant does not comply with this Code section or with the conditions of the permit after issuance, the local issuing authority may call the bond or any part thereof to be forfeited and may use the proceeds to hire a contractor to stabilize the site of the land-disturbing activity and bring it into compliance. This subsection shall not apply unless there is in effect an ordinance or statute specifically providing for hearing and judicial review of any determination or order of the local issuing authority with respect to alleged permit violations.

History. — Ga. L. 1975, p. 994, § 7; Ga. L. 1980, p. 942, § 5; Ga. L. 1988, p. 269, § 26; Ga. L. 1989, p. 1295, § 4; Ga. L. 1994, p. 1650, §§ 3, 4; Ga. L. 2003, p. 224, § 5; Ga. L. 2020, p. 488, § 2/SB 445.

The 2020 amendment, effective July 29, 2020, substituted "counties, municipalities, and service areas for water or water and sewer authorities" for "counties and municipalities" in subsection (b); deleted "and" at the end of paragraph (b)(2); added paragraph (b)(3) and redesignated former paragraph (b)(3) as present paragraph (b)(4); in subsection (c), substituted "counties, municipalities, and service areas for water or water and sewer authorities" for "counties and municipalities" and substituted "counties, municipalities, and service areas for water or water and sewer authorities" for "counties or municipalities" at the end; in subsection (e), substituted "jurisdiction or entity that is certified pursuant to subsection (a) of Code Section 12-7-8" for "governing authority of a county or municipality", substituted "jurisdiction or entity that is certified pursuant to subsection (a) of Code Section 12-7-8" for "governing authority" twice in the second sentence, and substituted "any jurisdiction or entity that" for "the governing authority of any county or municipality which" in the third sentence.

Cross references. — Powers of the commission generally, § 2-6-27. Powers of districts generally, § 2-6-33.

JUDICIAL DECISIONS

Grandfathering or non-conforming use. — When a landowner made no effort to comply with the Georgia Erosion and Sedimentation Act, O.C.G.A. § 12-7-1 et seq., until the landowner covenanted to maintain the property in agricultural use for a period of ten years, and the record did not show that the landowner fulfilled the necessary regulatory requirements as was necessary for the landowner to have a valid permit under the rule, the trial court erred in granting summary judgment in the landowner's favor and ruling that the landowner's subsequent use of the property as a landfill was grandfathered as a non-conforming use under the applicable

zoning ordinance. Flippen Alliance for Cmty. Empowerment, Inc. v. Brannan, 267 Ga. App. 134, 601 S.E.2d 106 (2004).

12-7-7.1. Erosion and sediment control plan prepared; completion; implementation.

(a) As used in this Code section, the term "contractor" means the individual, firm, corporation, or combination thereof or governmental organization contracting with the Department of Transportation or State Road and Tollway Authority for the performance of prescribed work.

(b)(1) In addition to the requirements of Code Section 12-7-6, the Department of Transportation or the State Road and Tollway Authority after July 1, 2003, shall not contract for land-disturbing activity on any construction or maintenance project that will disturb one or more contiguous acres of land until an erosion and sediment control plan for such project has been prepared and accepted pursuant to this Code section.

(2) Through its own forces or by means of the acquisition of professional service pursuant to the provisions of Chapter 22 of Title 50, the Department of Transportation or the State Road and Tollway Authority shall be responsible for the preparation of an erosion and sediment control plan for any construction or maintenance project as required by paragraph (1) of this subsection. Any consultant providing such professional service shall be prequalified by the Department of Transportation as a responsible bidder for the design of erosion and sediment control plans. The division shall assist the Department of Transportation in developing the prequalification approval process for purposes of this subsection.

(c) Upon completion of a proposed plan, the same shall be submitted to the division for review and comment as required by the state general permit.

(d)(1) All bidders for any construction or maintenance project subject to this Code section shall review and submit with their bid proposal a cost estimate as a separate bid for the implementation of the plan, it being understood that the contractor may utilize either its own personnel and resources, qualified subcontractors, or both for implementation of the plan. All contractors and subcontractors for such project shall be prequalified by the Department of Transportation as a responsible bidder for the installation of erosion and sediment control devices in accordance with a plan. The division shall assist the Department of Transportation in developing the prequalification approval process for purposes of this subsection.

(2) The contractor for a construction or maintenance project subject to this Code section shall be responsible for implementing the plan on the awarded project. Payment to any contractor under any contract for implementing any part or all of any plan shall not be on a lump sum basis; rather, such payment shall be based upon unit prices for specific quantities of work performed pursuant to the approved erosion and sediment control plan plus any additional quantities of completed work necessitated by project conditions affecting erosion and sediment control, including without limitation soil types and weather conditions. Charges for all maintenance and cleaning of erosion and sediment control devices shall likewise be paid on a unit price basis.

(e)(1) Through the services of independent consultants, contractors, or subcontractors, or by its own forces, the Department of Transportation shall monitor the water quality and inspect the installation and maintenance of the best management practices in accordance with the plan. All such consultants, contractors, or subcontractors shall be prequalified by the Department of Transportation as a responsible bidder for the inspection of such best management practices and shall have the necessary expertise to determine that such practices are being installed and maintained in accordance with the plan. The division shall assist the Department of Transportation in developing the prequalification approval process for purposes of this subsection.

(2) Proper design, installation, and maintenance of best management practices shall constitute a complete defense to any action by the director or to any other allegation of noncompliance with paragraph (2) of subsection (a) of Code Section 12-7-6.

(3) If deficiencies in the plan or installation or maintenance of best management practices are discovered during the inspection, the Department of Transportation or the State Road and Tollway Authority shall determine the appropriate corrective action. Further, the Department of Transportation or State Road and Tollway Authority may require the consultant to amend the plan or the contractor to change its procedures by change order or supplemental agreement in order to institute such changes as may be necessary to correct any errors or deficiencies in the plan, the implementation of the plan, or the maintenance of the best management practices.

(4) The division, the Department of Transportation, or the State Road and Tollway Authority shall control or coordinate the work of its employees inspecting any project so as to prevent any delay of, interference with, or hindrance to any contractor performing land-disturbing activity on any project subject to the provisions of this Code section.

(f)(1) There shall be an Erosion and Sediment Control Overview Council which shall approve the Manual for Erosion and Sediment Control in Georgia prior to publication by the commission. In addition, the council shall provide guidance on the best management practices for implementing any erosion and sediment control plan for purposes of this Code section. The council shall be composed of nine members, including one member of the House of Representatives who shall be appointed by the Speaker of the House of Representatives and serve at the pleasure thereof; one member of the Senate who shall be appointed by the Lieutenant Governor and serve at the pleasure thereof; and seven members who shall be appointed by the Governor and serve at the pleasure thereof, including one employee each from the Department of Transportation, the Environmental Protection Division of the Department of Natural Resources, and the State Road and Tollway Authority, a professional engineer licensed to practice in this state from a private engineering consulting firm practicing environmental engineering, one representative of the highway contracting industry certified by the Department of Transportation, one representative of the electric utility industry, and a chairperson. The council shall meet prior to December 1, 2015, to approve the most current version of the manual and at all other times as necessary to approve any subsequent changes or updates to the manual prior to its implementation. Such meetings shall be held at the call of the chairperson. Each councilmember shall receive a daily allowance in the amount specified in subsection (b) of Code Section 45-7-21; provided, however, that any full-time state employee serving on the council shall draw no compensation but shall receive necessary expenses. The commissioner is authorized to pay such compensation and expenses from department funds.

(2) The council may develop recommendations governing the preparation of plans and the installation and maintenance of best management practices. If a dispute concerning the requirements of this Code section should arise, the Erosion and Sediment Control Overview Council shall mediate the dispute.

(g) Nothing in this Code section shall be construed to affect the division's authority under Article 2 of Chapter 5 of this title, the "Georgia Water Quality Control Act."

History. — Code 1981, § 12-7-7.1, enacted by Ga. L. 2000, p. 1673, § 1; Ga. L. 2001, p. 1251, § 2-1; Ga. L. 2001, Ex. Sess., p. 317, § 2; Ga. L. 2003, p. 224, § 5; Ga. L. 2015, p. 35, § 4/HB 397.

Cross references. — Powers and duties of Department of Transportation, § 32-2-2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2000, "Transportation" was substituted for "Transporation" in paragraph (b)(2).

12-7-8. Certification of locality as local issuing authority; periodic review; procedure for revoking certification; enforcement actions.

(a)(1) If a county or municipality has enacted ordinances which meet or exceed the standards, requirements, and provisions of this chapter and the state general permit, except that the standards, requirements, and provisions of the ordinances for monitoring, reporting, inspections, design standards, turbidity standards, education and training, and project size thresholds with regard to education and training requirements shall not exceed the state general permit requirements, and which are enforceable by such county or municipality, and if a county or municipality documents that it employs or contracts with qualified personnel to implement enacted ordinances, the director shall certify such county or municipality as a local issuing authority for the purposes of this chapter.

(2) A local issuing authority shall regulate both primary and secondary permittees as such terms are defined in the state general permit. Primary permittees shall be responsible for installation and maintenance of best management practices where the primary permittee is conducting land-disturbing activities. Secondary permittees shall be responsible for installation and maintenance of best management practices where the secondary permittee is conducting land-disturbing activities. A local issuing authority must review, revise, or amend its ordinances within 12 months of any amendment to this chapter.

(3) Any land-disturbing activities by a local issuing authority shall be subject to the same requirements of the ordinances such local issuing authority adopted pursuant to this chapter as are applied to private persons, and the division shall enforce such requirements upon the local issuing authority.

(4)(A) If a local issuing authority certified by the director under paragraph (1) of this subsection has within its jurisdiction an area served by a water authority or water and sewer authority which has been authorized by local law to be responsible for storm-water management and to implement and enforce all relevant ordinances and regulations and, pursuant to an intergovernmental agreement with the governing authority of a county or municipality, operates a storm-water utility and maintains the storm-water management system and soil erosion and sedimentation control permitting, inspection, and enforcement within such county or municipality, such water authority or water and sewer authority may, in the sole discretion of the director, be certified as the local issuing authority for the county or municipality which it serves.

(B) In the event that a water authority or water and sewer authority serves more than one county or municipality that is a local issuing authority certified by the director under paragraph (1) of this subsection, such water authority or water and sewer authority must have authority to implement and enforce all relevant ordinances and regulations from and an intergovernmental agreement with every applicable county or municipality before the director may certify such water authority or water and sewer authority as a local issuing authority for any county or municipality which it serves.

(C) In the event that a water authority or water and sewer authority serves less than an entire county or municipality that is a local issuing authority certified by the director under paragraph (1) of this subsection, the intergovernmental agreement described under this paragraph shall specify the jurisdictional boundaries within which the water authority or water and sewer authority shall act as the local issuing authority.

(b) The districts or the commission or both shall review semi-annually the actions of jurisdictions and entities which have been certified as local issuing authorities pursuant to subsection (a) of this Code section. The districts or the commission or both may provide technical assistance to any jurisdiction or entity for the purpose of improving the effectiveness of the jurisdiction's or entity's erosion and sedimentation control program. The districts or the commission shall notify the division and request investigation by the division if any deficient or ineffective local program is found.

(c) The board, on or before December 31, 2003, shall promulgate rules and regulations setting forth the requirements and standards for certification and the procedures for decertification of a local issuing authority. The division may periodically review the actions of jurisdictions and entities which have been certified as local issuing authorities pursuant to subsection (a) of this Code section. Such review may include, but shall not be limited to, review of the administration and enforcement of and compliance with the applicable ordinances and regulations and review of conformance with an agreement, if any, between the district and the local issuing authority. If such review indicates that the jurisdiction or entity certified pursuant to subsection (a) of this Code section has not administered, enforced, or complied with its ordinances or regulations or has not conducted the program in accordance with subsection (e) of Code Section 12-7-7, the division shall notify that jurisdiction or entity in writing. The jurisdiction or entity so notified shall have 90 days within which to take the necessary corrective action to retain certification as a local issuing authority. If the jurisdiction or entity does not take necessary corrective action within 90

days after notification by the division, the division shall revoke the certification of the jurisdiction or entity as a local issuing authority.

(d) The director may determine that the public interest requires initiation of an enforcement action by the division. Where such a determination is made and the local issuing authority has failed to secure compliance, the director may implement the board's rules and seek compliance under provisions of Code Sections 12-7-12 through 12-7-15. For purposes of this subsection, enforcement actions taken by the division pursuant to Code Sections 12-7-12 through 12-7-15 shall not require prior revocation of certification of the jurisdiction or entity as a local issuing authority.

History. — Ga. L. 1975, p. 994, § 12; Ga. L. 1980, p. 942, § 8; Ga. L. 1985, p. 1224, § 1; Ga. L. 1988, p. 269, § 27; Ga. L. 1989, p. 1295, § 5; Ga. L. 1994, p. 1650, § 5; Ga. L. 1995, p. 150, § 3; Ga. L. 2003, p. 224, § 5; Ga. L. 2007, p. 127, § 2/HB 463; Ga. L. 2019, p. 606, § 3/HB 493; Ga. L. 2020, p. 488, § 3/SB 445; Ga. L. 2021, p. 922, § 12/HB 497.

The 2019 amendment, effective July 1, 2019, in paragraph (a)(1), inserted "or contracts with" and substituted "shall certify" for "may certify" near the end; and deleted "any agreement entered into pursuant to" preceding "subsection (e) of Code Section 12-7-7" near the end of the fourth sentence of subsection (c).

The 2020 amendment, effective July 29, 2020, substituted "jurisdiction or entity" for "county or municipality" throughout this Code section; added paragraph (a)(4); in subsection (b), substituted "jurisdictions and entities" for "counties and municipalities" in the first sentence and substituted "jurisdiction's or entity's" for "county's or municipality's" in the second sentence; in subsection (c) substituted "jurisdictions and entities" for "counties and municipalities", substituted "the applicable" for "a governing authority's", inserted "and regulations", and substituted "the local issuing authority" for "the governing local issuing authority" in the third sentence; substituted "jurisdiction or entity" for "governing authority of any county or municipality", inserted "or regulations", and substituted "that jurisdiction or entity in" for "the governing authority of the county or municipality" in the fourth sentence; and substituted "jurisdiction or entity" for "governing authority of the county or municipality" in the fifth sentence.

The 2021 amendment, effective May 10, 2021, part of an Act to revise, modernize, and correct the Code, in subsection (a), redesignated former paragraph (a)(4) as present subparagraph (a)(4)(A), and redesignated former divisions (a)(4)(i) and (a)(4)(ii) as present subparagraphs (a)(4)(B) and (a)(4)(C), respectively.

Cross references. — Powers of the commission generally, § 2-6-27. Powers of districts generally, § 2-6-33.

Editor's notes. — Ga. L. 2019, p. 606, § 1/HB 493, not codified by the General Assembly, provides: "This Act shall be known and may be cited as the 'Private Permitting Review and Inspection Act.'"

Law reviews. — For survey article on environment, natural resources, and land use, see 34 Mercer L. Rev. 145 (1982).

12-7-9. Applications for permits; erosion and sediment control plans and data; time for issuance or denial.

(a) Applications for permits shall be submitted in accordance with this chapter and the rules and regulations, ordinances, and resolutions adopted pursuant to this chapter. Such applications shall be accompanied by the applicant's erosion and sediment control plans and by such supportive data as will affirmatively demonstrate that the

land-disturbing activity proposed will be carried out in such a manner that the minimum requirements set forth in Code Section 12-7-6 shall be met. All applications shall contain a certification stating that the plan preparer or the designee thereof visited the site prior to creation of the plan or that such a visit was not required in accordance with rules and regulations established by the board.

(b) No permit shall be issued to any applicant unless the local issuing authority affirmatively determines that the plan embracing such activities meets the requirements of Code Section 12-7-6. All applicable fees shall be paid prior to issuance of the land disturbance permit by the local issuing authority.

(c) Permits shall be issued or denied as soon as practicable after the application therefor has been filed with the local issuing authority, but in any event not later than 45 days thereafter.

History. — Ga. L. 1975, p. 994, § 8; Ga. L. 1989, p. 1295, § 6; Ga. L. 2003, p. 224, § 5.

12-7-10. Referral of application and plan to district; time for action.

Except as otherwise provided by Code Section 12-7-7, immediately upon receipt of an application for a permit the application and plan for sediment and erosion control shall be referred to the appropriate district wherein such land-disturbing activities are proposed to take place, for its review and approval or disapproval concerning the adequacy of the erosion and sediment control plan proposed by the applicant. A district shall approve or disapprove a plan within 35 days of receipt. Failure of a district to act within 35 days shall be considered an approval of the pending plan.

History. — Ga. L. 1975, p. 994, § 9; Ga. L. 1980, p. 942, § 6; Ga. L. 2003, p. 224, § 5.

Cross references. — Powers of districts generally, § 2-6-33.

12-7-11. Statement of reasons for denial of permit required; conditions for approval; suspension, revocation, or modification of permit.

(a) Within the time specified by Code Section 12-7-9, the local issuing authority shall issue or deny the permit. The local issuing authority, upon denial of a permit, shall state its reasons for the denial, setting forth specifically wherein such application is found to be deficient. Any land-disturbing activity permitted under this chapter shall be carried out in accordance with this chapter and the ordinance, resolution, or rules and regulations adopted and promulgated pursuant to this

chapter. The local issuing authority shall specify on the permit the conditions under which the activity may be undertaken.

(b) The permit may be suspended, revoked, or modified by the local issuing authority, as to all or any portion of the land affected by the plan, upon a finding that the holder or his or her successor in title is not in compliance with the approved erosion and sediment control plan or that the holder or his or her successor in title is in violation of this chapter or any ordinance, resolution, rule, or regulation adopted or promulgated pursuant to this chapter. A holder of a permit shall notify any successor in title to him or her as to all or any portion of the land affected by the approved plan of the conditions contained in the permit.

History. — Ga. L. 1975, p. 994, § 10; Ga. L. 1989, p. 1295, § 7; Ga. L. 2003, p. 224, § 5.

12-7-12. Orders directed to violators; stop work order procedures.

(a) Except as provided in subsection (d) of this Code section, whenever the director has reason to believe that a violation of any provision of this chapter, any rule or regulation of the board, or any order of the director has occurred in a county or municipality which is not certified pursuant to subsection (a) of Code Section 12-7-8, the director may issue an order directed to such violator or violators. The order shall specify the provisions of this chapter or the rules or regulations or order alleged to have been violated and may require that land-disturbing activity be stopped until necessary corrective action and mitigation have been taken or may require that necessary corrective action and mitigation be taken within a reasonable time to be prescribed in the order. Any order issued by the director under this Code section shall be signed by the director. Any such order shall become final unless the person or persons named therein request, in writing, a hearing pursuant to Code Section 12-7-16.

(b) Except as provided in subsection (d) of this Code section, whenever a local issuing authority has reason to believe that a violation of any provision of a local ordinance or resolution has occurred within the jurisdiction of the local issuing authority, the local issuing authority may require that land-disturbing activity be stopped until necessary corrective action and mitigation have been taken or may require that necessary corrective action and mitigation be taken within a reasonable time.

(c) The following procedures shall apply to the issuances of stop work orders:

(1) For the first and second violations of the provisions of this chapter, the director or the local issuing authority shall issue a

written warning to the violator. The violator shall have five days to correct the violation. If the violation is not corrected within five days, the director or local issuing authority shall issue a stop work order requiring that land-disturbing activities be stopped until necessary corrective action or mitigation has occurred; provided, however, that, if the violation presents an imminent threat to public health or waters of the state, the director or local issuing authority shall issue an immediate stop work order in lieu of a warning;

(2) For a third and each subsequent violation, the director or local issuing authority shall issue an immediate stop work order; and

(3) All stop work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred.

(d) When a violation of this chapter in the form of taking action without a permit, failure to maintain a stream buffer, or significant amounts of sediment, as determined by the local issuing authority or by the director or his or her designee, have been or are being discharged into state waters and where best management practices have not been properly designed, installed, and maintained, a stop work order shall be issued by the local issuing authority or by the director or his or her designee. All such stop work orders shall be effective immediately upon issuance and shall be in effect until the necessary corrective action or mitigation has occurred. Such stop work orders shall apply to all land-disturbing activity on the site with the exception of the installation and maintenance of temporary or permanent erosion and sediment controls.

History. — Ga. L. 1980, p. 942, § 9; Ga. L. 1994, p. 1650, § 6; Ga. L. 2000, p. 1430, § 3; Ga. L. 2003, p. 224, § 5.

Law reviews. — For annual survey on administrative law, see 66 Mercer L. Rev. 1 (2014).

JUDICIAL DECISIONS

Organization lacked standing to appeal consent order. — Trial court erred by concluding that an organization had standing to appeal a consent order between a property owner and the Director of the Environmental Protection Division (EPD) with regard to soil erosion as it lacked standing to appeal based upon its inability to demonstrate redressability as it failed to identify a procedural requirement the EPD violated, and the consent order did not fall within the categories of orders that required provision of notice and opportunity for comment. Ctr. for a Sustainable Coast, Inc. v. Turner, 324 Ga. App. 762, 751 S.E.2d 555 (2013).

12-7-13. Injunctions.

Whenever, in the judgment of the director, any person has engaged in or is about to engage in any act or practice which constitutes or would constitute a violation of this chapter, the rules and regulations adopted

pursuant to this chapter, or any order or permit conditions in a county or municipality which is not certified pursuant to subsection (a) of Code Section 12-7-8, he or she may make application to the superior court of the county where such person resides or, if such person is a nonresident of the state, to the superior court of the county in which the violative act or practice has been or is about to be engaged in for an order enjoining such act or practice or for an order requiring compliance with this chapter, the rules and regulations adopted pursuant to this chapter, or the order or permit condition. Upon a showing by the director that such person has engaged in or is about to engage in any such violative act or practice, a permanent or temporary injunction, restraining order, or other order shall be granted without the necessity of showing the lack of an adequate remedy at law.

History. — Ga. L. 1980, p. 942, § 9; Ga. L. 2003, p. 224, § 5.

12-7-14. Actions to restrain imminent danger; emergency orders; duration of effectiveness of orders.

(a) Notwithstanding any other provision of this chapter to the contrary, upon receipt of evidence that certain land-disturbing activities occurring in a municipality or county which is not certified pursuant to subsection (a) of Code Section 12-7-8 are presenting an imminent and substantial danger to the environment or to the health of humans, the director may bring an action as provided in Code Section 12-7-13 to restrain immediately any person causing or contributing to the danger caused by such land-disturbing activities or to take such other action as may be necessary.

(b) If it is not practicable to assure prompt protection of the environment or the health of humans solely by commencement of such a civil action, the director may issue such emergency orders as may be necessary to protect the environment or the health of humans who are or may be affected by such land-disturbing activities. Notwithstanding any other provision of this chapter, such order shall be immediately effective for a period of not more than 48 hours, unless the director brings an action under subsection (a) of this Code section before the expiration of such period. Whenever the director brings such an action within such period, such order shall be effective for such period of time as may be authorized by the court pending litigation or thereafter.

History. — Ga. L. 1980, p. 942, § 9; Ga. L. 2003, p. 224, § 5.

12-7-15. Civil penalty.

Any person who violates any provision of this chapter, the rules and regulations adopted pursuant to this chapter, or any permit condition or limitation established pursuant to this chapter or who negligently or intentionally fails or refuses to comply with any final or emergency order of the director issued as provided in this chapter shall be liable for a civil penalty not to exceed $2,500.00 per day. For the purpose of enforcing the provisions of this chapter, notwithstanding any provision in any city charter to the contrary, municipal courts shall be authorized to impose a penalty not to exceed $2,500.00 for each violation. Notwithstanding any limitation of law as to penalties which can be assessed for violations of county ordinances, any magistrate court or any other court of competent jurisdiction trying cases brought as violations of this chapter under county ordinances approved under this chapter shall be authorized to impose penalties for such violations not to exceed $2,500.00 for each violation. Each day during which the violation or failure or refusal to comply continues shall be a separate violation.

History. — Ga. L. 1980, p. 942, § 9; Ga. L. 1985, p. 1224, § 2; Ga. L. 1989, p. 1295, § 8; Ga. L. 1994, p. 1650, § 7; Ga. L. 2000, p. 1430, § 4; Ga. L. 2003, p. 224, § 5.

12-7-16. Hearings and review.

All hearings on and review of contested matters, orders, or permits issued by or filed against the director and all hearings on and review of any other enforcement actions or orders initiated by the director under this chapter shall be provided and conducted in accordance with subsection (c) of Code Section 12-2-2. The hearing and review procedure provided in this Code section is to the exclusion of all other means of hearings or review.

History. — Ga. L. 1980, p. 942, § 9; Ga. L. 2003, p. 224, § 5.

JUDICIAL DECISIONS

Organization lacked standing to appeal consent order. — Trial court erred by concluding that an organization had standing to appeal a consent order between a property owner and the Director of the Environmental Protection Division (EPD) with regard to soil erosion as it lacked standing to appeal based upon its inability to demonstrate redressability as it failed to identify a procedural requirement the EPD violated, and the consent order did not fall within the categories of orders that required provision of notice and opportunity for comment. Ctr. for a Sustainable Coast, Inc. v. Turner, 324 Ga. App. 762, 751 S.E.2d 555 (2013).

12-7-17. Exemptions.

This chapter shall not apply to the following activities:

(1) Surface mining, as the same is defined in Code Section 12-4-72;

(2) Granite quarrying and land clearing for such quarrying;

(3) Such minor land-disturbing activities as home gardens and individual home landscaping, repairs, maintenance work, fences, and other related activities which result in minor soil erosion;

(4) The construction of single-family residences, when such construction disturbs less than one acre and is not a part of a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre and not otherwise exempted under this paragraph; provided, however, that construction of any such residence shall conform to the minimum requirements as set forth in subsection (b) of Code Section 12-7-6 and this paragraph. For single-family residence construction covered by the provisions of this paragraph, there shall be a buffer zone between the residence and any state waters classified as trout streams pursuant to Article 2 of Chapter 5 of this title. In any such buffer zone, no land-disturbing activity shall be constructed between the residence and the point where vegetation has been wrested by normal stream flow or wave action from the banks of the trout waters. For primary trout waters, the buffer zone shall be at least 50 horizontal feet, and no variance to a smaller buffer shall be granted. For secondary trout waters, the buffer zone shall be at least 50 horizontal feet, but the director may grant variances to no less than 25 feet. Regardless of whether a trout stream is primary or secondary, for first order trout waters, which are streams into which no other streams flow except for springs, the buffer shall be at least 25 horizontal feet, and no variance to a smaller buffer shall be granted. The minimum requirements of subsection (b) of Code Section 12-7-6 and the buffer zones provided by this paragraph shall be enforced by the issuing authority;

(5) Agricultural operations as defined in Code Section 1-3-3 to include those practices involving the establishment, cultivation, or harvesting of products of the field or orchard; the preparation and planting of pasture land; farm ponds; dairy operations; livestock and poultry management practices; and the construction of farm buildings;

(6) Forestry land management practices, including harvesting; provided, however, that when such exempt forestry practices cause or result in land-disturbing or other activities otherwise prohibited in a buffer, as established in paragraphs (15) and (16) of subsection (b) of Code Section 12-7-6, no other land-disturbing activities, except for

normal forest management practices, shall be allowed on the entire property upon which the forestry practices were conducted for a period of three years after the completion of such forestry practices;

(7) Any project carried out under the technical supervision of the Natural Resources Conservation Service of the United States Department of Agriculture;

(8) Any project involving less than one acre of disturbed area; provided, however, that this exemption shall not apply to any land-disturbing activity within a larger common plan of development or sale with a planned disturbance of equal to or greater than one acre or within 200 feet of the bank of any state waters, and for purposes of this paragraph, "state waters" excludes channels and drainageways which have water in them only during and immediately after rainfall events and intermittent streams which do not have water in them year round; provided, however, that any person responsible for a project which involves less than one acre, which involves land-disturbing activity, and which is within 200 feet of any such excluded channel or drainageway must prevent sediment from moving beyond the boundaries of the property on which such project is located and provided, further, that nothing contained in this chapter shall prevent a city or county which is a local issuing authority from regulating any such project which is not specifically exempted by paragraph (1), (2), (3), (4), (5), (6), (7), (9), or (10) of this Code section;

(9) Construction or maintenance projects, or both, undertaken or financed in whole or in part, or both, by the Department of Transportation, the Georgia Highway Authority, or the State Road and Tollway Authority; or any road construction or maintenance project, or both, undertaken by any county or municipality; provided, however, that construction or maintenance projects of the Department of Transportation or the State Road and Tollway Authority which disturb one or more contiguous acres of land shall be subject to the provisions of Code Section 12-7-7.1; except where the Department of Transportation, the Georgia Highway Authority, or the State Road and Tollway Authority is a secondary permittee for a project located within a larger common plan of development or sale under the state general permit, in which case a copy of a notice of intent under the state general permit shall be submitted to the local issuing authority, the local issuing authority shall enforce compliance with the minimum requirements set forth in Code Section 12-7-6 as if a permit had been issued, and violations shall be subject to the same penalties as violations by permit holders;

(10) Any land-disturbing activities conducted by any electric membership corporation or municipal electrical system or any public

utility under the regulatory jurisdiction of the Public Service Commission, any utility under the regulatory jurisdiction of the Federal Energy Regulatory Commission, any cable television system as defined in Code Section 36-18-1, or any agency or instrumentality of the United States engaged in the generation, transmission, or distribution of power; except where an electric membership corporation or municipal electrical system or any public utility under the regulatory jurisdiction of the Public Service Commission, any utility under the regulatory jurisdiction of the Federal Energy Regulatory Commission, any cable television system as defined in Code Section 36-18-1, or any agency or instrumentality of the United States engaged in the generation, transmission, or distribution of power is a secondary permittee for a project located within a larger common plan of development or sale under the state general permit, in which case the local issuing authority shall enforce compliance with the minimum requirements set forth in Code Section 12-7-6 as if a permit had been issued, and violations shall be subject to the same penalties as violations by permit holders; and

(11) Public water system reservoirs.

History. — Ga. L. 1975, p. 994, § 11; Ga. L. 1980, p. 942, § 7; Ga. L. 1985, p. 1224, § 3; Ga. L. 1989, p. 1295, § 9; Ga. L. 1994, p. 1650, § 8; Ga. L. 1995, p. 10, § 12; Ga. L. 1995, p. 150, § 4; Ga. L. 2000, p. 1430, § 5; Ga. L. 2000, p. 1673, § 2; Ga. L. 2001, p. 892, § 4; Ga. L. 2001, p. 1251, § 2-1; Ga. L. 2003, p. 224, § 5.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2001, "Public water system reservoirs" was substituted for "Public Water System Reservoirs" in paragraph (a)(11) (now paragraph (11)).

OPINIONS OF THE ATTORNEY GENERAL

Term "project" as used in paragraph (a)(7) of O.C.G.A. § 12-7-17 refers to the entire proposed development project and the exemption applies only when the entire proposed development project is five acres or less, regardless of the size of the area of land to be disturbed. 1984 Op. Att'y Gen. No. 84-21.

Regulation of excluded activities prohibited. — Local ordinances may not regulate land disturbing activities which are expressly excluded from regulation under O.C.G.A. § 12-7-17. 1987 Op. Att'y Gen. No. 87-20.

12-7-18. Effect of chapter on requirements of the "Georgia Water Quality Control Act."

No provision of this chapter shall authorize any person to violate Article 2 of Chapter 5 of this title, the "Georgia Water Quality Control Act," or the rules and regulations promulgated and approved under said article or to pollute any waters of this state as defined in said article.

History. — Ga. L. 1975, p. 994, § 13; Ga. L. 2003, p. 224, § 5.

12-7-19. Education and training requirements; required programs; instructor qualifications; expiration of certification.

(a)(1) Persons involved in land development design, review, permitting, construction, monitoring, or inspection or any land-disturbing activity shall meet the education and training certification requirements, dependent on his or her level of involvement with the process, as developed by the commission in accordance with this Code section and in consultation with the division and the Stakeholder Advisory Board created pursuant to Code Section 12-7-20.

(2) On or after May 14, 2007, for each site on which land-disturbing activity occurs, each entity or person acting as either a primary, secondary, or tertiary permittee, as defined in the state general permit, shall have as a minimum one person who is in responsible charge of erosion and sedimentation control activities on behalf of said entity or person and meets the applicable education or training certification requirements developed by the commission present on site whenever land-disturbing activities are conducted on that site. A project site shall herein be defined as any land disturbance site or multiple sites within a larger common plan of development or sale permitted by an owner or operator for compliance with the state general permit.

(3) Persons or entities involved in projects not requiring a state general permit but otherwise requiring certified personnel on site may contract with certified persons to meet the requirements of this chapter.

(4) If a state general permittee who has operational control of land-disturbing activities for a site has met the certification requirements of paragraph (1) of subsection (b) of this Code section, then any person or entity involved in land-disturbing activity at that site and operating in a subcontractor capacity for such permittee shall have until December 31, 2007, to meet those educational requirements specified in paragraph (4) of subsection (b) of Code Section 12-7-19 and shall not be required to meet any educational requirements that exceed those specified in said paragraph.

(b) No less than the following training programs shall be established:

(1) A fundamentals seminar (Level 1) will be established which provides sufficient training to all participants as to the applicable laws, requirements, processes, and latest means and methods recognized by this state to effectively control erosion and sedimentation;

(2) An advanced fundamentals seminar (Level 1) will be established which provides additional details of installation and maintenance of best management practices for both regulatory and nonregulatory inspectors and others;

(3) An introduction to design seminar (Level 2) will be established which provides required training to design and review a successful erosion, sedimentation, and pollution control plan;

(4) An awareness seminar (Level 1) will be established which does not exceed two hours in duration and which provides information regarding the erosion and sediment control practices and processes in the state and which will include an overview of the systems, laws, and roles of the participants; and

(5) A trainer and instructor seminar will be established for both Level 1 and Level 2 trainers and instructors which will provide the minimum training as to applicable laws and best management practices and design of erosion, sedimentation, and pollution control plans in this state.

(c) Trainer and instructor qualifications will be established with the following minimum requirements:

(1) Level 1 trainers and instructors shall meet at least the following minimum requirements and any other requirements as set by the commission:

(A) Education: four-year college degree or five years' experience in the field of erosion and sediment control;

(B) Experience: five-years' experience in the field of erosion and sediment control. Where years of experience is used in lieu of the education requirement of subparagraph (A) of this paragraph, a total of ten years' field experience is required;

(C) Approval by the commission and the Stakeholder Advisory Board; and

(D) Successful completion of the Level 1 trainer and instructor seminar found in paragraph (5) of subsection (b) of this Code section; and

(2) Level 2 trainers and instructors shall meet at least the minimum requirements of a Level 1 trainer or instructor, any other requirements as set by the commission, and successful completion of the Level 2 trainer and instructor seminar created under paragraph (5) of subsection (b) of this Code section.

(d) In addition to the requirements of subsection (c) of this Code section, the commission shall establish and any person desirous of

holding certification must obtain a passing grade as established by the Stakeholder Advisory Board on a final exam covering the material taught in each mandatory seminar; provided, however, that there shall be no final exam requirement for purposes of paragraph (4) of subsection (b) of this Code section. Final exams may, at the discretion of the commission, serve in lieu of attendance at the seminar. Any person shall be authorized to administer a final examination for any seminar for which he or she was the instructor.

(e)(1) A certification provided by achieving the requirements established by the commission shall expire no later than three years after its issuance.

(2) A certified individual shall be required to attend and participate in at least four hours of approved continuing education courses, as established by the commission, every three years.

(3) A certification may be extended or renewed by meeting requirements established by the commission.

(4) Revocation procedures may be established by the commission in consultation with the division and the Stakeholder Advisory Board.

History. — Code 1981, § 12-7-19, enacted by Ga. L. 2003, p. 224, § 5; Ga. L. 2007, p. 127, § 3/HB 463.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2007, "May 14, 2007" was substituted for "the effective date of this subsection" near the beginning of paragraph (a)(2).

12-7-20. Creation of Stakeholder Advisory Board; responsibilities; procedures.

(a) There shall be a Stakeholder Advisory Board to consist of not more than 13 members.

(b) Members shall be appointed by the Governor, shall serve at the pleasure thereof, and shall represent the following interests:

(1) The division;

(2) The commission;

(3) Soil and water conservation districts;

(4) The Department of Transportation;

(5) Municipal governments;

(6) County governments;

(7) Public utilities;

(8) The engineering and design community;

(9) The construction community;

(10) The development community;

(11) The environmental community;

(12) The Erosion and Sediment Control Overview Council; and

(13) Educators.

(c) The Stakeholder Advisory Board shall elect one of its members as chairperson. The chairperson shall call all meetings of the Stakeholder Advisory Board.

(d) The Stakeholder Advisory Board shall be responsible for working together with the division and the commission to establish, evaluate, and maintain the education and training program established pursuant to Code Section 12-7-19, including but not limited to reviewing course curricula, educational materials, and exam and testing procedures; evaluating trainer and instructor qualifications; and reviewing audit results performed by the commission.

(e) The Stakeholder Advisory Board may conduct such meetings at such places and at such times as it may deem necessary or convenient to enable it to exercise fully and effectively its powers, perform its duties, and accomplish the objectives and purposes of this Code section. Meetings shall be held on the written notice of the chairperson. The notice of a meeting shall set forth the date, time, and place of the meeting. Minutes shall be kept of all meetings.

(f) A majority of the members shall constitute a quorum of the Stakeholder Advisory Board. The powers and duties of the Stakeholder Advisory Board shall be transacted, exercised, and performed only pursuant to an affirmative vote of a majority of those members present at a meeting at which a quorum is present.

(g) Members of the Stakeholder Advisory Board shall not be entitled to any compensation for the rendering of their services to the Stakeholder Advisory Board.

History. — Code 1981, § 12-7-20, enacted by Ga. L. 2003, p. 224, § 5.

Law reviews. — For note on the 2003 enactment of this Code section, see 20 Ga. St. U.L. Rev. 244 (2003).

12-7-21. Appointment of panel to study controls implemented pursuant to chapter; procedure and operation of panel.

Reserved.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2006, the designation of this Code section was reserved.

Editor's notes. — This Code section was repealed under its own terms effective July 1, 2006, and was based on Code

1981, § 12-7-21, enacted by Ga. L. 2003, p. 224, § 5.

12-7-22. Electronic filing and reporting system.

In order to achieve efficiencies and economies for both the division and the regulated community by the use of electronic filing for certain application and reporting requirements of this chapter and National Pollution Discharge Elimination System permits, the division and the Pollution Prevention Assistance Division of the department shall jointly work toward implementing such an electronic filing and reporting system as soon as practicable and allowable under federal regulations.

History. — Code 1981, § 12-7-22, enacted by Ga. L. 2003, p. 224, § 5.

Law reviews. — For note on the 2003 enactment of this Code section, see 20 Ga. St. U.L. Rev. 244 (2003).

CHAPTER 8

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Article 9

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12-8-200. Short title.

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12-8-201. Public policy.
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12-8-203. Rules and regulations.
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12-8-205. Criteria for property to qualify for limitation of liability.
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12-8-207. Limitation of expenses following approval of a corrective action plan.
12-8-208. Exceptions to limitation of liability.
12-8-209. Initial compliance status report.
12-8-210. Applicability of limitation of liability to persons who purchased after July 1, 2002, and before July 1, 2005.
12-8-211. Application to identified purchasers.

Cross references. — Waste control, T. 16, C. 7, A. 2, P. 3. Establishment of public authorities for recovery and utilization of resources contained in sewage sludge and solid waste, T. 36, C. 63.

Law reviews. — For article, "Recent Developments in Georgia Solid Waste Law Pile Up," see 28 Ga. St. B.J. 182 (1992). For annual survey article on local government law, see 50 Mercer L. Rev. 263 (1998).

OPINIONS OF THE ATTORNEY GENERAL

Probate court has no jurisdiction over waste management violations. — Probate court does not have jurisdiction to try or sentence an individual accused of violating the criminal provisions concerning waste management or air pollution. 1995 Op. Att'y Gen. No. U95-1.

ARTICLE 1

GENERAL PROVISIONS

Cross references. — Restrictions on location of and screening and fencing requirements for junkyards, § 32-6-240 et seq.

Law reviews. — For note on solid waste disposal, flow control ordinances, and regulations, see 32 Ga. L. Rev. 1227 (1998).

12-8-1. Notice of denial of individual sewage disposal permits; duty to consider denial in ad valorem tax determinations.

(a) As used in this Code section, the term "individual sewage disposal system" means a sewage disposal system, other than a public or community sewage disposal system, serving a single building, residence, or other facility designed or used for human occupancy or congregation and shall include septic tank systems and pit privies.

(b) In any case in which an application for an individual sewage disposal system permit is denied, it shall be the duty of the Department of Public Health or the county board of health denying such permit to

notify the applicant, in writing, of such denial. Such notices shall be mailed by first-class mail within 15 days of the date on which the application is denied. The notice shall contain the name and address of the applicant, a description of the property involved, the reasons for denial of the permit, and notification that the applicant should contact the county board of tax assessors for ad valorem tax purposes. It shall be the duty of the county board of tax assessors and the county tax appraisal staff of the county in which the property is located to consider the denial of an individual sewage disposal system permit and the reasons for such denial in determining the fair market value of such property for ad valorem tax purposes.

History. — Code 1933, § 88-310, enacted by Ga. L. 1978, p. 1663, § 1; Ga. L. 2009, p. 453, § 1-4/HB 228; Ga. L. 2011, p. 705, § 6-3/HB 214.

Cross references. — County ad valorem taxation generally, § 48-5-220 et seq.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 76.

ALR. — Injunction to prevent establishment or maintenance of garbage or sewage disposal plant, 47 A.L.R. 1154.

12-8-2. Dumping sanitary sewer, kitchen, or toilet wastes in storm or sanitary sewers prohibited; forfeiture of involved vehicles.

(a) No person, firm, or corporation shall place, dump, dispose of, or cause to be placed, dumped, or disposed of in a public storm or sanitary sewer pipeline or through manholes thereof, or otherwise, any contents or matter of or from any septic tank, waste water holding tank, grease trap, or other container serving the purpose of a septic tank, waste water holding tank, or grease trap, which contents or matter is made up wholly or partly by the sanitary sewer, kitchen, or toilet waste from any residential source or commercial or industrial waste from business processes from any commercial or industrial facility, unless the express written permission of the owner of such public storm or sewer pipeline is first obtained.

(b) Any person, firm, or corporation violating subsection (a) of this Code section shall be guilty of a misdemeanor.

(c) Any motor vehicle, trailer, and all other property and instruments utilized in the hauling, transporting, dumping, placing, or disposition of any contents or matter in any public sewer in violation of subsection (a) of this Code section are declared to be contraband and shall be subject to forfeiture according to the terms, provisions, conditions, and procedures set out in Chapter 16 of Title 9.

History. — Code 1981, § 12-8-2, enacted by Ga. L. 1986, p. 780, § 1; Ga. L. 2001, p. 4, § 12; Ga. L. 2015, p. 693, § 3-12/HB 233.

Editor's notes. — Ga. L. 2015, p. 693, § 4-1/HB 233, not codified by the General Assembly, provides: "This Act shall become effective on July 1, 2015, and shall apply to seizures of property for forfeiture that occur on or after that date. Any such seizure that occurs before July 1, 2015, shall be governed by the statute in effect at the time of such seizure."

Law reviews. — For article on the 2015 amendment of this Code section, see 32 Ga. St. U.L. Rev. 1 (2015).

ARTICLE 2

SOLID WASTE MANAGEMENT

Cross references. — Regulation of facilities discharging pollutants into waters of state, T. 12, C. 5, A. 2. Criminal penalties for littering public and private property, T. 16, C. 7, A. 2, P. 2 & 3. Restrictions on location of and screening and fencing requirements for junkyards, T. 32, C. 6, A. 8. Prohibition against transporting garbage, trash, waste, or refuse across state or county lines for dumping, § 36-1-16. Authority of counties and municipalities to enter into contracts to provide industrial waste water treatment services, § 36-60-2.

Editor's notes. — Ga. L. 1990, p. 412, § 1, effective March 30, 1990, repealed the Code sections formerly codified at this article and enacted the current article. The former article consisted of Code Sections 12-8-20 through 12-8-45 and was based on Ga. L. 1972, p. 1002, §§ 1-20; Ga. L. 1973, p. 1269, §§ 1-7; Ga. L. 1982, p. 3, § 12; Ga. L. 1988, p. 215, § 1; Ga. L. 1988, p. 1965, §§ 1-8; Ga. L. 1989, p. 144, §§ 1-7; Ga. L. 1989, p. 513, § 1; and Ga. L. 1990, p. 8, § 12.

Administrative rules and regulations. — Solid waste management, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-4.

Law reviews. — For article discussing regulation of selected activities to effect environmental planning, see 10 Ga. L. Rev. 53 (1975). For article, "The Resource Conservation and Recovery Act (RCRA) and the Georgia Solid Waste Management Act," see 38 Mercer L. Rev. 569 (1987).

For note on 1990 enactment of this article, see 7 Ga. St. U.L. Rev. 231 (1990). For note on 1993 amendment of this article, see 10 Ga. St. U.L. Rev. 46 (1993).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under Ga. L. 1972, p. 1002 are included in the annotations for this article.

Process of acquiring a permit for the operation of a sanitary landfill in Georgia begins with an application to the Environmental Protection Division (EPD) of the State Department of Natural Resources for a letter of acceptance signifying the geological suitability of the tract in question for operation of a sanitary landfill. The second step on the state level requires an application for a permit signifying that the specific plan for operation of the landfill meets the requirements of state law. One such requirement is a letter from the proper local governing body assuring the EPD that the operation of a sanitary landfill on that particular tract will comply with local zoning regulations. Button Gwinnett Landfill, Inc. v. Gwinnett County, 256 Ga. 818, 353 S.E.2d 328 (1987) (decided under Ga. L. 1972, p. 1002).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions rendered under Ga. L. 1972, p. 1002 are included in the annotations for this article.

Policy and intent of the Solid Waste Management Act, Ga. L. 1972, p. 1002, mandates that the director coordinate activities with local political jurisdictions so as to achieve a unified and effective statewide solid waste management program. 1976 Op. Att'y Gen. No. 76-14 (decided under Ga. L. 1972, p. 1002).

Division empowered to regulate solid waste handling. — Solid Waste Management Act, Ga. L. 1972, p. 1002, places the responsibility and power to regulate solid waste handling and management in Georgia in the hands of the Environmental Protection Division of the Department of Natural Resources. 1976 Op. Att'y Gen. No. 76-17 (decided under Ga. L. 1972, p. 1002).

Adoption of regulations by county boards of health. — Existence of general laws relating to the regulation of solid waste handling and management does not necessarily preclude the adoption of regulations on the same subject by county boards of health, provided such regulations have a reasonable relation to the protection of the health of the citizenry of the county and are not prohibited by express or implied language in the Solid Waste Management Act, Ga. L. 1972, p. 1002, or the rules and regulations promulgated thereunder. 1976 Op. Att'y Gen. No. 76-17 (decided under Ga. L. 1972, p. 1002).

Local regulation conflicting with article invalid. — To the extent that any regulation adopted by a county board of health clearly conflicted with the Solid Waste Management Act, Ga. L. 1972, p. 1002, the regulation would be invalid. 1976 Op. Att'y Gen. No. 76-17 (decided under Ga. L. 1972, p. 1002).

RESEARCH REFERENCES

ALR. — Validity of statutory or municipal regulations as to garbage, 135 A.L.R. 1305.

State and local regulation of private landowner's disposal of solid waste on own property, 37 A.L.R.4th 635.

Part 1

General Provisions

12-8-20. Short title.

This part shall be known and may be cited as the "Georgia Comprehensive Solid Waste Management Act."

History. — Code 1981, § 12-8-20, enacted by Ga. L. 1990, p. 412, § 1.

Law reviews. — For annual survey on local government law, see 42 Mercer L. Rev. 359 (1990). For summary review article on zoning and land use law, see 60 Mercer L. Rev. 457 (2008).

JUDICIAL DECISIONS

Unrefuted evidence presented in support of the county's motion for reconsideration established that the existing landfill did not accept C&D waste; therefore, the trial court's finding that the county did not permit the placement of C&D waste in the county's existing landfill was not supported by the evidence of

record. Lamar County v. E.T. Carlyle Co., 277 Ga. 690, 594 S.E.2d 335 (2004).

Garbage collection services contracts. — County's alleged anticompetitive conduct in enacting an ordinance authorizing the county to enter into a contract with a private enterprise for garbage collection was expressly contemplated by the Georgia Comprehensive Solid Waste Management Act, O.C.G.A. § 12-8-20 et seq., and, thus, the county was immune from state and federal antitrust laws. Strykr v. Long County Bd. of Comm'rs, 277 Ga. 624, 593 S.E.2d 348 (2004).

Prior consent order did not amount to criminal punishment to which double jeopardy prohibitions applied. — Trial court properly denied a solid waste facility operator's double jeopardy plea in bar of prosecution because even though the parties stipulated that the consent order and the criminal action alleged the same nuisance conduct and each proceeding had the same goals of restraint, deterrence, and abatement, the criminal action was not barred by the sanctions imposed in the consent order since the consent order did not amount to criminal punishment to which double jeopardy prohibitions applied. Wilbros, LLC v. State, 294 Ga. 514, 755 S.E.2d 145 (2014).

Cited in Chambers of Ga., Inc. v. Department of Natural Resources, 232 Ga. App. 632, 502 S.E.2d 553 (1998); R&J Murray, LLC v. Murray County, 282 Ga. 740, 653 S.E.2d 720 (2007).

12-8-21. Declaration of policy; legislative intent.

(a) It is declared to be the policy of the State of Georgia, in furtherance of its responsibility to protect the public health, safety, and well-being of its citizens and to protect and enhance the quality of its environment, to institute and maintain a comprehensive state-wide program for solid waste management and to prevent and abate litter, so as to assure that solid waste does not adversely affect the health, safety, and well-being of the public and that solid waste facilities, whether publicly or privately owned, do not degrade the quality of the environment by reason of their location, design, method of operation, or other means and which, to the extent feasible and practical, makes maximum utilization of the resources contained in solid waste.

(b) It is further declared to be the policy of the State of Georgia to educate and encourage generators and handlers of solid waste to reduce and minimize to the greatest extent possible the amount of solid waste which requires collection, treatment, or disposal through source reduction, reuse, composting, recycling, and other methods and to promote markets for and engage in the purchase of goods made from recovered materials and goods which are recyclable.

(c) It is the intent of the General Assembly that every effort be undertaken to reduce on a state-wide per capita basis the amount of municipal solid waste being received at disposal facilities.

(d) It is further the intent of the General Assembly that the director of the Environmental Protection Division of the Department of Natural Resources shall be the official charged with primary responsibility for the solid waste management program. The director, in exercising any authority granted in this part, shall conform to and implement the

policies outlined in this part and shall at all times coordinate his activities with those of other state agencies and local political jurisdictions so as to achieve a unified and effective solid waste management program in the state.

(e) It is further intended by the General Assembly that the director of the Environmental Protection Division of the Department of Natural Resources shall, in exercising any authority granted in this part, recognize that the states which share common borders with Georgia also share the vital natural resources of clean air, clean surface waters, and clean ground waters which flow across those common borders and that, therefore, those bordering states have a mutual interest with Georgia to manage solid waste in a manner that does not threaten to contaminate the shared natural resources. The director shall also recognize, however, that such mutual interest may not exist between Georgia and states which do not share common borders and natural resources with it. Therefore, the director is instructed to be particularly mindful of the need to monitor, inspect, and regulate closely that solid waste generated from sources located in states not sharing common borders and natural resources with Georgia.

(f) It is further the intent of the General Assembly that every effort be undertaken to ensure the proper management of scrap tires from the point of generation to the ultimate point of reuse, recycling, or disposal and that every effort be made to ensure that, where possible, they be reused or recycled rather than being disposed.

(g) It is further the intent of the General Assembly to provide a frame of reference for this state and all counties, municipal corporations, and solid waste management authorities in this state relating to the handling of yard trimmings. It is also the intent of the General Assembly to encourage beneficial reuse of yard trimmings and other vegetative matter by composting and other methods of recycling and return of such vegetative matter to the soil and by reuse of yard trimmings to promote bioenergy and renewable energy goals. The General Assembly, therefore, adopts and recommends the following hierarchy for handling yard trimmings:

(1) Naturalized, low-maintenance landscaping requiring little or no cutting;

(2) Grass cycling by mowing it high and letting it lie;

(3) Return to the soil or other beneficial reuse on the site where the material was grown, including but not limited to:

(A) Stacking branches into brush piles for use as wildlife habitats and for gradual decomposition into the soil;

(B) Composting on the site where the material was grown, followed by incorporation of the finished compost into the soil at that site; or

(C) Chipping woody material on the site where such material was generated; and

(4) Collecting yard trimmings and transporting them to another site to be:

(A) Processed for mulch or feedstock for composting;

(B) Processed for use as a bioenergy feedstock; or

(C) Disposed in a lined landfill having a permitted gas collection system in operation by which landfill gas is directed to equipment or facilities for beneficial reuse such as electrical power generation, industrial end use, or other beneficial use promoting renewable energy goals.

History. — Code 1981, § 12-8-21, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1992, p. 3259, § 1; Ga. L. 1993, p. 399, §§ 1, 2; Ga. L. 2005, p. 1247, §§ 1, 2/SB 122; Ga. L. 2011, p. 283, § 1/HB 274.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 165 (2011). For article, "Conservation and Natural Resources: Waste Management," see 28 Ga. St. U.L. Rev. 165 (2011).

JUDICIAL DECISIONS

Ordinance restricting waste disposal services upheld. — Georgia trial court erred by denying injunctive relief to a county and the county's chosen waste disposal company wherein it sought to prohibit an unauthorized waste company from providing services in the county against an ordinance because the ordinance served a legitimate public purpose by establishing means reasonably necessary to achieve the purpose of the county providing a comprehensive solid waste management plan as the county was required to do under O.C.G.A. § 12-8-31.1. Advanced Disposal Servs. Middle Ga., LLC v. Deep S. Sanitation, LLC, 296 Ga. 103, 765 S.E.2d 364 (2014).

Termination of garbage collection service for nonpayment of fee. — O.C.G.A. § 12-8-21(a) was not violated by provisions in a county ordinance authorizing the termination of a resident's garbage collection service for nonpayment of the collection fee. Strykr v. Long County Bd. of Comm'rs, 277 Ga. 624, 593 S.E.2d 348 (2004).

OPINIONS OF THE ATTORNEY GENERAL

Essential intent of subsection (c) of O.C.G.A. § 12-8-21 is the reduction of solid waste by 25 percent. This goal remains effective in applying related requirements of the Georgia Comprehensive Solid Waste Management Act, O.C.G.A. § 12-8-20 et seq., notwithstanding that the goal was originally expressed in terms of a calendar date which has passed. 1997 Op. Att'y Gen. No. 97-23.

RESEARCH REFERENCES

Am. Jur. 2d. — 25 Am. Jur. 2d, Drains and Drainage Districts, § 3. 61C Am. Jur. 2d, Pollution Control, §§ 633, 961 et seq.

12-8-22. Definitions.

As used in this article, the term:

(1) "Affected county" means, in addition to the county in which a facility is or is proposed to be located, each county contiguous to the host county and each county and municipality within a county that has a written agreement with the facility to dispose of solid waste.

(1.1) "Biomedical waste" means pathological waste, biological waste cultures and stocks of infectious agents and associated biologicals, contaminated animal carcasses (body parts, their bedding, and other wastes from such animals), sharps, chemotherapy waste, discarded medical equipment and parts, not including expendable supplies and materials which have not been decontaminated, as further defined in Rule 391-3-4-.15 of the board as such rule existed on January 1, 2006, and other such waste materials.

(2) "Board" means the Board of Natural Resources of the State of Georgia.

(3) "Certificate" means a document issued by a college or university of the University System of Georgia or other organization approved by the director stating that the operator has met the requirements of the board for the specified operator classification of the certification program.

(4) "Closure" means a procedure approved by the division which provides for the cessation of waste receipt at a solid waste disposal site and for the securing of the site in preparation for postclosure.

(4.1) "Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

(5) "Composting" means the controlled biological decomposition of organic matter into a stable, odor-free humus.

(5.1) "Construction or demolition waste" means waste building materials and rubble resulting from construction, remodeling, repair, or demolition operations on pavements, houses, commercial buildings, and other structures. Such waste includes but is not limited to waste containing asbestos, wood, bricks, metal, concrete, wallboard, paper, cardboard, and other nonputrescible wastes associated with

construction and demolition activities which have a low potential for ground-water contamination. Inert waste landfill materials approved by the board for disposal in landfills permitted by rule and regulation are also included in this definition if disposed in a construction or demolition waste landfill.

(6) "Contaminant" means any physical, chemical, biological, or radiological substance or matter.

(7) "Director" means the director of the Environmental Protection Division of the Department of Natural Resources.

(8) "Disposal facility" means any facility or location where the final deposition of solid waste occurs and includes but is not limited to landfilling and solid waste thermal treatment technology facilities.

(9) "Division" means the Environmental Protection Division of the Department of Natural Resources.

(9.1) "Feedstock" means raw material that is used in a machine or industrial process.

(10) "Financial responsibility mechanism" means a mechanism designed to demonstrate that sufficient funds will be available to meet specific environmental protection needs of solid waste handling facilities. Available financial responsibility mechanisms include but are not limited to insurance, trust funds, surety bonds, letters of credit, personal bonds, certificates of deposit, financial tests, and corporate guarantees as defined in 40 C.F.R. Part 264 Subpart H — Financial Requirements.

(10.1) "Gasification to fuels and chemicals" means a process through which recovered materials or other nonrecycled feedstock is heated and converted into a fuel-gas mixture in an oxygen-deficient atmosphere, and such mixture is converted into fuel, including ethanol and transportation fuel, chemicals, or other chemical feedstocks.

(10.2) "Gasification to fuels and chemicals facility" means a facility that collects, separates, stores, or converts nonrecycled feedstock into fuels, chemicals, or other valuable final or intermediate products using a gasification to fuels and chemicals process. Such term shall not include a waste handling facility or solid waste thermal treatment facility.

(11) "Generator" means any person in Georgia or in any other state who creates solid waste.

(12) "Hazardous constituent" means any substance listed as a hazardous constituent in regulations promulgated pursuant to the federal act by the administrator of the United States Environmental

Protection Agency which are in force and effect on February 1, 2004, codified as Appendix VIII to 40 C.F.R. Part 261 — Identification and Listing of Hazardous Waste.

(12.1) "Industrial solid waste" means solid waste generated by manufacturing or industrial processes or operations that is not a hazardous waste regulated under Part 1 of Article 3 of this chapter, the "Georgia Hazardous Waste Management Act." Such waste includes, but is not limited to, waste resulting from the following manufacturing processes: Electric power generation; fertilizer and agricultural chemicals; food and related products and by-products; inorganic chemicals; iron and steel products; leather and leather products; nonferrous metal and foundry products; organic chemicals; plastics and resins; pulp and paper; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textiles; transportation equipment; and water treatment. This term does not include mining waste or oil and gas waste.

(13) "Label" means a code label described in paragraphs (3) and (4) of subsection (b) of Code Section 12-8-34.

(14) "Landfill" means an area of land on which or an excavation in which solid waste is placed for permanent disposal and which is not a land application unit, surface impoundment, injection well, or compost pile.

(15) "Leachate collection system" means a system at a landfill for collection of the leachate which may percolate through the waste and into the soils surrounding the landfill.

(15.1) "Litter" has the meaning provided by Code Section 16-7-42.

(16) "Manifest" means a form or document used for identifying the quantity and composition and the origin, routing, and destination of special solid waste during its transportation from the point of generation, through any intermediate points, to the point of disposal, treatment, or storage.

(17) "Materials recovery facility" means a solid waste handling facility that provides for the extraction from solid waste of recoverable materials, materials suitable for use as a fuel or soil amendment, or any combination of such materials.

(17.1) "Multijurisdictional solid waste management plan" means a comprehensive solid waste plan adopted pursuant to Code Section 12-8-31.1 covering two or more jurisdictions.

(18) "Municipal solid waste" means any solid waste derived from households, including garbage, trash, and sanitary waste in septic tanks and means solid waste from single-family and multifamily

residences, hotels and motels, bunkhouses, campgrounds, picnic grounds, and day use recreation areas. The term includes yard trimmings, construction or demolition waste, and commercial solid waste but does not include solid waste from mining, agricultural, or silvicultural operations or industrial processes or operations.

(19) "Municipal solid waste disposal facility" means any facility or location where the final deposition of any amount of municipal solid waste occurs, whether or not mixed with or including commercial or industrial solid waste, and includes, but is not limited to, municipal solid waste landfills and municipal solid waste thermal treatment technology facilities.

(20) "Municipal solid waste landfill" means a disposal facility where any amount of municipal solid waste, whether or not mixed with or including commercial waste, industrial waste, nonhazardous sludges, or small quantity generator hazardous waste, is disposed of by means of placing an approved cover thereon.

(20.1) "Nonrecycled feedstock" means one or more of the following materials, derived from nonrecycled materials, that has been processed so that it may be used as a feedstock in a gasification to fuels and chemicals facility, but excluding coal refuse and scrap tires:

(A) Post-use plastics; or

(B) Materials for which the Environmental Protection Agency has made a nonwaste determination under 40 C.F.R. Section 241.3(c) or that are otherwise determined not to constitute waste.

(21) "Operator" means the person stationed on the site who is in responsible charge of and has direct supervision of daily field operations of a municipal solid waste disposal facility to ensure that the facility operates in compliance with the permit.

(22) "Person" means the State of Georgia or any other state or any agency or institution thereof and any municipality, county, political subdivision, public or private corporation, solid waste authority, special district empowered to engage in solid waste management activities, individual, partnership, association, or other entity in Georgia or any other state. This term also includes any officer or governing or managing body of any municipality, political subdivision, solid waste authority, special district empowered to engage in solid waste management activities, or public or private corporation in Georgia or any other state. This term also includes employees, departments, and agencies of the federal government.

(22.1) "Post-use plastics" means recovered plastics, derived from any source, that are not being used for their originally intended purpose and that might otherwise become waste if not processed at a

pyrolysis or gasification to fuels and chemicals facility or recycled, and the term includes plastics that may contain incidental contaminants or impurities such as paper labels or metal rings.

(23) "Postclosure" means a procedure approved by the division to provide for long-term financial assurance, monitoring, and maintenance of a solid waste disposal site to protect human health and the environment.

(24) "Private industry solid waste disposal facility" means a disposal facility which is operated exclusively by and for a private solid waste generator for the purpose of accepting solid waste generated exclusively by said private solid waste generator.

(24.1) "Pyrolysis" means a process through which post-use plastics are heated, in an oxygen-free environment, until melted and thermally decomposed, then cooled, condensed, and converted into oil, diesel, gasoline, home heating oil, or other liquid fuel; gasoline or diesel blendstock; chemicals or chemical feedstock; waxes or lubricants; or other similar raw materials or intermediate or final products.

(24.2) "Pyrolysis facility" means a facility that collects, separates, stores, or converts post-use plastics into fuels or other valuable final or intermediate products using a pyrolysis process. Pyrolysis facilities shall not be considered solid waste handling facilities or solid waste thermal treatment facilities.

(25) "Recovered materials" means those materials which have known use, reuse, or recycling potential; can be feasibly used, reused, or recycled; and have been diverted or removed from the solid waste stream for sale, use, reuse, or recycling, whether or not requiring subsequent separation and processing.

(26) "Recovered materials processing facility" means a facility engaged solely in the storage, processing, recycling, and resale or reuse of recovered materials. Such facility shall not be considered a solid waste handling facility; provided, however, that any solid waste generated by such facility shall be subject to all applicable laws and regulations relating to such solid waste.

(27) "Recycling" means any process by which materials which would otherwise become solid waste are collected, separated, or processed and reused or returned to use in the form of raw materials, intermediates, or products which can be used as a substitute for products not derived by such processes.

(27.1) "Regional landfill or regional solid waste disposal facility" means a facility owned by a county, municipality, authority, or special district empowered to engage in solid waste management activities,

or any combination thereof, which serves two or more or any combination of counties, municipalities, or special solid waste districts.

(27.2) "Regional solid waste management plan" means a comprehensive solid waste plan adopted pursuant to Code Section 12-8-31.1 covering two or more counties and may include one or more municipal corporations within those counties.

(28) "Retreadable casing" means a scrap tire suitable for retreading.

(29) "Rigid plastic bottle" means any rigid plastic container with a neck that is smaller than the container body with a capacity of 16 ounces or more and less than five gallons.

(30) "Rigid plastic container" means any formed or molded part comprised predominantly of plastic resin, having a relatively inflexible finite shape or form, and intended primarily as a single-service container with a capacity of eight ounces or more and less than five gallons.

(31) "Scrap tire" means a tire that is no longer suitable for its original intended purpose because of wear, damage, or defect.

(32) Reserved.

(33) "Solid waste" means any garbage or refuse; sludge from a waste-water treatment plant, water supply treatment plant, or air pollution control facility; and other discarded material including solid, semisolid, or contained gaseous material resulting from industrial, commercial, mining, and agricultural operations and community activities, but does not include recovered materials; post-use plastics and nonrecycled feedstock that are subsequently processed using a pyrolysis or gasification to fuels and chemicals process; solid or dissolved materials in domestic sewage; solid or dissolved materials in irrigation return flows or industrial discharges that are point sources subject to permit under 33 U.S.C. Section 1342; or source, special nuclear, or by-product material as defined by the federal Atomic Energy Act of 1954, as amended (68 Stat. 923).

(34) "Solid waste handling" means the storage, collection, transportation, treatment, utilization, processing, or disposal of solid waste or any combination of such activities, but does not include recovered materials processing or pyrolysis or gasification to fuels and chemicals processes, or the holding of post-use plastics or nonrecycled feedstock at a pyrolysis facility or gasification to fuels and chemicals facility prior to processing at the facility where those materials are being held to ensure production is not interrupted.

(35) "Solid waste handling facility" means any facility the primary purpose of which is the storage, collection, transportation, treatment, utilization, processing, or disposal, or any combination thereof, of solid waste, but does not include recovered materials processing facilities or pyrolysis or gasification to fuels and chemicals facilities.

(36) "Solid waste thermal treatment technology" means any solid waste handling facility the purpose of which is to reduce the amount of solid waste to be disposed of through a process of combustion, with or without the process of waste to energy.

(37) "Special solid waste" means any solid waste not otherwise regulated under Part 1 of Article 3 of this chapter, known as the "Georgia Hazardous Waste Management Act," and regulations promulgated under such part originating or produced from or by a source or generator not subject to regulation under Code Section 12-8-24.

(38) "Tire" means a continuous solid or pneumatic rubber covering designed for encircling the wheel of a motor vehicle and which is neither attached to the motor vehicle nor a part of the motor vehicle as original equipment.

(38.1) "Tire carrier" means any person engaged in collecting or transporting tires, other than new tires.

(39) "Tire retailer" means any person, other than a used motor vehicle parts dealer licensed in accordance with Chapter 47 of Title 43, engaged in the business of selling new replacement tires or used tires.

(40) "Tire retreader" means any person actively engaged in the business of retreading scrap tires by scarifying the surface to remove the old surface tread and attaching a new tread to make a usable tire.

(40.1) "Used tire" means a tire which has a minimum of 2/32 inch of road tread and which is still suitable for its original purpose but is no longer new. A tire retailer shall inventory and market used tires in substantially the same fashion as a new tire and be able to provide satisfactory evidence to the division that a market for the tire exists and the tire is in fact being marketed as a used tire. A used tire shall not be considered solid waste.

(41) "Waste to energy facility" means a solid waste handling facility that provides for the extraction and utilization of energy from municipal solid waste through a process of combustion.

(42) "Yard trimmings" means leaves, brush, grass clippings, shrub and tree prunings, discarded Christmas trees, nursery and greenhouse vegetative residuals, and vegetative matter resulting from landscaping development and maintenance other than mining, agricultural, and silvicultural operations.

History. — Code 1981, § 12-8-22, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1992, p. 2234, § 2; Ga. L. 1992, p. 3259, § 2; Ga. L. 1992, p. 3276, § 1; Ga. L. 1993, p. 91, § 12; Ga. L. 1993, p. 399, §§ 3, 4; Ga. L. 2005, p. 1247, §§ 3-6/SB 122; Ga. L. 2006, p. 275, § 3-1/HB 1320; Ga. L. 2012, p. 775, § 12/HB 942; Ga. L. 2013, p. 274, § 1/HB 226; Ga. L. 2018, p. 760, § 1/HB 785.

Cross references. — Disposal of diseased, disabled, or dead animals generally, T. 4, C. 5. Abandonment of dead dogs, §§ 4-8-1.1, 4-8-2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "semisolid" was substituted for "semi-solid" in paragraph (33).

Editor's notes. — Ga. L. 2006, p. 275, § 1-1/HB 1320, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Comprehensive Litter Prevention and Abatement Act of 2006.'"

Ga. L. 2006, p. 275, § 5-1/HB 1320, not codified by the General Assembly, provides that the Act shall become effective April 21, 2006, for purposes of adopting local ordinances to become effective on or after July 1, 2006.

U.S. Code. — The Federal Water Pollution Control Act or the Clean Water Act, referred to in paragraph (33) of this Code section, is codified at 33 U.S.C. § 1342.

Law reviews. — For article, "Conservation and Natural Resources: Waste Management," see 28 Ga. St. U.L. Rev. 165 (2011). For annual survey on zoning and land use law, see 69 Mercer L. Rev. 371 (2017).

For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 199 (1992).

JUDICIAL DECISIONS

Commerce clause protection. — Landfill operator with solid waste handling permit was within the "zone of interests" protected by the Commerce Clause because its ability or inability to operate impacted the flow of interstate commerce and therefore had standing to sue. Diamond Waste, Inc. v. Monroe County, 796 F. Supp. 1511 (M.D. Ga. 1992).

County ordinance was unconstitutional to the extent that the ordinance regulated the importation of solid waste into that county. Mullis Tree Serv., Inc. v. Bibb County, 822 F. Supp. 738 (M.D. Ga. 1993).

Out-of-state solid waste. — Definition of "solid waste" does not include waste generated outside the State of Georgia. Out-of-state waste is classified as "special solid waste." Diamond Waste, Inc. v. Monroe County, 796 F. Supp. 1511 (M.D. Ga. 1992).

Special solid waste. — "Special solid waste" is really just another name for out-of-state waste. Southern States Landfill, Inc. v. Georgia Dep't of Natural Resources, 801 F. Supp. 725 (M.D. Ga. 1992).

Recovered materials and not solid waste. — Because defendant carpet manufacturer's "selvage" could be processed into other items, was shipped for recycling, and shipments stopped when the manufacturer learned no recycling was taking place, the selvage constituted "recovered materials," not "solid waste" under O.C.G.A. § 12-8-22(25), (33), and the manufacturer was not liable for alleged violations of the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; Georgia's Hazardous Waste Management Act, O.C.G.A. T. 12, C. 8; and Comprehensive Solid Waste Management Act, O.C.G.A. § 12-8-20. Premier Assocs. v. EXL Polymers, Inc., 507 Fed. Appx. 831 (2013).

Cited in Perry v. Soil Remediation, Inc., 221 Ga. App. 386, 471 S.E.2d 320 (1996); Board of Comm'rs v. Guthrie, 273 Ga. 1, 537 S.E.2d 329 (2000).

RESEARCH REFERENCES

ALR. — Liability of private persons or corporation draining into sewer maintained by municipality or other public body for damages to riparian owners or others, 170 A.L.R. 1192.

What constitutes solid waste subject to regulation under Resource Conservation and Recovery Act (42 U.S.C.A. §§ 6901 et seq.), 83 A.L.R. Fed. 2d 235.

Am. Jur. 2d. — 25 Am. Jur. 2d, Drains and Drainage Districts, § 2.

C.J.S. — 28 C.J.S., Drains, §§ 1, 8.

12-8-23. Powers and duties of board.

In the performance of its duties the board shall have and may exercise the power to:

(1) Adopt, promulgate, modify, amend, and repeal rules and regulations to implement and enforce the provisions of this part as the board may deem necessary to provide for the control and management of solid waste to protect the environment and the health of humans. Such rules and regulations may be applicable to the state as a whole or may vary from area to area or may vary by waste characteristics, as may be appropriate to facilitate the accomplishment of the provisions, purposes, and policies of this part. The rules and regulations may include, but shall not be limited to, the following:

(A) Rules and regulations governing and controlling solid waste handling, including measures to ensure that solid waste management practices are regulated, governed, and controlled in the public interest;

(B) Rules and regulations prescribing the procedure to be followed in applying for permits and requiring the submission of such plans, specifications, verifications, and other pertinent information deemed relevant in connection with the issuance of such permits;

(C) Rules and regulations concerning the establishment of permits by rule;

(D) Rules and regulations establishing the use of a manifest during the generation and handling of special solid waste;

(E) Rules and regulations governing and controlling the handling of special solid waste and biomedical waste;

(F) Rules and regulations establishing criteria and a system of priorities for the distribution of any state funds as may be made available through a grant-in-aid program to assist financially local governmental agencies or authorities in the planning, implementing, maintaining, or operating of solid waste handling systems which are consistent with local and regional solid waste management plans;

(G) Rules and regulations establishing procedures and requirements for the postclosure care of all solid waste disposal facilities, including but not limited to corrective action of releases, ground-water monitoring, and maintenance of final cover;

(H) Rules and regulations establishing the criteria for approval, time periods for coverage, and other terms and conditions for the demonstration of financial responsibility required by this part and for the implementation of financial responsibility instruments;

(I) Rules and regulations establishing qualifications for municipal solid waste disposal facility operators and certification of such operators through colleges or universities of the University System of Georgia or other organizations as may be determined acceptable by the board;

(J) Rules and regulations regulating the generation, collection, processing, and disposal of scrap tires and the collection, inventory, and marketing of used tires and governing the investigation and cleanup of sites where scrap tires have been disposed regardless of the date when such disposal occurred; and

(K) Rules and regulations further defining what shall or shall not constitute "recovered materials"; and

(2) Take all necessary steps to ensure the effective enforcement of this part.

History. — Code 1981, § 12-8-23, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1992, p. 3259, § 3; Ga. L. 1992, p. 3276, § 2; Ga. L. 2013, p. 274, § 2/HB 226.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "and" was deleted at the end of subparagraph (1)(I) and the subparagraph (1)(J) added by the second 1992 amendment was redesignated as subparagraph (1)(K) and "; and" was substituted for a period at the end thereof.

Administrative rules and regulations. — Solid waste management, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-4.

Law reviews. — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 199 (1992).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 45. 63C Am. Jur. 2d, Public Officers and Employees, § 237 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 323 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 147.

12-8-23.1. Powers and duties of director.

(a) The director shall have and may exercise the following powers and duties:

(1) To exercise general supervision over the administration and enforcement of this part and all rules and regulations, orders, or permits promulgated or issued under this part;

(2) To encourage, participate in, or conduct studies, reviews, investigations, research, and demonstrations relating to solid waste management practices as he deems advisable and necessary;

(3)(A) To issue all permits contemplated by this part, stipulating in each permit the conditions or limitations under which such permit is to be issued, and to deny, revoke, transfer, modify, suspend, or amend such permits.

(B) To refuse to grant such permit if the director finds by clear and convincing evidence that the applicant for a permit or, in the case of a corporation, partnership, or association, an officer, director, manager, or shareholder of 5 percent or more of stock or financial interest in said corporation, partnership, or association:

(i) Has intentionally misrepresented or concealed any material fact in the application submitted to the director;

(ii) Has obtained or attempted to obtain the permit by misrepresentation or concealment;

(iii) Has been convicted by final judgment, and all appeals have been exhausted, in the State of Georgia or any federal court of any felony involving moral turpitude within the three years immediately preceding the application for a permit;

(iv) Has been convicted of any violations of any environmental laws punishable as a felony in any state or federal court within the five years preceding the application for a permit;

(v) Has knowingly, willfully, and consistently violated the prohibitions specified in Code Section 12-8-30.7; or

(vi) Has been adjudicated in contempt of any court order enforcing any federal environmental laws or any environmental laws of the State of Georgia within the five years preceding the application for a permit;

(4) To make investigations, analyses, and inspections to determine and ensure compliance with this part, the rules and regulations promulgated under this part, and any permits or orders which the director may issue;

(5) To enter into such contracts as may be required or necessary to effectuate this part or the rules and regulations promulgated under this part;

(6) To prepare, develop, amend, modify, submit, and implement any comprehensive plan or program sufficient to comply with this

part or any applicable federal act, or both, for the control, regulation, and monitoring of solid waste management practices in this state and to enforce such plan or program;

(7) To advise, consult, cooperate, and contract on solid waste management matters with other agencies of this state, political subdivisions of this state, and other designated organizations, authorities, or entities and, with the approval of the Governor, to negotiate and enter into agreements with the governments of other states and the United States and their several agencies, subdivisions, or designated organizations or entities;

(8) To issue, amend, modify, or revoke orders as may be necessary to ensure and enforce compliance with this part and all rules or regulations promulgated under this part;

(9) To institute, in the name of the division, proceedings of mandamus, injunction, or other proper administrative, civil, or criminal proceedings to enforce this part, the rules and regulations promulgated under this part, or any orders or permits issued under this part;

(10) To accept, receive, administer, and disburse grants from public or private sources for the purpose of the proper administration of this part or for the purpose of carrying out any of the duties, powers, or responsibilities under this part;

(11) To grant variances in accordance with this part and the rules and regulations promulgated under this part, provided that such variances are not inconsistent with any applicable federal act and rules or regulations promulgated under such federal act;

(12) To require any person who is engaged in solid waste handling subject to the permit by rule provisions of this part to notify the division in writing, within a reasonable number of days which the director shall specify, of the location and general description of such activity, identify the solid waste handled, and give any other information which may be deemed relevant, under such conditions as the director may prescribe;

(13) To render technical assistance to state, regional, and local governments and others in the planning and operation of solid waste handling;

(14) To develop criteria and a system of priorities for the distribution of any state funds as may be available through a state grant-in-aid program to assist financially local governments and authorities in the planning, implementing, maintaining, or operating of solid waste handling systems which are consistent with local and regional solid waste management plans prepared in accordance with the requirements of this part;

(15) To approve or disapprove projects for which loans or grants are made under any state or federal act to any municipality, county, authority, or agency of the state for the purpose of solid waste handling; provided, however, the financial review and approval or disapproval for a loan will be made by the Georgia Environmental Finance Authority;

(16) To develop environmental standards for solid waste management planning to assist local governments, authorities, and corporations in the preparation of local and regional plans prepared in accordance with the requirements of this part;

(17) To advise and consult, cooperate, and contract with other agencies of this state, authorities, political subdivisions of this state, and other designated agencies, entities, persons, and corporations and with the governments of other states and the United States and their several agencies, subdivisions, or designated organizations and entities on matters concerning educating the public on all aspects of proper solid waste management;

(18) To collect and disburse all fees and funds authorized or imposed by this article;

(19) To collect fees related to the sale of new replacement tires and with such fees administer such programs as may be necessary to ensure that scrap tires are regulated from the point of generation to the point of ultimate disposal to protect public health and the environment; and

(20) To exercise all incidental powers necessary to carry out the purposes of this part.

(b) The powers and duties described in subsection (a) of this Code section may be exercised and performed by the director through such duly authorized agents and employees as he deems necessary and proper.

History. — Code 1981, § 12-8-23.1, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1990, p. 1222, § 1; Ga. L. 1992, p. 2234, § 3; Ga. L. 1992, p. 3259, § 4; Ga. L. 1992, p. 3276, § 3; Ga. L. 2010, p. 949, § 1/HB 244.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, former paragraph (a)(18), which was redesignated as paragraph (a)(19) by Ga. L. 1992, p. 2234, § 3, was redesignated as paragraph (a)(20).

Pursuant to Code Section 28-9-5, in 1992, in subsection (a), "and" was deleted at the end of paragraph (18) and "; and" was added at the end of paragraph (19).

Law reviews. — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 199 (1992).

JUDICIAL DECISIONS

Evidence of misrepresentation or concealment. — Clear and convincing evidence of misrepresentation or concealment justified rejection of a solid waste landfill permit when the city had been enjoined from holding the necessary public hearing, and the solid waste company held the hearing and tried to mislead the Environmental Protection Division by insinuating that it had acted on behalf of the city. Bartram Envtl., Inc. v. Reheis, 235 Ga. App. 204, 509 S.E.2d 114 (1998).

"Any evidence" standard of review. — Trial court applied the correct "any evidence" standard of review to the administrative law judge's findings that the factual evidence of misrepresentation and concealment regarding a solid waste landfill permit application satisfied the clear and convincing evidence standard of O.C.G.A. § 12-8-23.1. Bartram Envtl., Inc. v. Reheis, 235 Ga. App. 204, 509 S.E.2d 114 (1998).

12-8-24. Permits for solid waste or special solid waste handling, disposal, or thermal treatment technology facility; inspection of solid waste generators.

(a) No person shall engage in solid waste or special solid waste handling in Georgia or construct or operate a solid waste handling facility in Georgia, except those individuals exempted from this part under Code Section 12-8-30.10, without first obtaining a permit from the director authorizing such activity.

(b)(1) No permit for a biomedical waste thermal treatment technology facility shall be issued by the director unless the applicant for such facility demonstrates to the director that a need exists for the facility for waste generated in Georgia by showing that there is not presently in existence within the state sufficient disposal facilities for biomedical waste being generated or expected to be generated within the state. For purposes of this part, "biomedical waste thermal treatment technology facility" means any facility that exists for the purpose of reducing the amount of biomedical waste disposed of through a process of combustion, with or without the process of converting such waste to energy.

(2) Paragraph (1) of this subsection shall not apply to any biomedical waste thermal treatment technology facility which is operated exclusively by a private biomedical waste generator on property owned by the private biomedical waste generator for the purpose of accepting biomedical waste exclusively from the private biomedical waste generator so long as the operation of the biomedical waste thermal treatment technology facility does not adversely affect the public health or the environment. After commencement of operation by a private biomedical waste generator of a biomedical waste thermal treatment technology facility which is permitted by but not included in a local or regional solid waste management plan, amendment of the local or regional solid waste management plan shall be

required for any biomedical waste which is no longer to be disposed of by the private biomedical waste generator in its own biomedical waste thermal treatment technology facility prior to any substantial reduction in the amount of biomedical waste produced by the private biomedical waste generator and accepted by its own biomedical waste thermal treatment technology facility or the closure of such facility.

(c) On or after March 30, 1990, any permit for the transportation of municipal solid waste from a jurisdiction generating solid waste to a municipal solid waste disposal facility located in another county shall be conditioned upon the jurisdiction generating solid waste developing and being actively involved in, by July 1, 1992, a strategy for meeting the state-wide goal of waste reduction by July 1, 1996.

(d) If the director determines that such activity will result in any violation of this part or any rule or regulation promulgated pursuant to this part, he shall deny the permit; otherwise, he shall issue the permit, specifying on the permit the conditions under which such activity shall be conducted; provided, however, that a public hearing shall be held by the governing authority of the county or municipality in which the municipal solid waste or special solid waste handling shall occur not less than two weeks prior to the issuance of any permit under this Code section and notice of such hearing shall be posted at the proposed site and advertised in a newspaper of general circulation serving the county or counties in which the proposed activity will be conducted at least 30 days prior to such hearing.

(e)(1)(A) Reserved.

(B) The director may suspend, modify, or revoke any permit issued pursuant to this Code section if the holder of the permit is found to be in violation of any of the permit conditions or any order of the director or fails to perform solid waste handling in accordance with this part or rules promulgated under this part.

(C)(i) The director may modify any permit issued pursuant to this Code section in accordance with rules promulgated by the board. All modifications of existing permits shall be classified by the board as either major or minor modifications.

(ii) All modifications of existing permits to allow vertical or horizontal expansion of existing disposal facilities, except a facility operated by a utility regulated by the Public Service Commission, shall be classified as major permit modifications and shall not be granted by the director sooner than three years from the date any such facility commenced operation; provided, however, that a permit may be modified by the director to allow a vertical or horizontal expansion one time within three years from the date the facility commenced operation so long as the capacity of the facility is not increased more than 10 percent.

(iii) All modifications of permits for existing municipal solid waste disposal facilities for the addition at such facility of a recovered materials processing facility shall be classified as minor permit modifications, provided the location of such facility complies with the same buffer requirements applicable to the disposal facility. Such materials shall be reported at the disposal facility separately from waste materials destined for disposal. Operators of such disposal facilities may report to the Department of Community Affairs on an annual basis the total amounts of such materials diverted from landfill disposal.

(iv) The disposal facility permit holder shall provide written notification to the chief elected official of the jurisdiction in which the facility is located at least 30 days prior to starting any recovered materials processing facility. This notification shall include an indication of whether or not the ten-year demonstrated capacity of the landfill will be reduced. The permit holder shall comply with all applicable local zoning ordinances. If necessary to satisfy local solid waste planning and reporting requirements, disposal facility operators may be required by the county, municipality, or solid waste management authority for the jurisdiction in which the disposal facility is located to report the total amounts of such materials diverted from landfill disposal.

(2) Prior to the granting of any major modification of an existing solid waste handling permit by the director, a public hearing shall be held by the governing authority of the county or municipality in which the municipal solid waste facility or special solid waste handling facility requesting the modification is located not less than two weeks prior to the issuance of any permit under this Code section and notice of such hearing shall be posted at the site of such facility and advertised in a newspaper of general circulation serving the county or counties in which such facility is located at least 30 days prior to such hearing.

(3) Except as otherwise provided in this part, major modifications shall meet the siting and design standards applicable to new permit applications in effect on the date the modification is approved by the director; provided, however, that a facility may be granted a variance by the director from those standards when vertically expanded unless such variance is inconsistent with federal laws and regulations; provided, further, that the director shall not grant a variance from the provisions of subparagraph (B), (C), (D), or (E) of paragraph (4) of this subsection.

(4) No vertical expansions shall be approved under this subsection unless:

(A) The owner or operator demonstrates compliance with all standards not varied by the director;

(B) The owner or operator has installed a surface and ground-water monitoring system approved by the division under currently promulgated rules and has submitted the initial sampling results to the division;

(C) The owner or operator has implemented or installed a methane gas monitoring program or system approved by the division under currently promulgated rules and has submitted the initial sampling results to the division;

(D) The owner or operator has a closure and postclosure care plan approved by the division under currently promulgated rules;

(E) Where noncompliance with the standards for surface water, ground water, or methane gas has been determined, the owner or operator has a schedule and corrective action plan approved by the division for returning the site to compliance within six months of the director's approval of the corrective action plan. If the owner or operator cannot demonstrate that the site can be returned to compliance within said six-month period, the director shall not issue a permit to expand the site vertically but shall order the facility to prepare a final closure plan, including the cessation of waste receipt within six months of the final effective date of the order; and

(F) Where noncompliance with the standards for surface water, ground water, or methane gas may be determined and the permit has not been transferred to another person, the owner or operator has a remedial modification plan providing for the evacuation of all previously disposed waste from a permitted, unlined expansion site and redisposal of such waste into a conforming facility with a composite liner and leachate collection system. If noncompliance is determined, the director shall order the owner or operator to prepare a corrective action plan, which must be approved by the division, and such corrective action must be completed within the compliance time frame determined by the division. If the owner or operator cannot demonstrate that the site can be returned to compliance within such division compliance time frame, the director shall order the facility to prepare a final closure plan, including the cessation of waste receipt within 12 months of the final effective date of the order.

(5) Modifications for vertical expansions issued under this Code section may be restricted in duration, but in no case shall be effective for municipal solid waste landfills not having liners and leachate collection systems, other than those landfills restricted to construction or demolition waste.

(6) The owner or operator of any site not having a liner and leachate collection system which is vertically expanded and which subsequently fails to demonstrate compliance with all applicable surface water, ground-water, or methane gas standards shall demonstrate to the satisfaction of the director, through a corrective action plan, that the site has been or can be returned to compliance within six months of the director's approval of the corrective action plan. If the owner or operator fails to demonstrate to the satisfaction of the director that compliance has been attained or can be attained, the director shall notify the owner or operator, ordering cessation of the acceptance of waste for disposal, remediation of noncompliance, and implementation of the final closure plan, to include a final date for closure.

(f) In the event of the modification, suspension, amendment, or revocation of a permit, the director shall serve written notice of such action on the permit holder and shall set forth in such notice the reason for such action.

(g) Prior to the issuance of any permit for a solid waste handling facility or the granting of any major modification of an existing solid waste handling permit, the director shall require written verification to be furnished by the applicant that the proposed facility complies with local zoning or land use ordinances, if any; and after July 1, 1992, that the proposed facility is consistent with the local, multijurisdictional, or regional solid waste management plan developed in accordance with standards promulgated pursuant to this part subject to the provisions of Code Section 12-8-31.1 and that the host jurisdiction and all jurisdictions generating solid waste destined for the applicants' facility can demonstrate that they are part of an approved solid waste plan developed in accordance with standards promulgated pursuant to this part and are actively involved in and have a strategy for meeting the state-wide goal of waste reduction by July 1, 1996. Prior to the issuance of any permit for a solid waste handling facility or the granting of any major modification of an existing solid waste handling permit that will handle solid waste from jurisdictions outside Georgia, the out-of-state solid waste generating jurisdictions shall provide documentation that they have a strategy for and are actively involved in meeting planning requirements and a waste reduction goal that are substantially equivalent to the planning requirements and waste reduction goal contained in this part.

(h) No permit for a disposal facility shall be issued to any regional solid waste management authority created under Part 2 of this article, the "Regional Solid Waste Management Authorities Act," until local and regional solid waste management plans consistent with this part have been developed for all jurisdictions participating in such authority and

such plans are found to be consistent with the state solid waste management plan pursuant to subsection (d) of Code Section 12-8-31.1.

(i) No permit shall be issued for a new solid waste thermal treatment technology facility unless the applicant meets or exceeds standards adopted by the board which shall be consistent with and at least as stringent as the Federal New Source Performance Standards for new municipal waste combustors outlined in regulations pursuant to the federal Clean Air Act, 42 U.S.C. Section 1857, et seq., as amended, and 42 U.S.C. Section 7401, et seq., as amended.

(j) The director or his designee is authorized to inspect any generator in Georgia to determine whether that generator's solid waste is acceptable for the intended handling facility. The division may require any generator in Georgia to cease offering solid waste for handling if such solid waste is not acceptable under standards promulgated by the board, and the division may prohibit the handling of such solid waste until waste management procedures acceptable to the division are developed. Such prohibition shall continue in effect until the waste management procedure for handling is approved in writing by the division. Any generator or handler in Georgia which does not comply with a prohibition made under this subsection shall be in violation of this part.

(k) Any inert waste landfill which, as of January 1, 2014, has been certified by a professional engineer registered in accordance with Chapter 15 of Title 43 as being in full compliance with all permit by rule requirements established in the rules and regulations of the division as they existed on January 1, 2012, may continue to operate under such permit by rule requirements.

History. — Code 1981, § 12-8-24, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1991, p. 462, § 1; Ga. L. 1992, p. 3276, §§ 4, 5; Ga. L. 1993, p. 399, §§ 5, 6; Ga. L. 1994, p. 1922, § 1; Ga. L. 1995, p. 10, § 12; Ga. L. 1997, p. 1081, § 1; Ga. L. 2000, p. 1641, § 1; Ga. L. 2005, p. 1247, § 7/SB 122; Ga. L. 2010, p. 235, § 1/HB 1059; Ga. L. 2013, p. 171, § 1/HB 320.

Cross references. — Granting of permission by counties to persons contracting to transport and dump trash, garbage, or other refuse at publicly or privately owned dumps, § 36-1-16.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "March 30, 1990" was substituted for "the effective date of this part" near the beginning of subsection (c).

Pursuant to Code Section 28-9-5, in 1991, a comma was inserted following "March 30, 1990" in subsection (b) (now subsection (c)).

Pursuant to Code Section 28-9-5, in 1993, "landfills" was substituted for "land fills" in paragraph (e)(5) and "42 U.S.C. Section 7401" was substituted for "42 U.S.C. 7401" in subsection (i).

Law reviews. — For annual survey of administrative law, see 56 Mercer L. Rev. 31 (2004).

For note on 1991 amendment of this Code section, see 8 Ga. St. U.L. Rev. 16 (1992). For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 199 (1992).

JUDICIAL DECISIONS

Constitutionality. — Provisions of this article and the rules that apply to the regulation of out-of-state waste, or "special solid waste," specifically former § 12-8-27 and Rule 391-3-4.10, in their entirety, and O.C.G.A. § 12-8-24 and Rule 391-3-4-.02, insofar as they require a permit for the handling of special solid waste, are unconstitutional burdens upon interstate commerce. Southern States Landfill, Inc. v. Georgia Dep't of Natural Resources, 801 F. Supp. 725 (M.D. Ga. 1992) (decided prior to repeal of § 12-8-27 by Ga. L. 1993, p. 399).

State failed to justify the state's requirements that one must obtain a special solid waste handling permit prior to engaging in out-of-state waste disposal; that an out-of-state waste handler must submit a waste analysis plan, through which the operator must obtain a representative sample from every load of out-of-state waste received and perform a detailed chemical and physical analysis on the sample; that out-of-state waste be accompanied by a manifest at all times that the waste is in the state of Georgia; that $10.00 per ton be charged as a fee on out-of-state waste; and that the Environmental Protection Division of the Georgia Department of Natural Resources be authorized to inspect at random any out-of-state generators that dispose of their waste in Georgia. Southern States Landfill, Inc. v. Georgia Dep't of Natural Resources, 801 F. Supp. 725 (M.D. Ga. 1992).

That out-of-state generators may be less trustworthy than in-state generators is an insufficient reason to burden interstate commerce in solid waste disposal since a load of in-state waste is no different from a load of out-of-state waste apart from origin. Southern States Landfill, Inc. v. Georgia Dep't of Natural Resources, 801 F. Supp. 725 (M.D. Ga. 1992).

"Georgia need" provision in paragraph (b)(1) of O.C.G.A. § 12-8-4, which regulates permits for biomedical waste thermal treatment facilities, is unconstitutional as violative of the commerce clause. Environmental Waste Reductions, Inc. v. Reheis, 887 F. Supp. 1534 (N.D. Ga. 1994).

"Transportation restrictions" set forth in subsection (c) of O.C.G.A. § 12-8-4 and regulations thereunder, to the extent the restrictions place certain conditions on an applicant's permit for the transportation of biomedical waste from a jurisdiction generating solid waste destined for the applicant's facility, are unconstitutional as violative of the commerce clause. Environmental Waste Reductions, Inc. v. Reheis, 887 F. Supp. 1534 (N.D. Ga. 1994).

"Planning requirements" set forth in subsection (g) of O.C.G.A. § 12-8-24, O.C.G.A. § 12-8-31.1, and regulations thereunder, insofar as they require an applicant for a permit for a biomedical waste thermal treatment facility to provide certain verifications regarding out-of-state jurisdictions generating solid waste destined for the applicant's facility, are unconstitutional as violative of the commerce clause. Environmental Waste Reductions, Inc. v. Reheis, 887 F. Supp. 1534 (N.D. Ga. 1994).

Application of 1994 amendment to paragraph (e)(1) of O.C.G.A. § 12-8-24 to permit application filed prior to effective date of amendment violated constitutional prohibition against retroactive laws which injuriously affect vested rights of citizens. Recycle & Recover, Inc. v. Georgia Bd. of Natural Resources, 266 Ga. 253, 466 S.E.2d 197 (1996).

Three-year waiting period for modifications not applied retroactively. — When a treatment facility applied for a modification of the facility's permit less than three years after commencement of the facility's operations, but before the amendment of subsection (e) of O.C.G.A. § 12-8-24 imposing the three-year waiting period, the trial court erred in upholding the board's decision giving retroactive effect to the amendment. Recycle & Recover, Inc. v. Georgia Bd. of Natural Resources, 266 Ga. 253, 466 S.E.2d 197 (1996).

Applicability of verification requirement. — Requirement of subsection (g) of O.C.G.A. § 12-8-24, pertaining to documentation by an applicant of participation by the host jurisdiction and all jurisdictions generating waste destined

for the applicant's facility in an approved solid waste plan, applies before a permit may be issued; the provision does not call for conditioning issuance of a permit upon a continuing obligation to submit planning verification. Environmental Waste Reductions, Inc. v. Legal Envtl. Assistance Found., Inc., 216 Ga. App. 699, 455 S.E.2d 393 (1995).

Factors to be considered in verification process. — O.C.G.A. § 12-8-24(g) did not prohibit local governments from considering factors other than environmental and land use factors in developing a Solid Waste Management Plan (SWMP), and a local government was authorized to consider any relevant factor in determining whether a proposed facility was consistent with its SWMP that it properly considered in the SWMP itself; the Supreme Court of Georgia overruled Butts County v. Pine Ridge Recycling, Inc., 213 Ga. App. 510, 445 S.E.2d 294 (Ga. Ct. App. 1994) and held that a trial court erred in ruling that a county improperly considered factors other than environmental and land use factors in refusing to issue a verification to the Georgia Environmental Protection Division regarding an applicant's proposed landfill. Murray County v. R&J Murray, LLC, 280 Ga. 314, 627 S.E.2d 574 (2006).

Because a buyer's proposed landfill would not be a public utility, but would be privately-owned, the buyer was not entitled to a written verification of zoning compliance so the buyer could pursue a state permit to build a landfill; hence, the county was properly granted summary judgment as to this issue. EarthResources, LLC v. Morgan County, 281 Ga. 396, 638 S.E.2d 325 (2006).

County properly denied verification under O.C.G.A. § 12-8-24(g) of a limited liability company's proposal for a landfill because the relevant factors in developing the county's solid waste management plan, such as the costs and financing of a landfill that supported the county's one-landfill strategy, were considered; the county also properly considered the sustainability of a landfill as it related to citizens' protection, health, and safety and furthered the purposes of the Solid Waste Management Act, O.C.G.A. § 12-8-20 et seq. R&J Murray, LLC v. Murray County, 282 Ga. 740, 653 S.E.2d 720 (2007), cert. denied, 553 U.S. 1053, 128 S. Ct. 2476, 171 L. Ed. 2d 767 (2008).

Mandamus to compel verification. — When county invalidly refused to verify that proposed landfill site was consistent with the county's solid waste management plan, mandamus against the county to compel verification was the appropriate remedy. Butts County v. Pine Ridge Recycling, Inc., 213 Ga. App. 510, 445 S.E.2d 294 (1994), overruled on other grounds by Murray County v. R & J Murray, LLC, 280 Ga. 314, 627 S.E.2d 574 (2006).

Trial court properly entered a declaratory judgment against a limited liability limited partnership (LLLP) and properly denied the LLLP's request for a writ of mandamus as the LLLP was not entitled to a verification letter since the county's zoning ordinance was properly enacted, and the LLLP's land was not zoned for a landfill. Mid-Georgia Envtl. Mgmt. Group, L.L.L.P. v. Meriwether County, 277 Ga. 670, 594 S.E.2d 344 (2004).

Applicant for a solid waste handling facility was entitled to mandamus relief seeking to compel a city to issue written verification that a proposed solid waste handling facility did not violate any zoning or land use ordinances and that it was consistent with all solid waste management plans because: (1) the city did not comply with O.C.G.A. § 12-8-31.1(a) and (b); and (2) the city could not rely on the city's solid waste management plan to deny the written verification under O.C.G.A. § 12-8-24(g), which was consistent with the city's plan approved in 1993. McKee v. City of Geneva, 280 Ga. 411, 627 S.E.2d 555 (2006).

Direct appeal from denial of mandamus to compel verification. — Intermediate court properly transferred an application for discretionary review filed by a limited liability limited partnership (LLLP), seeking review of the denial of the partnership's request for a writ of mandamus, to the Georgia Supreme Court, as cases involving the grant or denial of mandamus are within the exclusive jurisdiction of the Georgia Supreme Court without regard to the underlying subject matter or the legal issues raised. As the

case involved permitting requirements for landfills, it concerned a statutory scheme requiring a permit from the state for a land use that was regulated by the state, and the LLLP was entitled to a direct appeal from the denial of its mandamus action. Mid-Georgia Envtl. Mgmt. Group, L.L.L.P. v. Meriwether County, 277 Ga. 670, 594 S.E.2d 344 (2004).

Right to verification of compliance. — When a proposed solid waste landfill expansion was in compliance with the county's zoning ordinances at the time the applicants sought written verification of compliance, the applicants had a vested right to obtain written verification despite the subsequent enactment of a restated zoning ordinance. Banks County v. Chambers of Ga., 264 Ga. 421, 444 S.E.2d 783 (1994).

Cited in Pine Ridge Recycling, Inc. v. Butts County, 886 F. Supp. 851 (M.D. Ga. 1994); ENRE Corp. v. Wheeler County Bd. of Comm'rs, 274 Ga. 17, 549 S.E.2d 67 (2001).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1973, pp. 1269 and 1270 are included in the annotations for this Code section.

Requirement that information accompany permit application permitted. — Director may, if the director deems it relevant, require that information accompany a solid waste permit application indicating whether the permit, if granted, would result in a violation of local zoning regulations or ordinances. 1976 Op. Att'y Gen. No. 76-14 (decided under Ga. L. 1973, pp. 1269, 1270).

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, §§ 9 et seq., 56 et seq.

12-8-24.1. Certification of municipal solid waste disposal facility operators.

(a) After July 1, 1992, no person shall perform the duties of a municipal solid waste disposal facility operator without being duly certified under this Code section.

(b) After July 1, 1992, no municipal solid waste disposal facility shall be operated in Georgia unless the operator is certified under this Code section. All inspectors of municipal solid waste disposal facilities shall be certified to inspect the same.

(c) The division is authorized to cooperate with the University System of Georgia or with any other appropriate organization approved by the director to develop a certification program which conforms with the requirements of this part. The division may classify all municipal solid waste disposal facilities required to have operators certified under this part with due regard to the size, type, character of the solid waste to be disposed of, and other physical conditions affecting such municipal solid waste disposal facilities according to the skill, knowledge, and experience that the operator in responsible charge must have to operate

the facilities successfully so as to protect the public health and welfare and prevent environmental problems.

(d) Any certificate granted under this Code section shall be renewable as provided by rules of the board.

(e) The division shall approve all examinations and courses to be used in determining the knowledge, ability, and judgment of applicants for certification under this Code section.

(f) Upon application, a certificate may be issued without examination in a comparable classification to any person who holds a valid current certificate in any state, territory, or possession of the United States or any other country, provided that the requirements for certification of operators under which the person's certificate was issued do not conflict with this part and are of a standard not lower than that specified by regulations adopted under this part and provided, further, that reciprocal privileges are granted to certified operators of this state.

(g) The director may investigate the actions of any operator and may revoke or suspend the certificate of an operator when the director finds that the operator has practiced fraud or deception; that reasonable care or judgment or the application of his knowledge or ability was not used in the performance of his duties; or that the operator is incompetent or unable to perform his duties properly.

History. — Code 1981, § 12-8-24.1, enacted by Ga. L. 1990, p. 412, § 1.

12-8-24.2. Public hearing prior to entering contract regarding landfill.

The governing authority of any county or municipal corporation and the directors or managers of any local authority or special district shall hold a public hearing before entering into a contract for the sale, lease, or management of a landfill or solid waste disposal facility owned by such county, municipal corporation, local authority, or special district. The party responsible for holding such a public hearing shall cause notice of the hearing to be posted at the site of the landfill or facility and to run in a newspaper of general circulation serving the county, municipal corporation, local authority, or special district not less than 30 nor more than 45 days prior to the date of the hearing.

History. — Code 1981, § 12-8-24.2, enacted by Ga. L. 1997, p. 1081, § 2.

12-8-24.3. Notification of contaminant release from landfill.

The owner or operator of a municipal solid waste landfill shall notify the local governing authorities of any city and county in which such landfill is located of any release from the site of such landfill of a contaminant which is likely to pose a danger to human health. In addition, such owner or operator shall cause notice of such release to be published in the legal organ of the county in which such landfill is located. Compliance with the requirements of this Code section shall occur within 14 days of confirmation of such release by the division.

History. — Code 1981, § 12-8-24.3, enacted by Ga. L. 2016, p. 213, § 1/HB 1028.

12-8-25. Sites in certain counties within one-half mile of adjoining county.

(a)(1) Except as otherwise provided in subsection (b) of this Code section, to encourage cooperation between the various counties, from March 15, 1988, through April 1, 1990, no permit shall be issued for a solid waste disposal facility in any county having a population of more than 350,000 according to the United States decennial census of 1980 or any future such census if any part of the site is within one-half mile of an adjoining county without the applicant's first receiving the express approval of the governing authority of that adjoining county; provided, however, that the director may permit such a facility if the applicant provides evidence that no alternative sites or methods are available in that jurisdiction for the handling of its solid waste. This paragraph shall apply to all permit applications that are pending or made on or after March 15, 1988, and to all permits issued prior to May 1, 1988, which permits are the subject of an appeal or judicial review and such appeal or judicial review is in process.

(2) Except as otherwise provided in subsection (b) of this Code section, until after April 1, 1990, no permit shall be issued to a private applicant for a solid waste disposal facility in any county of this state having a population of more than 350,000 according to the United States decennial census of 1980 or any future such census if any part of the site is within two miles of an adjoining county without the applicant's first receiving express approval of the governing authority of the adjoining county. As used in this paragraph, the term "private applicant" means any private person, firm, corporation, or other private entity, and the term does not mean or include the United States government or any agency thereof, the State of Georgia or any agency, institution, or public authority thereof, or any county or municipality of this state. As used in this paragraph, the term "solid

waste disposal facility" shall not mean or include any solid waste disposal facility which incorporates waste to energy processing, recycling, activities associated with the recycling process, or any combination of the foregoing.

(3) Except as otherwise provided in subsection (b) of this Code section, to encourage cooperation among the various cities and counties, after April 4, 1997, no permit shall be issued for a municipal solid waste disposal facility in any city or county if any part of the site is within one-half mile of the boundaries of such city or county adjoining any city or county in this state without the applicant's first receiving the express approval of the governing authority of that adjoining city or county; provided, however, that the director may permit such a facility if the applicant provides evidence that no alternative sites or methods are available in that jurisdiction or in any adjoining jurisdiction of the affected city and county for the handling of its solid waste. This paragraph shall apply to all permit applications that are pending on or made after April 4, 1997, and to all permits issued prior to such date, which permits are the subject of an appeal or judicial review and such appeal or judicial review is in process.

(b) The consent of an adjoining city or county as provided in subsection (a) of this Code section shall not be required either by new permit or by modification of an existing permit when the expansion of an existing municipal solid waste disposal facility is granted by the director or when the ownership, direct or indirect, of an existing municipal solid waste disposal facility is transferred.

History. — Code 1981, § 12-8-25, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1997, p. 447, §§ 1, 2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, in paragraph (a)(3), "April 4, 1997" was substituted for "the effective date of this subsection" in two places and a comma was added in one place.

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Landfill near county border. — Court order requiring a county to approve a landfill did not involve zoning, but the county's decision under O.C.G.A. § 12-8-25 to prevent a landfill close to the county's border, and an appeal from the order was considered an appeal from the grant of a writ of mandamus, which is a direct appeal. Long v. FSL Corp., 268 Ga. 479, 490 S.E.2d 102 (1997).

Mandamus not appropriate remedy. — Since O.C.G.A. § 12-8-25 provides a mechanism for relief to applicants for permits to build landfills to whom permission is denied, an applicant was not entitled to a writ of mandamus to require a county to give the county's approval. Long v. FSL Corp., 268 Ga. 479, 490 S.E.2d 102 (1997).

Cited in Carson v. Brown, 348 Ga. App. 689, 824 S.E.2d 605 (2019).

12-8-25.1. Sites within 5,708 yards of national historic site.

In order to preserve historic sites and their natural and built environments, no permit shall be issued for a solid waste disposal facility within 5,708 yards of the geographic center of any of the three sites currently designated in Georgia as a National Historic Site; provided, however, that the director may permit a solid waste disposal facility at such a site if the applicant provides evidence that no alternative sites or methods are available in that jurisdiction for the handling of its solid waste. This Code section shall apply to all permit applications made on or after July 1, 1988, and to all permits issued prior to July 1, 1988, which permits are the subject of an appeal or judicial review and such appeal or judicial review is in process.

History. — Code 1981, § 12-8-25.1, enacted by Ga. L. 1990, p. 412, § 1.

12-8-25.2. Sites within two miles of significant ground-water recharge area.

No permit shall be issued for a municipal solid waste landfill if any part of the site is within two miles of an area that has been designated by the director as a significant ground-water recharge area unless such municipal solid waste landfill will have a liner and leachate collection system and meets any other requirements as may be established by rules and regulations of the board or pursuant to other geological considerations as may be determined appropriate by the director.

History. — Code 1981, § 12-8-25.2, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1990, p. 1222, § 2; Ga. L. 1992, p. 3276, § 6.

Law reviews. — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 199 (1992).

12-8-25.3. Further restrictions on sites within significant ground-water recharge area or near military air space used as bombing range.

(a) Notwithstanding the provisions of Code Section 12-8-25.2, no permit shall be issued for a municipal solid waste landfill which accepts solid waste generated from outside the county in which such landfill is located or, in the case of a regional landfill, from outside any of the counties or special districts empowered to engage in solid waste management activities constituting such region if any part of such site is within any area that has been designated by the director as a significant ground-water recharge area.

(b) In addition to the provisions of subsection (a) of this Code section, in the case of a regional municipal solid waste landfill where any part

of such site is within any area that has been designated by the director as a significant ground-water recharge area, no permit shall be issued for such regional landfill unless the boundaries of the counties or special districts empowered to engage in solid waste management activities are contiguous and such counties or special districts have entered into a joint contract for the collection and disposal of solid waste.

(c) No permit or modification of an existing permit shall be issued for land application of untreated municipal sewage sludge located in an area designated by Hydrologic Atlas 18 prepared by the Department of Natural Resources as a significant ground-water recharge area including, but not limited to, those areas designated as probable areas of thick soils.

(d)(1) Notwithstanding any other provision of law or any administrative regulation or action to the contrary, no permit shall be issued for a municipal solid waste landfill within two miles of a federally restricted military air space which is used for a bombing range. The provisions of this subsection shall apply to all permit applications pending on or after July 1, 1997, and to all permits denied prior to such date which are the subject of an appeal or judicial review pending on such date.

(2) This subsection shall not prohibit or prevent any municipal solid waste landfill that was permitted and operational on July 1, 1997, from expanding its operation into an area outlined in paragraph (1) of this subsection.

History. — Code 1981, § 12-8-25.3, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1995, p. 1025, § 1; Ga. L. 1997, p. 928, § 1; Ga. L. 2020, p. 25, § 1/SB 123.

The 2020 amendment, effective June 29, 2020, designated the existing provisions of subsection (d) as paragraph (d)(1) and added paragraph (d)(2).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, "July 1, 1997," was substituted for "the effective date of this subsection" in the second sentence in subsection (d).

Editor's notes. — Ga. L. 1995, p. 1025, § 3, not codified by the General Assembly, provides in part that that Act shall not apply with respect to a site for which the Environmental Protection Division has issued a letter of site suitability prior to April 20, 1995.

12-8-25.4. Limits on the number of solid waste facilities within given area.

(a) As provided for in Code Section 12-8-21, it is the policy of the State of Georgia to assure that solid waste facilities do not adversely affect the health, safety, and well-being of the public and do not degrade the quality of the environment. The General Assembly finds that an excessive concentration of solid waste facilities in any one community can adversely affect the health, safety, well-being, and environment of that community and impose an onus on the community without any

reciprocal benefits to the community. The purpose of this Code section is to provide a limited degree of protection against any given community becoming an involuntary host to an excessive concentration of solid waste facilities.

(b) No permit shall be issued under Code Section 12-8-24 for any solid waste handling facility other than a material recovery facility or compost facility or for any solid waste disposal facility other than a private industry solid waste disposal facility if any part of the premises proposed for permitting would lie within any geographic area which can be shown to meet the following criteria:

(1) The geographic area is in the shape of a circle with a two-mile radius, the centerpoint of which circle may be any point within the premises proposed for permitting; and

(2) The circular geographic area already includes all or a portion of three or more landfills within that portion of its territory which is within this state (including the landfill proposed for permitting in the case of a proposed expansion).

(c) For the purposes of the criteria specified in subsection (b) of this Code section, the term "landfill" shall include:

(1) Any active landfill permitted under authority of the state under this part or any prior general law of the state; and

(2) Any inactive landfill so permitted under this part or any prior general law, which landfill ceased receiving waste on or after June 29, 1989, and is either in closure or postclosure status, provided that such a landfill which has completed postclosure care status shall no longer be included

but for purposes of subsection (b) of this Code section the count of landfills shall not include any permit by rule inert waste landfill or any private industry solid waste disposal facility; and in counting landfills each existing landfill site shall be counted only once even if such landfill site has previously been expanded under a new or existing permit, provided the facilities under each new or existing permit are the same type landfill, are owned by the same person, and are contiguous or if not contiguous are separated only by the width of a public road.

(d) Subsection (b) of this Code section shall apply with respect to: (1) the permitting of a proposed horizontal expansion requiring a permit or a major modification of an existing permit; and (2) the permitting of a new site requiring a new permit; provided, however, that a permit for a vertical expansion not to exceed 5 million tons capacity may be granted if all permitted landfills wholly or partially in the two-mile radius circular geographic area are in compliance with state and federal laws

and regulations and any applicable remedial plans have been implemented.

(e) The board may by rule authorize an exemption from this Code section for one or more areas in the state if the board determines that compliance with this Code section is not reasonably practicable in such area or areas because of a high water table in such area or areas which limits the land area suitable for facility siting.

History. — Code 1981, § 12-8-25.4, enacted by Ga. L. 1995, p. 1025, § 2; Ga. L. 1996, p. 6, § 12.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1995, "postclosure" was substituted for "post-closure" in two places in paragraph (c)(2) and "permit-by-rule" was substituted for "permit-by-Rule" in the undesignated language at the end of subsection (c).

Pursuant to Code Section 28-9-5, in 1996, "permit by rule" was substituted for "permit-by-rule" in the undesignated language at the end of subsection (c).

Editor's notes. — Ga. L. 1995, p. 1025, § 3, not codified by the General Assembly, provides that this Code section is not applicable to a site for which the Environmental Protection Division has issued a letter of site suitability prior to April 20, 1995.

Law reviews. — For article, "Conservation and Natural Resources: Waste Management," see 28 Ga. St. U.L. Rev. 165 (2011).

12-8-25.5. Locating disposal facility near private recreational camp.

No permit shall be issued for any new municipal solid waste disposal facility if any part of the premises proposed for permitting is within one mile of any private recreational camp operated primarily for use by persons under 18 years of age and which camp has been so operated at its location for 25 years or more.

History. — Code 1981, § 12-8-25.5, enacted by Ga. L. 2004, p. 55, § 1.

Editor's notes. — Ga. L. 2004, p. 55, § 2(b), not codified by the General Assembly, provides that this Code section shall apply to any permit application pending on or after April 1, 2004, and to any permit application denied prior to April 1, 2004, which is the subject of an appeal or judicial review pending on April 1, 2004.

12-8-26. Public meetings on site selection; notice; decision.

(a) Any county, municipality, group of counties, or authority beginning a process to select a site for a municipal solid waste disposal facility must first call at least one public meeting to discuss waste management needs of the local government or region and to describe the process of siting facilities to the public. Notice of this meeting shall be published within a newspaper of general circulation serving such county or municipality at least once a week for two weeks immediately preceding the date of such meeting. A regional solid waste management authority created under Part 2 of this article must hold at least one meeting within each jurisdiction participating in such authority, and

notice for these meetings must be published within a newspaper of general circulation serving each such jurisdiction at least once a week for two weeks immediately preceding the date of such meeting.

(b) The governing authority of any county or municipality taking action resulting in a publicly or privately owned municipal solid waste disposal facility siting decision shall cause to be published within a newspaper of general circulation serving such county or municipality a notice of the meeting at which such siting decision is to be made at least once a week for two weeks immediately preceding the date of such meeting. Such notice shall state the time, place, and purpose of the meeting and the meeting shall be conducted by the governing authority taking the action. A siting decision shall include, but is not limited to, such activities as the final selection of property for landfilling and the execution of contracts or agreements pertaining to the location of municipal solid waste disposal facilities within the jurisdiction, but shall not include zoning decisions.

History. — Code 1981, § 12-8-26, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1992, p. 3276, § 7.

Cross references. — Permission by counties to persons contracting to transport and dump trash, garbage, or other refuse at publicly or privately owned dumps, § 36-1-16.

Law reviews. — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 199 (1992).

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Applies to private developer. — Requirement for a public meeting applies when the applicant to the Environmental Protection Division is a private developer applying for a privately owned and operated facility to be located in the municipality, and would apply when the municipality acted for or in collaboration with the developer in "beginning a process to select a site." City of Arcade v. Emmons, 228 Ga. App. 879, 494 S.E.2d 186 (1997), modified in part, 270 Ga. 196, 507 S.E.2d 464 (1998).

"Siting decision." — Resolution approving a restated lease and operating agreement between a city and the city's solid waste treatment provider constituted a siting decision since the decision pertained to the location and expansion of the city's landfill facilities. Grove v. Sugar Hill Inv. Assocs., 219 Ga. App. 781, 466 S.E.2d 901 (1995).

When a private developer acted independently in selecting a site for the developer's proposed landfill, a city's subsequent entry into a contract with the developer governing operation of the landfill and requiring the city's cooperation with the developer in the city's application to the Environmental Protection Division was not governed by the requirements of subsection (a) of O.C.G.A. § 12-8-26, but was a "siting decision" governed by subsection (b) of that section. City of Arcade v. Emmons, 228 Ga. App. 879, 494 S.E.2d 186 (1997), modified in part, 270 Ga. 196, 507 S.E.2d 464 (1998).

Contract invalid for violating subsection (b). — Because the city failed to give notice, as required by subsection (b) of O.C.G.A. § 12-8-26, of a meeting at which a siting decision was made, the contract between the city and a private developer governing the operation of a proposed landfill was invalid. City of Arcade v. Emmons, 228 Ga. App. 879, 494 S.E.2d 186 (1997), modified in part, 270 Ga. 196, 507 S.E.2d 464 (1998).

Permanent injunction prohibited. — Even though a city's failure to hold a

properly noticed meeting at which a siting decision was made rendered invalid a contract between the city and a private developer regarding a proposed landfill, the city could not be prevented from holding a properly noticed meeting and it was error to grant a permanent injunction against the city's taking action in furtherance of the landfill. City of Arcade v. Emmons, 228 Ga. App. 879, 494 S.E.2d 186 (1997), modified in part, 270 Ga. 196, 507 S.E.2d 464 (1998).

Impact of failure to provide notice. — Failure of the city to provide notice of a meeting at which a restated lease and operating agreement between the city and the city's solid waste treatment provider was approved invalidated that portion of the agreement relating to the siting decision — that portion of the agreement pertaining to the expansion of the acreage of the landfill facility. Grove v. Sugar Hill Inv. Assocs., 219 Ga. App. 781, 466 S.E.2d 901 (1995).

RESEARCH REFERENCES

ALR. — Liability of private persons or corporations draining into sewer maintained by municipality or other public body for damages to riparian owners or others, 170 A.L.R. 1192.

Sewage disposal plant as nuisance, 40 A.L.R.2d 1177.

12-8-27. Standards for handling special solid waste; transportation manifest; fees; inspection; prohibition of waste generated out-of-state; certification.

Reserved. Repealed by Ga. L. 1993, p. 399, § 7, effective April 5, 1993.

Editor's notes. — This Code section was based on Ga. L. 1990, p. 412, § 1 and Ga. L. 1992, p. 3276, § 8.

12-8-27.1. (Effective until July 1, 2022.) Solid waste trust fund.

(a) There shall be established the solid waste trust fund. The director shall serve as trustee of the solid waste trust fund. The moneys deposited in such fund pursuant to this Code section, Code Section 12-8-30.6, and Code Section 12-8-40.1 may be expended by the director, with the approval of the board, for the following purposes:

(1) To take whatever emergency action is necessary or appropriate to assure that the public health or safety is not threatened whenever there is a release or substantial threat of a release of contaminants from a disposal facility;

(2) To take preventive or corrective actions where the release of contaminants presents an actual or potential threat to human health or the environment and where the owner or operator has not been identified or is unable or unwilling to perform corrective action, including but not limited to closure and postclosure care of a disposal facility and provisions for providing alternative water supplies;

(3) To take such actions as may be necessary to monitor and provide postclosure care of any disposal facility, including preventive

and corrective actions, without regard to the identity or solvency of the owner thereof, commencing five years after the date of completing closure; and

(4) To take such actions as may be necessary to implement the provisions of a scrap tire management program in this state, particularly as may be related to the cleanup of scrap tire disposal piles and facilities, regulation of tire carriers and other handlers, and disbursement of grants and loans to cities, counties, and other persons as may be necessary to implement fully the provisions of this part.

(b) If the director determines that a solid waste or special solid waste handling facility has been abandoned, that the owner or operator thereof has become insolvent, or that for any other reason there is a demonstrated unwillingness or inability of the owner or operator to maintain, operate, or close the facility, to carry out postclosure care of the facility, or to carry out corrective action required as a condition of a permit to the satisfaction of the director, the director may implement the applicable financial responsibility mechanisms. The proceeds from any applicable financial responsibility mechanisms shall be deposited in the solid waste trust fund.

(c) The determination of whether there has been an abandonment, default, or other refusal or inability to perform and comply with closure, postclosure, or corrective action requirements shall be made by the director.

(d) Any interest earned upon the corpus of the solid waste trust fund shall not become a part thereof but shall be paid over to the division to be utilized by the division for administration of the state solid waste management program. Any funds not expended for this purpose in the fiscal year in which they are generated shall be deposited into the state treasury. Nothing in this Code section shall be construed so as to allow the division to retain any funds required by the Constitution of Georgia to be paid into the state treasury. The division shall comply with all provisions of Part 1 of Article 4 of Chapter 12 of Title 45, known as the "Budget Act"; provided, however, that the division shall be exempt from the provisions of Code Section 45-12-92, which requires payment into the state treasury of moneys collected by state agencies.

History. — Code 1981, § 12-8-27.1, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1992, p. 3259, § 5; Ga. L. 1992, p. 3276, § 9; Ga. L. 2013, p. 171, § 2/HB 320; Ga. L. 2013, p. 274, § 3/HB 226.

Delayed effective date. — Code Section 12-8-27.1 is set out twice in this Code. This version is effective until July 1, 2022. For version effective July 1, 2022, see the following version.

Code Commission notes. — The amendment of subsection (a) of this Code section by Ga. L. 2013, p. 171, § 2, irreconcilably conflicted with and was treated as superseded by Ga. L. 2013, p. 274, § 3. See County of Butts v. Strahan, 151 Ga. 417 (1921); Keener v. McDougall, 232 Ga. 273 (1974) and Ga. L. 2013, p. 141, § 54(d)/HB 79.

Law reviews. — For article, "Conser-

vation and Natural Resources: Waste Management," see 28 Ga. St. U.L. Rev. 165 (2011).

For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 199 (1992).

JUDICIAL DECISIONS

Cited in Southern States Landfill, Inc. v. Georgia Dep't of Natural Resources, 801 F. Supp. 725 (M.D. Ga. 1992); Wilbros, LLC v. State, 294 Ga. 514, 755 S.E.2d 145 (2014).

12-8-27.1. (Effective July 1, 2022.) Solid Waste Trust Fund.

(a)(1) The state treasurer shall establish a separate trust fund in the state treasury that shall be known as the Solid Waste Trust Fund to which all funds within the solid waste trust fund previously established by this subsection shall be transferred. The director shall serve as trustee of the Solid Waste Trust Fund.

(2) The state treasurer shall invest the money held in the Solid Waste Trust Fund in the same manner in which state funds are invested as authorized by the State Depository Board pursuant to Article 3 of Chapter 17 of Title 50. Interest earned by the money held in the trust fund shall be accounted for separately and shall be credited to the trust fund to be disbursed as other moneys in the trust fund.

(b) Under the authority granted and subject to the conditions imposed by Article III, Section IX, Paragraph VI(r) of the Constitution of Georgia, for the period beginning on July 1, 2022, and ending on June 30, 2032, all of the money collected pursuant to subsection (h) of Code Section 12-8-40.1 shall be annually appropriated to the Solid Waste Trust Fund established by subsection (a) of this Code section and such funds shall not lapse as otherwise required by Article III, Section IX, Paragraph IV(c) of the Constitution of Georgia. Each annual appropriation shall be made through the General Appropriations Act and shall include all of the money collected from such source during the most recently completed fiscal year.

(c) All of the money appropriated to the Solid Waste Trust Fund pursuant to subsection (b) of this Code section shall be dedicated for use only for the following purposes:

(1) To take whatever emergency action is necessary or appropriate to assure that the public health or safety is not threatened whenever there is a release or substantial threat of a release of contaminants from a disposal facility;

(2) To take preventive or corrective actions where the release of contaminants presents an actual or potential threat to human health or the environment and where the owner or operator has not been

identified or is unable or unwilling to perform corrective action, including but not limited to closure and postclosure care of a disposal facility and provisions for providing alternative water supplies;

(3) To take such actions as may be necessary to monitor and provide postclosure care of any disposal facility, including preventive and corrective actions, without regard to the identity or solvency of the owner thereof, commencing five years after the date of completing closure;

(4) To take such actions as may be necessary to implement the provisions of a scrap tire management program in this state, particularly as may be related to the cleanup of scrap tire disposal piles and facilities, regulation of tire carriers and other handlers, and disbursement of grants and loans to cities, counties, and other persons as may be necessary to implement fully the provisions of this part; and

(5) To fulfill any purpose provided in subsection (c) of Code Section 12-8-37.1.

(d) The director shall prepare an accounting of the funds expended pursuant to this Code section during the most recently completed fiscal year to be provided to the Office of Planning and Budget, the House Budget and Research Office, and the Senate Budget and Evaluation Office by January 1 of each year.

(e)(1) If the director determines that a solid waste or special solid waste handling facility has been abandoned, that the owner or operator thereof has become insolvent, or that for any other reason there is a demonstrated unwillingness or inability of the owner or operator to maintain, operate, or close the facility, to carry out postclosure care of the facility, or to carry out corrective action required as a condition of a permit to the satisfaction of the director, the director may implement the applicable financial responsibility mechanisms. The proceeds from any applicable financial responsibility mechanisms shall be deposited into the Solid Waste Trust fund.

(2) The determination of whether there has been an abandonment, default, or other refusal or inability to perform and comply with closure, postclosure, or corrective action requirements shall be made by the director.

History. — Code 1981, § 12-8-27.1, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1992, p. 3259, § 5; Ga. L. 1992, p. 3276, § 9; Ga. L. 2013, p. 171, § 2/HB 320; Ga. L. 2013, p. 274, § 3/HB 226; Ga. L. 2021, p. 761, § 2/HB 511.

Delayed effective date. — Code Section 12-8-27.1 is set out twice in this Code. This version is effective July 1, 2022. For version effective until July 1, 2022, see the preceding version.

The 2021 amendment, effective July 1, 2022, substituted the present provisions of subsection (a) for the former provisions, which read: "There shall be established the solid waste trust fund. The director shall serve as trustee of the solid waste trust fund. The moneys deposited in

such fund pursuant to this Code section, Code Section 12-8-30.6, and Code Section 12-8-40.1 may be expended by the director, with the approval of the board, for the following purposes:"; added subsections (b) and (c); redesignated former paragraphs (a)(1) through (a)(4) as present paragraphs (c)(1) through (c)(4), respectively; deleted "and" from the end of paragraph (c)(3), added "; and" at the end of paragraph (c)(4), and added paragraph (c)(5); added subsection (d); redesignated former subsections (b) and (c) as present paragraphs (e)(1) and (e)(2), respectively; substituted "into the Solid Waste Trust fund" for "in the solid waste trust fund" in the second sentence of paragraph (e)(1); and deleted former subsection (d), which read: "Any interest earned upon the corpus of the solid waste trust fund shall not become a part thereof but shall be paid over to the division to be utilized by the division for administration of the state solid waste management program. Any funds not expended for this purpose in the fiscal year in which they are generated shall be deposited into the state treasury. Nothing in this Code section shall be construed so as to allow the division to retain any funds required by the Constitution of Georgia to be paid into the state treasury. The division shall comply with all provisions of Part 1 of Article 4 of Chapter 12 of Title 45, known as the 'Budget Act'; provided, however, that the division shall be exempt from the provisions of Code Section 45-12-92, which requires payment into the state treasury of moneys collected by state agencies."

Code Commission notes. — The amendment of subsection (a) of this Code section by Ga. L. 2013, p. 171, § 2, irreconcilably conflicted with and was treated as superseded by Ga. L. 2013, p. 274, § 3. See County of Butts v. Strahan, 151 Ga. 417 (1921); Keener v. McDougall, 232 Ga. 273 (1974) and Ga. L. 2013, p. 141, § 54(d)/HB 79.

Editor's notes. — Ga. L. 2021, p. 761, § 23/HB511, not codified by the General Assembly, provides: "In accordance with the requirements of Article III, Section IX, Paragraph VI(r) of the Constitution of Georgia, this Act shall not become law unless it receives the requisite two thirds' majority vote in both the Senate and the House of Representatives and the amount of the funds dedicated by this Act do not equal or exceed 1 percent of the previous fiscal year's state revenues subject to appropriations."

12-8-27.2. Financial responsibility.

(a) No solid waste handling facility shall be operated or maintained by any person unless adequate financial responsibility has been demonstrated to the director to ensure the satisfactory maintenance, closure, and postclosure care of such facility or to carry out any corrective action which may be required as a condition of a permit. The available financial responsibility mechanisms shall be expansive with adequate variety and flexibility to allow the owner or operator to meet its financial obligations. The owner or operator shall be allowed to use combined financial responsibility mechanisms for a single facility and shall be allowed to use combined financial responsibility mechanisms for multiple facilities, utilizing actuarially sound risk-spreading techniques. The director shall require the demonstration of financial responsibility prior to issuing a permit for any solid waste handling facility.

(b) The provisions of this Code section shall not apply to any county, municipality, authority, or special district empowered to engage in solid waste management activities which operates or maintains a solid waste

handling facility unless and until such times as federal regulations require counties, municipalities, or special districts to demonstrate financial responsibility for such facilities.

History. — Code 1981, § 12-8-27.2, enacted by Ga. L. 1990, p. 412, § 1.

12-8-28. Lead acid vehicle batteries.

(a) After January 1, 1991, no person may place a used lead acid vehicle battery in mixed municipal solid waste or discard or otherwise dispose of a lead acid vehicle battery except by delivery to a battery retailer or wholesaler, to a secondary lead smelter, or to a collection or recovered materials processing facility that accepts lead acid vehicle batteries.

(b) After January 1, 1991, no battery retailer shall dispose of a used lead acid vehicle battery except by delivery to the agent of a battery wholesaler or a secondary lead smelter, to a battery manufacturer for delivery to a secondary lead smelter, or to a collection or recovered materials processing facility that accepts lead acid vehicle batteries.

(c) After January 1, 1991, any person selling lead acid vehicle batteries at retail or offering lead acid vehicle batteries for retail sale in this state shall:

(1) Accept, at the point of transfer, lead acid vehicle batteries from customers for recycling; and

(2) Post written notice, which must be at least 8 1/2 inches by 11 inches in size and must contain the universal recycling symbol and the following language:

"IT IS ILLEGAL TO PUT A MOTOR VEHICLE BATTERY IN THE GARBAGE. RECYCLE YOUR USED BATTERIES. STATE LAW REQUIRES US TO ACCEPT MOTOR VEHICLE BATTERIES FOR RECYCLING."

(d) After January 1, 1991, any person selling lead acid vehicle batteries at wholesale or offering lead acid vehicle batteries for sale at wholesale must accept, at the point of transfer, lead acid vehicle batteries from customers.

History. — Code 1981, § 12-8-28, enacted by Ga. L. 1990, p. 412, § 1.

12-8-29. Investigations by director; actions to enforce article.

The director shall have the authority to investigate any apparent violation of this part and to take any action authorized under this part

as he deems necessary and may institute proceedings of mandamus or other proper legal proceedings to enforce this part.

History. — Code 1981, § 12-8-29, enacted by Ga. L. 1990, p. 412, § 1.

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 190.

12-8-29.1. Authority to enter property for inspection and investigation.

The director or his duly authorized representatives shall have the power to enter at reasonable times upon any private or public property for the purpose of inspection and investigation of conditions relating to solid waste handling in this state.

History. — Code 1981, § 12-8-29.1, enacted by Ga. L. 1990, p. 412, § 1.

Cross references. — Waste control, T. 16, C. 7, A. 2, P. 3.

12-8-29.2. Confidentiality of information obtained by director or agents.

(a) Any information relating to secret processes, devices, or methods of manufacture or production, or quantities and sources of recovered materials being privately processed, obtained by the director or his agents in the administration of this part shall be kept confidential.

(b) In the event the employment of the director or his agents with the department terminates for any reason, the confidentiality requirement outlined in subsection (a) of this Code section shall continue to apply to such persons. Any person who violates this subsection shall be guilty of a misdemeanor. Such criminal penalty shall be in addition to such civil remedies as may be available to any party.

History. — Code 1981, § 12-8-29.2, enacted by Ga. L. 1990, p. 412, § 1.

12-8-30. Director's order for corrective action.

Whenever the director has reason to believe that a violation of any provision of this part or any rule or regulation adopted pursuant to this part has occurred, he shall attempt to obtain a remedy with the violator or violators by conference, conciliation, or persuasion. In the case of failure of such conference, conciliation, or persuasion to effect a remedy to such violation, the director may issue an order directed to such violator or violators. The order shall specify the provisions of this part

or rule or regulation alleged to have been violated and shall order that necessary corrective action be taken within a reasonable time to be prescribed in such order. Any order issued by the director under this part shall be signed by the director. Any such order shall become final unless the person or persons named therein request in writing a hearing no later than 30 days after such order is served on such person or persons.

History. — Code 1981, § 12-8-30, enacted by Ga. L. 1990, p. 412, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 353, 354.
C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 226. 73A C.J.S., Public Administrative Law and Procedure §§ 277 et seq., 355.

12-8-30.1. Emergency orders.

Whenever the director finds that an emergency exists requiring immediate action to protect the public health, safety, or well-being, the director, with the concurrence of the Governor, may issue an order declaring the existence of such an emergency and requiring that such action be taken to meet the emergency as the director specifies. Such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately, but shall be afforded a hearing within 48 hours.

History. — Code 1981, § 12-8-30.1, enacted by Ga. L. 1990, p. 412, § 1.

12-8-30.2. Hearings and review of actions and orders.

All hearings on and review of contested matters and orders and all hearings on and review of any other enforcement actions or orders under this part shall be provided and conducted in accordance with subsection (c) of Code Section 12-2-2.

History. — Code 1981, § 12-8-30.2, enacted by Ga. L. 1990, p. 412, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 383.
C.J.S. — 73A C.J.S., Public Administrative Law and Procedure, §§ 374 et seq.

12-8-30.3. Judgment in accordance with director's order.

The director may file in the superior court of the county wherein the person under order resides or, if such person is a corporation, in the county wherein the corporation maintains its principal place of business or, in any case, in the county wherein the violation occurred or in which jurisdiction is appropriate a certified copy of an unappealed final order of the director or of a final order of the director affirmed upon appeal or modified on any review or appeal from which no further review is taken or allowed, whereupon such court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though such judgment had been rendered in an action duly heard and determined by such court.

History. — Code 1981, § 12-8-30.3, enacted by Ga. L. 1990, p. 412, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 385.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 88, 89, 144, 145. 73A C.J.S., Public Administrative Law and Procedure, §§ 354, 575, 577.

ALR. — Pollution control: preliminary mandatory injunction to prevent, correct, or reduce effects of polluting practices, 49 A.L.R.3d 1239.

12-8-30.4. Injunctive relief.

Whenever in the judgment of the director any person has engaged in or is about to engage in any act or practice which constitutes or will constitute any violation of this part, the director may apply to the superior court of the county where such person resides, or, if such person is a nonresident of the state, to the superior court of the county where such person is engaged in or is about to engage in such act or practice, for an order restraining and enjoining such act or practice. Upon a showing by the director that such person has engaged in or is about to engage in any such act or practice, a temporary or permanent injunction, restraining order, or other order shall be granted without the necessity of showing lack of an adequate remedy at law.

History. — Code 1981, § 12-8-30.4, enacted by Ga. L. 1990, p. 412, § 1.

12-8-30.5. Attorney General's duties.

It shall be the duty of the Attorney General or his representative to represent the director in all actions in connection with this part.

History. — Code 1981, § 12-8-30.5, enacted by Ga. L. 1990, p. 412, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, §§ 41, 42.

C.J.S. — 7A C.J.S., Attorney General, § 28 et seq.

12-8-30.6. Civil penalties for violations; procedures.

(a) Any person, provided that person is a public authority or a city or county government located within the boundaries of Georgia, violating any provision of this part or rules or regulations adopted pursuant to this part or intentionally or negligently failing or refusing to comply with any final or emergency order of the director issued as provided in this part shall be liable for a civil penalty not to exceed $1,000.00 for such violation and for an additional civil penalty not to exceed $500.00 for each day during which such violation continues. Any person other than a public authority or a city or county government located within the boundaries of Georgia violating any provision of this part or intentionally or negligently failing or refusing to comply with any final or emergency order of the director issued as provided in this part shall be liable for a civil penalty not to exceed $25,000.00 per day for each day during which such violation continues.

(b) Whenever the director has reason to believe that any person has violated any provision of this part or any rule or regulation effective under this part or has failed or refused to comply with any final order or emergency order of the director, he may upon written request cause a hearing to be conducted before an administrative law judge appointed by the board. Upon finding that said person has violated any provision of this part or any rule or regulation effective under this part or has failed or refused to comply with any final order or emergency order of the director, the administrative law judge shall issue his decision imposing civil penalties as provided in this Code section. Such hearing and any administrative or judicial review thereof shall be conducted in accordance with subsection (c) of Code Section 12-2-2.

(c) In rendering a decision under this Code section imposing civil penalties, the administrative law judge shall consider all factors which are relevant, including, but not limited to, the following:

(1) The amount of civil penalty necessary to ensure immediate and continued compliance and the extent to which the violator may have profited by failing or delaying to comply;

(2) The character and degree of impact of the violation or failure to comply on the natural resources of the state, especially any rare or unique natural phenomena;

(3) The conduct of the person incurring the civil penalty in promptly taking all feasible steps or procedures necessary or appropriate to comply or to correct the violation or failure to comply;

(4) Any prior violations or failures to comply by such person with regard to statutes, rules, regulations, or orders administered, adopted, or issued by the director;

(5) The character and degree of injury to or interference with public health or safety which is caused or threatened to be caused by such violation or failure to comply;

(6) The character and degree of injury to or interference with reasonable use of property which is caused or threatened to be caused by such violation or failure; and

(7) The character and degree of intent with which the conduct of the person incurring the civil penalty was carried out.

(d) All civil penalties recovered by the director as provided in this Code section shall be paid into the solid waste trust fund established pursuant to the provisions of Code Section 12-8-27.1.

History. — Code 1981, § 12-8-30.6, enacted by Ga. L. 1990, p. 412, § 1.

JUDICIAL DECISIONS

Prior consent order did not amount to criminal punishment to which double jeopardy prohibitions applied. — Trial court properly denied a solid waste facility operator's double jeopardy plea in bar of prosecution because even though the parties stipulated that the consent order and the criminal action alleged the same nuisance conduct and each proceeding had the same goals of restraint, deterrence, and abatement, the criminal action was not barred by the sanctions imposed in the consent order since the consent order did not amount to criminal punishment to which double jeopardy prohibitions applied. Wilbros, LLC v. State, 294 Ga. 514, 755 S.E.2d 145 (2014).

RESEARCH REFERENCES

Am. Jur. 2d. — 21 Am. Jur. 2d, Criminal Law, § 20.

C.J.S. — 22 C.J.S., Criminal Law, § 19.

12-8-30.7. Unlawful acts.

It shall be unlawful for any person to engage in solid waste handling except in such a manner as to conform to and comply with this part and all applicable rules, regulations, and orders established under this part.

History. — Code 1981, § 12-8-30.7, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1992, p. 3276, § 10.

Law reviews. — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 199 (1992).

JUDICIAL DECISIONS

Editor's notes. — In light of the similarity of the statutory provisions, decisions under former Code Section 12-8-26 are included in the annotations for this Code section.

Negligence action not available for breach of duty imposed by section. — Even if this statute were construed as imposing a general duty of safety beyond the primary duty of minimizing any environmental hazards, there is still no statutory authorization for a negligence action based on a breach of that duty. Dinsmore v. Cherokee County, 177 Ga. App. 93, 338 S.E.2d 523 (1985) (decided under former O.C.G.A. § 12-8-26).

RESEARCH REFERENCES

Am. Jur. 2d. — 58 Am. Jur. 2d, Nuisances, §§ 161, 162.

C.J.S. — 66 C.J.S., Nuisances, § 78.

12-8-30.8. Penalties for violations.

(a) Any person who:

(1) Knowingly transports or causes to be transported any solid waste as defined in this part to a facility which does not have a permit, which does not have a variance pursuant to this part, or which is not subject to an order of the director which specifically authorized continued operation of such facility;

(2) Knowingly treats, processes, stores, or disposes of any solid waste as defined in this part:

(A) Without a permit or an order of the director allowing such treatment, processing, storage, or disposal of solid waste;

(B) In knowing violation of any material condition or requirement of such permit or order; or

(C) In knowing violation of any material condition or requirement of any applicable regulations or standards adopted by the board in accordance with Code Section 12-8-23;

(3) Knowingly omits material, information, or makes any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with this part or regulations promulgated pursuant to this part;

(4) Knowingly processes, stores, treats, transports, disposes of, or otherwise handles any solid waste as defined in this part, and who knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed for purposes of compliance with this part; or

(5) Knowingly transports without a manifest or causes to be transported without a manifest, any solid waste required by this part to be accompanied by a manifest

shall, upon conviction, be subject to a fine of not more than $50,000.00 for each day of violation or imprisonment for not less than one nor more than two years or, in the case of a violation of paragraph (1) or (2) of this subsection, three years, or both. If conviction is for a violation committed after a first conviction of such person under this subsection, the maximum punishment under the respective paragraphs shall be doubled with respect to both fine and imprisonment.

(b) An organization may be convicted for the criminal acts set forth in subsection (a) of this Code section if an agent of the organization performs the conduct which is an element of the criminal act set forth in subsection (a) of this Code section and the agent's action is authorized, requested, commanded, or recklessly tolerated by the board of directors of the organization or by a managerial official who is acting within the scope of such official's employment on behalf of the organization.

(c) Any sheriff, deputy sheriff, or other peace officer or local code enforcement officer shall have the authority to enforce the provisions of subsection (c) of Code Section 12-8-40.1.

History. — Code 1981, § 12-8-30.8, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1992, p. 3276, § 11; Ga. L. 1994, p. 1101, § 2; Ga. L. 2013, p. 274, § 4/HB 226.

Law reviews. — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 199 (1992).

JUDICIAL DECISIONS

Prior consent order did not amount to criminal punishment to which double jeopardy prohibitions applied. — Trial court properly denied a solid waste facility operator's double jeopardy plea in bar of prosecution because even though the parties stipulated that the consent order and the criminal action alleged the same nuisance conduct and each proceeding had the same goals of restraint, deterrence, and abatement, the criminal action was not barred by the sanctions imposed in the consent order since the consent order did not amount to criminal punishment to which double jeopardy prohibitions applied. Wilbros, LLC v. State, 294 Ga. 514, 755 S.E.2d 145 (2014).

RESEARCH REFERENCES

Am. Jur. 2d. — 21 Am. Jur. 2d, Criminal Law, § 20.

C.J.S. — 22 C.J.S., Criminal Law, § 19.

12-8-30.9. Powers of local governmental bodies and state not limited by this part.

No provision of this part and no rule, regulation, or ruling of the board or the director shall be construed to be a limitation:

(1) On the power of a municipality, county, authority, or special district to adopt and enforce additional regulations, not in conflict

with this part, imposing further conditions, restrictions, or limitations with respect to the handling or disposal of municipal solid waste;

(2) On the power of a municipality, county, authority, or special district to declare, prohibit, and abate nuisances;

(3) On the power of the Attorney General, at the request of the director or upon his own volition, to bring an action in the name of the State of Georgia; or

(4) On the power of any state agency in the enforcement or administration of any provision of law it is specifically permitted or required to enforce or administer.

History. — Code 1981, § 12-8-30.9, enacted by Ga. L. 1990, p. 412, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, a comma was inserted following "authority" near the beginning of paragraph (1).

JUDICIAL DECISIONS

County ordinance covering payment of garbage collection fees. — State constitution, statutes, and case law permit a county to enact an ordinance making property owners responsible for the payment of garbage collection fees for the owners' rental property. Board of Comm'rs v. Guthrie, 273 Ga. 1, 537 S.E.2d 329 (2000).

Prior consent order did not amount to criminal punishment to which double jeopardy prohibitions applied. — Trial court properly denied a solid waste facility operator's double jeopardy plea in bar of prosecution because even though the parties stipulated that the consent order and the criminal action alleged the same nuisance conduct and each proceeding had the same goals of restraint, deterrence, and abatement, the criminal action was not barred by the sanctions imposed in the consent order since the consent order did not amount to criminal punishment to which double jeopardy prohibitions applied. Wilbros, LLC v. State, 294 Ga. 514, 755 S.E.2d 145 (2014).

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1972, pp. 1002 and 1006 are included in the annotations for this Code section.

"County" construed. — Reference to "county" should be construed broadly enough to cover other county governmental bodies. 1976 Op. Att'y Gen. No. 76-17 (decided under Ga. L. 1972, pp. 1002 and 1006).

12-8-30.10. Exemption for private individuals.

This part shall not apply to any individual disposing of solid waste originating from his own residence onto land or facilities owned by him when disposal of such waste does not thereby adversely affect the public health.

History. — Code 1981, § 12-8-30.10, enacted by Ga. L. 1990, p. 412, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, § 32.

C.J.S. — 53 C.J.S., Licenses, §§ 56, 57, 58.

12-8-31. State solid waste management plan; reporting.

(a) By January 1, 1991, the division, jointly with the Department of Community Affairs and in cooperation with the Georgia Environmental Finance Authority and local government officials, shall develop a state solid waste management plan.

(b) The state solid waste management plan shall be submitted to the Governor's Development Council and shall serve as the guide for the development of local plans and regional plans for solid waste management.

(c) The state solid waste management plan shall include but not be limited to:

(1) A general analysis of solid waste management practices currently in use, management alternatives and technologies available, and their application;

(2) Procedures and strategies for meeting state goals and objectives for waste reduction;

(3) Minimum standards and procedures to be met by local and regional solid waste management plans, including the assurance of adequate solid waste handling capability and capacity for the subsequent ten-year period which shall specifically include adequate collection capability;

(4) A procedure for informing the public annually of the locally incurred costs of solid waste management;

(5) Procedures for ensuring cooperative efforts on solid waste management planning by the state, regional commissions, local governments, groups of local governments, and private companies, including a description of the means by which the state will encourage local governments to pursue regional approaches;

(6) A description of public and private alternatives for the provision of solid waste management services;

(7) A description of the respective roles of agencies in the implementation of a state-wide public information education program on solid waste management which emphasizes grass roots participation of all age levels;

(8) Methods of assuring public participation in the planning and decision-making processes; and

(9) Methods for assuring implementation of the state solid waste management plan.

(d) In monitoring and reporting on the implementation success of the state solid waste management plan required under this Code section, the Department of Community Affairs, with the cooperation of the division and the Georgia Environmental Finance Authority, shall report annually to the Governor and the General Assembly on the status of solid waste management in Georgia. The Department of Community Affairs shall not be required to distribute copies of the annual report to the members of the General Assembly but shall notify the members of the availability of the annual report in the manner which it deems to be most effective and efficient. The annual report shall include but not be limited to:

(1) The status of local and regional solid waste planning in Georgia;

(2) The number and types of solid waste handling facilities in Georgia;

(3) The remaining permitted capacity of each permitted solid waste handling facility;

(4) The number and types of solid waste grants made to local governments;

(5) The number and types of solid waste loans made to local governments;

(6) A compilation and analysis of solid waste management data provided by cities and counties in their annual reports;

(7) A statement of progress achieved in meeting the goal established in subsection (c) of Code Section 12-8-21;

(8) A statement of progress achieved in solid waste management education;

(9) Any revisions in the state solid waste management plan which are deemed necessary; and

(10) Recommendations for improving the management of solid waste in this state.

(e) By December 31, 2006, and annually thereafter, the Department of Community Affairs, as part of the annual solid waste report required in subsection (d) of this Code section and in cooperation with state agencies and other entities involved in litter prevention or abatement,

shall report to the Governor and the General Assembly the status of litter prevention and abatement in this state. The litter report shall include but not be limited to:

(1) An itemization of expenditures made from the Solid Waste Trust Fund for the prevention and abatement of litter;

(2) A compilation and analysis of litter prevention, collection, and enforcement efforts;

(3) An assessment of littering in this state;

(4) A statement of progress in achieving a litter prevention ethic; and

(5) Recommendations for improving litter abatement and prevention efforts.

History. — Code 1981, § 12-8-31, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 2005, p. 1036, § 10/SB 49; Ga. L. 2006, p. 275, § 3-2/HB 1320; Ga. L. 2008, p. 181, § 19/HB 1216; Ga. L. 2010, p. 949, § 1/HB 244.

Cross references. — Emergency powers of Governor generally, §§ 38-3-22, 38-3-51, 45-12-29 et seq.

Editor's notes. — Ga. L. 2006, p. 275, § 1-1/HB 1320, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Comprehensive Litter Prevention and Abatement Act of 2006.'"

Ga. L. 2006, p. 275, § 5-1/HB 1320, not codified by the General Assembly, provides that the Act shall become effective April 21, 2006, for purposes of adopting local ordinances to become effective on or after July 1, 2006.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 86, 88.

JUDICIAL DECISIONS

Ordinances did not violate dormant commerce clause. — When the only palpable burden on interstate commerce was the insignificant amount of service that would no longer be provided during four months of the year in another state, city and county flow control ordinances requiring local waste to be delivered to a publicly owned landfill and enacted pursuant to O.C.G.A. § 12-8-31 were valid and did not violate the dormant Commerce Clause of the U.S. Const. in light of the revenue generation benefit to sustain a public landfill. Quality Compliance Servs. v. Dougherty County, 553 F. Supp. 2d 1374 (M.D. Ga. 2006).

12-8-31.1. Local, multijurisdictional, or regional solid waste plans; reporting by cities and counties; annual reporting requirements for landfill owners and operators.

(a)(1) Each city and county in Georgia shall develop or be included in a comprehensive solid waste management plan. Said plan may be

developed independently as a local plan or jointly with other jurisdictions as a multijurisdictional or regional solid waste plan.

(2)(A) The Department of Community Affairs under the provisions of Chapter 13 of Title 50 shall promulgate solid waste planning guidance that a city or county may use to update or amend such city's or county's solid waste plan.

(B) Any city or county that proposes to update or amend its solid waste management plan shall publish notice of such proposed action in the county legal organ or the city's or county's Internet website, as applicable, at least two weeks prior to adopting such update or amendment to its plan in accordance with subsection (c) of this Code section.

(b) The local, multijurisdictional, or regional solid waste plan and plan updates shall, at a minimum, provide for the assurance of adequate solid waste handling capability and capacity within the planning area for at least ten years from the date of completion of the plan which shall specifically include an adequate collection and disposal capability; shall enumerate the solid waste handling facilities as to size and type; and shall identify those sites which are not suitable for solid waste handling facilities based on environmental and land use factors.

(c) To be included as part of a local, multijurisdictional, or regional solid waste plan, each city and county included as part of the plan shall adopt the plan and any plan updates by local ordinance or resolution.

(d) Each city and county may report annually to the Department of Community Affairs on the status of solid waste management in the jurisdiction. Such reports may be individual or collective in nature or, in lieu of local reports, a regional report may be filed by any of the several regional commissions for political jurisdictions within their region. The annual report may include but not be limited to:

(1) The amount of solid waste collected, processed, and disposed of in the area;

(2) The progress on the reduction in solid waste, as evidenced by the solid waste received at disposal facilities in the planning area since the previous reporting period and total cumulative progress made toward meeting the waste reduction goals of the state;

(3) The remaining permitted capacity of disposal facilities;

(4) Recycling and composting activities in existence;

(5) Public information and education activities during the reporting period; and

(6) Any other pertinent information as may be required.

(e) After July 1, 1992, no permit, grant, or loan shall be issued for any municipal solid waste disposal facility or any solid waste handling equipment or recycling equipment used in conjunction therewith in a county or region which is not consistent with a local, multijurisdictional, or regional solid waste management plan. Each application for a permit, grant, or loan issued after July 1, 1992, shall include the following:

(1) Certification that the facility for which a permit is sought complies with local land use and zoning requirements, if any;

(2) Verification that the facility for which a permit is sought meets the ten-year capacity needs identified in the local, multijurisdictional, or regional solid waste management plan; and

(3) Demonstration that the host jurisdiction and all jurisdictions generating solid waste destined for the applicant's facility are part of an approved solid waste management plan or updated plan developed consistent with standards promulgated pursuant to this part, and are actively involved in, and have a strategy for, meeting the state-wide goal for reduction of solid waste disposal.

(f) This Code section shall not apply to:

(1) Any solid waste disposal facility which is operated exclusively by a private solid waste generator on property owned by the private solid waste generator for the purpose of accepting solid waste exclusively from the private solid waste generator so long as the operation of the solid waste disposal facility does not adversely affect the public health or the environment. After commencement of operation by a private solid waste generator of a solid waste disposal facility which is permitted but not included in a local or regional solid waste management plan, an amendment into a local or regional solid waste management plan shall be required for any solid waste which is to be no longer disposed of by the private solid waste generator in its own solid waste disposal facility prior to any substantial reduction in the amount of solid waste accepted by the solid waste disposal facility or its closure; or

(2) Any privately owned solid waste handling facility seeking a permit or major modification of an existing permit where the host local governing authority has failed to make a good faith effort, as determined by the Department of Community Affairs, to develop and adopt a local solid waste management plan or to be included in a multijurisdictional or regional solid waste management plan; provided, however, that the permit applicant continues to be obligated to demonstrate that all generating jurisdictions from which waste will

be received are part of an approved solid waste management plan developed in accordance with planning guidance promulgated pursuant to this part and have a strategy to meet and are actively engaged in meeting the state-wide goal of reducing waste.

(g) Effective July 1, 1991, it shall be the responsibility of the owner or operator of each municipal solid waste disposal facility to keep an accurate written record of all amounts of solid waste measured in tons received at the facility. Measurement in tons of solid waste received shall be accomplished by one or more of the following methods:

(1) The provision of stationary or portable scales at the disposal facility for weighing incoming waste;

(2) Implementation of contractual or other arrangements for the use of scales at a location other than the disposal facility for weighing all waste destined for disposal at the facility; or

(3) Implementation of contractual or other arrangements for the use of scales at a location other than the disposal facility to weigh representative samples of the solid waste received at the disposal facility on a basis which is sufficiently frequent to estimate accurately the amount of solid waste received at the disposal facility.

(h) The provisions of subsection (d) of this Code section notwithstanding, each public or private owner or operator of a municipal solid waste landfill shall report annually to the Department of Community Affairs on the status of solid waste management for each municipal solid waste landfill it owns or operates in this state. The annual report for each such landfill shall include but not be limited to:

(1) The amount of solid waste collected, processed, and disposed of at such landfill;

(2) The remaining permitted capacity of the landfill;

(3) Recycling and composting activities in existence at such landfill; and

(4) Any other pertinent information as may be required by the Department of Community Affairs.

History. — Code 1981, § 12-8-31.1, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1992, p. 3276, § 12; Ga. L. 1993, p. 399, § 8; Ga. L. 2008, p. 181, §§ 13, 19/HB 1216; Ga. L. 2011, p. 312, § 1/SB 157.

Law reviews. — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 199 (1992).

JUDICIAL DECISIONS

Constitutionality. — "Planning requirements" set forth in paragraph (e)(3) of O.C.G.A. §§ 12-8-31.1, 12-8-24, and regulations thereunder, insofar as they

require an applicant for a permit for a biomedical waste thermal treatment facility to provide certain verifications regarding out-of-state jurisdictions generating solid waste destined for the applicant's facility, are unconstitutional as violative of the commerce clause. Environmental Waste Reductions, Inc. v. Reheis, 887 F. Supp. 1534 (N.D. Ga. 1994).

Factors to be considered in verification process. — O.C.G.A. § 12-8-24(g) did not prohibit local governments from considering factors other than environmental and land use factors in developing a Solid Waste Management Plan (SWMP), and a local government was authorized to consider any relevant factor in determining whether a proposed facility was consistent with the facility's SWMP that the facility properly considered in the SWMP itself; the Supreme Court of Georgia overruled Butts County v. Pine Ridge Recycling, Inc., 213 Ga. App. 510, 445 S.E.2d 294 (Ga. Ct. App. 1994) and held that a trial court erred in ruling that a county improperly considered factors other than environmental and land use factors in refusing to issue a verification to the Georgia Environmental Protection Division regarding an applicant's proposed landfill. Murray County v. R&J Murray, LLC, 280 Ga. 314, 627 S.E.2d 574 (2006).

Applicant for a solid waste handling facility was entitled to mandamus relief seeking to compel a city to issue written verification that a proposed solid waste handling facility did not violate any zoning or land use ordinances and that it was consistent with all solid waste management plans because: (1) the city did not comply with O.C.G.A. § 12-8-31.1(a) and (b); and (2) the city could not rely on the city's solid waste management plan to deny the written verification under O.C.G.A. § 12-8-24(g) which was consistent with the city's plan approved in 1993. McKee v. City of Geneva, 280 Ga. 411, 627 S.E.2d 555 (2006).

Ordinance restricting waste disposal services upheld. — Georgia trial court erred by denying injunctive relief to a county and the county's chosen waste disposal company wherein it sought to prohibit an unauthorized waste company from providing services in the county against an ordinance because the ordinance served a legitimate public purpose by establishing means reasonably necessary to achieve the purpose of the county providing a comprehensive solid waste management plan as the county was required to do under O.C.G.A. § 12-8-31.1. Advanced Disposal Servs. Middle Ga., LLC v. Deep S. Sanitation, LLC, 296 Ga. 103, 765 S.E.2d 364 (2014).

12-8-32. Permits for regional solid waste disposal facilities.

(a) Prior to submission of an application to the division for a permit for a regional solid waste disposal facility, conflicts as defined in Articles 1 and 2 of Chapter 8 of Title 50 shall follow the mediation procedures developed by the Department of Community Affairs pursuant to Articles 1 and 2 of Chapter 8 of Title 50. Upon the submission of any application to the division for any municipal solid waste disposal facility for which a permit other than a permit by rule is required by the division, the permit applicant shall within 15 days of the date of submission of the application publicize the submission by public notice and in writing as follows:

(1) If the application is for a facility serving no more than one county, the public notice shall be published in a newspaper of general circulation serving the host county, and each local government in the county and the regional commission shall further be notified in writing of the permit application;

(2) If the application is for a facility serving more than one county, the public notice shall be published in a newspaper of general circulation serving each affected county, and each local government within said counties and the regional commission shall be further notified in writing of the permit application; and

(3) The public notice shall be prominently displayed in the courthouse of each notified county.

(b) The division shall review the application and supporting data, make a determination as to the suitability or unsuitability of the proposed site for the intended purpose, and notify the applicant and the host local government if different from the applicant in writing of its determination.

(c) Upon receipt from the division of notice that the proposed site is suitable for the intended purpose, the applicant shall within 15 days of receipt of such notification publicize the fact by public notice as outlined in paragraphs (1), (2), and (3) of subsection (a) of this Code section. Further, within 45 days of receipt of such notification from the division, the host local government for the proposed site shall as outlined in paragraphs (1), (2), and (3) of subsection (a) of this Code section advertise and hold a public meeting to inform affected residents and landowners in the area of the proposed site and of the opportunity to engage in a facility issues negotiation process.

(d) Following notification of the applicant of the proposed site's suitability, the division may continue to review the applicant's permit application but the director shall not take any action with respect to permit issuance or denial until such time as the local notification and negotiation processes described in this Code section have been exhausted.

(e) The division shall not be a party to the negotiation process described in this Code section, nor shall technical environmental issues which are required by law and rules to be addressed in the permitting process be considered negotiable items by parties to the negotiation process.

(f) Within 30 days following a public meeting held in accordance with subsection (c) of this Code section, a facility issues negotiation process shall be initiated by the host local government upon receipt of a written petition by at least 25 affected persons, at least 20 of whom shall be registered voters of or landowners in the host jurisdiction. Multiple petitions may be consolidated into a single negotiating process. For the purposes of this subsection, the term "affected person" means a registered voter of the host local government or of a county contiguous to such host local government or a landowner within the jurisdiction of the host local government.

(g) Within 15 days following receipt of such written petition, the host local government shall validate the petition to ensure that the petitioners meet the requirements of this Code section.

(h) Within 15 days following the validation of the written petition to negotiate, the host local government shall notify the petitioners by publication as provided in paragraphs (1), (2), and (3) of subsection (a) of this Code section; shall notify the permit applicant if different from the host local government, the division, and the regional commission that the negotiation process is being initiated; and shall set a date for a meeting with the citizens facility issues committee, the host local government, and the permit applicant not later than 30 days following validation of such written petition to negotiate.

(i) The petitioning persons shall select up to ten members, at least eight of whom shall be registered voters or landowners in the host local government, to serve on a citizens facility issues committee to represent them in the negotiation process. The membership of the citizens facility issues committee shall be chosen within 15 days following the validation of such written petition pursuant to this Code section.

(j) The negotiation process shall be overseen by a facilitator named by the host local government, after consultation with the citizens facility issues committee, from a list provided by the Department of Community Affairs. The function of the facilitator shall be to assist the petitioners, the host local government, and the permit applicant, if different from the host local government, through the negotiation process. The cost, if any, of the facilitator shall be borne by the permit applicant.

(k) Beginning with the date of the first negotiation meeting called in accordance with subsection (h) of this Code section, there shall be no fewer than three negotiation meetings within the following 45 day period unless waived by consent of the parties. Such negotiation meetings shall be presided over by the facilitator named in subsection (j) of this Code section and shall be for the purpose of assisting the petitioners, the host local government, and the permit applicant, if different from the host local government, to engage in nonbinding negotiation.

(l) Minutes of each meeting and a record of the negotiation process shall be kept by the host local government.

(m) All issues except those which apply to environmental permit conditions are negotiable. Environmental permit conditions are not negotiable. Issues which may be negotiated include but are not limited to:

(1) Operational issues, such as hours of operation;

(2) Recycling efforts that may be implemented;

(3) Protection of property values;

(4) Traffic routing and road maintenance; and

(5) Establishment of local advisory committees.

(n) At the end of the 45 day period following the first negotiation meeting, the facilitator shall publish a notice of the results, if any, of the negotiation process in the same manner as provided in paragraphs (1), (2), and (3) of subsection (a) of this Code section and shall include the date, time, and place of a public meeting to be held within ten days after publication at which the input of persons not represented by the citizens facility issues committee may be received.

(o) The negotiated concessions reached by the negotiating parties shall be reduced to writing and executed by the chairman of the citizens facility issues committee and the chief elected official of the host local government and shall be adopted by resolution of the host local government.

(p) If the negotiating parties fail to reach consensus on any issue or issues, the permit applicant may nonetheless proceed to seek a permit from the division. The facilitator shall notify the division in writing that the negotiating parties have failed to reach consensus.

(q) If the negotiating parties reach consensus on negotiated issues, the permit applicant may proceed to seek a permit from the division. The facilitator shall notify the division in writing that the negotiating parties have reached consensus.

(r) Negotiated concessions shall not be construed as environmental permit conditions.

(s) Upon receipt of a written notification from the facilitator that the parties to negotiation have reached consensus or have failed to reach consensus on negotiated issues, and upon written notification from the permit applicant that he wishes to pursue permitting of the solid waste disposal facility for which an application has been filed, the director shall proceed to process the permit in accordance with Code Section 12-8-24.

History. — Code 1981, § 12-8-32, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 2008, p. 181, § 13/HB 1216.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "facility" was substituted for "facilities" in subsection (h).

JUDICIAL DECISIONS

Cited in Anti-Landfill Corp. v. North Am. Metal Co., LLC, 299 Ga. App. 509, 683 S.E.2d 88 (2009).

12-8-33. Recycling Market Development Council.

(a) Effective July 1, 1990, there is created a 15 member Recycling Market Development Council to be appointed as follows:

(1) Seven members appointed by the Governor representing the paper, glass, aluminum, plastic, and ferrous and nonferrous metals industries and trade associations which are active in recycling;

(2) One member who is an elected or appointed municipal official to be appointed by the Governor;

(3) One member who is an elected or appointed member of a county governing authority to be appointed by the Governor;

(4) One member appointed by the Speaker of the House of Representatives;

(5) One member appointed by the President of the Senate; and

(6) One representative each from the Department of Administrative Services; the Department of Economic Development; the Department of Community Affairs; and the Department of Natural Resources.

(b) The council shall meet as necessary and shall determine what actions, if any, are needed to facilitate the development and expansion of markets for recovered materials in Georgia and shall prepare an annual report with recommendations to the Governor and General Assembly. The council shall not be required to distribute copies of the annual report to the members of the General Assembly but shall notify the members of the availability of the annual report in the manner which it deems to be most effective and efficient.

(c) The council shall function for a period of five years from its establishment, at which time it shall either be reauthorized or shall stand abolished.

History. — Code 1981, § 12-8-33, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1992, p. 3276, § 13; Ga. L. 2004, p. 690, § 11; Ga. L. 2004, p. 1036, § 11.

Law reviews. — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 199 (1992).

12-8-33.1. Improper disposal of computer equipment; Computer Equipment Disposal and Recycling Council created; compensation; powers and duties.

Repealed by Ga. L. 2007, p. 47, § 12/SB 103, effective May 11, 2007.

Editor's notes. — This Code section was based on Code 1981, § 12-8-33.1, enacted by Ga. L. 2002, p. 1086, § 1.

12-8-34. Labeling rigid plastic containers or bottles.

(a) On and after January 1, 1991, it shall be unlawful to manufacture for use in Georgia or offer for sale in Georgia any rigid plastic container or rigid plastic bottle which is not labeled in accordance with subsection (b) of this Code section.

(b) On and after January 1, 1991, any rigid plastic container or rigid plastic bottle manufactured for use in Georgia or offered for sale in Georgia shall be labeled with a code molded into the plastic product which indicates the resin used to produce the bottle or container. Such coding shall conform with the following:

(1) Rigid plastic containers or rigid plastic bottles with basecups or other components of the secondary material may, if the materials are compatible in recycling systems, carry the code of the basic material (even when the basic code is applied to the basecup of the secondary material); otherwise "7-other" is appropriate.

(2) The label code shall consist of a number placed inside a triangle and letters placed below the triangle as required by paragraph (3) of this subsection. The triangle shall be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The pointer (arrowhead) of each arrow shall be at the midpoint of each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow. The triangle, formed by the three arrows curved at their midpoints, shall depict a clockwise path around the code number;

(3) The numbers and letters used on labels described in this Code section and their interpretations shall be as follows:

"1-PETE" (polyethylene terephthalate)

"2-HDPE" (high-density polyethylene)

"3-V" (vinyl)

"4-LDPE" (low-density polyethylene)

"5-PP" (polypropylene)

"6-PS" (polystyrene)

"7-OTHER" (all other resins and layered multimaterial)

History. — Code 1981, § 12-8-34, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 2001, p. 4, § 12.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, a comma was inserted following "midpoints" in the last sentence of paragraph (b)(2) and in the last item listed in paragraph (b)(3) "all" was substituted for "All" and parentheses were added around language following "7-OTHER".

Pursuant to Code Section 28-9-5, in 1992, a period was deleted at the end of the Code section.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of statute or ordinances requiring return deposits on soft drinks, beer, water bottles, or similar containers, 94 A.L.R.6th 239.

12-8-35. Review of purchases and purchasing specifications, practices, and procedures by commissioner of administrative services.

(a) The commissioner of administrative services shall:

(1) By July 1, 1990, commence a review of all goods and products purchased to determine what percentage of state purchases contain recycled materials, which review shall be completed by December 31, 1991, and, upon completion of his review, file a report of his findings with the General Assembly and the Governor; and

(2) By July 1, 1990, commence a review of the purchasing specifications, practices, and procedures of the State of Georgia, paying particular attention to any procedures and specifications which concern or impact the purchase of recovered materials or goods or products made from recovered or recyclable materials, which review shall be completed by December 31, 1991, and, upon completion of his review, file a report to the Governor and the General Assembly with recommendations for procedures and specifications for state purchasing which promote the increased purchase of goods or products made from recovered materials and goods or products which are recyclable; provided, however, that the commissioner of administrative services shall not propose any procedure or specification which would be economically infeasible or which would cause the state to sacrifice quality or performance standards or would unduly restrict free and open competition among vendors.

(b) In conducting any review required under this Code section, the commissioner of administrative services shall consider those specifications adopted or recommended by the United States government pursuant to 40 C.F.R. Parts 248, 249, 250, 252, and 253.

History. — Code 1981, § 12-8-35, enacted by Ga. L. 1990, p. 412, § 1.

12-8-36. State agency recycling and collection programs.

(a) The Georgia Building Authority is authorized to establish and coordinate a state-wide recycling program for state agencies and to establish, engage in, contract for, or otherwise allow or arrange for a collection program for recovered materials generated as a result of agency operations, including, but not limited to, aluminum and steel cans, plastic and glass bottles, and all grades of paper, including corrugated cardboard, and for the mulching or composting of yard trimmings. The Georgia Building Authority is authorized to establish procedures for the collection and storage of such materials from any property or building utilized by the state or any agency thereof and to enter into contractual or other arrangements for the transportation, disposition, or sale of such materials. Proceeds generated from such sale shall be used by the Georgia Building Authority for the purpose of offsetting the costs and expenses of administering and implementing the recycling program.

(b) Nothing in this part shall prohibit any state agency from engaging in, contracting for, or otherwise allowing or arranging for its own recycling program for recovered materials generated as a result of its own agency operations.

History. — Code 1981, § 12-8-36, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1992, p. 3276, § 14; Ga. L. 2009, p. 786, § 2/HB 310.

Editor's notes. — Ga. L. 2009, p. 786, § 1/HB 310, not codified by the General Assembly, provides that: "The General Assembly finds that it is in the best interests of the state to encourage recycling and that state agencies can contribute to recycling efforts in a meaningful way. The General Assembly further finds that this Act is intended to be a part of the campaign to Make Georgia's Capitol Green."

Administrative rules and regulations. — Recycling and waste reduction grant program, Official Compilation of the Rules and Regulations of the State of Georgia, Grant Program Description for Georgia Environmental Facilities Authority, Chapter 267-2.

Law reviews. — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 199 (1992).

RESEARCH REFERENCES

ALR. — Validity, construction, and application of statute or ordinances requiring return deposits on soft drinks, beer, water bottles, or similar containers, 94 A.L.R.6th 239.

12-8-37. Financial aid from federal government or other sources.

The director shall be the state representative to receive and administer financial aid from the federal government or other public or nonprofit sources for purposes of solid waste management.

History. — Code 1981, § 12-8-37, enacted by Ga. L. 1990, p. 412, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 263 et seq., 346 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, § 363.

12-8-37.1. (Effective until July 1, 2022.) State grants authorized.

(a) The state is authorized to make grants, as funds are available, to any county, municipality, or any combination of the same, or to any public authority, agency, commission, or institution, to assist such governmental or public body in the construction of solid waste handling systems which are consistent with local and regional solid waste management plans prepared in accordance with the requirements of this part.

(b) The director shall administer all funds granted by the state pursuant to this Code section.

(c) The corpus of the solid waste trust fund established in Code Section 12-8-27.1 may be used to make grants and loans to cities and counties, any combination of cities and counties, authorities, state agencies, or the Georgia Recycling Market Development Council for the cleanup of solid waste disposal facilities, including those used for the disposal of scrap tires; for the development and implementation of solid waste enforcement programs for the prevention and abatement of illegal dumping of solid waste, including without limitation the prevention and abatement of litter; for the funding of grants or loans, in accordance with procedures developed by the division; for the implementation of innovative technologies for the recycling and reuse of solid waste, including without limitation scrap tires; and for educational and other efforts to promote waste reduction, recycling, and recycling market development.

History. — Code 1981, § 12-8-37.1, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1992, p. 3259, § 6; Ga. L. 2005, p. 1247, § 8/SB 122.

Delayed effective date. — Code Section 12-8-37.1 is set out twice in this Code. This version is effective until July 1, 2022. For version effective July 1, 2022, see the following version.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Funds, § 33 et seq. 63C Am. Jur. 2d, Public Officers and Employees, §§ 256 et seq., 340 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 363 et seq. 81A C.J.S., States, § 339.

12-8-37.1. (Effective July 1, 2022.) State grants authorized.

(a) The state is authorized to make grants, as funds are available, to any county, municipality, or any combination of the same, or to any public authority, agency, commission, or institution, to assist such governmental or public body in the construction of solid waste handling systems which are consistent with local and regional solid waste management plans prepared in accordance with the requirements of this part.

(b) The director shall administer all funds granted by the state pursuant to this Code section.

(c) The corpus of the Solid Waste Trust Fund established in Code Section 12-8-27.1 may be used to make grants and loans to cities and counties, any combination of cities and counties, authorities, state agencies, or the Georgia Recycling Market Development Council for the cleanup of solid waste disposal facilities, including those used for the disposal of scrap tires; for the development and implementation of solid waste enforcement programs for the prevention and abatement of illegal dumping of solid waste, including without limitation the prevention and abatement of litter; for the funding of grants or loans, in accordance with procedures developed by the division; for the implementation of innovative technologies for the recycling and reuse of solid waste, including without limitation scrap tires; and for educational and other efforts to promote waste reduction, recycling, and recycling market development.

History. — Code 1981, § 12-8-37.1, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1992, p. 3259, § 6; Ga. L. 2005, p. 1247, § 8/SB 122; Ga. L. 2021, p. 761, § 3/HB 511.

Delayed effective date. — Code Section 12-8-37.1 is set out twice in this Code. This version is effective July 1, 2022. For version effective until July 1, 2022, see the preceding version.

The 2021 amendment, effective July 1, 2022, substituted "Solid Waste Trust Fund" for "solid waste trust fund" near the beginning of subsection (c).

Editor's notes. — Ga. L. 2021, p. 761, § 23/HB511, not codified by the General Assembly, provides: "In accordance with the requirements of Article III, Section IX, Paragraph VI(r) of the Constitution of Georgia, this Act shall not become law unless it receives the requisite two thirds' majority vote in both the Senate and the House of Representatives and the amount of the funds dedicated by this Act do not equal or exceed 1 percent of the previous fiscal year's state revenues subject to appropriations."

12-8-38. Funds generated by division; use for operation and maintenance; deposit of unexpended funds.

Notwithstanding any other provision of law, the department is authorized to retain all miscellaneous funds generated by the division for use in the operation and maintenance of that area. Any such funds not expended for this purpose in the fiscal year in which they are

generated shall be deposited in the state treasury, provided that nothing in this Code section shall be construed so as to allow the department to retain any funds required by the Constitution of Georgia to be paid into the state treasury; provided, further, that the department shall comply with all provisions of Part 1 of Article 4 of Chapter 12 of Title 45, the "Budget Act," except Code Section 45-12-92, prior to expending any such miscellaneous funds.

History. — Code 1981, § 12-8-38, enacted by Ga. L. 1990, p. 412, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, §§ 409, 410, 411.

C.J.S. — 62 C.J.S., Municipal Corporations, §§ 166, 247.

12-8-39. (Effective until July 1, 2022.) Cost reimbursement fees; surcharges; exempt contracts; reporting.

(a) Effective January 1, 1992, each city or county which operates a municipal solid waste disposal facility is authorized and required to impose a cost reimbursement fee upon each ton of municipal solid waste or the volume equivalent of a ton, as determined by rules of the division, for each ton of municipal solid waste received at a municipal solid waste disposal facility regardless of its source. The fee imposed may be equal to, or a portion of, the true cost of providing solid waste management services on a per ton or volume equivalent as determined pursuant to the forms, rules, and procedures developed by the Department of Community Affairs.

(b) A minimum of $1.00 per ton or volume equivalent of the cost reimbursement fee specified in this Code section which is received by the city or county, if implemented after March 30, 1990, shall be paid into a local restricted account and shall be used for solid waste management purposes only.

(c) Effective January 1, 1992, when a municipal solid waste disposal facility is operated as a joint venture by more than one city or county or combination thereof, by a special solid waste district, or by an authority, the cost reimbursement fee specified in this Code section shall be imposed by the joint operators, district, or authority and the cost reimbursement fee received shall be administered as outlined in subsection (b) of this Code section and shall be remitted into a restricted account established by the participating local governments.

(d)(1)(A) Until June 30, 2019, when a municipal solid waste disposal facility is operated by private enterprise, the host local government is authorized and required to impose a surcharge of $1.00 per ton

or volume equivalent, in addition to any other negotiated charges or fees which shall be imposed by and paid to the host local government for the facility. Except as otherwise provided in subparagraph (B) of this paragraph, effective July 1, 2019, when a municipal solid waste disposal facility is owned by private enterprise, the host local government is authorized and required to impose a surcharge of $2.50 per ton or volume equivalent, in addition to any other negotiated charges or fees which shall be imposed by and paid to the host local government for the facility.

(B) When a municipal solid waste disposal facility is operated by private enterprise, the host local government is authorized and required to impose a surcharge of $1.00 per ton or volume equivalent for construction or demolition waste or inert waste, in addition to any other negotiated charges or fees which shall be imposed by and paid to the host local government for the facility.

(C) Any contract in existence on September 1, 2020, shall be exempt from the provisions of this subsection until such time as the contract is renewed, replaced, extended, amended, or otherwise changed.

(2)(A) At least 20 percent of the surcharges collected pursuant to this subsection shall be expended for the following purposes:

(i) To offset the impact of the facility;

(ii) Public education efforts for solid waste management, hazardous waste management, and litter control;

(iii) The cost of solid waste management;

(iv) Administration of the local or regional solid waste management plan;

(v) Repair of damage to roads and highways associated with the facility;

(vi) Enhancement of litter control programs;

(vii) Ground-water and air monitoring and protection associated with the location of the facility;

(viii) Remediation and monitoring of closed or abandoned facilities within the jurisdiction of the host local government;

(ix) Infrastructure improvements associated with the facility;

(x) Allocation of such funds in any fiscal year to a reserve fund designated for use for the above purposes in future fiscal years; and

(xi) For the acquisition of property and interests in property adjacent to or in reasonable proximity to the facility upon a

determination by the host local government that such acquisition will serve beautification, environmental, buffering, or recreational purposes such as will ameliorate the impact of the facility.

(B) Those surcharges not expended or allocated as provided for in subparagraph (A) of this paragraph may be used for other governmental expenses to the extent not required to meet the above or other solid waste management needs.

(3) Host local governments may negotiate for and obtain by contract surcharges higher than those set forth in this subsection; furthermore, nothing in this subsection shall reduce any such surcharge in existence on July 1, 2019.

(e)(1) Owners or operators of any solid waste disposal facility other than an inert waste landfill as defined in regulations promulgated by the board or a private industry solid waste disposal facility shall assess and collect on behalf of the division from each disposer of waste a surcharge of 75¢ per ton of solid waste disposed. Two percent of said surcharge collected may be retained by the owner or operator of any solid waste disposal facility collecting said surcharge to pay for costs associated with collecting said surcharge. Surcharges assessed and collected on behalf of the division shall be paid to the division not later than the first day of July of each year for the preceding calendar year. Any facility permitted exclusively for the disposal of construction or demolition waste that conducts recycling activities for construction or demolition materials shall receive a credit toward the surcharge listed above per ton of material recycled at the facility.

(2) The surcharge amount provided for in this subsection shall be subject to revision pursuant to Code Section 45-12-92.2.

(f) All surcharges required by subsection (e) of this Code section shall be paid to the division for transfer into the state treasury to the credit of the general fund. The division shall collect such fees until the unencumbered principal balance of the hazardous waste trust fund equals or exceeds $25 million, at which time the division shall not collect any further such surcharges until the unencumbered balance in such fund equals or is less than $12.5 million, at which time the division shall resume collection of such surcharges at the beginning of the next calendar year following the year in which such event occurs. The director shall provide written notice to all permitted solid waste disposal facilities at the time he receives notice that the unencumbered balance of such trust fund equals or exceeds $25 million or equals or is less than $12.5 million.

(g) Unless the requirement for the surcharge required by subsection (e) of this Code section is reimposed by the General Assembly, no such

surcharge shall be collected after June 30, 2025. The director shall make an annual report to the House Committee on Natural Resources and Environment and the Senate Natural Resources and the Environment Committee regarding the status of the activities funded by the hazardous waste trust fund.

(h) The division shall advertise to the public the surcharges imposed pursuant to subsection (e) of this Code section in accordance with rules promulgated by the board.

History. — Code 1981, § 12-8-39, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1992, p. 2234, § 4; Ga. L. 1992, p. 3276, §§ 15, 16; Ga. L. 2002, p. 927, § 1; Ga. L. 2011, p. 283, § 2/HB 274; Ga. L. 2012, p. 775, § 12/HB 942; Ga. L. 2013, p. 856, § 1/HB 276; Ga. L. 2018, p. 228, § 1/HB 792; Ga. L. 2019, p. 261, § 1/HB 220; Ga. L. 2020, p. 25, § 2/SB 123.

Delayed effective date. — Code Section 12-8-39 is set out twice in this Code. This version is effective until July 1, 2022. For version effective July 1, 2022, see the following version.

The 2019 amendment, effective June 30, 2019, in paragraph (e)(1), substituted "Effective until June 30, 2020, owners" for "Owners" at the beginning of the first sentence, added the second sentence, and substituted "the surcharges listed above" for "such surcharges of 75¢" near the end of the last sentence; in subsection (g), substituted "surcharges" for "surcharge" near the middle, substituted "are reimposed" for "is reimposed" in the middle, and substituted "July 1, 2022" for "July 1, 2019" at the end.

The 2020 amendment, effective June 29, 2020, substituted "subparagraph (B)" for "subparagraphs (B) and (C)" in the second sentence of subparagraph (d)(1)(A); deleted former subparagraph (d)(1)(B), which read: "When a municipal solid waste disposal facility is operated by private enterprise, the host local government is authorized and required to impose a surcharge of $1.00 per ton or volume equivalent until June 30, 2025, and a surcharge of $2.00 per ton or volume equivalent effective July 1, 2025, for fly ash, bottom ash, boiler slag, or flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers, in addition to any other negotiated charges or fees which shall be imposed by and paid to the host local government for the facility."; redesignated former subparagraph (d)(1)(C) as present subparagraph (d)(1)(B); and added subparagraph (d)(1)(C); substituted "20 percent" for "50 percent" in subparagraph (d)(2)A); in paragraph (e)(1), substituted "Owners" for "Effective until June 30, 2020, owners" at the beginning, deleted the former second sentence, which read: "Effective from July 1, 2020, until June 30, 2022, owners or operators of any solid waste disposal facility other than an inert waste landfill as defined in regulations promulgated by the board or a private industry solid waste disposal facility shall assess and collect on behalf of the division from each disposer of waste a surcharge of 51¢ per ton of solid waste disposed.", substituted "surcharge" for "surcharges" in the present second sentence, and substituted "toward the surcharge" for "towards the surcharges" in the last sentence; and, in subsection (g), substituted "surcharge" for "surcharges", substituted "is reimposed" for "are reimposed", substituted "June 30, 2025" for "July 1, 2022", and added the last sentence.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "March 30, 1990" was substituted for "the effective date of this part" in subsection (b).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 165 (2011). For article, "Conservation and Natural Resources: Waste Management," see 28 Ga. St. U.L. Rev. 165 (2011).

For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 199 (1992). For note on the 2002 amendment

of this Code section, see 19 Ga. St. U.L. Rev. 59 (2002).

12-8-39. (Effective July 1, 2022.) Cost reimbursement fees; surcharges; exempt contracts; reporting.

(a) Effective January 1, 1992, each city or county which operates a municipal solid waste disposal facility is authorized and required to impose a cost reimbursement fee upon each ton of municipal solid waste or the volume equivalent of a ton, as determined by rules of the division, for each ton of municipal solid waste received at a municipal solid waste disposal facility regardless of its source. The fee imposed may be equal to, or a portion of, the true cost of providing solid waste management services on a per ton or volume equivalent as determined pursuant to the forms, rules, and procedures developed by the Department of Community Affairs.

(b) A minimum of $1.00 per ton or volume equivalent of the cost reimbursement fee specified in this Code section which is received by the city or county, if implemented after March 30, 1990, shall be paid into a local restricted account and shall be used for solid waste management purposes only.

(c) Effective January 1, 1992, when a municipal solid waste disposal facility is operated as a joint venture by more than one city or county or combination thereof, by a special solid waste district, or by an authority, the cost reimbursement fee specified in this Code section shall be imposed by the joint operators, district, or authority and the cost reimbursement fee received shall be administered as outlined in subsection (b) of this Code section and shall be remitted into a restricted account established by the participating local governments.

(d)(1)(A) Until June 30, 2019, when a municipal solid waste disposal facility is operated by private enterprise, the host local government is authorized and required to impose a surcharge of $1.00 per ton or volume equivalent, in addition to any other negotiated charges or fees which shall be imposed by and paid to the host local government for the facility. Except as otherwise provided in subparagraph (B) of this paragraph, effective July 1, 2019, when a municipal solid waste disposal facility is owned by private enterprise, the host local government is authorized and required to impose a surcharge of $2.50 per ton or volume equivalent, in addition to any other negotiated charges or fees which shall be imposed by and paid to the host local government for the facility.

(B) When a municipal solid waste disposal facility is operated by private enterprise, the host local government is authorized and required to impose a surcharge of $1.00 per ton or volume equiva-

lent for construction or demolition waste or inert waste, in addition to any other negotiated charges or fees which shall be imposed by and paid to the host local government for the facility.

(C) Any contract in existence on September 1, 2020, shall be exempt from the provisions of this subsection until such time as the contract is renewed, replaced, extended, amended, or otherwise changed.

(2)(A) At least 20 percent of the surcharges collected pursuant to this subsection shall be expended for the following purposes:

(i) To offset the impact of the facility;

(ii) Public education efforts for solid waste management, hazardous waste management, and litter control;

(iii) The cost of solid waste management;

(iv) Administration of the local or regional solid waste management plan;

(v) Repair of damage to roads and highways associated with the facility;

(vi) Enhancement of litter control programs;

(vii) Ground-water and air monitoring and protection associated with the location of the facility;

(viii) Remediation and monitoring of closed or abandoned facilities within the jurisdiction of the host local government;

(ix) Infrastructure improvements associated with the facility;

(x) Allocation of such funds in any fiscal year to a reserve fund designated for use for the above purposes in future fiscal years; and

(xi) For the acquisition of property and interests in property adjacent to or in reasonable proximity to the facility upon a determination by the host local government that such acquisition will serve beautification, environmental, buffering, or recreational purposes such as will ameliorate the impact of the facility.

(B) Those surcharges not expended or allocated as provided for in subparagraph (A) of this paragraph may be used for other governmental expenses to the extent not required to meet the above or other solid waste management needs.

(3) Host local governments may negotiate for and obtain by contract surcharges higher than those set forth in this subsection;

furthermore, nothing in this subsection shall reduce any such surcharge in existence on July 1, 2019.

(e) Owners or operators of any solid waste disposal facility other than an inert waste landfill as defined in regulations promulgated by the board or a private industry solid waste disposal facility shall assess and collect on behalf of the division from each disposer of waste a surcharge of 75¢ per ton of solid waste disposed. Two percent of said surcharge collected may be retained by the owner or operator of any solid waste disposal facility collecting said surcharge to pay for costs associated with collecting said surcharge. Surcharges assessed and collected on behalf of the division shall be paid to the division not later than the first day of July of each year for the preceding calendar year. Any facility permitted exclusively for the disposal of construction or demolition waste that conducts recycling activities for construction or demolition materials shall receive a credit toward the surcharge listed above per ton of material recycled at the facility.

(f) Reserved.

(g) Unless the requirement for the surcharge required by subsection (e) of this Code section is reimposed by the General Assembly, no such surcharge shall be collected after June 30, 2032. The director shall make an annual report to the House Committee on Natural Resources and Environment and the Senate Natural Resources and the Environment Committee regarding the status of the activities funded by the Hazardous Waste Trust Fund.

(h) The division shall advertise to the public the surcharges imposed pursuant to subsection (e) of this Code section in accordance with rules promulgated by the board.

History. — Code 1981, § 12-8-39, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1992, p. 2234, § 4; Ga. L. 1992, p. 3276, §§ 15, 16; Ga. L. 2002, p. 927, § 1; Ga. L. 2011, p. 283, § 2/HB 274; Ga. L. 2012, p. 775, § 12/HB 942; Ga. L. 2013, p. 856, § 1/HB 276; Ga. L. 2018, p. 228, § 1/HB 792; Ga. L. 2019, p. 261, § 1/HB 220; Ga. L. 2020, p. 25, § 2/SB 123; Ga. L. 2021, p. 761, § 4/HB 511.

Delayed effective date. — Code Section 12-8-39 is set out twice in this Code. This version is effective July 1, 2022. For version effective until July 1, 2022, see the preceding version.

The 2019 amendment, effective June 30, 2019, in paragraph (e)(1), substituted "Effective until June 30, 2020, owners" for "Owners" at the beginning of the first sentence, added the second sentence, and substituted "the surcharges listed above" for "such surcharges of 75¢" near the end of the last sentence; in subsection (g), substituted "surcharges" for "surcharge" near the middle, substituted "are reimposed" for "is reimposed" in the middle, and substituted "July 1, 2022" for "July 1, 2019" at the end.

The 2020 amendment, effective June 29, 2020, substituted "subparagraph (B)" for "subparagraphs (B) and (C)" in the second sentence of subparagraph (d)(1)(A); deleted former subparagraph (d)(1)(B), which read: "When a municipal solid waste disposal facility is operated by private enterprise, the host local government is authorized and required to impose a surcharge of $1.00 per ton or volume equivalent until June 30, 2025, and a surcharge of $2.00 per ton or volume

equivalent effective July 1, 2025, for fly ash, bottom ash, boiler slag, or flue gas desulfurization materials generated from burning coal for the purpose of generating electricity by electric utilities and independent power producers, in addition to any other negotiated charges or fees which shall be imposed by and paid to the host local government for the facility."; redesignated former subparagraph (d)(1)(C) as present subparagraph (d)(1)(B); and added subparagraph (d)(1)(C); substituted "20 percent" for "50 percent" in subparagraph (d)(2)A); in paragraph (e)(1), substituted "Owners" for "Effective until June 30, 2020, owners" at the beginning, deleted the former second sentence, which read: "Effective from July 1, 2020, until June 30, 2022, owners or operators of any solid waste disposal facility other than an inert waste landfill as defined in regulations promulgated by the board or a private industry solid waste disposal facility shall assess and collect on behalf of the division from each disposer of waste a surcharge of 51¢ per ton of solid waste disposed.", substituted "surcharge" for "surcharges" in the present second sentence, and substituted "toward the surcharge" for "towards the surcharges" in the last sentence; and, in subsection (g), substituted "surcharge" for "surcharges", substituted "is reimposed" for "are reimposed", substituted "June 30, 2025" for "July 1, 2022", and added the last sentence.

The 2021 amendment, effective July 1, 2022, redesignated former paragraph (e)(1) as present subsection (e); deleted former paragraph (e)(2), which read: "The surcharge amount provided for in this subsection shall be subject to revision pursuant to Code Section 45-12-92.2."; substituted "Reserved" for the former provisions of subsection (f), which read: "All surcharges required by subsection (e) of this Code section shall be paid to the division for transfer into the state treasury to the credit of the general fund. The division shall collect such fees until the unencumbered principal balance of the hazardous waste trust fund equals or exceeds $25 million, at which time the division shall not collect any further such surcharges until the unencumbered balance in such fund equals or is less than $12.5 million, at which time the division shall resume collection of such surcharges at the beginning of the next calendar year following the year in which such event occurs. The director shall provide written notice to all permitted solid waste disposal facilities at the time he receives notice that the unencumbered balance of such trust fund equals or exceeds $25 million or equals or is less than $12.5 million."; and, in subsection (g), substituted "June 30, 2032" for "June 30, 2025" in the first sentence, and substituted "Hazardous Waste Trust Fund" for "hazardous waste trust fund" at the end of the second sentence.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "March 30, 1990" was substituted for "the effective date of this part" in subsection (b).

Editor's notes. — Ga. L. 2021, p. 761, § 23/HB511, not codified by the General Assembly, provides: "In accordance with the requirements of Article III, Section IX, Paragraph VI(r) of the Constitution of Georgia, this Act shall not become law unless it receives the requisite two thirds' majority vote in both the Senate and the House of Representatives and the amount of the funds dedicated by this Act do not equal or exceed 1 percent of the previous fiscal year's state revenues subject to appropriations."

12-8-39.1. Program for reduction of municipal solid waste on per capita basis.

Effective July 1, 1992, each city or county as a part of its solid waste management plan shall have in effect a program to reduce on a per capita basis the amount of municipal solid waste, as evidenced by the solid waste received at disposal facilities, which are not exempt from subsection (c) of Code Section 12-8-21, within its jurisdiction consistent with the goal established in subsection (c) of Code Section 12-8-21.

History. — Code 1981, § 12-8-39.1, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1993, p. 399, § 9.

12-8-39.2. Reports of costs of solid waste management services.

Reserved. Repealed by Ga. L. 2011, p. 312, § 2/SB 157, effective July 1, 2011.

Editor's notes. — This Code section was based on Code 1981, § 12-8-39.2, enacted by Ga. L. 1990, p. 412, § 1.

12-8-39.3. Authorization to enforce collection of taxes, fees, or assessments.

(a) Any city, county, or authority which operates a solid waste handling facility or provides solid waste collection services or both and which levies and collects taxes, fees, or assessments to accomplish the purposes of this part shall be further authorized to enforce by ordinance or resolution the collection of taxes, fees, or assessments due a city, county, or authority in the same manner as authorized by law for the enforcement of the collection and payment of state taxes, fees, or assessments. Any such ordinance or resolution enacted by a county governing authority may provide that the tax commissioner or tax collector of such county shall be the officer charged with the enforcement of its provisions.

(b) The provisions of this Code section shall apply to any taxes, fees, or assessments due a county, city, or authority under any ordinance or resolution in effect on July 1, 1992, or adopted thereafter.

History. — Code 1981, § 12-8-39.3, enacted by Ga. L. 1992, p. 3276, § 17; Ga. L. 1993, p. 399, § 10; Ga. L. 1997, p. 1081, § 3.

Law reviews. — For note on 1992 enactment of this Code section, see 9 Ga. St. U.L. Rev. 199 (1992).

JUDICIAL DECISIONS

County ordinance covering payment of garbage collection fees. — State constitution, statutes, and case law permit a county to enact an ordinance making property owners responsible for the payment of garbage collection fees for the owner's rental property. Board of Comm'rs v. Guthrie, 273 Ga. 1, 537 S.E.2d 329 (2000).

Sanitation assessments were not taxes within the meaning of the Georgia Constitution but rather charges for services rendered by a county, which was authorized to enforce by ordinance the collection of fees for solid waste collection services in the same manner as authorized by law for the enforcement of the collection and payment of state taxes, fees, or assessments; the county's solid waste collection fee did not violate Ga. Const. 1983, Art. VII, Sec. I, Para. I. Strykr v. Long County Bd. of Comm'rs, 277 Ga. 624, 593 S.E.2d 348 (2004).

Contract with private solid waste collection companies. — In choosing the option of contracting with private

solid waste collection companies, a county was, through that method, providing solid waste collection services to county property owners within the meaning of O.C.G.A. § 12-8-39.3(a); the fact that the individuals performing that service were not county employees, but employees of private contractors, was of no moment, insofar as it related to a property owner's constitutional challenge to the county's solid waste ordinance. Mesteller v. Gwinnett County, 292 Ga. 675, 740 S.E.2d 605 (2013).

12-8-40. Exemption for livestock-feeding facility.

This article shall not apply to any individual, corporation, partnership, or cooperative disposing of livestock-feeding facility waste from facilities with a maximum total capacity of 1,000 cattle or 5,000 swine, provided that if such individual, corporation, partnership, or cooperative shall provide an approved waste disposal system which is capable of properly disposing of the runoff from a "ten-year storm," such individual shall be further exempt regardless of total per head capacity. Nothing in this part shall limit the right of any person to use poultry or other animal manure for fertilizer.

History. — Code 1981, § 12-8-40, enacted by Ga. L. 1990, p. 412, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "part" was substituted for "article" in the second sentence.

12-8-40.1. (Effective until July 1, 2022.) Tire disposal restrictions; fees.

(a) Effective July 1, 1990, each city, county, or solid waste management authority shall have the right to impose certain restrictions on scrap tires originating in or which may ultimately be disposed of in its area of jurisdiction. These restrictions may include but are not limited to:

(1) A ban on the disposal of scrap tires at solid waste disposal facilities within its control; and

(2) A requirement that scrap tires be recycled, shredded, chopped, or otherwise processed in an environmentally sound manner prior to disposal at solid waste disposal facilities owned or operated by the city, county, or authority.

(b) After December 31, 1994, no person may dispose of scrap tires in a solid waste landfill unless the scrap tires are shredded, chopped, or chipped in accordance with standards established by the board and:

(1) The director finds that the reuse or recycling of scrap tires is not economically feasible;

(2) The scrap tires are received from a municipal solid waste collector holding a valid solid waste collection permit under authority

of this part and who transports fewer than ten scrap tires at any one time; or

(3) The scrap tires are received from a person transporting fewer than five scrap tires in combination with the person's own solid waste for disposal.

(c)(1) No person shall collect or transport any tires, other than new tires, unless the person:

(A) Obtains a tire carrier permit issued by the division; and

(B) Displays on each vehicle used to collect or transport tires a decal issued by the division; provided, however, that this subparagraph shall not apply to a common carrier that collects tires exclusively from outside this state and transports them directly to a scrap tire processor or end user within this state.

(2) As a condition of holding a permit to collect or transport tires, each permitted person shall:

(A) Report to the division in such manner and with such frequency as the division shall require the number of tires transported and the manner of disposition;

(B) Maintain financial assurance in accordance with subsection (l) of this Code section;

(C) Submit such other data as is determined by the board to be reasonably necessary to protect public health and the environment; and

(D) Pay to the division a nominal fee for each decal issued.

(c.1) No person shall process scrap tires unless the person has a scrap tire processing permit issued by the division. For purposes of this subsection, the term "process scrap tires" means any method, system, or other treatment designed to change the physical form, size, or chemical content of scrap tires for beneficial use.

(d) Subsection (c) of this Code section shall not apply to:

(1) A municipal solid waste collector holding a valid solid waste collection permit under authority of this part whose primary business is the collection of municipal solid waste;

(2) A private individual transporting no more than ten of the individual's own tires or a private individual transporting more than ten tires if such individual can provide proof of purchase with receipt for such tires;

(3) A company transporting the company's own tires to a scrap tire processor or end user or for proper disposal;

(4) A tire retailer transporting its own used tires if such dealer can provide proof of purchase with receipt for all used tires being transported and a document verifying the origin, route, and destination of such used tires;

(5) Any person transporting tires collected as part of an organized site cleanup activity; and

(6) The United States, the State of Georgia, any county, municipality, or public authority.

(e) After July 1, 1992, any person who generates scrap tires shall:

(1) Notify the division of such activities, requesting the issuance of an identification number, which number shall be used on scrap tire shipment manifests;

(2) Have the scrap tires collected and transported by persons in compliance with subsection (c) of this Code section;

(3) Maintain receipts indicating the disposition of the scrap tires;

(4) Maintain receipts indicating the permit number and name of the tire carrier to whom the tires were given;

(5) Maintain receipts indicating the disposal site or processing facility where the scrap tires were taken including the date of such disposal and the number of scrap tires; and

(6) Provide such other information as the board shall require and for such period of time as the board deems appropriate.

(f) No person may store more than 25 scrap tires anywhere in this state. Any person storing in excess of 25 scrap tires shall be deemed to be in violation of this part.

(g) Subsection (f) of this Code section shall not apply to any of the following:

(1) A solid waste disposal site permitted by the division if the permit authorizes the storage of scrap tires prior to their disposal;

(2) A tire retailer or a publicly owned vehicle maintenance facility with not more than 1,500 scrap tires in storage;

(3) A tire retreader with not more than 3,000 scrap tires in storage so long as the scrap tires are of the type the retreader is actively retreading;

(4) A licensed used motor vehicle parts dealer, a registered secondary metals recycler, or a privately owned vehicle maintenance facility that operates solely for the purpose of servicing a commercial vehicle fleet with not more than 500 scrap tires in storage; and

(5) A scrap tire processor approved by the division so long as the number of scrap tires in storage do not exceed the quantity approved by the division

if all of the scrap tires are secured in a locked enclosure or are otherwise adequately secured in a manner suitable to prevent unauthorized access; provided, however, that the division may grant a waiver of the enclosure requirement if the person requesting the waiver can definitively show a significant and unique economic hardship which impairs such person's ability to continue operating his or her business.

(g.1) Subsection (f) of this Code section shall not apply to a farm with not more than 100 scrap tires in storage or in use for agricultural purposes. In addition, the division may grant waivers to allow the storage or use of more than 100 scrap tires for agricultural purposes if such storage or use does not pose a threat to human health or the environment.

(h)(1) A fee is imposed upon the retail sale of all new replacement tires in this state of $1.00 per tire sold. The fee shall be collected by retail dealers at the time the retail dealer sells a new replacement tire to the ultimate consumer; provided, however, that a Georgia tire distributor who sells tires to retail dealers must collect such fees from any retail dealer who does not have a valid scrap tire generator identification number issued by the division. The fee and any required reports shall be remitted not less than quarterly on such forms as may be prescribed by the division. The division is authorized to contract with the Department of Revenue to, and the Department of Revenue is authorized to, collect such fees on behalf of the division. All fees received shall be deposited into the state treasury to the account of the general fund in accordance with the provisions of Code Section 45-12-92. All moneys deposited into the solid waste trust fund shall be deemed expended and contractually obligated and shall not lapse to the general fund.

(2) In collecting, reporting, and paying the fees due under this subsection, each distributor or retailer shall be allowed the following deductions, but only if the amount due was not delinquent at the time of payment:

(A) A deduction of 3 percent of the first $3,000.00 of the total amount of all fees reported due on such report; and

(B) A deduction of one-half of 1 percent of that portion exceeding $3,000.00 of the total amount of all fees reported due on such report.

(3) The tire fees authorized in this subsection shall cease to be collected on June 30, 2025. The director shall make an annual report

to the House Committee on Natural Resources and Environment and the Senate Natural Resources and the Environment Committee regarding the status of the activities funded by the solid waste trust fund.

(4) The fee amount provided for in this subsection shall be subject to revision pursuant to Code Section 45-12-92.2.

(i)(1) The division may abate any threat or potential threat to public health or the environment created or which could be created by scrap tires or other scrap tire materials by removing or processing the scrap tires or other scrap tire materials. Before taking any action to abate the threat or potential threat, the division shall give any person having the care, custody, or control of the scrap tires or materials or owning the property upon which the scrap tires or materials are located notice of the division's intentions and order the responsible party to abate the threat or potential threat in a manner approved by the division. Such order shall be issued in accordance with Code Section 12-8-30.

(2) If the responsible party is unable or unwilling to comply with such order or if no person who has contributed or is contributing to the scrap tires or scrap tire materials which are to be abated can be found, the director may undertake cleanup of the site utilizing funds from the solid waste trust fund.

(3) The division or its contractors may enter upon the property of any person at such time and in such manner as deemed necessary to effectuate the necessary corrective action to protect human health and the environment.

(4) Neither the State of Georgia nor the solid waste trust fund established in Code Section 12-8-27.1 shall be liable for any loss of business, damages, or taking of property associated with the corrective action.

(5) The division may bring an action or proceeding against the property owner or the person having possession, care, custody, or control of the scrap tires or other scrap tire materials to enforce the corrective action order issued under Code Section 12-8-30 and recover any reasonable and necessary expenses incurred by the division for corrective action, including administrative and legal expenses. The division's certification of expenses shall be prima-facie evidence that the expenses are reasonable and necessary. Notwithstanding any other provision of this subsection, any generator of scrap tires who is identified as being a contributor to the materials which are the object of the abatement and who can document that he or she has fully complied with this part and all rules promulgated pursuant to this part in disposing of such scrap tires shall not be liable for any of the cost of recovery actions of the abatement.

(6) Nothing in this part shall affect the right of any municipality or county to abate or clean up scrap tires or scrap tire materials which are a threat or potential threat to human health or the environment. The division may reimburse such local governments for such actions in accordance with procedures approved by the board.

(j) Except for the purposes of scrap tire corrective actions, the provisions of this Code section do not apply to:

(1) Tires with a rim size less than 12 inches;

(2) Tires from:

(A) Any device moved exclusively by human power; or

(B) Any device used exclusively for agricultural purposes, except a farm truck; or

(3) A retreadable casing while under the control of a tire retreader or while being delivered to a retreader.

(k) The director shall be authorized to order the cessation of operation of any tire carrier or scrap tire processor who is found not to be operating in compliance with this part or rules adopted pursuant to this part and the seizure of all property used in such unlawful operations; provided, however, that the tire carrier or scrap tire processor shall be afforded a hearing within 48 hours before an administrative law judge of the Department of Natural Resources upon such order of the director.

(l)(1) A surety bond shall be provided to the director by a tire carrier or scrap tire processor prior to issuance of a permit to ensure compliance with the provisions of this part.

(2) The bond required in this subsection shall be:

(A) Conditioned upon compliance with this part, any rules adopted pursuant to this part, and the carrier's or processor's permit; and

(B) In such amount as determined by the director necessary to ensure compliance, but in any event not less than $10,000.00 nor greater than $20,000.00.

(3) Such bond shall be payable to the director and issued by an insurance company authorized to issue such bonds in this state.

(4) Upon a determination by the director that a tire carrier or scrap tire processor has failed to meet the provisions of this part, rules promulgated pursuant to this part, or its permit, the director may, after written notice of such failure:

(A) Forfeit or draw that amount of such bond that the director determines necessary to correct the violation;

(B) Expend such amount for such purposes; and

(C) Require the replacement of that amount of such bond forfeited or drawn upon.

(5) Any moneys received by the director in accordance with paragraph (4) of this subsection shall be deposited into the solid waste trust fund established in Code Section 12-8-27.1.

History. — Code 1981, § 12-8-40.1, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1992, p. 3259, § 7; Ga. L. 1993, p. 399, §§ 11-14; Ga. L. 1997, p. 1081, § 4; Ga. L. 1999, p. 780, § 1; Ga. L. 2005, p. 1247, §§ 9, 10, 11, 12/SB 122; Ga. L. 2008, p. 287, § 1/SB 399; Ga. L. 2011, p. 283, § 3/HB 274; Ga. L. 2013, p. 274, § 5/HB 226; Ga. L. 2013, p. 856, § 2/HB 276; Ga. L. 2014, p. 230, § 1/HB 908; Ga. L. 2019, p. 261, § 2/HB 220; Ga. L. 2020, p. 25, § 3/SB 123.

Delayed effective date. — Code Section 12-8-40.1 is set out twice in this Code. This version is effective until July 1, 2022. For version effective July 1, 2022, see the following version.

The 2019 amendment, effective June 30, 2019, in paragraph (h)(1), inserted "and ending June 30, 2020," in the first sentence, added the second sentence, and substituted "fees" for "fee" near the beginning of the third and fourth sentences; and substituted "2022" for "2019" at the end of the first sentence of paragraph (h)(3).

The 2020 amendment, effective June 29, 2020, in paragraph (h)(1), substituted "A fee" for "Beginning July 1, 1992, and ending June 30, 2020, a fee" in the first sentence, deleted the former second sentence which read: "Effective from July 1, 2020, until June 30, 2022, a fee is imposed upon the retail sale of all new replacement tires in this state of 38¢ per tire sold.", and substituted "fee" for "fees" twice; and substituted "June 30, 2025" for "June 30, 2022" at the end of the first sentence of paragraph (h)(3).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "were" was substituted for "where" in paragraph (e)(4).

Pursuant to Code Section 28-9-5, in 1996, "one-half" was substituted for the fraction "1/2" in subparagraph (h)(2)(B).

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 165 (2011). For article, "Conservation and Natural Resources: Waste Management," see 28 Ga. St. U.L. Rev. 165 (2011).

JUDICIAL DECISIONS

Seller not liable for buried tires on property. — In a dispute between a buyer and seller of property arising out of the presence of old tires buried in pits on the property, judgment for the buyer was reversed because the seller only warranted that the seller had not taken any action to violate the law regarding the property, and the buyer admitted that the seller had not dumped the tires and was not aware of the tires. Rivers v. Revington Glen Investments, LLC, 346 Ga. App. 440, 816 S.E.2d 406 (2018).

12-8-40.1. (Effective July 1, 2022.) Tire disposal restrictions; fees.

(a) Effective July 1, 1990, each city, county, or solid waste management authority shall have the right to impose certain restrictions on scrap tires originating in or which may ultimately be disposed of in its

area of jurisdiction. These restrictions may include but are not limited to:

(1) A ban on the disposal of scrap tires at solid waste disposal facilities within its control; and

(2) A requirement that scrap tires be recycled, shredded, chopped, or otherwise processed in an environmentally sound manner prior to disposal at solid waste disposal facilities owned or operated by the city, county, or authority.

(b) After December 31, 1994, no person may dispose of scrap tires in a solid waste landfill unless the scrap tires are shredded, chopped, or chipped in accordance with standards established by the board and:

(1) The director finds that the reuse or recycling of scrap tires is not economically feasible;

(2) The scrap tires are received from a municipal solid waste collector holding a valid solid waste collection permit under authority of this part and who transports fewer than ten scrap tires at any one time; or

(3) The scrap tires are received from a person transporting fewer than five scrap tires in combination with the person's own solid waste for disposal.

(c)(1) No person shall collect or transport any tires, other than new tires, unless the person:

(A) Obtains a tire carrier permit issued by the division; and

(B) Displays on each vehicle used to collect or transport tires a decal issued by the division; provided, however, that this subparagraph shall not apply to a common carrier that collects tires exclusively from outside this state and transports them directly to a scrap tire processor or end user within this state.

(2) As a condition of holding a permit to collect or transport tires, each permitted person shall:

(A) Report to the division in such manner and with such frequency as the division shall require the number of tires transported and the manner of disposition;

(B) Maintain financial assurance in accordance with subsection (l) of this Code section;

(C) Submit such other data as is determined by the board to be reasonably necessary to protect public health and the environment; and

(D) Pay to the division a nominal fee for each decal issued.

(c.1) No person shall process scrap tires unless the person has a scrap tire processing permit issued by the division. For purposes of this subsection, the term "process scrap tires" means any method, system, or other treatment designed to change the physical form, size, or chemical content of scrap tires for beneficial use.

(d) Subsection (c) of this Code section shall not apply to:

(1) A municipal solid waste collector holding a valid solid waste collection permit under authority of this part whose primary business is the collection of municipal solid waste;

(2) A private individual transporting no more than ten of the individual's own tires or a private individual transporting more than ten tires if such individual can provide proof of purchase with receipt for such tires;

(3) A company transporting the company's own tires to a scrap tire processor or end user or for proper disposal;

(4) A tire retailer transporting its own used tires if such dealer can provide proof of purchase with receipt for all used tires being transported and a document verifying the origin, route, and destination of such used tires;

(5) Any person transporting tires collected as part of an organized site cleanup activity; and

(6) The United States, the State of Georgia, any county, municipality, or public authority.

(e) After July 1, 1992, any person who generates scrap tires shall:

(1) Notify the division of such activities, requesting the issuance of an identification number, which number shall be used on scrap tire shipment manifests;

(2) Have the scrap tires collected and transported by persons in compliance with subsection (c) of this Code section;

(3) Maintain receipts indicating the disposition of the scrap tires;

(4) Maintain receipts indicating the permit number and name of the tire carrier to whom the tires were given;

(5) Maintain receipts indicating the disposal site or processing facility where the scrap tires were taken including the date of such disposal and the number of scrap tires; and

(6) Provide such other information as the board shall require and for such period of time as the board deems appropriate.

(f) No person may store more than 25 scrap tires anywhere in this state. Any person storing in excess of 25 scrap tires shall be deemed to be in violation of this part.

(g) Subsection (f) of this Code section shall not apply to any of the following:

(1) A solid waste disposal site permitted by the division if the permit authorizes the storage of scrap tires prior to their disposal;

(2) A tire retailer or a publicly owned vehicle maintenance facility with not more than 1,500 scrap tires in storage;

(3) A tire retreader with not more than 3,000 scrap tires in storage so long as the scrap tires are of the type the retreader is actively retreading;

(4) A licensed used motor vehicle parts dealer, a registered secondary metals recycler, or a privately owned vehicle maintenance facility that operates solely for the purpose of servicing a commercial vehicle fleet with not more than 500 scrap tires in storage; and

(5) A scrap tire processor approved by the division so long as the number of scrap tires in storage do not exceed the quantity approved by the division

if all of the scrap tires are secured in a locked enclosure or are otherwise adequately secured in a manner suitable to prevent unauthorized access; provided, however, that the division may grant a waiver of the enclosure requirement if the person requesting the waiver can definitively show a significant and unique economic hardship which impairs such person's ability to continue operating his or her business.

(g.1) Subsection (f) of this Code section shall not apply to a farm with not more than 100 scrap tires in storage or in use for agricultural purposes. In addition, the division may grant waivers to allow the storage or use of more than 100 scrap tires for agricultural purposes if such storage or use does not pose a threat to human health or the environment.

(h)(1) A fee is imposed upon the retail sale of all new replacement tires in this state of $1.00 per tire sold. The fee shall be collected by retail dealers at the time the retail dealer sells a new replacement tire to the ultimate consumer; provided, however, that a Georgia tire distributor who sells tires to retail dealers must collect such fees from any retail dealer who does not have a valid scrap tire generator identification number issued by the division. The fee and any required reports shall be remitted not less than quarterly on such forms as may be prescribed by the division. The division is authorized to contract with the Department of Revenue to, and the Department of Revenue is authorized to, collect such fees on behalf of the division. All fees received shall be deposited into the state treasury to the account of the general fund in accordance with the provisions of Code Section 45-12-92.

(2) In collecting, reporting, and paying the fees due under this subsection, each distributor or retailer shall be allowed the following deductions, but only if the amount due was not delinquent at the time of payment:

(A) A deduction of 3 percent of the first $3,000.00 of the total amount of all fees reported due on such report; and

(B) A deduction of one-half of 1 percent of that portion exceeding $3,000.00 of the total amount of all fees reported due on such report.

(3) The tire fees authorized in this subsection shall cease to be collected on June 30, 2032. The director shall make an annual report to the House Committee on Natural Resources and Environment and the Senate Natural Resources and the Environment Committee regarding the status of the activities funded by the Solid Waste Trust Fund.

(i)(1) The division may abate any threat or potential threat to public health or the environment created or which could be created by scrap tires or other scrap tire materials by removing or processing the scrap tires or other scrap tire materials. Before taking any action to abate the threat or potential threat, the division shall give any person having the care, custody, or control of the scrap tires or materials or owning the property upon which the scrap tires or materials are located notice of the division's intentions and order the responsible party to abate the threat or potential threat in a manner approved by the division. Such order shall be issued in accordance with Code Section 12-8-30.

(2) If the responsible party is unable or unwilling to comply with such order or if no person who has contributed or is contributing to the scrap tires or scrap tire materials which are to be abated can be found, the director may undertake cleanup of the site utilizing funds from the solid waste trust fund.

(3) The division or its contractors may enter upon the property of any person at such time and in such manner as deemed necessary to effectuate the necessary corrective action to protect human health and the environment.

(4) Neither the State of Georgia nor the solid waste trust fund established in Code Section 12-8-27.1 shall be liable for any loss of business, damages, or taking of property associated with the corrective action.

(5) The division may bring an action or proceeding against the property owner or the person having possession, care, custody, or control of the scrap tires or other scrap tire materials to enforce the

corrective action order issued under Code Section 12-8-30 and recover any reasonable and necessary expenses incurred by the division for corrective action, including administrative and legal expenses. The division's certification of expenses shall be prima-facie evidence that the expenses are reasonable and necessary. Notwithstanding any other provision of this subsection, any generator of scrap tires who is identified as being a contributor to the materials which are the object of the abatement and who can document that he or she has fully complied with this part and all rules promulgated pursuant to this part in disposing of such scrap tires shall not be liable for any of the cost of recovery actions of the abatement.

(6) Nothing in this part shall affect the right of any municipality or county to abate or clean up scrap tires or scrap tire materials which are a threat or potential threat to human health or the environment. The division may reimburse such local governments for such actions in accordance with procedures approved by the board.

(j) Except for the purposes of scrap tire corrective actions, the provisions of this Code section do not apply to:

(1) Tires with a rim size less than 12 inches;

(2) Tires from:

(A) Any device moved exclusively by human power; or

(B) Any device used exclusively for agricultural purposes, except a farm truck; or

(3) A retreadable casing while under the control of a tire retreader or while being delivered to a retreader.

(k) The director shall be authorized to order the cessation of operation of any tire carrier or scrap tire processor who is found not to be operating in compliance with this part or rules adopted pursuant to this part and the seizure of all property used in such unlawful operations; provided, however, that the tire carrier or scrap tire processor shall be afforded a hearing within 48 hours before an administrative law judge of the Department of Natural Resources upon such order of the director.

(l)(1) A surety bond shall be provided to the director by a tire carrier or scrap tire processor prior to issuance of a permit to ensure compliance with the provisions of this part.

(2) The bond required in this subsection shall be:

(A) Conditioned upon compliance with this part, any rules adopted pursuant to this part, and the carrier's or processor's permit; and

(B) In such amount as determined by the director necessary to ensure compliance, but in any event not less than $10,000.00 nor greater than $20,000.00.

(3) Such bond shall be payable to the director and issued by an insurance company authorized to issue such bonds in this state.

(4) Upon a determination by the director that a tire carrier or scrap tire processor has failed to meet the provisions of this part, rules promulgated pursuant to this part, or its permit, the director may, after written notice of such failure:

(A) Forfeit or draw that amount of such bond that the director determines necessary to correct the violation;

(B) Expend such amount for such purposes; and

(C) Require the replacement of that amount of such bond forfeited or drawn upon.

(5) Any moneys received by the director in accordance with paragraph (4) of this subsection shall be deposited into the solid waste trust fund established in Code Section 12-8-27.1.

History. — Code 1981, § 12-8-40.1, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1992, p. 3259, § 7; Ga. L. 1993, p. 399, §§ 11-14; Ga. L. 1997, p. 1081, § 4; Ga. L. 1999, p. 780, § 1; Ga. L. 2005, p. 1247, §§ 9, 10, 11, 12/SB 122; Ga. L. 2008, p. 287, § 1/SB 399; Ga. L. 2011, p. 283, § 3/HB 274; Ga. L. 2013, p. 274, § 5/HB 226; Ga. L. 2013, p. 856, § 2/HB 276; Ga. L. 2014, p. 230, § 1/HB 908; Ga. L. 2019, p. 261, § 2/HB 220; Ga. L. 2020, p. 25, § 3/SB 123; Ga. L. 2021, p. 761, § 5/HB 511.

Delayed effective date. — Code Section 12-8-40.1 is set out twice in this Code. This version is effective July 1, 2022. For version effective until July 1, 2022, see the preceding version.

The 2019 amendment, effective June 30, 2019, in paragraph (h)(1), inserted "and ending June 30, 2020," in the first sentence, added the second sentence, and substituted "fees" for "fee" near the beginning of the third and fourth sentences; and substituted "2022" for "2019" at the end of the first sentence of paragraph (h)(3).

The 2020 amendment, effective June 29, 2020, in paragraph (h)(1), substituted "A fee" for "Beginning July 1, 1992, and ending June 30, 2020, a fee" in the first sentence, deleted the former second sentence which read: "Effective from July 1, 2020, until June 30, 2022, a fee is imposed upon the retail sale of all new replacement tires in this state of 38¢ per tire sold.", and substituted "fee" for "fees" twice; and substituted "June 30, 2025" for "June 30, 2022" at the end of the first sentence of paragraph (h)(3).

The 2021 amendment, effective July 1, 2022, deleted the former last sentence of paragraph (h)(1), which read: "All moneys deposited into the solid waste trust fund shall be deemed expended and contractually obligated and shall not lapse to the general fund."; in paragraph (h)(3), substituted "June 30, 2032" for "June 30, 2025" in the first sentence and substituted "Solid Waste Trust Fund" for "solid waste trust fund" in the second sentence; and deleted former paragraph (h)(4), which read: "The fee amount provided for in this subsection shall be subject to revision pursuant to Code Section 45-12-92.2."

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "were" was substituted for "where" in paragraph (e)(4).

Pursuant to Code Section 28-9-5, in

1996, "one-half" was substituted for the fraction "1/2" in subparagraph (h)(2)(B).

Editor's notes. — Ga. L. 2021, p. 761, § 23/HB511, not codified by the General Assembly, provides: "In accordance with the requirements of Article III, Section IX, Paragraph VI(r) of the Constitution of Georgia, this Act shall not become law unless it receives the requisite two thirds' majority vote in both the Senate and the House of Representatives and the amount of the funds dedicated by this Act do not equal or exceed 1 percent of the previous fiscal year's state revenues subject to appropriations."

12-8-40.2. Yard trimmings disposal restrictions.

(a) Each city, county, or solid waste management authority may impose restrictions on yard trimmings which are generated in or may ultimately be disposed of in its area of jurisdiction; provided, however, that under no circumstances shall yard trimmings be placed in or mixed with municipal solid waste, except at:

(1) Landfills restricted to construction or demolition waste;

(2) Inert waste landfills; or

(3) Lined municipal solid waste landfills having operating landfill gas collection systems directed to beneficial uses of landfill gas that promote renewable energy goals such as electrical power generation, industrial end use, or similar beneficial reuse.

(b) Except as otherwise provided in subsection (a) of this Code section, owners and operators of municipal solid waste landfills shall be prohibited from disposing of yard trimmings in municipal solid waste landfills.

(c) The Board of Natural Resources is authorized to develop guidelines to assist local governing authorities and others in the orderly stockpiling of yard trimmings at suitable sites, the chipping and composting of yard trimmings, and the distribution of the products resulting from such chipping and composting.

History. — Code 1981, § 12-8-40.2, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1992, p. 3276, § 18; Ga. L. 1993, p. 399, § 15; Ga. L. 2005, p. 1247, § 13/SB 122; Ga. L. 2011, p. 283, § 4/HB 274.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 165 (2011). For article, "Conservation and Natural Resources: Waste Management," see 28 Ga. St. U.L. Rev. 165 (2011).

For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 199 (1992).

12-8-40.3. Disposal of shingles containing asphalt.

It shall be unlawful to dispose of any roofing shingles which contain asphalt except in construction and demolition or municipal solid waste landfills.

History. — Code 1981, § 12-8-40.3, enacted by Ga. L. 1997, p. 928, § 2.

Editor's notes. — Ga. L. 1997, p. 928, § 3, not codified by the General Assembly, provides: "The Environmental Protection Division of the Department of Natural Resources in conjunction with the Pollution Prevention Assistance Division shall develop a plan, if practicable, to encourage the recycling of asphalt shingles and shall make a report on such plan to the General Assembly of Georgia by December 31, 1997."

12-8-41. Department to provide permits.

The department shall provide by rule or regulation for the regulation and permitting of any land disposal site that receives septic tank waste from any one or more septic tank pumping and hauling businesses. Any new permit issued for such type of site on or after July 1, 2007, shall be issued by the department under this Code section. Any such type of site that as of June 30, 2007, operated under a valid permit issued on or before such date by the Department of Human Resources (now known as the Department of Public Health for these purposes) under Code Section 31-2A-12 may continue to operate under such Code section until July 1, 2014, but a permit shall be obtained from the department under this Code section prior to such date in order to continue such operation thereafter.

History. — Code 1981, § 12-8-41, enacted by Ga. L. 2002, p. 927, § 1A; Ga. L. 2005, p. 1529, § 1/HB 54; Ga. L. 2007, p. 127, § 4/HB 463; Ga. L. 2009, p. 453, § 1-12/HB 228; Ga. L. 2011, p. 705, §§ 3-4, 6-3/HB 214; Ga. L. 2012, p. 843, § 1A/HB 1102.

Law reviews. — For article on the 2011 amendment of this Code section, see 28 Ga. St. U.L. Rev. 147 (2011).

For note on the 2002 enactment of this Code section, see 19 Ga. St. U.L. Rev. 59 (2002).

JUDICIAL DECISIONS

Ultra vires act void. — Because the chair of the county board of commissioners committed an ultra vires act in granting approval for a project in a letter to a company, the company did not have a right to mandamus or declaratory relief against the county after the board of commissioners wrote a later letter to the company informing the company that the company did not have the board of commissioners' approval for the project as no formal application for the project was made to the board of commissioners. Enviro Pro, Inc. v. Emanuel County, 265 Ga. App. 309, 593 S.E.2d 673 (2004).

PART 2

REGIONAL SOLID WASTE MANAGEMENT AUTHORITIES

12-8-50. Short title.

This part shall be known and may be cited as the "Regional Solid Waste Management Authorities Act."

History. — Code 1981, § 12-8-50, enacted by Ga. L. 1990, p. 412, § 1.

12-8-51. Authority for enactment; nonprofit and public purposes of authorities; tax exemption; state policy; unfair competition with private sector prohibited.

(a) This part is enacted pursuant to authority granted to the General Assembly by the Constitution of Georgia. Each authority created by this part is created for nonprofit and public purposes; and it is found, determined, and declared that the creation of each such authority and the carrying out of its corporate purposes is in all respects for the benefit of the people of this state and that the authority is an institution of purely public charity and will be performing an essential governmental function in the exercise of the power conferred upon it by this part. For such reasons, the state covenants from time to time with the holders of the bonds issued under this part that such authority shall be required to pay no taxes or assessments imposed by the state or any of its counties, municipal corporations, political subdivisions, or taxing districts upon any property acquired by the authority or under its jurisdiction, control, possession, or supervision or leased by it to others; or upon its activities in the operation or maintenance of any such property; or upon any income derived by the authority in the form of fees, recording fees, rentals, charges, purchase price, installments, or otherwise; and that the bonds of such authority, their transfer, and the income therefrom shall at all times be exempt from taxation within the state. The tax exemption provided in this Code section shall not include any exemption from sales and use tax on property purchased by the authority or for use by the authority.

(b) It is the express policy of the State of Georgia that any authority created by this part shall be authorized with respect to any solid waste which the generator thereof, county, or municipal corporation makes available to such authority to enter into agreements in furtherance of a project granting, directing, or providing for an exclusive right or rights in any authority with respect to such solid waste, including, but not limited to, the exclusive right to collect, acquire, receive, transport, store, treat, process, utilize, sell, or dispose of discarded solid waste; provided, however, no authority created by this part and no county or municipal corporation or other governmental body shall have the right to enter into agreements or to enact ordinances or resolutions providing for any rights with respect to recovered materials or substances, materials, or resources contained in solid waste as may be separated for recycling, use, or reuse at any time prior to pickup by or delivery to any authority, county, municipal corporation, or persons under contract with such authority, county, or municipal corporation.

(c) Notwithstanding any other provision of this part, no authority shall compete unfairly with the private sector by purchasing or offering

to purchase recovered materials at prices higher than the highest prevailing market prices in the county in which the purchase is made for recovered materials of like grade and quality.

History. — Code 1981, § 12-8-51, enacted by Ga. L. 1990, p. 412, § 1.

JUDICIAL DECISIONS

State cannot authorize violation of commerce clause. — State cannot authorize activity which violates the commerce clause; thus, if the Georgia statute enabling authorities to enter agreements for exclusive rights with respect to solid waste disposal is interpreted to exclude competition from the solid waste disposal market, then the statute would conflict with the commerce clause, and, accordingly, conduct of authorities pursuant to the statute would not be entitled to state action immunity. Pine Ridge Recycling, Inc. v. Butts County, 855 F. Supp. 1264 (M.D. Ga. 1994).

Immunity from antitrust liability. — In an action by a landowner arising from actions of county officials in zoning and land use matters, the policy set forth in O.C.G.A. § 12-8-51 pertaining to the power of solid waste management authorities to enter agreements in furtherance of projects, providing for "exclusive" rights regarding solid waste, served to shield the officials from federal antitrust liability. James Emory, Inc. v. Twiggs County, 883 F. Supp. 1546 (M.D. Ga. 1995).

Zoning board's actions in denying landfill developer a permit for the vertical expansion of its landfill made pursuant to the Georgia Comprehensive Solid Waste Management Act, O.C.G.A. § 12-8-51(b), were shielded from federal antitrust liability under the Sherman Act, 15 U.S.C. § 2. BFI Waste Sys. of N. Am. v. Dekalb County, 303 F. Supp. 2d 1335 (N.D. Ga. 2004).

12-8-52. Definitions.

As used in this part, the term:

(1) "Authority" means each public corporation created pursuant to this part.

(2) "Collection" means the aggregating of solid waste from its primary source and includes all activities up to such time as the waste is delivered to the place at which it is to be processed.

(3) "Cost of project" means all costs of site preparation and other start-up costs; all costs of construction; all costs of real and personal property required for the purposes of the project and facilities related thereto, including land and any rights or undivided interest therein, easements, franchises, fees, permits, approvals, licenses, and certificates and the securing of such permits, approvals, licenses, and certificates and all machinery and equipment, including motor vehicles which are used for project functions; financing charges and interest prior to and during construction and during such additional period as the authority may reasonably determine to be necessary for the placing of the project in operation; costs of engineering, architectural, and legal services; cost of plans and specifications and all

expenses necessary or incident to determining the feasibility or practicability of the project; administrative expenses; and such other expenses as may be necessary or incidental to the financing authorized in this part. The costs of any project may also include funds for the creation of a debt service reserve, a renewal and replacement reserve, and such other reserves as may be reasonably required by the authority for the operation of its projects and as may be authorized by any bond resolution or trust agreement or indenture pursuant to the provisions of which the issuance of any such bonds may be authorized. Any obligation or expense incurred for any of the foregoing purposes shall be regarded as a part of the costs of the project and may be paid or reimbursed as such out of the proceeds of user fees, of revenue bonds or notes issued under this part for such project, or from other revenues obtained by the authority.

(4) "County" means any county of this state or a governmental entity formed by the consolidation of a county and one or more municipal corporations.

(5) "Governing body" means the elected or duly appointed officials constituting the governing body of each municipal corporation and county in the state.

(6) "Municipal corporation" means any city or town in this state.

(7) "Project" means:

(A) The collection, transportation, and management of solid waste and shall also mean any property, real or personal, used as or in connection with a facility for the composting, extraction, collection, storage, treatment, processing, utilization, or final disposal of resources contained in solid waste, including the conversion of solid waste or resources contained therein into compost, oil, charcoal, gas, or any other product or energy source and the collection, storage, treatment, utilization, processing, or final disposal of solid waste in connection with the foregoing; and

(B) Any property, real or personal, used as or in connection with a facility for the composting, extraction, collection, storage, treatment, processing, or utilization of water resources and the conversion of such resources into any compost or useful form of energy.

History. — Code 1981, § 12-8-52, enacted by Ga. L. 1990, p. 412, § 1.

12-8-53. Creation of authorities.

(a) There is created in and for each county and municipal corporation in this state a public body corporate and politic, to be known as the "solid waste management authority" of such county or municipal

corporation. No authority shall transact any business or exercise any powers under this part until the governing body of the county by proper resolution of its board of commissioners, or, if a municipal corporation, by proper ordinance or resolution of its council, declares that there is a need for an authority to function in the county or municipal corporation.

(b) Any two or more counties or municipal corporations or a combination thereof may jointly form an authority, to be known as the "regional solid waste management authority" for such counties and municipal corporations. No authority shall transact any business or exercise any powers under this part until the governing authorities of the units of local government involved declare, by ordinance or resolution, that there is a need for an authority to function and until the governing authorities authorize the chief elected official of the unit of local government to enter into an agreement with the other units of local government for the activation of an authority and such agreement is executed.

History. — Code 1981, § 12-8-53, enacted by Ga. L. 1990, p. 412, § 1.

12-8-54. Board of directors.

(a) Control and management of the authority shall be vested in a board of at least five directors who shall be residents of the county or municipal corporation which is a member of the authority. At least three of such directors shall be elected officials of the county or municipal corporation which is a member of the authority. The directors shall serve at the pleasure of the governing authority of the county or municipal corporation. Directors shall be appointed, and may be reappointed, for terms of four years. In the case of a regional solid waste management authority, each unit of local government participating in the authority shall appoint two members, with an additional member to be appointed by the directors themselves; provided, however, that if each participating municipal corporation which is within a participating county shall agree and, if authorized by an agreement among political subdivisions activating the authority, such participating county and participating municipal corporations may join in appointing their members to the authority and may agree to appoint as many as two members per participating municipal corporation within a county and, if the county is participating, two members for the county or as few as one member per county; provided, further, that in any case, an additional member shall be appointed by the directors of the authority themselves. The directors shall elect one of their members as chairman and another as vice-chairman and shall also elect a secretary and a treasurer or a secretary-treasurer, either of whom may but need not be

a director. The directors shall receive no compensation for their services but shall be reimbursed for their actual expenses incurred in the performance of their duties. The directors may make bylaws and regulations for the governing of the authority and the operation of projects and may delegate to one or more of the officers, agents, and employees of the authority such powers and duties as may be deemed necessary and proper.

(b) Members of the board of directors of an authority formed pursuant to this Code section may agree that additional political subdivisions may become members of such authority subsequent to its formation upon an affirmative vote of two-thirds of the members of such board of directors under the terms imposed by agreement of two-thirds of the members of such board of directors.

(c) Any political subdivision which has become a member of such authority pursuant to subsection (b) of Code Section 12-8-53 and has determined that it shall not enter into a mutual agreement with the other political subdivisions which are members of such authority for the financial support and administrative function of such authority may be removed from such authority subsequent to its formation upon an affirmative vote of two-thirds of those members of the board of directors of such authority representing political subdivisions which have determined to enter into such an agreement. Upon such removal, the membership of such board of directors shall be reconstituted according to the terms of the agreement creating such authority as though the removed member or members had never executed such agreement. Any political subdivision removed from an authority pursuant to this subsection may be restored to membership in the authority pursuant to the terms of subsection (b) of this Code section.

History. — Code 1981, § 12-8-54, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1992, p. 3276, § 19; Ga. L. 1994, p. 1101, § 3.

Administrative rules and regulations. — Solid waste management, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-4.

Law reviews. — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 199 (1992).

12-8-55. Quorum; majority vote requirement.

A majority of the directors shall constitute a quorum for the transaction of business of the authority. However, any action with respect to any project of the authority must be approved by the affirmative vote of not less than a majority of the directors.

History. — Code 1981, § 12-8-55, enacted by Ga. L. 1990, p. 412, § 1.

12-8-56. Powers of authority.

Each authority shall have all of the powers necessary or convenient to carry out and effectuate the purposes and provisions of this part, including, but without limiting the generality of the foregoing, the power:

(1) To bring and defend actions;

(2) To adopt and amend a corporate seal;

(3) To acquire, construct, improve, or modify, to place into operation, and to operate or cause to be placed into operation and operated, either as owner of all or of any part in common with others, a project or projects within the county in which the authority is activated and, subject to execution of agreements with the appropriate political subdivisions affected, within other counties and to pay all or part of the cost of any such project or projects from the proceeds of revenue bonds of the authority or from any contribution or loans by persons, firms, or corporations or from any other contribution or user fees, all of which the authority is authorized to receive, accept, and use;

(4) To acquire, in its own name, by purchase on such terms and conditions and in such manner as it may deem proper, by condemnation in accordance with any and all laws applicable to the condemnation of property for public use, or by gift, grant, lease, or otherwise, real property or rights and easements therein and franchises and personal property necessary or convenient for its corporate purposes, which purposes shall include, but shall not be limited to, the constructing or acquiring of a project; the improving, extending, adding to, reconstructing, renovating, or remodeling of any project or part thereof already constructed or acquired; or the demolition to make room for such project or any part thereof and to insure the same against any and all risks as such insurance may, from time to time, be available. The authority may also use such property and rent or lease the same to or from others or make contracts with respect to the use thereof or sell, lease, exchange, transfer, assign, pledge, or otherwise dispose of or grant options for any such property in any manner which the authority deems to the best advantage of itself and its purposes, provided that the powers to acquire, use, and dispose of property as set forth in this paragraph shall include the power to acquire, use, and dispose of any interest in such property, whether divided or undivided, which acquisition may result in the ownership of such property or any part thereof in common with any other party or parties, public or private. Title to any such property of the authority, however, shall be held by the authority exclusively for the benefit of the public;

(5) To make contracts and leases and to execute all instruments necessary or convenient, including contracts for construction of

projects and leases of projects or contracts with respect to the use of projects which it causes to be acquired or constructed, provided that all private persons, firms, and corporations, this state, and all political subdivisions, departments, instrumentalities, or agencies of the state or of local government are authorized to enter into contracts, leases, or agreements with the authority, upon such terms and for such purposes as they deem advisable; and, without limiting the generality of the above, authority is specifically granted to municipal corporations and counties and to the authority to enter into contracts, lease agreements, or other undertakings relative to the furnishing of project activities and facilities or either of them by the authority to such municipal corporations and counties and by such municipal corporations and counties to the authority for a term not exceeding 50 years;

(6) To exercise any one or more of the powers, rights, and privileges conferred by this Code section either alone or jointly or in common with one or more other public or private parties. In any such exercise of such powers, rights, and privileges jointly or in common with others with respect to the construction, operation, and maintenance of project facilities, the authority may own an undivided interest in such facilities with any other party with which it may jointly or in common exercise the rights and privileges conferred by this part and may enter into an agreement or agreements with respect to any such project facility with the other party or parties participating therein; and such agreement may contain such terms, conditions, and provisions, consistent with this part, as the parties thereto shall deem to be in their best interests, including, but not limited to, provisions for the construction, operation, and maintenance of such project facility by any one or more party of the parties to such agreement, which party or parties shall be designated in or pursuant to such agreement as agent or agents on behalf of itself and one or more of the other parties thereto, or by such other means as may be determined by the parties thereto, and including provisions for a method or methods of determining and allocating, among or between the parties, costs of construction, operation, maintenance, renewals, replacements, improvements, and disposal with respect to such facility. In carrying out its functions and activities as such agent with respect to construction, operation, and maintenance of such a facility, such agent shall be governed by the laws and regulations applicable to such agent as a separate legal entity and not by any laws or regulations which may be applicable to any of the other participating parties; provided, however, the agent shall act for the benefit of the public. Notwithstanding anything contained in any other law to the contrary, pursuant to the terms of any such agreement, the authority may delegate its powers and duties with respect to the construction, operation, and mainte-

nance of such facility to the party acting as agent; and all actions taken by such agent in accordance with the provisions of such agreement may be binding upon the authority without further action or approval of the authority;

(7) To accept, receive, and administer gifts, grants, appropriations, and donations of money, materials, and property of any kind, including loans and grants from the United States, this state, a unit of local government, or any agency, department, authority, or instrumentality of any of the foregoing, upon such terms and conditions as the United States, this state, a unit of local government, or such agency, department, authority, or instrumentality shall impose; to administer trusts; and to sell, lease, transfer, convey, appropriate, and pledge any and all of its property and assets;

(8) To do any and all things necessary or proper for the accomplishment of the objectives of this part and to exercise any power usually possessed by private corporations performing similar functions which is not in conflict with the Constitution and laws of this state, including the power to employ professional and administrative staff and personnel and to retain legal, engineering, fiscal, accounting, and other professional services; the power to purchase all kinds of insurance, including, without limitation, insurance against tort liability and against risks of damage to property; the power to borrow money for any of the corporate purposes of the authority; the power to indemnify and hold harmless any parties contracting with the authority or its agents from damage to persons or property; and the power to act as self-insurer with respect to any loss or liability; provided, however, that obligations of the authority other than revenue bonds, for which provision is made in this part, shall be payable from the general funds of the authority and shall not be a charge against any special fund allocated to the payment of revenue bonds;

(9) To borrow money and issue its revenue bonds and bond anticipation notes from time to time and to use the proceeds thereof for the purpose of paying all or part of the cost of any project, including the cost of extending, adding to, or improving such project, or for the purpose of refunding any such bonds of the authority theretofore issued; and otherwise to carry out the purposes of this part and to pay all other costs of the authority incident to, or necessary and appropriate to, such purposes, including the providing of funds to be paid into any fund or funds to secure such bonds and notes, provided that all such bonds and notes shall be issued in accordance with the procedures and subject to the limitations set forth in Code Section 12-8-58; and

(10) To fix rentals and other charges which any user shall pay to the authority for the use of the project or part or combination thereof,

and to charge and collect the same, and to lease and make contracts with political subdivisions and agencies with respect to use of any part of the project. Such rentals and other charges shall be so fixed and adjusted with respect to the aggregate thereof from the project or any part thereof so as to provide a fund with other revenues of such project, if any, to pay the cost of maintaining, repairing, and operating the project, including reserves for extraordinary repairs and insurance, unless such cost shall be otherwise provided for, which costs shall be deemed to include the expenses incurred by the authority on account of the project for water, light, sewer, and other services furnished by other facilities at such project.

History. — Code 1981, § 12-8-56, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 2001, p. 4, § 12.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, the subsection designation "(a)" was deleted at the beginning of this Code section, since there was no subsection (b).

JUDICIAL DECISIONS

County ordinance covering payment of garbage collection fees. — The state constitution, statutes, and case law permit a county to enact an ordinance making property owners responsible for the payment of garbage collection fees for their rental property. Board of Comm'rs v. Guthrie, 273 Ga. 1, 537 S.E.2d 329 (2000).

OPINIONS OF THE ATTORNEY GENERAL

Inmate labor may not be used to work for a solid waste management facility that is operated by a private, for-profit entity, if the labor inures to the benefit of the entity. 1999 Op. Att'y Gen. No. 99-12.

12-8-57. Limitation on liability of members, officers, or employees of authority.

Except for gross negligence or willful or wanton misconduct, neither the members of the authority nor any officer or employee of the authority, acting on behalf thereof and while acting within the scope of his responsibilities, shall be subject to any liability resulting from:

(1) The design, construction, ownership, maintenance, operation, or management of a project; or

(2) The carrying out of any of the discretionary powers or duties expressly provided for in this part.

History. — Code 1981, § 12-8-57, enacted by Ga. L. 1990, p. 412, § 1.

12-8-58. Bonds or other obligations; limitations and procedures for issuance.

(a) Subject to the limitations and procedures provided by this Code section, the obligations of any authority evidenced by bonds, bond anticipation notes, trust indentures, deeds to secure obligations, security agreements, or mortgages executed in connection therewith may contain such provisions not inconsistent with law as shall be determined by the board of directors of the authority. The authority, in such instruments, may provide for the pledging of all or any part of its revenues, income, or charges and for the mortgaging, encumbering, or conveying of all or any part of its real or personal property; may covenant against pledging any or all of its revenues, income, or charges; and may further provide for the disposition of proceeds realized from the sale of any bonds and bond anticipation notes, for the replacement of lost, destroyed, stolen, or mutilated bonds and notes, and for the payment and redemption of such bonds and notes. Similarly, subject to the limitations and procedures of this Code section, undertakings of any authority may prescribe the procedure by which bondholders and noteholders may enforce rights against the authority and provide for rights upon breach of any covenant, condition, or obligation of the authority. Bonds, resolutions, trust indentures, mortgages, or deeds to secure obligations executed by an authority and bond anticipation notes executed by an authority may contain such provisions not otherwise contrary to law as the authority shall deem necessary or desirable.

(b) The proceeds derived from the sale of all bonds and bond anticipation notes issued by an authority shall be held and used for the ultimate purpose of paying, directly or indirectly as permitted in this part, all or part of the cost of any project, including the cost of extending, financing, adding to, or improving such project, or for the purpose of refunding any bond anticipation notes issued in accordance with this part or refunding any previously issued bonds of the authority.

(c) All bonds and bond anticipation notes issued by an authority shall be revenue obligations of such authority and may be made payable out of any revenues or other receipts, funds, or moneys of the authority, subject only to any agreements with the holders of other bonds or bond anticipation notes or to particular security agreements pledging any particular revenues, receipts, funds, or moneys.

(d) Issuance by an authority of one or more series of bonds or bond anticipation notes for one or more purposes shall not preclude it from issuing other bonds or notes in connection with the same project or with any other projects, but the proceeding wherein any subsequent bonds or bond anticipation notes shall be issued shall recognize and protect any prior pledge or mortgage made in any prior security agreement or made

for any prior issue of bonds or bond anticipation notes, unless in the resolution authorizing such prior issue the right is expressly reserved to the authority to issue subsequent bonds or bond anticipation notes on a parity with such prior issue.

(e) An authority shall have the power and is authorized, whenever revenue bonds of the authority have been validated as provided in this part, to issue, from time to time, its notes in anticipation of the issuance of such bonds as validated and to renew from time to time any such notes by the issuance of new notes, whether the notes to be renewed have or have not matured. The authority may issue notes only to provide funds which would otherwise be provided by the issuance of the bonds as validated. The notes may be authorized, sold, executed, and delivered in the same manner as bonds. As with its bonds, the authority may sell such notes at public or private sale. Any resolution or resolutions authorizing notes of the authority or any issue thereof may contain any provisions which the authority is authorized to include in any such resolution or resolutions; and the authority may include in any notes any terms, covenants, or conditions which it is authorized to include in any bonds. Validation of such bonds shall be a condition precedent to the issuance of the notes, but it shall not be required that such notes be judicially validated. Bond anticipation notes shall not be issued in an amount exceeding the par value of the bonds in anticipation of which they are to be issued.

(f) The interest rate on or rates to be borne by any bonds, notes, or other obligations issued by the authority shall be fixed by the board of directors of the authority. Any limitations with respect to interest rates found in Article 3 of Chapter 82 of Title 36 or in the usury laws of this state shall not apply to obligations issued under this part.

(g) All revenue bonds issued by an authority under this part will be issued and validated under and in accordance with Article 3 of Chapter 82 of Title 36, except as provided in subsection (f) of this Code section and except as specifically set forth below:

(1) Revenue bonds issued by an authority may be in such form, either coupon or fully registered, or both coupon and fully registered, and may be subject to such exchangeability and transferability provisions as the bond resolution authorizing the issuance of such bonds or any indenture or trust agreement may provide;

(2) Revenue bonds shall bear a certificate of validation. The signature of the clerk of the superior court of the judicial circuit in which the issuing authority is located may be made on the certificate of validation of such bonds by facsimile or by manual execution, stating the date on which such bonds were validated; and such entry shall be original evidence of the fact of judgment and shall be received as original evidence in any court in this state; and

(3) In lieu of specifying the rate or rates of interest which revenue bonds to be issued by an authority are to bear, the notice to the district attorney or the Attorney General and the notice to the public of the time, place, and date of the validation hearing may state that the bonds, when issued, will bear interest at a rate not exceeding a maximum per annum rate of interest specified in such notices or, in the event the bonds are to bear different rates of interest for different maturity dates, that none of such rates will exceed the maximum rate specified in the notices; provided, however, that nothing contained in this paragraph shall be construed as prohibiting or restricting the right of the authority to sell such bonds at a discount, even if in so doing the effective interest cost resulting therefrom would exceed the maximum per annum interest rate specified in such notices.

(h) The term "cost of project" shall have the meaning prescribed in paragraph (3) of Code Section 12-8-52 whenever referred to in bond resolutions of an authority, bonds and bond anticipation notes issued by an authority, or notices and proceedings to validate such bonds.

History. — Code 1981, § 12-8-58, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 1992, p. 3276, § 20.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, "and" was substituted for "an" preceding "transferability" in paragraph (g)(1).

Law reviews. — For note on 1992 amendment of this Code section, see 9 Ga. St. U.L. Rev. 199 (1992).

12-8-59. Bonds or other obligations not indebtedness of state or political subdivision.

No bonds or other obligations of and no indebtedness incurred by any authority shall constitute an indebtedness or obligation of the State of Georgia or of any county, municipal corporation, or political subdivision thereof, nor shall any act of any authority in any manner constitute or result in the creation of an indebtedness of this state or of any such county, municipal corporation, or political subdivision. However, provisions of this Code section shall not preclude counties, municipal corporations, or other political subdivisions from choosing to guarantee the bonds, indebtedness, or other obligations of a regional solid waste authority as part of its demonstration of adequate financial responsibility pursuant to this part. All such bonds and obligations shall be payable solely from the revenues therein pledged to such payment, including pledged rentals, sales proceeds, insurance proceeds, and condemnation awards; and no holder or holders of any such bonds or obligation shall ever have the right to compel any exercise of the taxing power of this state or of any county, municipal corporation, or political subdivision thereof or to enforce the payment thereof against any property of the state or of any such county, municipal corporation, or political subdivision.

History. — Code 1981, § 12-8-59, enacted by Ga. L. 1990, p. 412, § 1.

12-8-59.1. Liberal construction of part; bonds not subject to other state law; other authorities.

(a) This part shall be liberally construed to effect the purposes hereof. Sale or issuance of bonds by any authority shall not be subject to regulation under Chapter 5 of Title 10, the "Georgia Uniform Securities Act of 2008," or any other law.

(b) A municipal corporation, a county, or any number of counties and municipal corporations shall have the right to activate any authority under this part, notwithstanding the existence of any other authority having similar powers or purposes within the county or municipal corporation created pursuant to any general law or amendment to the Constitution of this state. However, nothing in this part shall be construed as repealing, amending, superseding, or altering the organization of or abridging the powers of such authorities as are now in existence.

History. — Code 1981, § 12-8-59.1, enacted by Ga. L. 1990, p. 412, § 1; Ga. L. 2008, p. 381, § 10/SB 358.

12-8-59.2. Resolutions or ordinances declaring functioning of previously activated authority unnecessary.

(a) As used in this Code section, the term "project" shall mean any interest of the authority in a project as otherwise defined in this part.

(b) The governing body of any unit of local government which has authorized the functioning of an authority pursuant to Code Section 12-8-53 may by proper resolution or ordinance declare that there is no need for such authority to function in the county or municipal corporation. Upon such declaration by all units of local government which previously authorized the activation of the authority and upon compliance by such units of local government with the provisions of subsection (c) of this Code section, the authority shall cease to transact any business or exercise any powers inconsistent with the winding up of its affairs.

(c) No resolutions or ordinances of units of local government declaring the functioning of a previously activated authority to be unnecessary shall be of any force and effect until:

(1) In the case of an authority having outstanding notes or bonds:

(A) Said notes or bonds have been paid or retired according to their terms or acquired by such units of local government; or

(B) Appropriate contractual arrangements have been made by such units of local government to lease or purchase the authority's projects, or to arrange to have the authority's projects leased or purchased by others, consistent with the terms of said notes or bonds on such terms as will together with any existing debt service reserves held by the authority provide for the payment of the principal and interest on said notes or bonds; and

(C) Appropriate arrangements have been made by such units of local government, or in the case of authorities activated pursuant to subsection (b) of Code Section 12-8-53, appropriate contractual and other arrangements have been made by, among, and between all units of local government which previously authorized the activation of the authority:

(i) To hold, operate, or dispose of all assets or projects of the authority in the case of the transfer of such assets and projects by the authority to such units of local government, but nothing in this Code section shall require the continued operation of any project by such units of local government;

(ii) To assume or satisfy, or arrange to have assumed or satisfied, all contracts, leases, agreements, or obligations previously entered into or incurred by the authority with respect to the acquisition or operation of such assets or projects, consistent with the terms thereof, other than notes or bonds, but nothing in this Code section shall require the renewal, continuation beyond its terms, or extension of any such contract, lease, agreement, or obligation; and

(iii) To make provision, by creation of a reserve fund or otherwise, for residual obligations which may from time to time arise during the period of winding up of the affairs of the authority pursuant to subsection (d) of this Code section; or

(2) In the case of an authority having no outstanding notes or bonds, there has been compliance with the terms of subparagraph (C) of paragraph (1) of this subsection.

(d)(1) Upon compliance by all units of local government which previously authorized the activation of the authority with subsections (b) and (c) of this Code section, the board of directors of the authority shall cause to be transferred to such units of local government, at such a time and on such reasonable terms and conditions as may be agreed to between the authority and such units of local government and subject to the arrangements made under and the provisions of subsection (c) of this Code section, the assets, projects, contracts, leases, agreements, and obligations of the authority. The board of directors of any such authority shall take all steps necessary

or convenient to carry out the provisions of this Code section consistent with the benefit of the public.

(2) The board of directors of the authority shall continue in existence for a period of time sufficient for the orderly winding up of the affairs of the authority and, in the case of an authority having outstanding notes or bonds, for a reasonable period of time after such notes or bonds have been paid or retired and may exercise any power usually possessed by private corporations of this state in the process of winding up their affairs not in conflict with the Constitution or laws of this state. In the course of such winding up, the board of directors shall have access to any funds made available pursuant to division (c)(1)(C)(iii) of this Code section but shall exercise control over such funds as fiduciaries, shall disburse such funds only for purposes appropriate to the winding up of the affairs of the authority, and shall account for any remainder of such funds to the units of local government which authorized the activation of the authority.

(3) Upon the completion of the process of winding up of the affairs of the authority, the board of directors shall relinquish control of any remaining funds made available pursuant to division (c)(1)(C)(iii) of this Code section to the units of local government which authorized the activation of the authority and by resolution dissolve itself, whereupon such authority shall become dormant but may be reactivated by compliance with Code Section 12-8-53.

History. — Code 1981, § 12-8-59.2, enacted by Ga. L. 1997, p. 447, § 3; Ga. L. 1997, p. 1081, § 5.

ARTICLE 3

HAZARDOUS WASTE

Cross references. — Regulation of transportation, storage, and disposal of pesticides and pesticide containers, § 2-7-106. Regulation of storage, handling, and transportation of gasoline, liquefied petroleum gases, anhydrous ammonia, and other flammable or hazardous substances, § 25-2-16. General power of Department of Human Resources and county boards of health to prevent environmental conditions which, if permitted to develop or continue, would endanger public health, T. 31, C. 12. Permits for disposal of radioactive waste, § 31-13-7. Regulation of transportation of radioactive materials, liquefied natural gas, and polychlorinated biphenyl, T. 46, C. 11.

Administrative rules and regulations. — Hazardous waste management, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-11.

Law reviews. — For survey article on constitutional law, see 34 Mercer L. Rev. 53 (1982). For survey article on environment, natural resources, and land use, see 34 Mercer L. Rev. 145 (1982). For article, "The Resource Conservation and Recovery Act (RCRA) and the Georgia Solid Waste Management Act," see 38 Mercer L. Rev. 569 (1987). For article, "The Installation Restoration Programs (IRP): Georgia's Perspective," see 38 Mercer L. Rev. 665 (1987).

RESEARCH REFERENCES

Am. Jur. Trials. — Contractor's Liability for Mishandling Toxic Substance, 37 Am. Jur. Trials 115.

Cost Recovery Litigation: Abatement of Asbestos Contamination, 40 Am. Jur. Trials 317.

Handling Toxic Tort Litigation, 57 Am. Jur. Trials 395.

Asbestos Injury Litigation, 60 Am. Jur. Trials 73.

ALR. — Validity of local regulation of hazardous waste, 67 A.L.R.4th 822.

Validity, construction, and application of state hazardous waste regulations, 86 A.L.R.4th 401.

Part 1

Hazardous Waste Management

Editor's notes. — Ga. L. 1992, p. 2234, § 5 designated the existing provisions of Article 3, Code Sections 12-8-60 through 12-8-83, as Part 1.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Toxic Torts: Proof of Medical Monitoring Damages for Exposure to Toxic Substances, 25 POF3d 313.

12-8-60. Short title.

This part shall be known as and may be cited as the "Georgia Hazardous Waste Management Act."

History. — Ga. L. 1979, p. 1127, § 1; Ga. L. 1992, p. 2234, § 5.

Law reviews. — For annual survey on environmental law, see 70 Mercer L. Rev. 1007 (2019).

JUDICIAL DECISIONS

Constitutionality. — O.C.G.A. § 50-13-10 did not authorize plaintiffs to obtain declaratory judgment as to validity of rules enacted pursuant to the Hazardous Waste Management Act, O.C.G.A. § 12-8-60 et seq., when the plaintiffs were contending that the Act and rules promulgated thereunder were unconstitutional. George v. Department of Natural Resources, 250 Ga. 491, 299 S.E.2d 556 (1983).

Cited in Earth Mgt., Inc. v. Heard County, 248 Ga. 442, 283 S.E.2d 455 (1981); South Carolina Ins. Co. v. Coody, 813 F. Supp. 1570 (M.D. Ga. 1993); Georgia Ports Auth. v. Diamond Mfg. Co., 164 Bankr. 189 (Bankr. S.D. Ga. 1994).

RESEARCH REFERENCES

ALR. — Right to maintain action based on violation of § 7003 of Resource Conservation and Recovery Act (42 USCS § 6973) pertaining to imminent hazards from solid or hazardous waste, 105 A.L.R. Fed. 800.

12-8-61. Legislative policy.

It is declared to be the public policy of the State of Georgia, in furtherance of its responsibility to protect the public health, safety, and well-being of its citizens and to protect and enhance the quality of its environment, to institute and maintain a comprehensive state-wide program for the management of hazardous wastes through the regulation of the generation, transportation, storage, treatment, and disposal of hazardous wastes.

History. — Ga. L. 1979, p. 1127, § 2; Ga. L. 1992, p. 2234, § 5.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 48. 25 Am. Jur. 2d, Drains and Drainage Districts, § 3. 61C Am. Jur. 2d, Pollution Control, §§ 975 et seq., 1052 et seq.

C.J.S. — 28 C.J.S., Drains, § 3 et seq.

12-8-62. Definitions.

As used in this part, the term:

(1) "Board" means the Board of Natural Resources of the State of Georgia.

(2) "Designated hazardous waste" means any solid waste identified as such in regulations promulgated by the board. The board may identify as "designated hazardous waste" any solid waste which the board concludes is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported, or disposed of or otherwise managed, based on the factors set forth in regulations promulgated by the administrator of the United States Environmental Protection Agency pursuant to the federal act which are codified as 40 C.F.R. Section 261.11(a)(3), in force and effect on February 1, 2010, if such solid waste contains any substance which is listed on any one or more of the following lists:

(A) List of Hazardous Constituents, codified as 40 C.F.R. Part 261, Appendix VIII, in force and effect on February 1, 2010;

(B) Ground-water Monitoring List, codified as 40 C.F.R. Part 264, Appendix IX, in force and effect on February 1, 2010;

(C) List of Hazardous Substances and Reportable Quantities, codified as 40 C.F.R. Table 302.4, and all appendices thereto, in force and effect on February 1, 2010;

(D) List of Regulated Pesticides, codified as 40 C.F.R. Part 180, in force and effect on February 1, 2010;

(E) List of Extremely Hazardous Substances and Their Threshold Planning Quantities, codified as 40 C.F.R. Part 355, Appendix A, in force and effect on February 1, 2010; or

(F) List of Chemicals and Chemical Categories, codified as 40 C.F.R. Part 372.65 in force and effect on February 1, 2010.

(3) "Director" means the director of the Environmental Protection Division of the Department of Natural Resources.

(4) "Disposal" means the discharge, deposit, injection, dumping, spilling, leaking, or placing of any solid waste or hazardous waste into or on any land or water so that such solid waste or hazardous waste or any constituent thereof may enter the environment or be emitted into the air or discharged into any waters, including ground waters.

(5) "Division" means the Environmental Protection Division of the Department of Natural Resources.

(6) "Federal act" means the federal Solid Waste Disposal Act, as amended, particularly by the Resource Conservation and Recovery Act of 1976 (Public Law 94-580, 42 U.S.C. Section 6901, et seq.), as amended, particularly by but not limited to the Used Oil Recycling Act of 1980 (Public Law 96-463), the Solid Waste Disposal Act Amendments of 1980 (Public Law 96-482), the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Public Law 96-510), the Hazardous and Solid Waste Amendments of 1984 (Public Law 98-616), and the Superfund Amendments and Reauthorization Act of 1986 (Public Law 99-499), as amended.

(7) "Final disposition" means the location, time, and method by which hazardous waste loses its identity or enters the environment, including, but not limited to, disposal, disposal site closure and post closure, resource recovery, and treatment.

(8) "Guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator pursuant to this article.

(9) "Hazardous constituent" means any substance listed as a hazardous constituent in regulations promulgated by the administrator of the United States Environmental Protection Agency pursuant to the federal act which are in force and effect on February 1, 2010, codified as Appendix VIII to 40 C.F.R. Part 261-Identification and Listing of Hazardous Waste.

(10) "Hazardous waste" means any solid waste which has been defined as a hazardous waste in regulations promulgated by the administrator of the United States Environmental Protection Agency

pursuant to the federal act which are in force and effect on February 1, 2010, codified as 40 C.F.R. Section 261.3 and any designated hazardous waste.

(11) "Hazardous waste facility" means any property or facility that is intended or used for storage, treatment, or disposal of hazardous waste.

(12) "Hazardous waste generation" means the act or process of producing hazardous waste.

(13) "Hazardous waste management" means the systematic recognition and control of hazardous wastes from generation to final disposition or disposal, including, but not limited to, identification, containerization, labeling, storage, collection, source separation, transfer, transportation, processing, treatment, facility closure, post closure, perpetual care, resource recovery, and disposal.

(14) "Land disposal" means any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome formation, salt bed formation, or underground mine or cave.

(15) "Large quantity generator" means a hazardous waste generator who generates 2.2 pounds or more of acute hazardous waste or 2,200 pounds or more of hazardous waste in one month, as defined in the Rules for Hazardous Waste Management, Chapter 391-3-11, of the Board of Natural Resources.

(16) "Manifest" means a form or document used for identifying the quantity and composition, and the origin, routing and destination, of hazardous waste during its transportation from the point of generation, through any intermediate points, to the point of disposal, treatment, or storage.

(17) "Organization" means a legal entity, other than a government agency or authority, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

(18) "Person" means an individual, trust, firm, joint stock company, corporation (including a government corporation), partnership, association, municipality, commission, or political subdivision, or any agency, board, department, or bureau of this state or of any other state or of the federal government.

(19) "Serious bodily injury" means a bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

(20) "Solid waste" means solid waste as defined by regulations promulgated by the administrator of the United States Environmental Protection Agency pursuant to the federal act which are in force and effect on February 1, 2010, codified as 40 C.F.R. Sections 261.1, 261.2(a)-(d), and 261.4(a).

(21) "Storage" means the containment or holding of hazardous waste, either on a temporary basis or for a period of years, in such a manner as not to constitute disposal of such hazardous waste.

(22) "Transport" means the movement of hazardous waste from the point of generation to any point of final disposition, storage, or disposal, including any intermediate point.

(23) "Treatment" means any method, technique, or process, including neutralization, designed to change the physical, chemical, or biological character or composition of any hazardous waste so as to neutralize such waste or so as to render such waste nonhazardous, safe for transport, amenable for recovery, amenable for storage, or reduced in volume. Such term includes any activity or processing designed to change the physical form or chemical composition of hazardous waste so as to render it nonhazardous.

(24) "Waste reduction" means a practice, other than dewatering, dilution, or evaporation, by an environmental waste generator, including changes in production technology, materials, processes, operations or procedures or use of in-process, in-line, or closed loop recycling according to standard engineering practices, that reduces the environmental and health hazards associated with waste without diluting or concentrating the waste before release, handling, storage, transport, treatment, or disposal of the waste. The term does not include a practice applied to environmental waste after it is generated and exits a production or commercial operation. Waste reduction shall not in any way be inferred to promote, include, or require:

(A) Waste burning in industrial furnaces, boilers, or cement kilns;

(B) Transfer of an environmental waste from one environmental medium to another environmental medium (otherwise known as waste shifting);

(C) Conversion of a potential waste into another form for use in a production process or operation without serving any substantial productive function;

(D) Off-site waste recycling; or

(E) Any other method of end-of-pipe management of environmental wastes.

History. — Ga. L. 1979, p. 1127, § 4; Ga. L. 1985, p. 266, §§ 1, 2; Ga. L. 1986, p. 10, § 12; Ga. L. 1986, p. 761, §§ 1, 2; Ga. L. 1987, p. 3, § 12; Ga. L. 1988, p. 727, § 1; Ga. L. 1990, p. 1427, § 1; Ga. L. 1991, p. 456, § 1; Ga. L. 1992, p. 2234, § 5; Ga. L. 1996, p. 319, § 2; Ga. L. 2006, p. 275, § 3-3/HB 1320; Ga. L. 2010, p. 531, § 4/SB 78; Ga. L. 2010, p. 828, § 1/SB 490.

Editor's notes. — Ga. L. 2006, p. 275, § 1-1/HB 1320, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Comprehensive Litter Prevention and Abatement Act of 2006.'"

Ga. L. 2006, p. 275, § 5-1/HB 1320, not codified by the General Assembly, provides that the Act shall become effective April 21, 2006, for purposes of adopting local ordinances to become effective on or after July 1, 2006.

U.S. Code. — The federal Solid Waste Disposal Act, referred to in paragraph (6) of this Code section, was formerly codified at 42 U.S.C. § 3251 et seq. The federal Solid Waste Disposal Act was amended, reorganized, and expanded by the federal Resource Conservation and Recovery Act of 1976, referred to and cited in paragraph (6) of this Code section.

RESEARCH REFERENCES

ALR. — What constitutes "hazardous waste" subject to regulation under Resource Conservation and Recovery Act (42 USCS § 6901, et seq.), 135 A.L.R. Fed 197.

12-8-63. Administration of article by division; enforcement of article by director.

The division shall be the state agency to administer this article. The director shall be the official charged with the primary responsibility for the enforcement of this article. In exercising any authority or power granted by this article and in fulfilling his duties under this article, the director shall conform to and implement the policies outlined in this article.

History. — Ga. L. 1979, p. 1127, § 2; Ga. L. 1992, p. 2234, § 5.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 48. 25 Am. Jur. 2d, Drains and Drainage Districts, § 3. 61C Am. Jur. 2d, Pollution Control, §§ 975 et seq., 1052 et seq.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 17 et seq., 73, 147, 226.

12-8-64. Powers and duties of board as to hazardous waste.

In the performance of its duties, the board shall have and may exercise the power to:

(1) Adopt, promulgate, modify, amend, and repeal rules and regulations to implement and enforce the provisions of this article as the board may deem necessary to provide for the control and manage-

ment of hazardous waste to protect the environment and the health of humans. Such rules and regulations may be applicable to the state as a whole or may vary from area to area, as may be appropriate to facilitate the accomplishment of the provisions, purposes, and policies of this article. The rules and regulations shall include, but shall not be limited to, the following:

(A) Rules and regulations governing and controlling standards applicable to hazardous waste generators, hazardous waste transporters, and owners or operators of hazardous waste treatment, storage, or disposal facilities. These rules and regulations may include measures to ensure that hazardous waste management practices are regulated, governed, and controlled in the public interest. Such measures may include, but shall not be limited to:

(i) The establishment of record-keeping procedures;

(ii) Requirements calling for the submission of reports to the director; and

(iii) The establishment of monitoring practices;

(B) Rules and regulations governing and controlling the treatment, storage, and disposal of hazardous waste;

(C) Rules and regulations specifying the terms, provisions, and conditions under which the director shall issue, modify, amend, revoke, or deny permits pursuant to this article;

(D) Rules and regulations governing and controlling hazardous waste management;

(E) Rules and regulations establishing procedures and requirements for the reporting of the generation of hazardous wastes and governing and controlling the activities of hazardous waste generators;

(F) Rules and regulations establishing standards and procedures for the operation and maintenance of hazardous waste facilities;

(G) Rules and regulations establishing the use of a manifest during the generation and handling of hazardous wastes;

(H) Rules and regulations establishing procedures to ensure public access to records and to ensure protection of trade secrets and confidential information, the disclosure of which to the director is required by this article or the rules and regulations adopted under this article;

(I) Rules and regulations establishing procedures and requirements for the use and disposition of hazardous waste or hazardous constituents;

(J) Rules and regulations deleting certain solid wastes from the definition of hazardous waste;

(K) Rules and regulations exempting from some or all regulation certain small quantities of hazardous waste;

(L) Rules and regulations exempting from some or all regulation certain hazardous wastes that are recyclable; and

(M) Rules and regulations designating certain solid wastes as designated hazardous wastes; and

(2) Take all necessary steps to ensure the effective enforcement of this article.

History. — Ga. L. 1979, p. 1127, § 5; Ga. L. 1985, p. 266, § 3; Ga. L. 1988, p. 727, § 2; Ga. L. 1992, p. 2234, § 5.

Administrative rules and regulations. — Hazardous waste management, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-11.

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 207, 212 et seq.

ALR. — Vendor's obligation to disclose to purchaser of land presence of contamination from hazardous substances or wastes, 12 A.L.R.5th 630.

12-8-65. Powers and duties of director as to hazardous waste.

(a) The director shall have and may exercise the following powers and duties:

(1) To exercise general supervision over the administration and enforcement of this article and all rules and regulations, orders, or permits promulgated or issued under this article;

(2) To encourage, participate in, or conduct studies, reviews, investigations, research, and demonstrations relating to hazardous waste management practices in this state as he deems advisable and necessary;

(3) To issue all permits contemplated by this article, stipulating in each permit the conditions or limitations under which such permit is issued, and to deny, revoke, modify, or amend such permits;

(4) To make investigations, analyses, and inspections to determine and ensure compliance with this article, the rules and regulations promulgated under this article, and any permits or orders which the director may issue;

(5) To enter into such contracts as may be required or necessary to effectuate this article or the rules and regulations promulgated under this article;

(6) To prepare, develop, amend, modify, submit, and enforce any comprehensive plan or program sufficient to comply with this article or the federal act, or both, for the control, regulation, and monitoring of hazardous waste management practices in this state;

(7) To develop and implement plans to achieve goals and objectives set by any comprehensive plan or program;

(8) To conduct such public hearings as are required by this article or as he deems necessary for the proper administration of this article and to control and manage the conduct and procedure for such public hearings;

(9) To advise, consult, cooperate, and contract on hazardous waste management matters with other agencies of this state, political subdivisions thereof, and other designated organizations or entities, and, with the approval of the Governor, to negotiate and enter into agreements with the governments of other states and the United States and their several agencies, subdivisions, or designated organizations or entities, provided that nothing in this article shall authorize the division to own or operate a hazardous waste storage, treatment, or disposal facility;

(10) To collect and disseminate information and to provide for public notification in matters relating to hazardous waste management;

(11) To issue, amend, modify, or revoke orders as may be necessary to ensure and enforce compliance with this article and all rules or regulations promulgated under this article;

(12) To institute, in the name of the division, proceedings of mandamus, injunction, or other proper administrative, civil, or criminal proceedings to enforce this article, the rules and regulations promulgated under this article, or any orders or permits issued under this article;

(13) To accept, receive, administer, or disburse grants from public or private sources for the purpose of the proper administration of this article or for the purpose of carrying out any of the duties, powers, or responsibilities under this article;

(14) To grant variances in accordance with this article and the rules and regulations promulgated under this article, provided that such variances are not inconsistent with the federal act and rules or regulations promulgated thereunder;

(15) To encourage voluntary cooperation by persons and affected groups to achieve the purposes of this article;

(16) To assure that the State of Georgia complies with the federal act and retains maximum control thereunder and receives all desired federal grants, aid, and other benefits;

(17) To require any person who is generating, transporting, treating, storing, or disposing of hazardous waste to notify the division in writing, within a reasonable number of days which the director shall specify, of the location and general description of such activity and identifying the hazardous waste handled, and any other information which may be deemed relevant, under such conditions as the director may prescribe;

(18) To maintain an inventory of hazardous wastes within the state, including such information as location, identity, quantity, method of storage, rate of accumulation, disposal practices, and any other information which the director may deem necessary to administer and enforce this article;

(19) To exclude from regulation under this article the solid waste at any particular generating facility if it is determined that such solid waste does not pose a danger to human health or the environment;

(20) To establish hazardous waste management standards for the state, provided that they are in all cases not less stringent than those standards provided by the federal act;

(21) To take all necessary steps to ensure that the administration of this article is consistent with and equivalent to the provisions of the federal act and any standards, rules, or regulations promulgated thereunder toward the end that the State of Georgia shall have maximum control over hazardous waste management practices in this state; and

(22) To exercise all incidental powers necessary to carry out the purposes of this article.

(b) The powers and duties described in subsection (a) of this Code section may be exercised and performed by the director through such duly authorized agents and employees as he deems necessary and proper.

History. — Ga. L. 1979, p. 1127, § 6; Ga. L. 1988, p. 727, § 3; Ga. L. 1992, p. 2234, § 5; Ga. L. 1996, p. 6, § 12.

Cross references. — Permits for disposal of radioactive wastes, § 31-13-7.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 45. 63C Am. Jur. 2d, Public Officers and Employees, § 237 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 323 et seq. 73 C.J.S., Public Administrative Law and Procedure, § 147.

12-8-65.1. Hazardous waste reduction plans; specific performance goals; biennial progress reports; rules and regulations.

(a) By not later than March 1, 1992, large quantity hazardous waste generators shall develop hazardous waste reduction plans and submit such plans to the director. At a minimum, the plans shall include:

(1) A written policy articulating upper management and corporate support for the generator's hazardous waste reduction plan and a commitment to implement plan goals;

(2) The scope and objectives of the plan, including the evaluation of technologies, procedures, and personnel training programs to ensure unnecessary hazardous waste is not generated and specific goals for hazardous waste reduction, based on what is technically and economically practical;

(3) Internal analysis of hazardous waste streams, with periodic hazardous waste reduction assessments, to review individual processes or facilities and other activities where hazardous waste may be generated and identify opportunities to reduce or eliminate hazardous waste generation. Such assessments shall evaluate data on the types, amount, and hazardous constituents of hazardous waste generated, where and why that hazardous waste was generated within the production process or other operations, and potential hazardous waste reduction and recycling techniques applicable to those hazardous wastes;

(4) Hazardous waste accounting systems that identify hazardous waste management costs and factor in liability, compliance, and oversight costs to the extent technically and economically practical;

(5) Employee awareness and training programs to involve employees in hazardous waste reduction planning and implementation to the maximum extent feasible;

(6) Institutionalization of the plan to ensure an ongoing effort as demonstrated by incorporation of the plan into management practice and procedures; and

(7) Implementation of technically and economically practical hazardous waste reduction options, including a plan for implementation.

(b) As part of each hazardous waste reduction plan developed under subsection (a) of this Code section, each large quantity hazardous waste generator shall establish specific performance goals for the reduction of hazardous waste. Wherever technically and economically practical, the specific performance goals established under this subsection shall be expressed in numeric terms. If the establishment of numeric perfor-

mance goals is not practical, the performance goals shall include a clearly stated list of objectives designed to lead to the establishment of numeric goals as soon as practical. Each large quantity hazardous waste generator shall explain the rationale for each performance goal. The rationale for a particular performance goal shall address any impediments to hazardous waste reduction, including but not limited to the following:

(1) The availability of technically practical hazardous waste reduction methods, including any anticipated changes in the future;

(2) Previously implemented reductions of hazardous waste; and

(3) The economic practicability of available hazardous waste reduction methods, including any anticipated changes in the future.

(c) Examples of situations where hazardous waste reduction may not be economically practical as provided for in paragraph (3) of subsection (b) of this Code section include but are not limited to:

(1) For valid reasons of priority, a particular company may choose first to address other more serious hazardous waste reduction concerns;

(2) Necessary steps to reduce hazardous waste are likely to have significant adverse impacts on product quality; or

(3) Legal or existing contractual obligations interfere with the necessary steps that would lead to hazardous waste reduction.

(d) All large quantity hazardous waste generators shall complete biennially a hazardous waste reduction progress report. A biennial progress report shall:

(1) Analyze and quantify progress made, if any, in hazardous waste reduction, relative to each performance goal established under subsection (b) of this Code section; and

(2) Set forth amendments to the hazardous waste reduction plan and explain the need for the amendments.

(e) The board may adopt and promulgate such rules and regulations as may be necessary to further define and implement the provisions of this Code section and Code Section 12-8-65.2, provided such rules and regulations are supplemental to and not in conflict with this Code section and Code Section 12-8-65.2.

History. — Code 1981, § 12-8-65.1, enacted by Ga. L. 1990, p. 1427, § 2; Ga. L. 1992, p. 2234, § 5.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, ". Such" was substituted for "; such" in the middle of paragraph (a)(3) and a comma was deleted following "programs" in paragraph (a)(5).

12-8-65.2. Updating plans and reports; technical assistance; information available to public.

(a) All large quantity hazardous waste generators shall complete and submit to the director a hazardous waste reduction plan on or before March 1, 1992. The plans shall be updated and progress reported on a biennial basis thereafter. The first updated biennial report shall be due in 1994 and shall be submitted to the director as prescribed in rules or regulations adopted by the board.

(b) Subject to available funding, the Georgia Institute of Technology shall provide technical assistance, if requested, to hazardous waste generators in reducing the amount and toxicity of hazardous waste generated, in preparing hazardous waste reduction plans, and in preparing biennial progress reports.

(c) The director shall maintain a copy of each hazardous waste reduction plan and biennial progress report received. This information shall be available to the public at the director's or the division's office.

History. — Code 1981, § 12-8-65.2, enacted by Ga. L. 1990, p. 1427, § 2; Ga. L. 1992, p. 2234, § 5.

12-8-65.3. Plans and reports by out-of-state generators storing, treating, or disposing of hazardous waste in state.

(a) For the purposes of this Code section, "out-of-state generator" means any large quantity hazardous waste generator generating hazardous waste at a location outside the State of Georgia.

(b) As a condition of allowing any out-of-state generator to store, treat, or dispose of hazardous waste at a hazardous waste disposal facility located within the State of Georgia, such out-of-state generator shall prepare and submit to the director upon his request a hazardous waste reduction plan and biennial hazardous waste reduction progress reports in substantial compliance with the requirements of Code Sections 12-8-65.1 and 12-8-65.2.

(c) No hazardous waste disposal facility shall accept hazardous waste from an out-of-state generator unless the out-of-state generator presents to the owner or operator of the hazardous waste facility certification that the out-of-state generator is in compliance with the provisions of subsection (b) of this Code section. Such certification shall be made under oath or affirmation of the person making such certification that the contents of such certification are true and shall be made by a corporate officer, partner, or owner of such generator. It shall be unlawful to make a false statement on such certification and the

making of a false statement shall be punishable as an act of false swearing under Code Section 16-10-71.

(d) The requirements of Code Sections 12-8-65.1 and 12-8-65.2 and of subsections (a), (b), and (c) of this Code section shall not apply to any hazardous waste generator which is a generator as a consequence of any remediation or cleanup programs conducted either voluntarily or through legal actions under either the Resource Conservation and Recovery Act of 1976 (Public Law 94-580, 42 U.S.C. Section 6901, et seq.), as amended, or the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (Public Law 96-510), as amended, and shall not apply to a commercial hazardous waste treatment, storage, or disposal facility upon certification to the director that because of the nature of its business operation or process such facility cannot meet the waste reduction requirement prescribed under Code Sections 12-8-65.1 and 12-8-65.2 and subsections (a), (b), and (c) of this Code section. Such certification shall be made under oath or affirmation of the person making such certification that the contents of such certification are true and shall be made by a corporate officer, partner, or owner of such facility. It shall be unlawful to make a false statement on such certification and the making of such false statement shall be punishable as an act of false swearing under Code Section 16-10-71.

History. — Code 1981, § 12-8-65.3, enacted by Ga. L. 1990, p. 1427, § 2; Ga. L. 1992, p. 2234, § 5.

12-8-65.4. Duplication of prior reporting requirements not required.

Nothing contained in Code Sections 12-8-65.1 through 12-8-65.3 or Code Section 12-8-66 shall require a duplication of reporting requirements under this article as it existed prior to July 1, 1990.

History. — Code 1981, § 12-8-65.4, enacted by Ga. L. 1990, p. 1427, § 2; Ga. L. 1992, p. 2234, § 5.

12-8-66. Permits for construction, installation, operation, or alteration of hazardous waste facilities.

(a) No person shall, and it shall be unlawful and a violation of this part to, construct, install, operate, or substantially alter a hazardous waste facility without first obtaining and possessing a hazardous waste facility permit from the director. An application for a permit shall be submitted in such manner and on such forms as the director may prescribe. A permit shall be issued to an applicant on evidence,

satisfactory to the director, of compliance with this part and any standards, requirements, or rules and regulations effective pursuant to this part.

(b) The director may require that applications for such permits shall be accompanied by plans, data, specifications, engineering reports, designs, and such other information as the director deems necessary to make a determination of compliance with this part and the standards, requirements, or rules and regulations promulgated pursuant to this part.

(c) The director may amend, modify, suspend, or revoke any permit issued for cause, including, but not limited to, the following:

(1) Violation of any condition or provision of such permit or failure to comply with any final order of the director;

(2) Failure to comply with this part or any rules or regulations promulgated pursuant to this part;

(3) Obtaining a permit by misrepresentation or failure to disclose fully all relevant facts; or

(4) When the permitted activity poses a threat to the environment or to the health of humans.

(d) An application for a permit shall include a demonstration of financial responsibility, including, but not limited to, guarantees, liability insurance, the posting of bonds, or any combination of guarantees, liability insurance, or bonds in accordance with Code Section 12-8-68, which financial responsibility shall be related to the type and size of facility.

(e) Permits issued under this Code section shall contain such terms and conditions, including conditions requiring corrective action beyond the facility boundary, as are deemed necessary by the director to protect the environment and the health of humans, and the director may require such testing and construction supervision as said officer deems necessary to protect the environment and the health of humans. Any permit issued subsequent to November 8, 1984, shall contain conditions requiring corrective action for any releases into the environment of hazardous waste or hazardous constituents at the facility seeking a permit, regardless of the time at which waste was placed at such facility.

(f) In the event of denial, amendment, modification, suspension, or revocation of a permit, the director shall send written notice of such action to the permit holder or applicant and shall set forth in such notice the reason for the action.

(g) The issuance, denial, amendment, modification, suspension, or revocation of any permit by the director shall become final unless a petition for hearing in accordance with Code Section 12-8-73 is filed.

(h) Upon the first receipt of an application for a hazardous waste facility permit, the director, within 15 days, shall provide to the government of the county in which the facility is located or is proposed to be located, to each city government located wholly or partially within that county, and to the government of each county and city having territorial boundaries within two miles of the hazardous waste facility, or proposed hazardous waste facility a written notice indicating that an application has been received and describing the hazardous waste activities the applicant proposes to conduct. Within a 30 day period after first receipt of such application, the director shall also publish in at least one local newspaper of general circulation in the county a public notice that an application for a hazardous waste facility permit has been received. A public hearing shall be held if such is requested in writing within 30 days after publication of notification and is requested by 25 or more persons who claim to be affected by the pending permit application, by a governmental subdivision, or by an association having not fewer than 25 members. If requested, the public hearing shall be conducted at the county seat of the county in which the hazardous waste facility is proposed to be located. At least 45 days prior to the date of the public hearing, the director shall provide written notice to the various local governmental subdivisions and other interested parties in the locality in which the proposed facility may be located that a public hearing has been requested, which written notice shall also include the date, time, location, and purpose of the public hearing. The date, time, location, and purpose of such public hearing shall be advertised in the legal organ of the county in which the facility is proposed at least 45 days in advance of the date set for the hearing. Such public hearings shall be held for the purpose of receiving comments and suggestions concerning the location and requirements for the operation of a hazardous waste facility. The director shall consider fully all written and oral submissions regarding the proposed facility and the pending application.

(i) Any person who owns or operates a facility required to have a permit under this Code section, which facility was in existence on November 19, 1980, or is in existence on the effective date of any amendment to this part or any regulation promulgated pursuant to this part which renders the facility subject to the requirement to have a permit pursuant to this Code section shall be accorded interim status, which means that such person shall be treated as having been issued a permit until such time as final administrative disposition of the person's application has been made, if and to the extent the person:

(1) Has notified the director of the existence of such facility as required pursuant to paragraph (17) of subsection (a) of Code Section 12-8-65;

(2) Has filed an application for a permit as required pursuant to this Code section;

(3) Furnishes to the director information reasonably required or requested for processing such application;

(4) Does not treat, store, or dispose of hazardous waste not specified in the permit application, nor employ processes not specified in the permit application, nor exceed the design capacity specified in the permit application; and

(5) Complies with all standards applicable to interim status facilities as have been or may be promulgated by the board.

(j) In the case of any land disposal facility which had interim status prior to November 8, 1984, interim status shall terminate on November 8, 1985, unless the owner or operator of such facility:

(1) Applies for a final determination regarding the issuance of a permit pursuant to this Code section for such facility prior to November 8, 1985; and

(2) Certifies that such facility is in compliance with all applicable ground-water monitoring and financial responsibility requirements.

(k) In the case of any land disposal facility that has interim status due to any amendments to this part or any regulations promulgated pursuant to this part on or subsequent to November 8, 1984, which render the facility subject to the requirement to have a permit pursuant to this part, interim status shall terminate on the date 12 months after the date on which the facility first becomes subject to such permit requirement unless the owner or operator of such facility:

(1) Applies for a final determination regarding the issuance of a permit pursuant to this Code section for such facility before the date 12 months after the date on which the facility first becomes subject to such permit requirement; and

(2) Certifies that such facility is in compliance with all applicable ground-water monitoring and financial responsibility requirements.

(l) In the case of any hazardous waste incinerator which had interim status prior to November 8, 1984, interim status shall terminate on November 8, 1989, unless the owner or operator of such facility applies for a final determination regarding the issuance of a permit pursuant to this Code section for such facility prior to November 8, 1986.

(m) In the case of all hazardous waste facilities which had interim status prior to November 8, 1984, other than land disposal facilities and

incinerators, interim status shall terminate on November 8, 1992, unless the owner or operator of such facility applies for a final determination regarding the issuance of a permit pursuant to this Code section for such facility prior to November 8, 1988.

(n) In the case of all hazardous waste facilities in existence on November 8, 1984, the director must make a decision to issue or deny a permit pursuant to this Code section by the following dates:

(1) By November 8, 1988, for all land disposal facilities;

(2) By November 8, 1989, for all incinerators; and

(3) By November 8, 1992, for all other hazardous waste facilities.

(o) The director shall not issue a permit allowing any owner or operator of a cement kiln to burn hazardous waste as fuel until the U.S. Environmental Protection Agency has completed developing its strategy for hazardous waste reduction and combustion which may affect the burning of hazardous wastes in cement kilns.

History. — Ga. L. 1979, p. 1127, § 8; Ga. L. 1982, p. 3, § 12; Ga. L. 1985, p. 266, §§ 4, 5; Ga. L. 1986, p. 10, § 12; Ga. L. 1989, p. 240, § 1; Ga. L. 1990, p. 1427, § 3; Ga. L. 1992, p. 2234, § 5; Ga. L. 1993, p. 500, § 2; Ga. L. 1994, p. 483, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, the paragraph (1) designation in subsection (h) was deleted and a comma was deleted preceding "a written notice" near the end of the first sentence in subsection (h).

JUDICIAL DECISIONS

Financial responsibility requirements under O.C.G.A. § 12-8-60 et seq., and the regulations adopted thereunder meet the constitutional due process standard of bearing a rational relation to a proper and constitutionally permitted legislative purpose. Georgia Dep't of Natural Resources v. Union Timber Corp., 258 Ga. 873, 375 S.E.2d 856 (1989).

Director is not obligated to establish financial responsibility requirements for individual hazardous-waste facilities. Indeed, if the director is obligated at all, the director is to exercise discretion in a manner consistent with the federal act and such criteria as the board shall establish. Georgia Dep't of Natural Resources v. Union Timber Corp., 258 Ga. 873, 375 S.E.2d 856 (1989).

Cited in George v. Department of Natural Resources, 250 Ga. 491, 299 S.E.2d 556 (1983); Board of Natural Resources v. Walker County, 200 Ga. App. 301, 407 S.E.2d 436 (1991).

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, §§ 7 et seq., 45 et seq.

C.J.S. — 53 C.J.S., Licenses, § 7.

ALR. — Common-law strict liability in tort of prior landowner or lessee to subsequent owner for contamination of land with hazardous waste resulting from prior owner's or lessee's abnormally dangerous or ultrahazardous activity, 13 A.L.R.5th 600.

12-8-67. Hazardous waste in transit to be accompanied by manifest.

No hazardous waste shall be transported across, within, or through this state unless it is accompanied by a manifest properly issued, completed, and filled out in accordance with the rules and regulations promulgated by the board. The manifest shall accompany all hazardous waste from the point of generation through handling, storage, treatment, and disposal. A copy of the manifest shall be transmitted to the director as often as is required by the rules and regulations adopted by the board pursuant to this article.

History. — Ga. L. 1979, p. 1127, § 9; Ga. L. 1992, p. 2234, § 5.

RESEARCH REFERENCES

Am. Jur. 2d. — 15A Am. Jur. 2d, Commerce, §§ 71. 97. 39 Am. Jur. 2d, Health, §§ 1, 3, 5, 7, 17.

C.J.S. — 39A C.J.S., Health and Environment, §§ 4, 6.

12-8-68. Requirement of financial responsibility for persons operating or maintaining hazardous waste storage, treatment, or disposal facility; hazardous waste facility trust fund.

(a) No hazardous waste storage, treatment, or disposal facility shall be operated or maintained by any person unless adequate financial responsibility, by bonding or other methods approved by the director, has been demonstrated to the director to ensure the satisfactory maintenance, operation, closure, and postclosure care of the facility, any corrective action which may be required as a condition of a permit, and payment of any liabilities to third parties as set forth in the regulations adopted pursuant to this part.

(b) The director may require the demonstration of financial responsibility prior to issuing a permit for any hazardous waste storage, treatment, or disposal facility to assure the availability of funds to meet sufficiently the requirements for proper closure, maintenance, or postclosure care of the facility and the hazardous waste contained therein, to assure any corrective action required as a condition of such a permit, and to guarantee payment of any liabilities to third parties as set forth in regulations adopted pursuant to this part. The director is authorized to establish the financial responsibility requirements for permit applicants and classes of permit applicants, including the establishment of a range of monetary amounts.

(c) The board may adopt rules and regulations pursuant to this article establishing the criteria for approval, time periods for coverage,

and other terms and conditions for the demonstration of financial responsibility required by this article and for the implementation of financial responsibility instruments.

(d) If the director determines that a hazardous waste storage, treatment, or disposal facility has been abandoned, that the owner or operator thereof has become insolvent, or that for any other reason there is a demonstrated inability of the owner or operator to maintain, operate, or close the facility, to carry out postclosure care of the facility, or to carry out corrective action required as a condition of a permit, to the satisfaction of the director, the director may implement the applicable financial responsibility instruments. The proceeds from any applicable financial responsibility instruments shall be deposited in a special account designated as the hazardous waste facility trust fund. The director shall serve as trustee of any such hazardous waste facility trust fund and the funds deposited in any such fund shall be used only for closure, postclosure care, or corrective action required for the facility. The determination of whether there has been an abandonment, default, or other refusal or inability to perform and comply with closure, postclosure, or corrective action requirements shall be made by the director.

(e) An order or other action of the director under this Code section shall become final unless a petition for hearing in accordance with Code Section 12-8-73 is filed.

(f) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the federal Bankruptcy Code or where, with reasonable diligence, jurisdiction in any state court or any federal court cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this Code section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which will have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(g) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this part. Nothing in this subsection shall be construed to limit any other state or federal statutory contractual or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate

the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under Section 107 or 111 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980 or other, applicable law.

History. — Ga. L. 1979, p. 1127, § 10; Ga. L. 1985, p. 266, § 6; Ga. L. 1986, p. 761, § 3; Ga. L. 1992, p. 2234, § 5.

U.S. Code. — The federal Bankruptcy Code, referred to in this Code section, is codified at 11 U.S.C. § 1 et seq. The federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, referred to in this Code section, is codified throughout Titles 26, 42, and 49 U.S.C.

JUDICIAL DECISIONS

Constitutionality. — Financial responsibility requirements under O.C.G.A. § 12-8-60 et seq., and the regulations adopted thereunder meet the constitutional due process standard of bearing a rational relation to a proper and constitutionally permitted legislative purpose. Georgia Dep't of Natural Resources v. Union Timber Corp., 258 Ga. 873, 375 S.E.2d 856 (1989).

Director not obligated to establish requirements for individual facilities. — Director is not obligated to establish financial responsibility requirements for individual hazardous-waste facilities. Indeed, if the director is obligated at all, the director is to exercise discretion in a manner consistent with the federal act and such criteria as the board shall establish. Georgia Dep't of Natural Resources v. Union Timber Corp., 258 Ga. 873, 375 S.E.2d 856 (1989).

OPINIONS OF THE ATTORNEY GENERAL

Third party's action on corporate guarantee for subsidiary's liability. — Parent corporation's guarantee for its subsidiary's liability for sudden and nonsudden accidental occurrences at hazardous waste treatment, storage, and disposal facilities would be fully valid and enforceable by third parties who have sustained injury or damage caused by such occurrences. 1986 Op. Att'y Gen. No. 86-35.

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, § 50 et seq.

C.J.S. — 53 C.J.S., Licenses, §§ 59, 60, 107.

ALR. — Equitable considerations in allocating response costs to owner or occupant of previously contaminated facility in action pursuant to § 113(f) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCA § 9613(f)), 148 A.L.R. Fed. 203.

12-8-69. Variances.

(a) Unless variances are prohibited by the federal act or the standards, rules, and regulations promulgated thereunder, the director may grant variances from the requirements of this article or the rules and regulations effective under this article whenever the director finds that compliance with any provision of this article or any standard, rule, or regulation will result in an arbitrary and unreasonable taking of

property or will result, in effect, in the closing and elimination of any lawful business, occupation, or activity without sufficient corresponding benefit or advantage to the public, provided that no variance shall be granted where the effect of a variance will permit the continuation of a condition which poses an undue present or potential threat to the environment or to the health of humans; provided, further, that any variance so granted shall not be construed so as to relieve any person from any liability imposed by law or rule and regulation.

(b) Variances may be granted for such periods of time and under such provisions and conditions as shall be specified by the director.

(c) As a condition precedent to the issuance of a variance, the director may require the filing of a bond in accordance with Code Section 12-8-68, sufficient to ensure compliance with the terms and conditions of the variance. The director may require that the bond shall remain in effect until all terms and conditions of the variance are met and compliance is achieved with this article and the rules and regulations promulgated under this article.

(d) Upon failure of a person to comply with the terms and conditions of any bond or any variance issued by the director, a variance may be amended, modified, suspended, or revoked, or the bond may be forfeited by the director or ordered to be modified or amended. The proceeds from any forfeited bond shall be deposited in either the hazardous waste facility trust fund in accordance with Code Section 12-8-68 or the hazardous waste trust fund in accordance with Code Section 12-8-91, as the director deems appropriate.

History. — Ga. L. 1979, p. 1127, § 11; Ga. L. 1992, p. 2234, § 5; Ga. L. 1994, p. 483, § 2; Ga. L. 1996, p. 6, § 12.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 55, 57, 171.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 165 et seq.

12-8-70. Inspections and investigations.

(a) The director or the director's authorized representative, upon presentation of his credentials, shall have a right to enter upon, to, or through premises of persons subject to this article, or premises whereon a violation of the article or rules and regulations is reasonably believed to be occurring or is reasonably believed to be about to occur, to investigate, take samples, copy all records relating to hazardous wastes, and inspect for compliance with the requirements imposed under this article or the rules and regulations or to determine whether

such a violation or threatened violation exists in accordance with the following purposes:

(1) For the purpose of determining whether any person subject to the requirements of this article is in compliance with any standard or requirement imposed pursuant to this article;

(2) For the purpose of investigating conditions relating to hazardous waste management or hazardous waste management practices where the director is in possession of information sufficient to form a reasonable belief that a violation of this article or the rules and regulations is occurring or is about to occur;

(3) For the purpose of determining whether there has been a violation of any of the provisions of this article, the rules and regulations promulgated under this article, or any permit or order issued pursuant to this article and the rules and regulations; or

(4) For the purpose of determining whether a release of hazardous wastes, hazardous constituents, or hazardous substances is occurring or has occurred.

(b) In the event any person does not consent to an inspection or investigation, the director or his authorized representative may seek to obtain a warrant authorizing the inspection or investigation.

(c) Each such inspection or investigation shall be commenced and completed with reasonable promptness. If the director or his authorized representatives obtain any samples prior to leaving the premises, he or they shall give to the owner, operator, or agent in charge a receipt describing the sample obtained and, if requested, a portion of each such sample equal in volume or weight to the portion retained. If any analysis is made of such samples, a copy of the results of such analysis shall be furnished promptly to the owner, operator, or agent in charge.

(d) Any person whom the agency has reason to believe is contributing to or may have contributed to or may be responsible for a release of or the disposal of hazardous wastes, hazardous constituents, or hazardous substances or who is the owner of real property where a release or disposal has occurred or is suspected to have occurred, when requested by the director, shall furnish to the director any information which that person may have or may reasonably obtain which is relevant to the release and has been requested by the director.

History. — Ga. L. 1979, p. 1127, § 12; Ga. L. 1992, p. 2234, § 5; Ga. L. 1996, p. 6, § 12.

JUDICIAL DECISIONS

Cited in Price v. State, 250 Ga. App. 872, 553 S.E.2d 194 (2001).

12-8-71. Proceedings for enforcement.

(a) Whenever the director has reason to believe that a violation of any provision of this part, a violation of any rule or regulation of the board, or a violation of any order of the director has occurred, the director shall attempt to remedy the same by conference, conciliation, and persuasion. In the case of failure of such conference, conciliation, or persuasion to correct or remedy any violation, the director may issue an order directed to such violator or violators. The order shall specify the provisions of this part, the rules and regulations, or the order alleged to have been violated and may direct that necessary corrective action be taken within a reasonable time to be prescribed in the order.

(b) Whenever the director has reason to believe that there is or has been a release of hazardous waste or hazardous constituents into the environment, regardless of the time at which release of such hazardous waste or hazardous constituents occurred, and has reason to believe that such release poses a danger to health or the environment, the director shall attempt to obtain corrective action for such release by conference, conciliation, and persuasion. In the case of failure of such conference, conciliation, or persuasion to obtain corrective action, the director may issue an order directed to any person, including any past or present generator, past or present transporter, or past or present owner or operator of a hazardous waste treatment, storage, or disposal facility, who has contributed or who is contributing to such release. The order may direct that necessary corrective action be taken within a reasonable time to be prescribed in the order.

(c) Any order issued by the director under this Code section shall be signed by the director. Any such order shall become final unless the person or persons named therein request in writing a hearing pursuant to Code Section 12-8-73.

History. — Ga. L. 1979, p. 1127, § 13; Ga. L. 1985, p. 266, § 7; Ga. L. 1988, p. 727, § 4; Ga. L. 1992, p. 2234, § 5.

JUDICIAL DECISIONS

Obligation to remedy violations by "conference, conciliation, or persuasion." — Finding that company holding a "corrective action permit" wilfully and flagrantly violated the corrective action plan and that the Environmental Protection Division acted reasonably in attempting to obtain compliance was sufficient to show the division acted in accord with the requirements of O.C.G.A. § 12-8-71.

Reheis v. AZS Corp., 232 Ga. App. 852, 503 S.E.2d 36 (1998).

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 226. 73A C.J.S., Public Administrative Law, § 277 et seq.

12-8-72. Application for injunctive relief.

Whenever, in the judgment of the director, any person has engaged in or is about to engage in any act or practice which constitutes or would constitute a violation of this article, the rules and regulations, or any order or permit conditions, he may apply to the superior court of the county in which the violative act or practice has been or is about to be engaged in, or in which jurisdiction is appropriate, for an order enjoining such act or practice or for an order requiring compliance with the article, the rules and regulations, or the order or permit condition. Upon a showing by the director that such person has engaged in or is about to engage in any such violative act or practice, a permanent or temporary injunction, restraining order, or other order shall be granted without the necessity of showing the lack of an adequate remedy at law.

History. — Ga. L. 1979, p. 1127, § 14; Ga. L. 1982, p. 3, § 12; Ga. L. 1992, p. 2234, § 5.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 385.
C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 144, 145. 73A C.J.S., Public Administrative Law, §§ 575, 577.

12-8-73. Hearings on contested matters; judicial review.

All hearings on and the review of contested matters, orders, or permits and all hearings on and the review of any other enforcement actions or orders under this article shall be provided and conducted in accordance with subsection (c) of Code Section 12-2-2. The hearing and review procedure herein provided is to the exclusion of all other means of hearing or review.

History. — Ga. L. 1979, p. 1127, § 15; Ga. L. 1992, p. 2234, § 5.

JUDICIAL DECISIONS

Cited in George v. Department of Natural Resources, 250 Ga. 491, 299 S.E.2d 556 (1983).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 260, 385.
C.J.S. — 73A C.J.S., Public Administrative Law and Procedure, §§ 278 et seq., 374 et seq.

12-8-74. Judgment in accordance with final orders.

Any order of the hearing officer issued after a hearing as provided in Code Section 12-8-73 or any order of the director issued pursuant to Code Section 12-8-71 or 12-8-96, either unappealed from as provided in those Code sections or affirmed or modified on any review or appeal pursuant to Code Section 12-8-73, and from which no further review is taken or allowed under Code Section 12-8-73, may be filed, as unappealed from or as affirmed or modified, if reviewed or appealed, by certified copy from the director in the superior court of the county wherein the person under order resides, or if such person is a corporation in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred or in which jurisdiction is appropriate, whereupon such superior court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though such judgment had been rendered in an action duly heard and determined by such court.

History. — Ga. L. 1979, p. 1127, § 16; Ga. L. 1992, p. 2234, § 5.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 358, 359.
C.J.S. — 73A C.J.S., Public Administrative Law and Procedure, §§ 329 et seq.

12-8-75. Powers of director in situations involving imminent and substantial endangerment to environment or to public health.

Notwithstanding any provision of this article to the contrary, the director, upon receipt of evidence that the past or present handling, storage, treatment, transportation, or disposal of any solid waste or hazardous waste is presenting or may present imminent and substantial endangerment to the environment or to the health of humans, may bring an action as provided in Code Section 12-8-72 to restrain immediately any person, including any past or present generator, past or present transporter, or past or present owner or operator of a hazardous waste treatment, storage, or disposal facility, who has caused or is causing or has contributed or is contributing to such handling, storage, treatment, transportation, or disposal to stop such

handling, storage, treatment, transportation, or disposal or to take such other action as may be necessary. If it is not practicable to assure prompt protection of the environment or the health of humans solely by commencement of such a civil action, the director, with the concurrence of the Governor, may issue such emergency orders as may be necessary to protect the environment or the health of humans who are or may be affected by such past or present handling, storage, treatment, transportation, or disposal. Notwithstanding Code Sections 12-8-71, 12-8-72, 12-8-73, 12-8-74, 12-8-81, and 12-8-96, such order shall be immediately effective for a period of not more than 48 hours unless the director brings an action under the first sentence of this Code section before the expiration of such period. Whenever the director brings such an action within such period, such order shall be effective for such period of time as may be authorized by the court pending litigation or thereafter.

History. — Ga. L. 1979, p. 1127, § 18; Ga. L. 1982, p. 3, § 12; Ga. L. 1985, p. 266, § 8; Ga. L. 1992, p. 2234, § 5.

Cross references. — Emergency powers of Governor generally, §§ 38-3-22, 38-3-51, 45-12-29 et seq.

12-8-76. Legal assistance by Attorney General.

It shall be the duty of the Attorney General or his representative to represent the director in all actions in connection with this article.

History. — Ga. L. 1979, p. 1127, § 22; Ga. L. 1992, p. 2234, § 5.

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, §§ 41, 42.

C.J.S. — 7A C.J.S., Attorney General, § 28 et seq.

12-8-77. Contracts to provide solid waste handling, reclamation, or recycling services.

(a) Any provision of law to the contrary notwithstanding, in order to comply with this article, with the federal act, or with applicable state and federal rules, regulations, or guidelines, or in order to be eligible for grants-in-aid and other allotments, the State of Georgia, the division, and each municipal corporation and county in this state are authorized, at the discretion of its governing authority, to enter into valid and binding contracts with each other or with private persons, firms, associations, or corporations to provide solid waste handling, reclamation, and recycling services to such private persons, firms, associations, or corporations, or to each other.

(b) As used in this Code section, the terms "solid waste handling," "solid waste," "reclamation," and "recycling" shall be construed to have

the meanings given them in Code Section 12-8-62 or in the rules and regulations effective under this article.

History. — Ga. L. 1979, p. 1127, § 19; Ga. L. 1992, p. 2234, § 5.

Cross references. — Authority of municipalities and counties to enter into contracts to provide industrial waste water treatment services, § 36-60-2.

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 184.

12-8-78. Public access to information; protection of confidential information; access to confidential information by federal government and courts.

(a) Any records, reports, or information obtained from any person by the director under this part or the rules and regulations promulgated under this part shall be available to the public for inspection and copying at the expense of the person requesting copies.

(b) Notwithstanding subsection (a) of this Code section, upon a showing satisfactory to the director by any person that any records, reports, or information, or any particular part thereof, to which the director has access under this article or the rules and regulations would, if made public, divulge information entitled to protection or confidentiality under law, the director shall consider such information or any particular portion thereof confidential in accordance with the purposes of the law under which confidentiality or protection is claimed, provided that such records, reports, documents, or information may be disclosed to officers, employees, or authorized representatives of the United States government concerned with carrying out the terms of the federal act or when required by any court in any proceeding under the federal act or under this article.

History. — Ga. L. 1979, p. 1127, § 20; Ga. L. 1992, p. 2234, § 5; Ga. L. 1996, p. 6, § 12.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 100.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 47 et seq.

12-8-79. Effect of other laws on permits issued under article and rules and regulations.

Subject to the provisions of the Constitution of Georgia, no other law of this state and no action, ordinance, regulation, or law of any county,

municipality, or other political subdivision shall operate to prevent the location or operation of a hazardous waste facility holding a valid hazardous waste facility permit issued under this article and the rules and regulations promulgated hereunder, provided that nothing in this Code section shall prevent any county, municipality, or other political subdivision from challenging a facility's compliance with this article or any rule or regulation, order, or permit provision or condition adopted or issued under this article.

History. — Ga. L. 1979, p. 1127, § 21; Ga. L. 1992, p. 2234, § 5.

Law reviews. — For survey article on constitutional law, see 34 Mercer L. Rev. 53 (1982). For survey article on environment, natural resources, and land use, see 34 Mercer L. Rev. 145 (1982). For survey article on real property, see 34 Mercer L. Rev. 255 (1982).

JUDICIAL DECISIONS

Preemption feature of O.C.G.A. T. 12, C. 8, A. 3 operates only in regard to facility already holding valid permit. Earth Mgt., Inc. v. Heard County, 248 Ga. 442, 283 S.E.2d 455 (1981).

12-8-80. Applicability of article.

Reserved. Repealed by Ga. L. 1992, p. 2234, § 5, effective July 1, 1992.

Editor's notes. — This Code section was based on Ga. L. 1979, p. 1127, § 3.

12-8-81. Civil penalties; procedures for imposing penalties.

(a) Any person violating any provision of this article, the rules or regulations effective under this article, or any permit condition or limitation established pursuant to this article or any person negligently or intentionally failing or refusing to comply with any final or emergency order of the director issued as provided in this article shall be liable for a civil penalty not to exceed $25,000.00 per day. Each day during which the violation or failure or refusal to comply continues shall be a separate violation.

(b) Whenever the director has reason to believe that any person has violated any provision of this article, any rule or regulation effective under this article, or any permit condition or has negligently or intentionally failed or refused to comply with any final order or emergency order of the director, he may upon written request cause a hearing to be conducted before a hearing officer appointed by the board. Upon finding that such person has violated any provision of this article, any rule or regulation effective under this article, or any permit condition or has negligently or intentionally failed or refused to comply with any final order or emergency order of the director, the hearing

officer shall issue his decision imposing civil penalties as provided in this Code section. Such hearing and any administrative or judicial review thereof shall be conducted in accordance with Code Section 12-8-73.

(c) In rendering a decision under this Code section imposing civil penalties, the hearing officer shall consider all factors which are relevant, including, but not limited to, the following:

(1) The amount of civil penalty necessary to ensure immediate and continued compliance and the extent to which the violator may have profited by failing or delaying to comply;

(2) The character and degree of impact of the violation or failure on the natural resources of the state, especially any rare or unique natural phenomena;

(3) The conduct of the person incurring the civil penalty in promptly taking all feasible steps or procedures necessary or appropriate to comply with this article or to correct the violation or failure;

(4) Any prior violations of, or failures by, such person to comply with statutes, rules, regulations, orders, or permits administered, adopted, or issued by the director;

(5) The character and degree of injury to or interference with public health or safety which is caused or threatened to be caused by such violation or failure; and

(6) The character and degree of injury to or interference with reasonable use of property which is caused or threatened to be caused by such violation or failure.

History. — Ga. L. 1979, p. 1127, § 17; Ga. L. 1992, p. 2234, § 5; Ga. L. 1996, p. 6, § 12.

RESEARCH REFERENCES

C.J.S. — 36A C.J.S., Fines, § 3.
ALR. — Recovery of cumulative statutory penalties, 71 A.L.R.2d 986.

12-8-82. Criminal penalty.

(a) Any person who:

(1) Knowingly transports or causes to be transported any hazardous waste as defined in this article to a facility which does not have a permit or interim status pursuant to Code Section 12-8-66, which does not have a variance pursuant to Code Section 12-8-69, or which

is not subject to an order of the director which specifically authorized continued operation of such facility;

(2) Knowingly treats, stores, or disposes of any hazardous waste as defined in this article:

(A) Without a permit or interim status pursuant to Code Section 12-8-66, a variance pursuant to Code Section 12-8-69, or an order of the director allowing such treatment, storage, or disposal of hazardous waste;

(B) In knowing violation of any material condition or requirement of such permit, interim status, variance, or order; or

(C) In knowing violation of any material condition or requirement of any applicable regulations or standards promulgated in accordance with Code Section 12-8-64;

(3) Knowingly omits material information or makes any false material statement or representation in any application, label, manifest, record, report, permit, or other document filed, maintained, or used for purposes of compliance with this article or regulations promulgated in accordance with Code Section 12-8-64;

(4) Knowingly generates, stores, treats, transports, disposes of, exports, or otherwise handles any hazardous waste as defined in this article, whether such activity took place before or takes place after March 14, 1985, and who knowingly destroys, alters, conceals, or fails to file any record, application, manifest, report, or other document required to be maintained or filed for purposes of compliance with this article or regulations promulgated in accordance with Code Section 12-8-64; or

(5) Knowingly transports without a manifest or causes to be transported without a manifest, any hazardous waste required by this article or regulations promulgated in accordance with Code Section 12-8-64 to be accompanied by a manifest

shall, upon conviction, be subject to a fine of not more than $50,000.00 for each day of violation, or imprisonment for not less than one nor more than two years, or three years in the case of a violation of paragraph (1) or (2) of this subsection, or both. If the conviction is for a violation committed after a first conviction of such person under this subsection, the maximum punishment under the respective paragraphs shall be doubled with respect to both fine and imprisonment.

(b) Any person who knowingly transports, treats, stores, disposes of, or exports any hazardous waste as defined in this article in violation of paragraph (1), (2), (3), (4), or (5) of subsection (a) of this Code section and who knows at that time that by such action another person is

placed in imminent danger of death or serious bodily injury shall, upon conviction, be subject to a fine of not more than $250,000.00 or imprisonment for not less than one nor more than 15 years, or both. A defendant that is an organization shall, upon conviction of violating this subsection, be subject to a fine of not more than $1 million.

(c) An organization may be convicted for the criminal acts set forth in subsections (a) and (b) of this Code section, if an agent of the organization performs the conduct which is an element of the crime while acting within the scope of such agent's office or employment and in behalf of the organization or if the commission of the criminal act set forth in subsection (a) or (b) of this Code section is authorized, requested, commanded, performed, or recklessly tolerated by the board of directors of the organization or by a managerial official who is acting within the scope of such official's employment on behalf of the organization.

History. — Ga. L. 1979, p. 1127, § 7; Ga. L. 1982, p. 3, § 12; Ga. L. 1985, p. 266, § 10; Ga. L. 1986, p. 10, § 12; Ga. L. 1992, p. 2234, § 5; Ga. L. 1994, p. 1101, § 4.

RESEARCH REFERENCES

Am. Jur. 2d. — 21 Am. Jur. 2d, Criminal Law, § 721. 21A Am. Jur. 2d, Criminal Law, §§ 822 et seq., 849 et seq.

C.J.S. — 22 C.J.S., Criminal Law, §§ 17, 19, 41 et seq. 22B C.J.S., Criminal Law, § 2002.

12-8-83. Use of material mixed with dioxin or other hazardous waste for dust suppression or road treatment prohibited.

The use of waste or used oil or other material which is contaminated or mixed with dioxin or any other hazardous waste as defined in this article, other than a waste identified as a hazardous waste solely on the basis of ignitibility, for dust suppression or road treatment is prohibited.

History. — Code 1981, § 12-8-83, enacted by Ga. L. 1985, p. 266, § 11; Ga. L. 1992, p. 2234, § 5.

Law reviews. — For note, "Regulating a Toxic Chemical: The Dioxin Controversy in Georgia," see 9 Ga. St. U.L. Rev 717 (1993).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Liability for Dioxin Contamination, 25 POF3d 473.

PART 2

HAZARDOUS SITE RESPONSE

Administrative rules and regulations. — Hazardous site response, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-19.

Law reviews. — For article on the Georgia Hazardous Site Response Act, see 44 Mercer L. Rev. 1 (1992).

For note on 1992 enactment of this part, see 9 Ga. St. U.L Rev. 190 (1992). For note on 1993 amendment of this part, see 10 Ga. St. U.L. Rev. 55 (1993).

12-8-90. Short title.

This part shall be known and may be cited as the "Georgia Hazardous Site Response Act."

History. — Code 1981, § 12-8-90, enacted by Ga. L. 1992, p. 2234, § 5.

Law reviews. — For survey article on construction law for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 85 (2003). For article, "Georgia's Hazardous Site Response Act: Growing Pains for Georgia's Baby Superfund," see 9 Ga. St. B.J. 32 (2004). For annual survey of administrative law, see 57 Mercer L. Rev. 1 (2005). For annual survey of zoning and land use law, see 57 Mercer L. Rev. 447 (2005). For annual survey of real property law, see 58 Mercer L. Rev. 367 (2006).

JUDICIAL DECISIONS

Applicability of cases construing CERCLA. — While there are certain similarities between the federal Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9601 et seq., and the Georgia Hazardous Site Response Act (HSRA), O.C.G.A. § 12-8-90 et seq., CERCLA does not afford the same procedural due process protections as the HSRA. It follows that cases cited under CERCLA are inapplicable. Reheis v. Baxley Creosoting & Osmose Wood Preserving Co., 268 Ga. App. 256, 601 S.E.2d 781 (2004).

Since the court held that there was sufficient evidence that the supplier proximately caused harm to the owner's property, the court did not need to reach the issue of whether the HSRA required proof of proximate cause. Sprayberry Crossing P'ship v. Phenix Supply Co., 274 Ga. App. 364, 617 S.E.2d 622 (2005).

Act does not waive sovereign immunity. — Georgia Hazardous Site Response Act, O.C.G.A. § 12-8-90 et seq., provides an administrative environmental cleanup procedure and does not expressly waive sovereign immunity for any allegedly responsible governmental entity. McElmurray v. Augusta-Richmond County, 274 Ga. App. 605, 618 S.E.2d 59 (2005).

Cited in Couch v. Parker, 280 Ga. 580, 630 S.E.2d 364 (2006).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — CERCLA Liability of Parent, Subsidiary, and Successor Corporation, 34 POF3d 387.

Citizens' Suit Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Emergency Planning and Community Right-To-Know Act (EPCRA), 55 POF3d 155.

12-8-91. (Effective until July 1, 2022.) Declaration of policy and legislative intent.

(a) It is declared to be the public policy of the State of Georgia, in furtherance of its responsibility to protect the public health, safety, and well-being of its citizens and to protect and enhance the quality of its environment, to require corrective action for releases of hazardous wastes, hazardous constituents, and hazardous substances, without regard to when such releases may have occurred, into the environment that may pose a threat to human health or the environment and to provide incentives for the reduction of the amount of hazardous wastes generated or managed in the state. Additionally, the purpose of this part is to reduce the generation of hazardous wastes in this state and to encourage hazardous waste generators, prior to considering landfill disposal, to consider the following measures in descending order of preference:

(1) Reduce the amount of wastes generated through improvement in industrial processes;

(2) Isolate hazardous materials from mixtures in which they occur;

(3) Reuse and recycle wastes in accordance with state and federal requirements;

(4) Transfer wastes through clearing-houses so that they may be recycled in industrial processes;

(5) Detoxify or neutralize wastes into less harmful substances or destroy such wastes; and

(6) Store hazardous waste residues in aboveground facilities using encapsulation and monitoring.

(b) The General Assembly declares its intent to fund the execution of the public policy set forth in subsection (a) of this Code section by and through the division with the fees established and collected by the division pursuant to subsection (e) of Code Section 12-2-2, subsection (e) of Code Section 12-8-39, subsection (d) of Code Section 12-8-68, and Code Section 12-8-95.1. The General Assembly further declares its intent to ensure that the funding provided by fees on hazardous waste management activities and hazardous substance reporting and by owners and operators of solid waste disposal facilities pursuant to those Code sections and through the collection of civil penalties will not be diverted for any purpose other than the administration of this article by the division, including reviewing and overseeing investigations, corrective action, and other actions by federal agencies required under this

article and supporting the reduction of hazardous waste and pollution prevention activities by federal agencies; the prevention of pollution, including reduction of hazardous wastes generated; and the effectuation of corrective action at sites that may threaten human health or the environment where hazardous wastes, hazardous constituents, or hazardous substances have been disposed of or released. Appropriation of funds to the department for inclusion in the hazardous waste trust fund continued in existence by subsection (a) of Code Section 12-8-95 shall be deemed consistent with this declaration of legislative intent.

History. — Code 1981, § 12-8-91, enacted by Ga. L. 1992, p. 2234, § 5; Ga. L. 2002, p. 927, § 2.

Delayed effective date. — Code Section 12-8-91 is set out twice in this Code. This version is effective until July 1, 2022. For version effective July 1, 2022, see the following version.

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 54 (2002).

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Cited in McElmurray v. Augusta-Richmond County, 274 Ga. App. 605, 618 S.E.2d 59 (2005).

12-8-91. (Effective July 1, 2022.) Declaration of policy and legislative intent.

(a) It is declared to be the public policy of the State of Georgia, in furtherance of its responsibility to protect the public health, safety, and well-being of its citizens and to protect and enhance the quality of its environment, to require corrective action for releases of hazardous wastes, hazardous constituents, and hazardous substances, without regard to when such releases may have occurred, into the environment that may pose a threat to human health or the environment and to provide incentives for the reduction of the amount of hazardous wastes generated or managed in the state. Additionally, the purpose of this part is to reduce the generation of hazardous wastes in this state and to encourage hazardous waste generators, prior to considering landfill disposal, to consider the following measures in descending order of preference:

(1) Reduce the amount of wastes generated through improvement in industrial processes;

(2) Isolate hazardous materials from mixtures in which they occur;

(3) Reuse and recycle wastes in accordance with state and federal requirements;

(4) Transfer wastes through clearing-houses so that they may be recycled in industrial processes;

(5) Detoxify or neutralize wastes into less harmful substances or destroy such wastes; and

(6) Store hazardous waste residues in aboveground facilities using encapsulation and monitoring.

(b) The General Assembly declares its intent to fund the execution of the public policy set forth in subsection (a) of this Code section by and through the Hazardous Waste Trust Fund established by Code Section 12-8-95.

History. — Code 1981, § 12-8-91, enacted by Ga. L. 1992, p. 2234, § 5; Ga. L. 2002, p. 927, § 2; Ga. L. 2021, p. 761, § 6/HB 511.

Delayed effective date. — Code Section 12-8-91 is set out twice in this Code. This version is effective July 1, 2022. For version effective until July 1, 2022, see the preceding version.

The 2021 amendment, effective July 1, 2022, substituted the present provisions of subsection (b) for the former provisions, which read: "The General Assembly declares its intent to fund the execution of the public policy set forth in subsection (a) of this Code section by and through the division with the fees established and collected by the division pursuant to subsection (e) of Code Section 12-2-2, subsection (e) of Code Section 12-8-39, subsection (d) of Code Section 12-8-68, and Code Section 12-8-95.1. The General Assembly further declares its intent to ensure that the funding provided by fees on hazardous waste management activities and hazardous substance reporting and by owners and operators of solid waste disposal facilities pursuant to those Code sections and through the collection of civil penalties will not be diverted for any purpose other than the administration of this article by the division, including reviewing and overseeing investigations, corrective action, and other actions by federal agencies required under this article and supporting the reduction of hazardous waste and pollution prevention activities by federal agencies; the prevention of pollution, including reduction of hazardous wastes generated; and the effectuation of corrective action at sites that may threaten human health or the environment where hazardous wastes, hazardous constituents, or hazardous substances have been disposed of or released. Appropriation of funds to the department for inclusion in the hazardous waste trust fund continued in existence by subsection (a) of Code Section 12-8-95 shall be deemed consistent with this declaration of legislative intent."

Editor's notes. — Ga. L. 2021, p. 761, § 23/HB511, not codified by the General Assembly, provides: "In accordance with the requirements of Article III, Section IX, Paragraph VI(r) of the Constitution of Georgia, this Act shall not become law unless it receives the requisite two thirds' majority vote in both the Senate and the House of Representatives and the amount of the funds dedicated by this Act do not equal or exceed 1 percent of the previous fiscal year's state revenues subject to appropriations."

12-8-92. Definitions.

Unless otherwise defined in this part, the definition of all terms included in Code Section 12-8-62 shall be applicable to this part. As used in this part, the term:

(1) "Corrective action contractor" means any person contracting with the division to perform any activities authorized to be paid from the hazardous waste trust fund.

(2) "Environment" means:

(A) The navigable waters, the waters of the contiguous zone, and the ocean waters of which the natural resources are under the exclusive management authority of the United States under the Magnuson Fishery Conservation and Management Act; and

(B) Any other surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient air within the United States or under the jurisdiction of the United States.

(3) "Facility" means:

(A) Any building, structure, installation, equipment, pipe or pipeline, pipe into a sewer or publicly owned treatment works, well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft; or

(B) Any site or area where a hazardous waste, hazardous constituent, or hazardous substance has been deposited, stored, disposed of, placed, or has otherwise come to be located.

This term does not include any consumer product in consumer use but does include any vessel.

(4) "Hazardous substance" means any substance listed on the List of Hazardous Substances and Reportable Quantities, codified as 40 C.F.R., Part 302, Table 302.4, in force and effect on February 1, 2010, or any substance listed on the List of Extremely Hazardous Substances and Their Threshold Planning Quantities, codified as 40 C.F.R., Part 355, Appendix A, in force and effect on February 1, 2010.

(5) "Inventory" means the hazardous site inventory compiled and updated by the division pursuant to Code Section 12-8-97.

(6) "Onshore facility" means any facility of any kind including, but not limited to, motor vehicles and rolling stock located in, on, or under any land or nonnavigable waters within the United States.

(7) "Owner" or "operator" means:

(A) In the case of a vessel, any person owning, operating, or chartering by demise such vessel;

(B) In the case of an onshore facility or an offshore facility, any person owning or operating such facility; and

(C) In the case of any facility, title or control of which was conveyed due to bankruptcy, foreclosure, tax delinquency, abandonment, or similar means to a unit of state or local government, any person who owned, operated, or otherwise controlled activities at such facility immediately beforehand.

Such term does not include a person who holds indicia of ownership primarily to protect said person's security interest in the facility or who acts in good faith solely in a fiduciary capacity and who did not actively participate in the management, disposal, or release of hazardous wastes, hazardous constituents, or hazardous substances from the facility. Such term does not include a unit of state or local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or other circumstances in which the government involuntarily acquires title by virtue of its function as sovereign; provided, however, that this exclusion shall not apply to any state or local government which has caused or contributed to the release of a hazardous waste, hazardous constituent, or hazardous substance from the facility.

(8) "Person" means an individual, trust, firm, joint-stock company, corporation, partnership, association, authority, county, municipality, commission, political subdivision of this state, or any agency, board, department, or bureau of any other state or of the federal government.

(9) "Person who has contributed or who is contributing to a release" means:

(A) The owner or operator of a facility;

(B) Any person who at the time of disposal of any hazardous waste, hazardous constituent, or hazardous substance owned or operated any facility at which such hazardous waste, hazardous constituent, or hazardous substance was disposed of;

(C) Any person who by contract, agreement, or otherwise arranged for disposal or treatment of or arranged with a transporter for transport for disposal or treatment of hazardous wastes, hazardous constituents, or hazardous substances owned or possessed by such person or by any other party or entity at any facility owned or operated by another party or entity and containing such hazardous wastes, hazardous constituents, or hazardous substances. A person who arranged for the recycling of recovered materials consisting solely of scrap paper, scrap plastic, scrap glass, scrap textiles, scrap rubber other than whole tires, scrap metal or spent lead-acid, nickel-acid, nickel-cadmium, and other batteries, and not consisting of any residue from a pollution control device, shall not be deemed to have arranged for treatment or disposal under this subparagraph; and

(D) Any person who accepts or accepted any hazardous wastes, hazardous constituents, or hazardous substances for transport to disposal or treatment facilities or sites selected by such person, from or at which facility or site there is a release of a hazardous waste, a hazardous constituent, or a hazardous substance.

(10) "Pollution prevention" means:

(A) The elimination at the source of the use, generation, or release of hazardous constituents, hazardous substances, or hazardous wastes; or

(B) Reduction at the source in the quantity and toxicity of such substances.

(11) "Release" means any intentional or unintentional act or omission resulting in the spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including without limitation the abandonment or discarding of barrels, containers, and other closed receptacles, of any hazardous waste, hazardous constituent, or hazardous substance; provided, however, that such term shall not include any release which results in exposure to persons solely within a workplace, with respect to a claim which such persons may assert against the employer of such persons; emissions from the engine exhaust of any motor vehicle, rolling stock, aircraft, vessel, or pipeline pumping station; or the normal application of fertilizer.

(12) "Site" means that portion of the owner's contiguous property and any other owner's property affected by a release exceeding a reportable quantity.

(13) "Small quantity generator" means a hazardous waste generator who generates greater than 220 pounds but less than 2,200 pounds of hazardous waste in one month, as provided by rules promulgated by the board in accordance with this article.

History. — Code 1981, § 12-8-92, enacted by Ga. L. 1992, p. 2234, § 5; Ga. L. 1993, p. 500, § 3; Ga. L. 1994, p. 483, § 3; Ga. L. 1996, p. 319, § 3; Ga. L. 1996, p. 993, § 1; Ga. L. 2006, p. 275, § 3-4/HB 1320; Ga. L. 2010, p. 531, § 5/SB 78; Ga. L. 2010, p. 828, § 2/SB 490.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1994, "constituent" was substituted for "constitutent" near the end of subparagraph (9)(D).

Editor's notes. — Ga. L. 2006, p. 275, § 1-1/HB 1320, not codified by the General Assembly, provides that: "This Act shall be known and may be cited as the 'Comprehensive Litter Prevention and Abatement Act of 2006.'"

Ga. L. 2006, p. 275, § 5-1/HB 1320, not codified by the General Assembly, provides that the Act shall become effective April 21, 2006, for purposes of adopting local ordinances to become effective on or after July 1, 2006.

Law reviews. — For article, "Structuring Corporate and Real Estate Transactions Involving Contamination," see 4 Ga. St. B.J. 14 (1998).

JUDICIAL DECISIONS

Cited in Georgia Ports Auth. v. Diamond Mfg. Co., 164 Bankr. 189 (Bankr. S.D. Ga. 1994); South Carolina Ins. Co. v. Coody, 957 F. Supp. 234 (M.D. Ga. 1997); Canadyne-Georgia Corp. v. Nationsbank, 982 F. Supp. 886 (M.D. Ga. 1997); Canadyne-Georgia Corp. v. NationsBank, 183 F.3d 1269 (11th Cir. 1999).

RESEARCH REFERENCES

ALR. — What are "navigable waters" subject to Federal Water Pollution Control Act (33 USCA § 1251 et seq.), 160 A.L.R. Fed. 585.

12-8-93. Powers and duties of board.

(a) In the performance of its duties, and in addition to the powers set forth in Code Section 12-8-64, the board shall have the power to adopt, promulgate, modify, amend, and repeal rules and regulations to implement and enforce the provisions of this part as the board may deem necessary to provide for corrective action for releases of hazardous wastes, hazardous constituents, and hazardous substances into the environment that pose a present or future danger to human health or the environment and to provide incentives for the reduction of the amount of hazardous wastes generated or managed in the state. Such rules and regulations may be applicable to the state as a whole or may vary from region to region, as may be appropriate to facilitate the accomplishment of the provisions, purposes, and policies of this part.

(b) The board's rules and regulations shall include, but shall not be limited to, the following:

(1) Rules and regulations governing the reporting of releases of hazardous wastes, hazardous constituents, and hazardous substances, including rules and regulations governing reportable quantities;

(2) Rules and regulations governing the investigation, cleanup, and corrective action at sites where hazardous wastes, hazardous constituents, or hazardous substances have been disposed of or released regardless of the date when such disposal or release occurred, including rules and regulations establishing cleanup standards;

(3) Rules and regulations governing procedures for placement of sites on and removal of sites from the hazardous site inventory required under the provisions of Code Section 12-8-97;

(4) Rules and regulations governing procedures and criteria for making a determination whether property requires corrective action pursuant to paragraph (8) of subsection (a) of Code Section 12-8-97;

(5) Rules and regulations governing procedures for the filing in the deed records of the superior courts of additional affidavits concerning property for which an initial affidavit has been filed pursuant to Code Section 12-8-97; and

(6) Rules and regulations governing the waiver of hazardous waste management fees and hazardous substance reporting fees as provided in subsection (i) of Code Section 12-8-95.1.

History. — Code 1981, § 12-8-93, enacted by Ga. L. 1992, p. 2234, § 5; Ga. L. 1993, p. 500, § 4; Ga. L. 1997, p. 564, § 1.

12-8-94. (For effective date, see note) Powers and duties of director.

(a) In addition to the powers and duties specified in Code Section 12-8-65, the director shall have and may exercise the following powers and duties:

(1) To make determinations, in accordance with procedures and criteria established by the board, as to whether property requires corrective action pursuant to the provisions of paragraph (8) of subsection (a) of Code Section 12-8-97;

(2) To ensure that corrective action is taken for releases of hazardous wastes, hazardous constituents, or hazardous substances into the environment that pose a present or future danger to human health or the environment;

(3) To collect fees for hazardous waste management activities and hazardous substance reporting;

(4) To administer the hazardous waste trust fund and expend the principal and interest of such trust fund;

(5) To appoint a hazardous waste trust fund advisory committee and to consult with that committee in developing rules and regulations regarding criteria for compilation of the hazardous site inventory, site priorities, uses of the fund, cleanup standards, and deed notations. At a minimum, the director shall appoint to the committee four representatives from local government, four representatives from business and industry, and four representatives from other interested parties. Upon promulgation of rules and regulations in accordance with this part, the director shall no longer be required to consult with the committee; provided, however, that the director shall consult with the committee from time to time as necessary to adopt, promulgate, modify, amend, or repeal rules and regulations in accordance with this part; and

(6) The director shall have the authority to perfect, foreclose, negotiate, settle, release or cancel any lien filed under subsection (e) of Code Section 12-8-96, where such action is in the best interest of the state.

(b) The powers and duties described in subsection (a) of this Code section may be exercised and performed by the director through such duly authorized agents and employees as the director deems necessary and proper.

History. — Code 1981, § 12-8-94, enacted by Ga. L. 1992, p. 2234, § 5; Ga. L. 1993, p. 500, § 5; Ga. L. 1994, p. 483, § 4; Ga. L. 1997, p. 1050, § 2.

Delayed effective date. — The second 1994 amendment, by Ga. L. 1994, p. 1101, in subsection (a), deleted "and" from the end of paragraph (4), substituted "; and" for the period at the end of paragraph (5), and added a paragraph (6) which would read: "To request the Georgia State Financing and Investment Commission for the issuance of public debt to fund corrective action pursuant to this part; provided, however, that any moneys recovered from persons found to be legally liable for such corrective action shall be used to reduce any such public debt incurred." Ga. L. 1994, p. 1101, § 6, provided that the amendment to this Code section by that Act "shall become effective only upon the effective date of a duly ratified amendment to the Constitution authorizing the state to incur indebtedness to fund activities associated with the investigation, detoxification, removal, and disposal of any hazardous wastes, hazardous constituents, or hazardous substances at certain sites." As of May, 2021, no vote had been taken on the constitutional amendment, and the Code section set out above does not reflect the amendment by that Act.

12-8-95. (Effective until July 1, 2022.) Hazardous waste trust fund.

(a) There shall continue in existence the hazardous waste trust fund. The hazardous waste trust fund shall be funded in accordance with subsection (b) of Code Section 12-8-91. All moneys deposited in the fund shall be deemed expended and contractually obligated and shall not lapse to the general fund. The director shall serve as trustee of the hazardous waste trust fund.

(b) The moneys deposited in the hazardous waste trust fund may be expended by the director as follows:

(1) For activities associated with the investigation, detoxification, removal, and disposal of any hazardous wastes, hazardous constituents, or hazardous substances at sites where corrective action is necessary to mitigate a present or future danger to human health or the environment;

(2) For emergency actions the director considers necessary to protect public health, safety, or the environment whenever there is a release of hazardous wastes, hazardous constituents, or hazardous substances;

(3) For activities of the division associated with the administration of this part, including reviewing and overseeing investigations, corrective action, and other actions by federal agencies required under this article and supporting the reduction of hazardous waste and pollution prevention activities by federal agencies;

(4) In accordance with rules promulgated by the board, for financing of the state and local share of the costs associated with the investigation, remediation, and postclosure care and maintenance of sites placed on the National Priority List pursuant to the federal

Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or sites placed on the hazardous site inventory pursuant to Code Section 12-8-97; provided, however, that the director shall ensure that beginning July 1, 2003, and annually in each following year, an amount equal to at least one-half of the sum of annual collections made pursuant to subsection (e) of Code Section 12-8-39 and appropriated to the department in accordance with subsection (b) of Code Section 12-8-91 shall be available to be used for the purposes of this paragraph; provided, further, that if a county or municipal corporation has been or is the owner of or operator of such site, not less than $500,000 of such costs shall be paid from the hazardous waste trust fund; and

(5) For activities administered by the director associated with pollution prevention, including reduction of hazardous wastes generated in this state.

(c) The director may require the demonstration of financial responsibility as a condition of an order requiring corrective action for the release of hazardous wastes, hazardous constituents, or hazardous substances.

(d) If the director determines that corrective action has not been carried out as required by a condition of an order of the director to the reasonable satisfaction of the director, the director may implement the applicable financial responsibility instruments. The proceeds from any applicable financial responsibility instruments shall be deposited in the hazardous waste trust fund.

(e) In any case where a person is in bankruptcy, reorganization, or other arrangement pursuant to the federal Bankruptcy Code or where, with reasonable diligence, jurisdiction in any state court or any federal court cannot be obtained over a person likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this Code section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the person if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(f) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this Code section. Nothing in this subsection shall be construed to limit any other state or federal statutory, contractual, or common-law liability of a

guarantor to a person including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under Section 107 or 111 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or any other applicable law.

History. — Code 1981, § 12-8-95, enacted by Ga. L. 1992, p. 2234, § 5; Ga. L. 2002, p. 415, § 12; Ga. L. 2002, p. 927, § 3; Ga. L. 2004, p. 631, § 12; Ga. L. 2013, p. 856, § 3/HB 276.

Delayed effective date. — Code Section 12-8-95 is set out twice in this Code. This version is effective until July 1, 2022. For version effective July 1, 2022, see the following version.

Law reviews. — For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 59 (2002).

12-8-95. (Effective July 1, 2022.) Hazardous Waste Trust Fund; appropriations; accounting.

(a)(1) The state treasurer shall establish a separate trust fund in the state treasury that shall be known as the Hazardous Waste Trust Fund to which all funds within the hazardous waste trust fund previously established by this subsection shall be transferred. The director shall serve as trustee of the Hazardous Waste Trust Fund.

(2) The state treasurer shall invest the money held in the Hazardous Waste Trust Fund in the same manner in which state funds are invested as authorized by the State Depository Board pursuant to Article 3 of Chapter 17 of Title 50. Interest earned by the money held in the trust fund shall be accounted for separately and shall be credited to the trust fund to be disbursed as other moneys in the trust fund.

(a.1) Under the authority granted and subject to the conditions imposed by Article III, Section IX, Paragraph VI(r) of the Constitution of Georgia, for the period beginning on July 1, 2022, and ending on June 30, 2032, all of the money collected pursuant to subsection (e) of Code Section 12-8-39 shall be annually appropriated to the Hazardous Waste Trust Fund established by subsection (a) of this Code section and such funds shall not lapse as otherwise required by Article III, Section IX, Paragraph IV(c) of the Constitution of Georgia. Each annual appropriation shall be made through the General Appropriations Act and shall include all of the money collected from such source during the most recently completed fiscal year.

(b) All of the money appropriated to the Hazardous Waste Trust Fund pursuant to subsection (a.1) of this Code section shall be dedicated for use only for the following purposes expended by the director as follows:

(1) For activities associated with the investigation, detoxification, removal, and disposal of any hazardous wastes, hazardous constituents, or hazardous substances at sites where corrective action is necessary to mitigate a present or future danger to human health or the environment;

(2) For emergency actions the director considers necessary to protect public health, safety, or the environment whenever there is a release of hazardous wastes, hazardous constituents, or hazardous substances;

(3) For activities of the division associated with the administration of this part, including reviewing and overseeing investigations, corrective action, and other actions by federal agencies required under this article and supporting the reduction of hazardous waste and pollution prevention activities by federal agencies;

(4) In accordance with rules promulgated by the board, for financing of the state and local share of the costs associated with the investigation, remediation, and postclosure care and maintenance of sites placed on the National Priority List pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or sites placed on the hazardous site inventory pursuant to Code Section 12-8-97; provided, however, that the director shall ensure that beginning July 1, 2003, and annually in each following year, an amount equal to at least one-half of the sum of annual collections made pursuant to subsection (e) of Code Section 12-8-39 shall be available to be used for the purposes of this paragraph; provided, further, that if a county or municipal corporation has been or is the owner of or operator of such site, not less than $500,000.00 of such costs shall be paid from the Hazardous Waste Trust Fund; and

(5) For activities administered by the director associated with pollution prevention, including reduction of hazardous wastes generated in this state.

(b.1) The director shall prepare an accounting of the funds expended pursuant to this Code section during the most recently completed fiscal year to be provided to the Office of Planning and Budget, the House Budget and Research Office, and the Senate Budget and Evaluation Office by January 1 of each year.

(c) The director may require the demonstration of financial responsibility as a condition of an order requiring corrective action for the release of hazardous wastes, hazardous constituents, or hazardous substances.

(d) If the director determines that corrective action has not been carried out as required by a condition of an order of the director to the

reasonable satisfaction of the director, the director may implement the applicable financial responsibility instruments. The proceeds from any applicable financial responsibility instruments shall be deposited in the hazardous waste trust fund.

(e) In any case where a person is in bankruptcy, reorganization, or other arrangement pursuant to the federal Bankruptcy Code or where, with reasonable diligence, jurisdiction in any state court or any federal court cannot be obtained over a person likely to be solvent at the time of judgment, any claim arising from conduct for which evidence of financial responsibility must be provided under this Code section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the person if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(f) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this Code section. Nothing in this subsection shall be construed to limit any other state or federal statutory, contractual, or common-law liability of a guarantor to a person including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this subsection shall be construed to diminish the liability of any person under Section 107 or 111 of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, or any other applicable law.

History. — Code 1981, § 12-8-95, enacted by Ga. L. 1992, p. 2234, § 5; Ga. L. 2002, p. 415, § 12; Ga. L. 2002, p. 927, § 3; Ga. L. 2004, p. 631, § 12; Ga. L. 2013, p. 856, § 3/HB 276; Ga. L. 2021, p. 761, § 7/HB 511.

Delayed effective date. — Code Section 12-8-95 is set out twice in this Code. This version is effective July 1, 2022. For version effective until July 1, 2022, see the preceding version.

The 2021 amendment, effective July 1, 2022, substituted the present provisions of subsection (a) for the former provisions, which read: "There shall continue in existence the hazardous waste trust fund. The hazardous waste trust fund shall be funded in accordance with subsection (b) of Code Section 12-8-91. All moneys deposited in the fund shall be deemed expended and contractually obligated and shall not lapse to the general fund. The director shall serve as trustee of the hazardous waste trust fund."; added subsection (a.1); substituted the present provisions of the introductory paragraph of subsection (b) for the former provisions, which read: "The moneys deposited in the hazardous waste trust fund may be expended by the director as follows:"; in paragraph (b)(4), deleted "and appropriated to the department in accordance with subsection (b) of Code Section 12-8-91" following "Code Section 12-8-39" in the first proviso, and, in the second proviso, substituted "$500,000.00" for "$500,000",

and substituted "Hazardous Waste Trust Fund" for "hazardous waste trust fund" at the end; and added subsection (b.1).

Editor's notes. — Ga. L. 2021, p. 761, § 7/HB511, purported to add a new subsection to this Code section, but actually added two subsections.

Ga. L. 2021, p. 761, § 23/HB511, not codified by the General Assembly, provides: "In accordance with the requirements of Article III, Section IX, Paragraph VI(r) of the Constitution of Georgia, this Act shall not become law unless it receives the requisite two thirds' majority vote in both the Senate and the House of Representatives and the amount of the funds dedicated by this Act do not equal or exceed 1 percent of the previous fiscal year's state revenues subject to appropriations."

12-8-95.1. Hazardous waste management fees and hazardous substance reporting fees.

(a) The division is authorized and directed to charge and collect the fees for hazardous waste management activities and hazardous substance reporting fees as provided in this subsection. As used in this Code section, the term "hazardous waste" shall not include any material excluded by 40 C.F.R. Part 261 of the Code of Federal Regulations. Every large quantity generator and every small quantity generator shall pay the greater of $115.00 per calendar year or the total of the hazardous waste management fees, and every person who is required to report pursuant to Section 313 of Title III of the federal Superfund Amendments and Reauthorization Act of 1986 shall pay the annual hazardous substance reporting fees, imposed as follows:

(1) Every large quantity generator of hazardous waste shall pay an annual fee of $23.00 per ton for hazardous waste shipped off site for disposal or incineration, $18.40 per ton for hazardous waste shipped off site for treatment or storage, and $10.35 per ton for hazardous waste shipped off site for treatment by being burned for energy recovery in accordance with rules and regulations promulgated pursuant to Part 1 of this article; provided, however, that no large quantity generator shall be liable for off-site hazardous waste management fees exceeding $75,000.00 in any calendar year. In no event shall any person be liable for an off-site hazardous waste management fee on any hazardous waste for which an off-site hazardous waste management fee has previously been paid;

(2) Every large quantity generator of hazardous waste shall pay an annual fee of $11.50 per ton for hazardous waste disposed of or incinerated on site, $4.60 per ton for hazardous waste treated or stored on site, and $2.90 per ton for hazardous waste treated on site by being burned for energy recovery in accordance with rules and regulations promulgated pursuant to Part 1 of this article; provided, however, that no large quantity generator shall be liable for on-site hazardous waste management fees for disposal or incineration, treatment or storage, or treatment by burning for energy recovery in any calendar year exceeding the following amounts and according to the following schedule:

(A) Twenty-five thousand dollars for such payments due on July 1, 1993, and on July 1, 1994;

(B) Fifty thousand dollars for such payments, excluding payments for the on-site treatment of waste water which is a hazardous waste, due on July 1, 1995, and on July 1, 1996;

(C) Seventy-five thousand dollars for such payments, excluding payments for the on-site treatment of waste water which is a hazardous waste, due on and after July 1, 1997;

(D) One thousand five hundred dollars for waste water which is a hazardous waste which is treated on site for payments due on July 1, 1995;

(E) Three thousand dollars for waste water which is a hazardous waste treated on site for payments due on July 1, 1996; and

(F) Seven thousand five hundred dollars for waste water which is a hazardous waste treated on site for payments due on and after July 1, 1997.

For the purposes of this paragraph, a generator who generates waste water which is a hazardous waste shall not be required to count such hazardous waste in determining its status as a large quantity generator, a small quantity generator, or a conditionally exempt small quantity generator. For the purposes of this paragraph, dilution of waste water that is a hazardous waste shall be considered treatment subject to the fees established by this paragraph. A large quantity generator which pays fees for the off-site management of hazardous waste under paragraph (1) of this subsection for a hazardous waste which was previously managed on site shall not pay the applicable on-site management fee for that hazardous waste;

(3) Every person who receives hazardous waste generated outside this state shall pay an annual fee of $23.00 per ton for hazardous waste disposed of or incinerated, $18.40 per ton for hazardous waste treated or stored, and $10.35 per ton for hazardous waste treated by being burned for energy recovery in accordance with rules and regulations promulgated pursuant to Part 1 of this article; provided, however, that no person shall be liable for importation fees exceeding $75,000.00 per out-of-state generator in any calendar year. In no case shall any person who receives hazardous waste from any person outside this state and who pays an importation fee on such waste pursuant to this paragraph be liable for the off-site hazardous waste management fees required by paragraph (1) of this subsection. Persons who receive hazardous waste generated outside this state are not required to pay the fees required by this paragraph for those wastes generated by conditionally exempt small quantity generators

which are located outside this state. For the purposes of this paragraph, a "conditionally exempt small quantity generator" means a generator who generates 220 pounds or less of hazardous waste in one month, as provided by rules promulgated by the board in accordance with this article; and

(4) Each person who is required to report pursuant to Section 313 of Title III of the federal Superfund Amendments and Reauthorization Act of 1986 shall pay to the division an annual hazardous substance reporting fee as follows:

(A) A facility with no reported release shall pay no fee;

(B) A facility with a reported release of less than 1,000 pounds during the calendar year shall pay a fee of $575.00 for that calendar year;

(C) A facility with a reported release equal to or greater than 1,000 pounds but less than 10,000 pounds during the calendar year shall pay a fee of $1,150.00 for that calendar year; and

(D) A facility with a reported release equal or greater than 10,000 pounds during the calendar year shall pay a fee of $1,725.00 for that calendar year.

(b) All hazardous waste and hazardous substance fees required by subsection (a) of this Code section shall be paid to the division for transfer into the state treasury to the credit of the general fund. The division shall collect such fees until the unencumbered principal balance of the hazardous waste trust fund equals or exceeds $25 million, at which time no hazardous waste or hazardous substance fees shall be levied until the balance in that fund is less than or equal to an unencumbered balance of $12.5 million, in which case the levy and collection of hazardous waste fees shall resume at the beginning of the next calendar year following the year in which such unencumbered balance occurs. The director shall provide written notice to all large quantity generators and hazardous waste treatment, storage, and disposal facilities and all persons who are required to report pursuant to Section 313 of Title III of the federal Superfund Amendments and Reauthorization Act of 1986 at such time as the director receives notice that the unencumbered principal balance of the fund equals or exceeds $25 million or is equal to or less than $12.5 million.

(c) All hazardous waste fees levied under this Code section shall be based on the amounts of hazardous waste managed or imported within the preceding calendar year. Such fees for the period July 1, 1992, through December 31, 1992, shall be paid to the division not later than July 1, 1993. All subsequent hazardous waste fees shall be paid not later than the first day of July of each year for the preceding calendar year.

(d) All hazardous substance fees levied under this Code section shall be based on the hazardous substances reported for the preceding calendar year. All hazardous substance fees shall be paid not later than the first day of July of each year for the preceding calendar year.

(e) Persons who make payments of fees levied by this Code section later than 30 days after the due date specified in subsection (c) of this Code section shall pay a penalty of 15 percent of the balance due and shall pay interest on the unpaid balance at the rate imposed by law for delinquent taxes due to the state. Delinquent fees may be collected in a civil action instituted in the name of the director. In addition to the 15 percent penalty and the interest that may be collected along with the delinquent fees as provided in this subsection, the director shall be entitled to collect all costs, including administrative costs, and legal expenses incurred by the state in connection with its collection efforts.

(f) Hazardous waste which is generated by any of the following means is exempted from the fees required by this Code section:

(1) Corrective action required by an order, permit, or approved closure plan issued pursuant to Part 1 of this article;

(2) Voluntary corrective action required by any person in accordance with applicable laws and regulations; and

(3) Response actions required under the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended.

(g) The following persons shall not be required to pay the hazardous substance reporting fees required by this Code section:

(1) Persons who report pursuant to Section 313 of Title III of the federal Superfund Amendments and Reauthorization Act of 1986 only for substances not designated as regulated substances pursuant to rules and regulations of the board; and

(2) Persons who report pursuant to Section 313 of Title III of the federal Superfund Amendments and Reauthorization Act of 1986 only for petroleum fuels, lubricants, and hydraulic fluids and components thereof that are designated as regulated substances pursuant to rules and regulations of the board.

(h) Unless fee requirements established in this Code section are reimposed by the General Assembly, no such fees shall be levied after July 1, 2022.

(i) In accordance with rules promulgated by the board pursuant to paragraph (6) of subsection (b) of Code Section 12-8-93, the director is authorized to grant a waiver of a portion of the hazardous waste management fees and hazardous substance reporting fees provided by

subsection (a) of this Code section not to exceed a 25 percent reduction per year for a maximum of three years for any company as an incentive upon the recommendation of the director of the Pollution Prevention Assistance Division made in conjunction with programs and activities designed to encourage industries in the state to reduce their generation of wastes, including but not limited to programs established to recognize and reward pollution performance and environmental improvement.

(j) Beginning July 1, 2003, and continuing annually thereafter, federal agencies shall pay the hazardous waste management fees required by this Code section provided an amount not less than the sum of all fees collected from federal agencies is appropriated annually to the department and used in accordance with subsection (b) of Code Section 12-8-91 and used for the purposes set forth in paragraph (3) of subsection (b) of Code Section 12-8-95.

History. — Code 1981, § 12-8-95.1, enacted by Ga. L. 1992, p. 2234, § 5; Ga. L. 1993, p. 500, § 6; Ga. L. 1994, p. 483, § 5; Ga. L. 1996, p. 993, § 2; Ga. L. 1997, p. 564, § 2; Ga. L. 2002, p. 927, § 4; Ga. L. 2013, p. 856, § 4/HB 276; Ga. L. 2018, p. 228, § 2/HB 792; Ga. L. 2019, p. 261, § 3/HB 220.

The 2019 amendment, effective June 30, 2019, substituted "July 1, 2022" for "July 1, 2019" at the end of subsection (h).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, "40 C.F.R. Part 261" was substituted for "40 CFR Part 261" in the second sentence of subsection (a).

Pursuant to Code Section 28-9-5, in 2002, "paragraph (6) of subsection (b) of Code Section 12-8-93" was substituted for "paragraph (6) of Code Section 12-8-93" in subsection (i).

Law reviews. — For review of 1996 waste management legislation, see 13 Ga. St. U.L. Rev. 54 (1996). For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 59 (2002).

12-8-96. Corrective action upon release of hazardous wastes, hazardous constituents, or hazardous substances; notice; administrative consent order; expenditure of funds from trust fund.

(a) Whenever the director has reason to believe that there is or has been a release of hazardous wastes, hazardous constituents, or hazardous substances into the environment, regardless of the time at which release of such hazardous wastes, hazardous constituents, or hazardous substances occurred, and has reason to believe that such release poses a danger to health or the environment, the director shall make a reasonable effort to identify each person who has contributed or who is contributing to such a release. The director shall then notify each such person in writing of the opportunity to perform voluntarily corrective action in accordance with an administrative consent order entered into with the director within such period of time as may be specified by the director in written correspondence to the person. If the person fails or refuses to enter into an administrative consent order with the director

within the period of time specified by the director, the director may issue an order directed to any such person. The order may direct that necessary corrective action be taken within a reasonable time to be prescribed in the order.

(b) If a person fails to comply with such an order or if all necessary corrective action cannot be obtained from the responsible person or persons, the director may undertake corrective action utilizing funds from the hazardous waste trust fund.

(c) The division or its corrective action contractors may enter upon the property of any person, at such time and in such manner as deemed necessary by the director, to effectuate the necessary corrective action to protect human health and the environment.

(d) The State of Georgia and the hazardous waste trust fund are relieved from all liability for loss of business, damages, and taking of property associated with the corrective action.

(e) Whenever the director utilizes funds from the hazardous waste trust fund, such expenditure shall constitute a debt to the state. Any such debt, together with interest accruing at a rate of 12 percent per annum, shall constitute a lien on the real property for which such funds are being expended or have been expended. In order to perfect the lien created by this article, the director shall file a claim of lien with the clerk of the superior court in the county in which the real property is located. Such claim of lien shall, at a minimum, accurately describe the property on which the lien is imposed and shall state the type of corrective action, the authority pursuant to which the corrective action is being performed, the date the corrective action began, the cost to date of the claim, and the estimated total cost. Such claim of lien may be updated from time to time. The director shall mail a copy of the claim of lien to the owner of the real property and to all other persons the director believes to be liable for the cost of the corrective action. The clerk of the superior court shall index the claim of lien in the land records of the court. The filing of the claim of lien shall be notice to all persons of the state's lien against the real property. The lien provided by this Code section shall be superior to all other liens except liens for taxes and other prior perfected recorded liens or claims of record. The lien created by this Code section may be foreclosed as provided in Code Section 44-14-530. All funds obtained from the foreclosure or settlement of any lien filed under this Code section shall be deposited into the hazardous waste trust fund subject to the provisions of Code Section 45-12-92. No transferral of title, sale, or execution of lien, whether judicial or nonjudicial, shall divest the lien provided by this Code section. However, the lien provided for in this subsection shall not be available where the present owner of the real property otherwise subject to such lien did not cause or contribute to a release which

resulted in the expenditure of hazardous waste trust funds upon the property, unless that owner knew or in the exercise of reasonable diligence should have known that the release was occurring during his or her period of ownership or that the release had occurred prior to his or her acquisition of ownership.

History. — Code 1981, § 12-8-96, enacted by Ga. L. 1992, p. 2234, § 5; Ga. L. 1997, p. 1050, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1997, "lien" was substituted for "liens" in the eighth sentence of subsection (e).

JUDICIAL DECISIONS

"Corrective action" explained. — "Corrective action" referenced in O.C.G.A. § 12-8-96.1(e) does not contemplate environmental cleanup efforts undertaken independently by a party without the involvement of the Director of the Environmental Protection Division of the Georgia Department of Natural Resources (EPD). Rather, when read in conjunction with O.C.G.A. §§ 12-8-96(a) and 12-8-96.1(a), it is clear that "corrective action" taken by a person refers to action taken pursuant to an administrative consent order entered with the EPD Director, or action taken pursuant to an administrative order issued by the EPD Director directing that the necessary action be taken. Walker County v. Tri-State Crematory, 292 Ga. App. 411, 664 S.E.2d 788 (2008), cert. denied, No. S08C1908, 2008 Ga. LEXIS 947 (Ga. 2008).

Individual liability. — Polluting facility's president who negotiated a consent order for the facility did not have "actual notice" that the president could be personally liable for remediation costs under O.C.G.A. §§ 12-8-96(a) and 12-8-96.1(a) of Georgia's Hazardous Site Response Act, O.C.G.A. § 12-8-90 et seq., and, therefore, was not liable for such costs. Reheis v. Baxley Creosoting & Osmose Wood Preserving Co., 268 Ga. App. 256, 601 S.E.2d 781 (2004).

Order issued by the Director of the Environmental Protection Division providing each person the opportunity to perform corrective action is a prerequisite to the imposition of individual liability under the Hazardous Site Response Act, O.C.G.A. § 12-8-90 et seq. Reheis v. Baxley Creosoting & Osmose Wood Preserving Co., 268 Ga. App. 256, 601 S.E.2d 781 (2004).

Legislative intent. — Homeowners lacked standing to appeal consent orders entered by the Director of the Environmental Protection Division of the Department of Natural Resources until the Director sought to enforce the orders, but the homeowners were authorized to sue those directly responsible for polluting the homeowners' property, irrespective of the homeowners' right of access to the courts; hence, the underlying intent of O.C.G.A. § 12-2-2(c)(3)(B) was to preclude such attacks on the Director's exercise of the administrative authority to determine the scope of remedial measures set forth in consent orders issued under the Hazardous Site Response Act, O.C.G.A. § 12-8-90 et seq. Couch v. Parker, 280 Ga. 580, 630 S.E.2d 364 (2006).

Cited in McElmurray v. Augusta-Richmond County, 274 Ga. App. 605, 618 S.E.2d 59 (2005).

12-8-96.1. Liability for cleanup costs; punitive damages; action for recovery of costs and damages; claims for contribution.

(a) Each and every person who contributed to a release of a hazardous waste, a hazardous constituent, or a hazardous substance shall be

jointly, severally, and strictly liable to the State of Georgia for the reasonable costs of activities associated with the cleanup of environmental hazards, including legal expenses incurred by the state pursuant to subsection (a) of Code Section 12-8-96, as a result of the failure of such person to comply with an order issued by the director. Any such person shall be so liable notwithstanding the absence of the issuance of an order to such person pursuant to subsection (a) of Code Section 12-8-96 if the director is unable to identify such person prior to the commencement of clean-up action after making a reasonable effort to do so pursuant to such Code section, or if such person contributed to a release which resulted in an emergency action by the director and issuance of such an order would cause a delay in corrective action that could endanger human health and the environment. The person may, in addition, be liable for punitive damages in an amount at least equal to the costs incurred by the state and not more than three times the costs incurred by the state for activities associated with the cleanup of environmental hazards. Costs and damages incurred by the state may be recovered in a civil action instituted in the name of the director. All costs recovered by the state pursuant to this Code section shall be deposited into the hazardous waste trust fund.

(b) Any action for the recovery of costs and for punitive damages shall be commenced within six years of the date on which all costs have been incurred.

(c) No person shall be liable for costs or damages pursuant to this Code section if he can show by a preponderance of the evidence that the release of a hazardous waste, a hazardous constituent, or a hazardous substance was caused solely by:

(1) An act of God;

(2) An act of war;

(3) An act or omission of a third party other than an employee or agent of the person or other than one whose act or omission occurs in connection with a contractual relationship, existing directly or indirectly, with the person, if the person establishes by a preponderance of the evidence that:

(A) He had no relationship with the third party nor exercised any control over activities of the third party; and

(B) He took precautions against foreseeable acts or omissions of any such third party and the consequences that could foreseeably result from such acts or omissions; or

(4) Any combination of paragraph (1), (2), or (3) of this subsection.

(d)(1) For purposes of paragraph (3) of subsection (c) of this Code section, a contractual relationship may be conclusively established

by, but not limited to, land contracts, deeds, or other instruments transferring title or possession, unless the real property on which the disposal or release of hazardous wastes, hazardous constituents, or hazardous substances has occurred or is occurring was acquired by the person after the disposal or release of the hazardous wastes, hazardous constituents, or hazardous substances and one or more of the following circumstances are established by a preponderance of the evidence:

(A) At the time the person acquired the site, the person did not know and had no reason to know that any hazardous waste, hazardous constituent, or hazardous substance had been disposed of or released at the site;

(B) The person is a government entity which acquired the site by escheat, through any other involuntary transfer or acquisition, or through the exercise of eminent domain by purchase or condemnation; or

(C) The person acquired the site by inheritance or bequest

and that one or more of the circumstances described in paragraph (1), (2), or (3) of subsection (c) of this Code section are applicable.

(2) To establish that the person had no reason to know as provided in subparagraph (A) of paragraph (1) of this subsection, the person must have undertaken, at the time of acquisition, all appropriate inquiries into the previous ownership and uses of the property consistent with good commercial or customary practice in an effort to minimize liability. For purposes of the preceding sentence, the finder of fact shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection.

(3) Nothing in this subsection shall diminish the liability of any previous owner of such property who would otherwise be liable under this part. Notwithstanding this paragraph, if a person obtained actual knowledge of the disposal or release of a hazardous waste, hazardous constituent, or hazardous substance at the site when the person owned the real property and then subsequently transferred ownership of the property to another person without disclosing such knowledge, the person so transferring the property shall be treated as liable under subsection (a) of this Code section, and no defense under subsection (c) of this Code section shall be available to such person. Nothing in this subsection shall affect the liability under this part of

a person who, by any act or omission, causes or contributes to the disposal or release of a hazardous waste, a hazardous constituent, or a hazardous substance which is the subject of the action relating to the site.

(e) During or following the undertaking of any corrective action, any person may seek contribution from any other person who has contributed or is contributing to any release of a hazardous waste, a hazardous constituent, or a hazardous substance. Such claims for contribution shall be governed by the law of this state. In resolving contribution claims, the court may allocate costs among liable parties using such equitable factors as the court determines to be appropriate. In any action filed by the director for the recovery of costs and damages pursuant to this Code section, any third-party claim for contribution may, upon the motion of the director, be severed and maintained as a separate action.

(f) A person who has voluntarily agreed to perform corrective action pursuant to an administrative consent order with the director shall not be liable for claims for contribution regarding matters addressed in the administrative consent order. Such administrative consent order does not discharge any other person who has contributed or is contributing to a release of hazardous wastes, hazardous constituents, or hazardous substances unless the terms of the administrative consent order so provide, and the other persons remain liable for any corrective action deemed necessary by the director but not agreed to in the administrative consent order.

History. — Code 1981, § 12-8-96.1, enacted by Ga. L. 1992, p. 2234, § 5; Ga. L. 1993, p. 500, § 7; Ga. L. 2002, p. 927, § 5.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "paragraph" was substituted for "paragraphs" in the undesignated language following subparagraph (d)(1)(C).

Pursuant to Code Section 28-9-5, in 1994, "constituents" was substituted for "constitutents" near the middle of the introductory language in paragraph (d)(1).

Law reviews. — For annual survey of zoning and land use law, see 57 Mercer L. Rev. 447 (2005).

For note on the 2002 amendment of this Code section, see 19 Ga. St. U.L. Rev. 59 (2002).

JUDICIAL DECISIONS

Strict construction of O.C.G.A. § 12-8-96.1(a) does not permit the Director of the Georgia Environmental Protection Division to negotiate consent corrective action orders with corporate officers and ignore the statutorily-mandated due process requirements for subjecting those officers to personal liability for the discharge of hazardous waste. Reheis v. Baxley Creosoting & Osmose Wood Preserving Co., 268 Ga. App. 256, 601 S.E.2d 781 (2004).

Action taken without agency involvement. — "Corrective action" referenced in O.C.G.A. § 12-8-96.1(e) does not contemplate environmental cleanup efforts undertaken independently by a party without the involvement of the Director of the Environmental Protection Division of the Georgia Department of

Natural Resources (EPD). Rather, when read in conjunction with O.C.G.A. §§ 12-8-96(a) and 12-8-96.1(a), it is clear that "corrective action" taken by a person refers to action taken pursuant to an administrative consent order entered with the EPD Director, or action taken pursuant to an administrative order issued by the EPD Director directing that the necessary action be taken. Walker County v. Tri-State Crematory, 292 Ga. App. 411, 664 S.E.2d 788 (2008), cert. denied, No. S08C1908, 2008 Ga. LEXIS 947 (Ga. 2008).

As there was no evidence that a consent or remediation order had been issued, a facility owner could not show a required "corrective action" for purposes of seeking contribution pursuant to O.C.G.A. § 12-8-96.1(e) for an alleged chemical contamination. Barrett Props., LLC v. Roberts Capitol, Inc., 316 Ga. App. 507, 729 S.E.2d 621 (2012).

County not entitled to contribution for cleanup of crematorium property. — County could not seek contribution from owners and operators of a crematorium and from funeral homes that sent bodies there for the costs associated with the county's voluntary cleanup of crematorium property. The cleanup was done without the involvement of the Director of the Environmental Protection Division, and the statute did not contemplate independent activities conducted without the Director's involvement. Walker County v. Tri-State Crematory, 292 Ga. App. 411, 664 S.E.2d 788 (2008), cert. denied, No. S08C1908, 2008 Ga. LEXIS 947 (Ga. 2008).

Buyer liable for actions on site disturbing arsenic and lead particles. — In a soil contamination contribution action in which a buyer, in developing the property, disturbed and moved cinders containing arsenic and lead left by the seller and the seller's predecessors, the trial court erred in interpreting the parties' assumption agreement to require the seller to indemnify the buyer; apportionment of fault was required. Viad Corp v. United States Steel Corp., 343 Ga. App. 609, 808 S.E.2d 58 (2017).

Third party defense. — Statute requires that in addition to establishing the lack of a contractual relationship in connection with the release of a hazardous waste, the party asserting the third party defense under subsection (c) of O.C.G.A. § 12-8-96.1 must also establish the lack of any other relationship between oneself and the third party. Briggs & Stratton Corp. v. Concrete Sales & Servs., 20 F. Supp. 2d 1356 (M.D. Ga. 1998).

Availability of jury trial. — Defendants sued under O.C.G.A. § 12-8-96.1(a) of the Georgia Hazardous Site Response Act, O.C.G.A. § 12-8-90 et seq., had no right to a jury trial on the issue of whether the actual clean-up costs of the defendants' site were reasonable, but the defendants were entitled to a jury trial on the issue of punitive damages. Reheis v. Baxley Creosoting & Osmose Wood Preserving Co., 268 Ga. App. 256, 601 S.E.2d 781 (2004).

Cited in McElmurray v. Augusta-Richmond County, 274 Ga. App. 605, 618 S.E.2d 59 (2005).

RESEARCH REFERENCES

ALR. — Secured lender liability: application of security interest exemption from definition of "owner or operator" under § 101(20)(A) of Comprehensive Environmental Response, Compensation, and Liability Act (42 USCS § 9601(20)(A)), 131 A.L.R. Fed. 293.

Construction and application of §§ 2Q1.2 and 2Q1.3 of United States Sentencing Guidelines (18 USCS Appx 2Q1.2 and 2Q1.3), pertaining to offenses involving hazardous or toxic substances, or other environmental pollutants, 138 A.L.R. Fed 507.

Equitable considerations in allocating response costs to owner or occupant of previously contaminated facility in action pursuant to § 113(f) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCA § 9613(f)), 148 A.L.R. Fed. 203.

Amount and characteristics of wastes as equitable factors in allocation of response costs pursuant to § 113(f)(1) of Compre-

hensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USCA § 9613(f)(1): multiple waste streams, 162 A.L.R. Fed. 371.

12-8-96.2. Limitation of liability of corrective action contractors.

(a) No corrective action contractor engaged in activities associated with the cleanup of environmental hazards created by others shall be liable for any damages arising from the release of a hazardous waste, hazardous constituent, or hazardous substance resulting from such activity in an amount greater than $1 million to any one person or $3 million to all persons for a single occurrence. The limitation of liability of this Code section shall not:

(1) Affect any right of indemnification which such person has, or may acquire by contract, against any other person who is liable for creating an environmental hazard; or

(2) Apply to persons who intentionally, wantonly, or willfully violate federal or state regulations in the cleanup process.

(b) For purposes of Code Section 12-8-96.1 and this Code section, the phrase "activities associated with the cleanup of environmental hazards" shall mean activities including investigation, evaluation, planning, design, engineering, removal, construction, and ancillary services which are carried out to abate or cleanup a hazardous waste, hazardous constituent, or hazardous substance.

(c) Nothing contained in this Code section shall be construed to be a waiver of the sovereign immunity of this state or of any agency or political subdivision of this state.

History. — Code 1981, § 12-8-96.2, enacted by Ga. L. 1992, p. 2234, § 5.

12-8-96.3. Limitation of liability for release of hazardous substances for subsequent purchasers of property.

(a) As used in this Code section, the term:

(1) "Affected property" means real property listed on the hazardous site inventory maintained pursuant to Code Section 12-8-97.

(2) "Bona fide purchaser" means a person who has purchased affected property and has complied with the provisions of subsection (b) of this Code section relative to such property; provided, however, that no person may qualify as a bona fide purchaser if such person:

(A) Is a person who has contributed or is contributing to a release;

(B) Has or in the past has had a contractual relationship with a person who has contributed or is contributing to a release;

(C) Is related by blood or marriage to a previous owner of the property or to a person who contributed or is contributing to the release or is a shareholder, employee, agent, or is otherwise affiliated with such person;

(D) Is a predecessor or successor entity, subsidiary, owner, or division of any person who has contributed to or is contributing to a release;

(E) Is in violation of any order, judgment, statute, rule, or regulation within the jurisdiction of the division;

(F) Is an owner or operator of an underground storage tank, as defined by Code Section 12-13-3, located at the affected property and subject to the financial responsibility regulations promulgated pursuant to Code Section 12-13-9;

(G) Is an owner or operator of a solid waste handling, disposal, or thermal treatment technology facility, as defined by Code Section 12-8-22, located at the affected property and subject to permitting requirements pursuant to Code Section 12-8-24;

(H) Is an owner or operator of a "hazardous waste facility" as defined by paragraph (11) of Code Section 12-8-62; or

(I) Is not able to meet such other criteria as may be established by the board pursuant to Code Section 12-8-93.

(3) "Cleanup standards" means those rules adopted by the board pursuant to Code Section 12-8-93.

(4) "Contractual relationship" means a contractual relationship established as provided in subsection (d) of Code Section 12-8-96.1.

(5) "Person who has contributed or is contributing to a release" means such term as defined in paragraph (9) of Code Section 12-8-92.

(b) A person desiring to qualify as a bona fide purchaser shall, before purchasing the affected property, present to the director a corrective action plan which describes in detail those actions needed to bring the affected property into compliance with cleanup standards. The director shall approve the plan if, in his or her opinion, the plan will bring the property into compliance with the cleanup standards. Such plan shall include a schedule for completion, which shall be not longer than one year following the date the plan is finally approved, which shall be the date the purchaser and the director enter into an administrative consent order incorporating the plan; provided, however, that the director may extend the completion date by up to six months if, in his

or her opinion, the purchaser has made a good faith attempt to complete the corrective action within the time provided in the consent order and that the corrective action can be completed within the period of the extension. If the corrective action provided for in the administrative consent order is completed to the satisfaction of the director, the director shall certify that the purchaser is a bona fide purchaser of the affected property for purposes of this Code section.

(c) A bona fide purchaser shall not be liable for third-party claims for contribution or for third-party claims for damages arising from a release of the hazardous waste, hazardous substance, or hazardous constituent which is the subject of the corrective action included in the consent order provided for in subsection (b) of this Code section.

(d) The limitation of liability provided for in subsection (c) of this Code section shall commence on the date of execution of the consent order provided for in subsection (b) of this Code section; provided, however, that such limitation shall be withdrawn automatically if the director determines at the end of the cleanup period or any extension thereof to certify that the property has not been brought into compliance with the cleanup standards. The limitation shall apply only to the parties to the consent order and for the hazardous waste, hazardous substance, or hazardous constituent addressed in the consent order. The limitation shall not apply with respect to any release occurring in conjunction with an activity related to a corrective action which results in injury to a person not a party to the consent order.

History. — Code 1981, § 12-8-96.3, enacted by Ga. L. 1996, p. 993, § 3.

Law reviews. — For review of 1996 waste management legislation, see 13 Ga. St. U.L. Rev. 54 (1996).

RESEARCH REFERENCES

ALR. — Equitable considerations in allocating response costs to owner or occupant of previously contaminated facility in action pursuant to § 113(f) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCA § 9613(f)), 148 A.L.R. Fed. 203.

12-8-97. Hazardous site inventory.

(a) Beginning on July 1, 1994, the division shall compile and update as necessary an inventory of all known or suspected sites where hazardous wastes, hazardous constituents, or hazardous substances have been disposed of or released in quantities deemed reportable by rules or regulations of the board. At least annually, beginning July 1, 1994, the division shall send a copy of the inventory with the sites listed by county to the clerk of each superior court of the state, who shall place and maintain the most current copy of the inventory in the room or rooms in which the deed records of the county are kept. This inventory

shall be called the hazardous site inventory. The inventory shall include:

(1) The name of the property or another description identifying the site;

(2) The location of the site;

(3) The name of the owner of the site at the time of the site's inclusion in the inventory;

(4) A general description of the type and quantity of hazardous wastes, hazardous constituents, or hazardous substances known or suspected to be at the site;

(5) A general description of possible or known threats to human health or the environment posed by the site;

(6) The status of any cleanup activities conducted by any person;

(7) A relative priority for cleanup;

(8) If a site is determined, in accordance with rules and regulations promulgated by the board, to require corrective action, a designation that corrective action is needed and a summary of needed actions;

(9) If a site is considered not capable of posing or is no longer posing an environmental or human health hazard, a designation that no further action is required; and

(10) The status of any actions contesting a determination that corrective action is needed.

The division shall also publish in print or electronically annually a report of the fees collected and the funds appropriated to the hazardous waste trust fund and an accounting of all disbursements from such trust fund.

(b) After July 1, 1993, the property owner of any site listed on the inventory which is designated as having a known release and which is designated as needing corrective action shall include the following notice in any deed, mortgage, deed to secure debt, lease, rental agreement, or other instrument given or caused to be given by the property owner which creates an interest in or grants a use of the property:

"This property has been listed on the state's hazardous site inventory and has been designated as needing corrective action due to the presence of hazardous wastes, hazardous constituents, or hazardous substances regulated under state law. Contact the property owner or the Georgia Environmental Protection Division for further information concerning this property. This notice is provided in compliance with the Georgia Hazardous Site Response Act."

(c) After July 1, 1993, each property owner who owns a site listed on the inventory which is designated as having a known release and which is designated as needing corrective action shall cause to be prepared an affidavit of such fact in recordable form as set forth in subsection (c) of Code Section 44-2-20 and shall file such affidavit with the clerk of the superior court of each county in which the real property or any part thereof lies. Such affidavit shall be recorded in the clerk's deed records pursuant to Code Section 44-2-20. Such affidavit shall include a statement that the property has been listed on the state's hazardous site inventory and has been designated as needing corrective action due to the presence of hazardous wastes, hazardous constituents, or hazardous substances regulated under state law. Such affidavit shall be filed with the clerk within 45 days after receipt of notice by the property owner that the director has designated the property as needing corrective action; provided, however, that neither the affidavit required by this subsection or the notice required by subsection (b) of this Code section shall be required until any contest under subsection (f) of this Code section has been resolved adversely to the property owner.

(d) After July 1, 1993, each property owner who owns real property upon which hazardous wastes, hazardous constituents, or hazardous substances have been disposed of or released in amounts exceeding reportable quantities shall, within 30 days of receipt of knowledge by the property owner of the release or disposal, notify the division in writing on such forms as may be provided by the director. This notification shall include the location, type, quantity, and date of such disposal or release, if known, and a summary of actions taken to investigate, clean up, or remediate the site. Such notification shall include a quadrangle map prepared in accordance with the National Ocean Survey/National Geodetic Survey or a Georgia Coordinate System pursuant to Article 2 of Chapter 4 of Title 44 that clearly indicates the location of the disposal or release; provided, however, that any property owner that has notified the United States Environmental Protection Agency under Section 103(c) of the federal Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, may satisfy this notification requirement by submitting a copy of the 103(c) notice together with such quadrangle map.

(e) The provisions of this Code section shall not be applicable to emissions regulated under Article 1 of Chapter 9 of this title, "The Georgia Air Quality Act," point source discharges regulated under Article 2 of Chapter 5 of this title, the "Georgia Water Quality Control Act," or sites regulated solely by Chapter 13 of this title, the "Georgia Underground Storage Tank Act," or substances regulated under Chapter 12 of this title, the "Georgia Asbestos Safety Act."

(f) The director shall provide a property owner with written notice of any determination to designate property as needing corrective action,

including a statement concerning the requirements of subsections (b) and (c) of this Code section. The requirements of subsections (b) and (c) of this Code section shall be stayed by the filing of a petition for a hearing in accordance with Code Section 12-8-73 within 30 days of the issuance of the director's written notice of the director's determination to designate property as needing corrective action.

History. — Code 1981, § 12-8-97, enacted by Ga. L. 1992, p. 2234, § 5; Ga. L. 1993, p. 91, § 12; Ga. L. 1993, p. 500, § 8; Ga. L. 2010, p. 838, § 10/SB 388.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1993, "clean up" was substituted for "cleanup" in the second sentence in subsection (d).

Editor's notes. — Ga. L. 2010, p. 838, § 10(29)/SB 388, which amended this Code section, purported to amend paragraph (a)(10) but actually amended the ending undesignated paragraph of subsection (a).

Part 3

Georgia Voluntary Remediation Program

12-8-100. Short title.

This part shall be known and may be cited as the "Georgia Voluntary Remediation Program Act."

History. — Code 1981, § 12-8-100, enacted by Ga. L. 2009, p. 714, § 1/HB 248.

Editor's notes. — Former Code Section 12-8-100, formerly part of Article 4, concerning the Georgia Hazardous Waste Management Authority, was repealed by Ga. L. 2001, p. 873, § 5, effective July 1, 2001, and was based on Ga. L. 1981, p. 462, § 1.

12-8-101. Policy declaration.

(a) It is declared to be the public policy of the State of Georgia to encourage the voluntary and timely investigation and remediation of properties where there have been releases of regulated substances into the environment for the purpose of reducing human and environmental exposure to safe levels, to protect current and likely future use of groundwater, and to ensure the cost-effective allocation of limited resources that fully accomplish the provisions, purposes, standards, and policies of this part.

(b) The General Assembly declares its intent to encourage voluntary and cost-effective investigation and remediation of qualifying properties under this part and that provisions of this part shall apply and take precedence over any conflicting provisions, regulations, or policies existing under Part 2 of this article with regard to any properties properly enrolled in the voluntary remediation program created under this part.

History. — Code 1981, § 12-8-101, enacted by Ga. L. 2009, p. 714, § 1/HB 248.

Editor's notes. — Former Code Section 12-8-101, formerly part of Article 4, concerning definitions, was repealed by Ga. L. 2001, p. 873, § 5, effective July 1, 2001, and was based on Ga. L. 1981, p. 462, § 3; Ga. L. 1988, p. 1934, § 1; Ga. L. 1991, p. 1740, § 1; Ga. L. 1992, p. 2234, § 6.

12-8-102. Definitions.

(a) Unless otherwise provided in this part, the definition of all terms included in Code Sections 12-8-62, 12-8-92, and 12-8-202 shall be applicable to this part.

(b) As used in this part, the term:

(1) "Cleanup standards" means those rules and regulations adopted by the board pursuant to Code Section 12-8-93.

(2) "Constituents of concern" means the specific regulated substances that may contribute to unacceptable exposure at a site.

(3) "Controls" means institutional controls or engineering controls.

(4) "Engineering controls" means any physical mechanism, device, measure, system, or actions taken at a property that minimize the potential for exposure, control migration or dispersal, or maintain the effectiveness of other remedial actions. Engineering controls may include, without limitation, caps, covers, physical barriers, containment structures, leachate collection systems, ground water or surface water control systems, solidification, stabilization, treatment, fixation, slurry walls, and vapor control systems. Engineered property development features shall be acceptable as engineering controls provided these features physically control or eliminate the potential for exposure to contaminants of concern or control migration.

(5) "Exposure" means contact of a constituent of concern with a receptor.

(6) "Exposure domain" means the contaminated geographical area or areas of a site that can result in exposure to a particular receptor by a specified exposure pathway: the soil exposure domain for routine surficial contact with site soils is the soil area impacted by site constituents of concern from the ground surface down to a depth of two feet below ground surface; the soil exposure domain for exposure of construction workers or underground utility workers is the impacted area of site soils from the ground surface down to the depth of construction; and the soil exposure domain for protection of groundwater at an established point of exposure is the impacted area of site soils from the ground surface down to the uppermost groundwater zone.

(7) "Exposure pathway" means a route by which a receptor comes into contact with a constituent of concern.

(8) "Fate and transport parameters" means quantitative factors that describe the various media through which constituents of concern migrate from a source of release to a receptor.

(9) "Institutional controls" means legal or administrative measures that minimize the potential for human exposure to contaminants of concern or protect and enhance the integrity of a remedy or engineering controls. Examples include, without restriction: easements, covenants, deed notices, well drilling or groundwater use prohibitions, zoning restrictions, digging restrictions, orders, building permit conditions, and land-use restrictions.

(10) "Point of demonstration wells" means monitoring wells located between the source of site groundwater contamination and the actual or estimated downgradient point of exposure.

(11) "Point of exposure" means the nearest of the following locations:

(A) The closest existing down gradient drinking water supply well;

(B) The likely nearest future location of a downgradient drinking water supply well where public supply water is not currently available and is not likely to be made available within the foreseeable future; or

(C) The hypothetical point of drinking water exposure located at a distance of 1000 feet downgradient from the delineated site contamination under this part.

(12) "Proof of financial assurance" means a mechanism, in a form specified by the director, designed to demonstrate that sufficient funds will be available to implement and maintain specific actions or controls. Mechanisms for proof of financial assurance include, but are not limited to, insurance, trust funds, surety bonds, letters of credit, performance bonds, certificates of deposit, financial tests, and corporate guarantees.

(13) "Receptor" means any human or sensitive organism which is or has the reasonable potential to be adversely affected by the release of constituents of concern.

(14) "Representative concentration" means the average concentration to which a specified receptor is exposed over an exposure duration within a relevant exposure domain for soils or at an established or estimated point of exposure for groundwater and consistent with United States Environmental Protection Agency guidance for determination of average exposure concentration.

(15) "Technical impracticability" means the inability to fully delineate or remediate contamination without incremental expenditures

disproportionate to the incremental benefit. An example may include, without limitation, dense non-aqueous phase liquids in fractured bedrock settings.

(16) "Voluntary remediation program" means the program established under this part.

(17) "Voluntary remediation property" means a qualifying property enrolled in the voluntary remediation program.

History. — Code 1981, § 12-8-102, enacted by Ga. L. 2009, p. 714, § 1/HB 248; Ga. L. 2010, p. 878, § 12/HB 1387.

Editor's notes. — Former Code Section 12-8-102, formerly part of Article 4, concerning the creation, composition, terms of office, election of officers, quorum, and reimbursement for expenses of the Georgia Hazardous Waste Authority, was repealed by Ga. L. 2001, p. 873, § 5, effective July 1, 2001, and was based on Ga. L. 1981, p. 462, § 2; Ga. L. 1982, p. 3, § 12; Ga. L. 1988, p. 426, § 1; Ga. L. 1989, p. 1641, § 9; Ga. L. 1990, p. 1983, § 1; Ga. L. 1991, p. 1740, §§ 2-4; Ga. L. 1993, p. 91, § 12.

12-8-103. Rules and regulations.

The board shall have the power to adopt, promulgate, modify, amend, and repeal rules and regulations to implement and enforce the provisions of this part as necessary to provide for the investigation and remediation of voluntary remediation properties, to the extent necessary to facilitate the accomplishment of the provisions, purposes, standards, and policies of this part.

History. — Code 1981, § 12-8-103, enacted by Ga. L. 2009, p. 714, § 1/HB 248.

Editor's notes. — Former Code Section 12-8-103, formerly part of Article 4, concerning the powers of the Georgia Hazardous Waste Management Authority, was repealed by Ga. L. 2001, p. 873, § 5, effective July 1, 2001, and was based on Ga. L. 1981, p. 462, § 4; Ga. L. 1991, p. 1740, § 5.

12-8-104. Powers and duties of director.

(a) The director shall have the power and duty:

(1) To make determinations, in accordance with procedures and criteria enumerated in this part, as to whether a property qualifies and an applicant is eligible for the voluntary remediation program;

(2) To approve, in accordance with procedures and criteria enumerated in this part and rules and regulations promulgated pursuant to this part, voluntary remediation plans;

(3) To approve, in accordance with procedures and criteria enumerated in this part and rules and regulations promulgated pursuant to this part, compliance status reports;

(4) To concur with certifications of compliance;

(5) To collect, assess, receive, administer, and disperse funds obtained from application and reimbursement fees for the purpose of carrying out the duties and powers under this part;

(6) To enter into such agreements and contracts as required to accomplish the purposes of this part; and

(7) To grant waivers of all or any portion of the fees provided by this part for any small business or for any county, municipality, or other political subdivision of this state.

(b) The powers and duties described in subsection (a) of this Code section may be exercised and performed by the director through such duly authorized agents and employees as the director deems necessary and proper.

History. — Code 1981, § 12-8-104, enacted by Ga. L. 2009, p. 714, § 1/HB 248; Ga. L. 2010, p. 531, § 1/SB 78; Ga. L. 2011, p. 752, § 12/HB 142.

Editor's notes. — Former Code Section 12-8-104, formerly part of Article 4, concerning the power of the Georgia Hazardous Waste Management Authority to fix rentals, charge and collect rentals, and enter into leases and other contracts, was repealed by Ga. L. 2001, p. 873, § 5, effective July 1, 2001, and was based on Ga. L. 1981, p. 462, § 9.

12-8-104.1. Voluntary Remediation Escrow Account established; role and duties of director.

(a) There is established the Voluntary Remediation Escrow Account. The director shall serve as the trustee of the escrow account. The account shall consist of the application fees and reimbursement fees collected by the director pursuant to this part and pursuant to Code Section 12-8-209, and such fees shall be held in an interest-bearing account.

(b) The director is authorized to expend the principal balance of the escrow account for costs incurred in administering the voluntary remediation program including reimbursing state contractors used in the administration of such program. The director is also authorized to expend interest earned on the account for the administration of the voluntary remediation program; provided, however, that interest funds collected must be expended within the same fiscal year in which the interest was earned and any interest not so expended shall be deposited in the state treasury. Any unused funds remaining following the conclusion of a project shall be deposited in the general treasury.

History. — Code 1981, § 12-8-104.1, enacted by Ga. L. 2010, p. 531, § 2/SB 78; Ga. L. 2011, p. 752, § 12/HB 142.

12-8-105. Criteria for property qualifying for voluntary remediation program.

In order to be considered a qualifying property for the voluntary remediation program under this part, a property shall meet the following criteria:

(1) The property must be listed on the inventory under Part 2 of this article or be a property which meets the criteria of Code Section 12-8-205 or otherwise have a release of regulated substances into the environment;

(2) The property shall not:

(A) Be listed on the federal National Priorities List pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, et seq.;

(B) Be currently undergoing response activities required by an order of the regional administrator of the federal Environmental Protection Agency; or

(C) Be a facility required to have a permit under Code Section 12-8-66;

(3) Qualifying the property under this part would not violate the terms and conditions under which the division operates and administers remedial programs by delegation or similar authorization from the United States Environmental Protection Agency; and

(4) Any lien filed under subsection (e) of Code Section 12-8-96 or subsection (b) of Code Section 12-13-12 against the property shall be satisfied or settled and released by the director pursuant to Code Section 12-8-94 or Code Section 12-13-6.

History. — Code 1981, § 12-8-105, enacted by Ga. L. 2009, p. 714, § 1/HB 248.

Editor's notes. — Former Code Section 12-8-105, formerly part of Article 4, concerning the acceptance of contributions by federal agencies, was repealed by Ga. L. 2001, p. 873, § 5, effective July 1, 2001, and was based on Ga. L. 1981, p. 462, § 7.

12-8-106. Criteria for participants in voluntary remediation program.

A participant in the voluntary remediation program must meet the following criteria:

(1) Be the property owner of the voluntary remediation property or have express permission to enter another's property to perform corrective action including, to the extent applicable, implementing

controls for the site pursuant to written lease, license, order, or indenture;

(2) Not be in violation of any order, judgment, statute, rule, or regulation subject to the enforcement authority of the director; and

(3) Meet other such criteria as may be established by the board pursuant to Code Section 12-8-103.

History. — Code 1981, § 12-8-106, enacted by Ga. L. 2009, p. 714, § 1/HB 248; Ga. L. 2013, p. 141, § 12/HB 79.

Editor's notes. — Former Code Section 12-8-106, formerly part of Article 4, concerning moneys received as constituting trust funds, was repealed by Ga. L. 2001, p. 873, § 5, effective July 1, 2001, and was based on Ga. L. 1981, p. 462, § 8.

12-8-107. Submission of voluntary investigation and remediation plan; enrollment; proof of assurance; termination; compliance status.

(a) In order to enroll any qualifying property in the voluntary remediation program described in this part, an applicant shall submit to the director a voluntary investigation and remediation plan prepared by a registered professional engineer or a registered professional geologist who is registered with the State Board of Registration for Professional Engineers and Land Surveyors or the State Board of Registration for Geologists and who has experience in responsible charge of the investigation and remediation of such releases. The voluntary investigation and remediation plan shall be in such streamlined form as may be prescribed by the director; provided, however, that the plan shall, at minimum, enumerate and describe those actions planned to bring the qualifying property into compliance with the applicable cleanup standards, with one or more registered professionals to be retained by the applicant at its sole cost to oversee the investigation and remediation described in the plan; all in accordance with the provisions, purposes, standards, and policies of the voluntary remediation program. The voluntary investigation and remediation plan shall be considered an application for enrollment in the voluntary remediation program, and a nonrefundable application fee of $5,000.00 shall be submitted with the application. The director may, at any time, invoice the participant for any costs to the division in reviewing the application or subsequent document that exceed the initial application review fee, including reasonably detailed itemization and justification of the costs. Failure to remit payment within 60 days of receipt of such invoice may cause rejection of the participant from the voluntary remediation program. The director may not issue a written concurrence with a certification of compliance if there is an outstanding fee to be paid by the participant.

(b) Upon the director's approval of the voluntary investigation and remediation plan described in subsection (a) of this Code section, the qualifying property shall be deemed enrolled, and the applicant deemed a participant, in the voluntary remediation program. It shall be the responsibility of the participant to cause one or more registered professionals to oversee the implementation of said plan in accordance with the provisions, purposes, standards, and policies of this part. The registered professional shall submit at least semi-annual status reports to the director describing the implementation of the plan during the preceding period. Upon request of the applicant, the director shall have the discretion to approve annual or longer periods for submittal of status reports. Within 30 days of the director's approval of the voluntary investigation and remediation plan described in subsection (a) of this Code section, the director shall cause any relevant voluntary remediation property listed on the inventory under Part 2 of this article to be designated as undergoing corrective action pursuant to the voluntary remediation program.

(c) The director may issue an order requiring the participant to submit proof of financial assurance for continuing actions or controls upon issuance of the director's approval with the voluntary investigation and remediation plan.

(d) The participant may terminate at any time the enrollment of the property in the voluntary remediation program and the participant's requirements under this part. The director may terminate, at any time prior to approval of the compliance status report described in subsection (e) of this Code section, the enrollment of the property in the voluntary remediation program and the participant's requirements under this part if the director determines that either:

(1) The participant has failed to implement the voluntary investigation and remediation plan in accordance with the provisions, purposes, standards, and policies of the voluntary remediation program; or

(2) Such continued enrollment would result in a condition which poses an imminent or substantial danger to human health and the environment.

(e) Upon completion of corrective action under this Code section, the participant shall cause to be prepared a compliance status report confirming consistency of the corrective action with the provisions, purposes, standards, and policies of the voluntary remediation program and certifying the compliance of the relevant voluntary remediation property with the applicable cleanup standards in effect at the time.

(f) Upon receipt of the compliance status report described in subsection (d) of this Code section, a decision of concurrence with the report

and certification shall be issued on evidence satisfactory to the director that it is consistent with the provisions, purposes, standards, and policies of the voluntary remediation program. The participant shall comply with the applicable public participation requirements for compliance status reports as promulgated pursuant to Part 2 of this article. Within 90 days of the director's written concurrence, the director shall cause the property to be removed from the inventory under Part 2 of this article.

(g) In addition to other provisions of this part:

(1) The director shall remove the voluntary remediation property from the inventory if the participant demonstrates to the director at the time of enrollment, in accordance with rules and regulations promulgated by the board pursuant to Part 2 of this article, that a release exceeding a reportable quantity did not exist at the voluntary remediation property, unless the director issues a decision that such release poses an imminent or substantial danger to human health and the environment;

(2) The participant shall not be required to perform corrective action or to certify compliance for groundwater if the voluntary remediation property was listed on the inventory as a result of a release to soil exceeding a reportable quantity for soil but was not listed on the inventory as a result of a release to groundwater exceeding a reportable quantity, and if the participant further demonstrates to the director at the time of enrollment that a release exceeding a reportable quantity for groundwater does not exist at the voluntary remediation property; and the groundwater protection requirements for soils shall be based on protection of the established point of exposure for groundwater as provided under this part. The director may require annual groundwater monitoring for up to five years for a voluntary remediation property removed from the inventory pursuant to this paragraph unless the director determines that further monitoring is necessary to protect human health and the environment; and

(3) The limitations provided under subparagraph (c)(3)(B) of Code Section 12-2-2 shall not apply to the director's decisions or actions under this part.

(h) Any voluntary remediation property or site relying on controls, including, but not limited to, groundwater use restrictions for the purposes of certifying compliance with cleanup standards, shall execute a covenant restricting such use in conformance with Chapter 16 of Title 44, the "Uniform Environmental Covenants Act." The division shall maintain an inventory of such properties as provided for in that statute.

History. — Code 1981, § 12-8-107, enacted by Ga. L. 2009, p. 714, § 1/HB 248; Ga. L. 2010, p. 531, § 3/SB 78.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, a misspelling of "remediation" was corrected in paragraph (g)(2); and "Chapter 16 of Title 44, the 'Uniform Environmental Covenants Act.'" was substituted for "O.C.G.A. 44-16-1, et seq., the 'Georgia Uniform Environmental Covenants Act.'" in subsection (h).

Editor's notes. — Former Code Section 12-8-107, formerly part of Article 4, concerning payment of ad valorem taxes and percentage of gross revenues, was repealed by Ga. L. 2001, p. 873, § 5, effective July 1, 2001, and was based on Ga. L. 1981, p. 462, § 5.

12-8-108. Standards and policies considered in investigation of voluntary remediation property.

At the participant's option, any or all of the following standards and policies may be considered and used in connection with the investigation and remediation of a voluntary remediation property under this part:

(1) **Site delineation concentration criteria.** Satisfactory evidence of the definition of the horizontal and vertical delineation of soil or groundwater contamination for the purposes of this part may be determined on the basis of any of the following concentrations; provided, however, that the provisions of subparagraphs (B) and (C) of this paragraph shall not be used if the concentrations are higher than as provided in subparagraph (E) of this paragraph:

(A) Concentrations from an appropriate number of samples that are representative of local ambient or anthropogenic background conditions not affected by the subject site release;

(B) Soil concentrations less than those concentrations that require notification under standards promulgated by the board pursuant to Part 2 of this article;

(C) Two times the laboratory lower detection limit concentration using an applicable analytical test method recognized by the United States Environmental Protection Agency, provided that such concentrations do not exceed all cleanup standards;

(D) For metals in soils, the concentrations reported for Georgia undisturbed native soil samples as reported in the United States Geological Survey (USGS) Open File Report 8 1-197 (Boerngen and Shacklette, 1981), or such later version as may be adopted by rule or regulation of the board; or

(E) Default, residential cleanup standards;

(2) **Exposure pathway.** A site-specific exposure pathway shall be considered complete if there are no discontinuities in or impediments to constituent of concern movement, including without limitation

controls, from the source of the release to the receptor. Otherwise, the exposure pathway shall be incomplete and there shall be no exposure pathway that requires evaluation;

(3) **Representative exposure concentrations.** Compliance with site-specific cleanup standards shall be determined on the basis of representative concentrations of constituents of concern in soils across each applicable soil exposure domain, and the representative concentrations for groundwater at a point of exposure;

(4) **Point of demonstration monitoring for groundwater.** Concentrations of site-specific constituents of concern in groundwater shall be measured and evaluated at a point of demonstration well to demonstrate that groundwater concentrations are protective of any established downgradient point of exposure;

(5) **Cleanup standards for soil.** Compliance with site-specific cleanup standards for soil may be based on:

(A) Direct exposure factors for surficial soils within two feet of the land surface;

(B) Construction worker exposure factors for subsurface soils to a specified subsurface construction depth; and

(C) Soil concentrations for protection of groundwater criteria (at an established point of exposure for groundwater as defined under this part) for soils situated above the uppermost groundwater zone.

Whenever such depth-specific soil criteria are applied, the voluntary investigation and remediation plan for the site shall include a description of the continuing actions and controls necessary to maintain compliance;

(6) **Available cleanup standards.** Any cleanup standard lawfully promulgated pursuant to Code Section 12-8-93 that is protective of human health and the environment and accomplishes the provisions, purposes, standards, and policies of this part may be used without demonstrating that a different cleanup standard is inappropriate or impracticable;

(7) **Fate and transport parameters.** Compliance with site-specific cleanup standards may be determined on the basis of any fate and transport model recognized by the United States Environmental Protection Agency or United States Geological Survey and using most probable representative values for model parameters as adopted by the board;

(8) **Source material.** Compliance with site-specific cleanup standards that require that source material be removed may be satisfied

when such material is removed, decontaminated, or otherwise immobilized in the subsurface, to the extent practicable; and

(9) **Technical impracticability.** Site delineation or remediation beyond the point of technical impracticability shall not be required if the site does not otherwise pose an imminent or substantial danger to human health and the environment.

History. — Code 1981, § 12-8-108, enacted by Ga. L. 2009, p. 714, § 1/HB 248; Ga. L. 2010, p. 531, § 3/SB 78; Ga. L. 2010, p. 878, § 12/HB 1387.

Editor's notes. — Former Code Section 12-8-108, formerly part of Article 4, concerning maintenance of separate accounts and audits, was repealed by Ga. L. 2001, p. 873, § 5, effective July 1, 2001, and was based on Ga. L. 1981, p. 462, § 14.

ARTICLE 4

12-8-110.

Reserved.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2009, the designation of this Code section was reserved.

Editor's notes. — This article formerly pertained to the Georgia Hazardous Waste Management Authority. The former article was repealed by Ga. L. 2001, p. 875, § 5, effective July 1, 2001. The former article consisted of Code Sections 12-8-100 through 12-8-103, 12-8-103.1 and 12-8-103.2, 12-8-104 through 12-8-112, 12-8-112.1 and 12-8-112.2, and 12-8-113, relating to hazardous waste management, and was based on Ga. L. 1981, p. 462, §§ 1-14; Ga. L. 1982, p. 3, § 12; Ga. L. 1988, p. 426, § 1; Ga. L. 1988, p. 1934, §§ 1-3; Ga. L. 1989, p. 1641, § 9; Ga. L. 1990, p. 1983, §§ 1-2; Ga. L. 1991, p. 1740, §§ 1-6; Ga. L. 1992, p. 6, § 12; Ga. L. 1992, p. 2234, § 6; Ga. L. 1993, p. 91, § 12.

ARTICLE 5

SOUTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE MANAGEMENT COMPACT

Cross references. — Other interstate compacts pertaining to conservation and natural resources, T. 12, C. 10.

Administrative rules and regulations. — Radioactive waste material disposal, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection Division, Subject 391-3-9.

Radioactive materials, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection Division, Subject 391-3-17.

Law reviews. — For survey article on environment, natural resources, and land use, see 34 Mercer L. Rev. 145 (1982).

12-8-120. Short title.

This article shall be known and may be cited as the "Southeast Interstate Low-Level Radioactive Waste Management Compact."

History. — Code 1981, § 12-8-120, enacted by Ga. L. 1982, p. 2389, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "shall be known and" was inserted.

12-8-121. Compact enacted and entered into by State of Georgia.

The Southeast Interstate Low-Level Radioactive Waste Management Compact is enacted into law and entered into by the State of Georgia.

History. — Code 1981, § 12-8-121, enacted by Ga. L. 1982, p. 2389, § 1.

12-8-122. Text of compact.

The Compact is substantially as follows:

"Article I. Policy and Purpose

There is hereby created the Southeast Interstate Low-Level Radioactive Waste Management Compact. The party states recognize and declare that each state is responsible for providing for availability of capacity either within or outside the state for disposal of low-level radioactive waste generated within its borders, except for waste generated as a result of defense activities of the federal government or federal research and development activities. They also recognize that the management of low-level radioactive waste is handled most efficiently on a regional basis. The party states further recognize that the Congress of the United States, by enacting the Low-Level Radioactive Waste Policy Act (P.L. 96-573), has provided for and encouraged the development of low-level radioactive waste compacts as a tool for disposal of such waste. The party states recognize that the safe and efficient management of low-level radioactive waste generated within the region requires that sufficient capacity to dispose of such waste be properly provided.

It is the policy of the party states to: enter into a regional low-level radioactive waste management compact for the purpose of providing the instrument and framework for a cooperative effort; provide sufficient facilities for the proper management of low-level radioactive waste generated in the region, promote the health and safety of the region; limit the number of facilities required to effectively and efficiently manage low-level radioactive waste generated in the region; encourage the reduction of the amounts of low-level waste generated in

the region; distribute the costs, benefits, and obligations of successful low-level radioactive waste management equitably among the party states; and ensure the ecological and economical management of low-level radioactive wastes.

Implicit in the Congressional consent to this Compact is the expectation by the Congress and the party states that the appropriate federal agencies will actively assist the Compact Commission and the individual party states to this Compact by:

1. expeditious enforcement of federal rules, regulations, and laws; and

2. imposing sanctions against those found to be in violation of federal rules, regulations, and laws; and

3. timely inspection of their licensees to determine their capability to adhere to such rules, regulations, and laws; and

4. timely provision of technical assistance to this Compact in carrying out their obligations under the Low-Level Radioactive Waste Policy Act as amended.

ARTICLE II. DEFINITIONS

As used in this Compact, unless the context clearly requires a different construction:

a. 'Commission' or 'Compact Commission' means the Southeast Interstate Low-Level Radioactive Waste Management Commission.

b. 'facility' means a parcel of land, together with the structures, equipment, and improvements thereon or appurtenant thereto, which is used or is being developed for the treatment, storage, or disposal of low-level radioactive waste.

c. 'generator' means any person who produces or possesses low-level radioactive waste in the course of, or as an incident to, manufacturing, power generation, processing, medical diagnosis and treatment, research, or other industrial or commercial activity. This does not include persons who provide a service to generators by arranging for the collection, transportation, storage or disposal of wastes with respect to such waste generated outside the region.

d. 'high-level waste' means irradiated reactor fuel, liquid wastes from reprocessing irradiated reactor fuel, solids into which such liquid wastes have been converted, and other high-level radioactive waste as defined by the U.S. Nuclear Regulatory Commission.

e. 'host state' means any state in which a regional facility is situated or is being developed.

f. 'low-level radioactive waste' or 'waste' means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in Section 11e.(2) of the Atomic Energy Act of 1954, or as may be further defined by federal law or regulation.

g. 'party state' means any state which is a signatory party to this Compact.

h. 'person' means any individual, corporation, business enterprise, or other legal entity (either public or private).

i. 'region' means the collective party states.

j. 'regional facility' means (1) a facility as defined in this Article which has been designated, authorized, accepted, or approved by the Commission to receive waste or (2) the disposal facility in Barnwell County, South Carolina, owned by the State of South Carolina and as licensed for the burial of low-level radioactive waste on July 1, 1982, but in no event shall this disposal facility serve as a regional facility beyond December 31, 1992.

k. 'state' means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands or any other territorial possession of the United States.

l. 'transuranic wastes' means waste material containing transuranic elements with contamination levels as determined by the regulations of (1) the U.S. Nuclear Regulatory Commission or (2) any host state, if it is an agreement state under Section 274 of the Atomic Energy Act of 1954.

m. 'waste management' means the storage, treatment, or disposal of waste.

Article III. Rights and Obligations

The rights granted to the party states by this Compact are additional to the rights enjoyed by sovereign states, and nothing in this Compact shall be construed to infringe upon, limit, or abridge those rights.

a. Subject to any license issued by the U.S. Nuclear Regulatory Commission or a host state, each party state shall have the right to have all wastes generated within its borders stored, treated, or disposed of, as applicable, at regional facilities, and additionally shall have the right of access to facilities made available to the region through agreements entered into by the Commission pursuant to Article IV(e)(9). The right of access by a generator within a party state to any regional facility is limited by its adherence to applicable state and federal law and regulation.

b. If no operating regional facility is located within the borders of a party state and the waste generated within its borders must therefore be stored, treated, or disposed of at a regional facility in another state, the party state without such facilities may be required by the host state or states to establish a mechanism which provides compensation for access to the regional facility according to terms and conditions established by the host state or states and approved by a two-thirds vote of the commission.

c. Each party state must establish the capability to regulate, license, and ensure the maintenance and extended care of any facility within its borders. Host states are responsible for the availability, the subsequent post-closure observation and maintenance, and the extended institutional control of their regional facilities, in accordance with the provisions of Article V, Section b.

d. Each party state must establish the capability to enforce any applicable federal or state laws and regulations pertaining to the packaging and transportation of waste generated within or passing through its borders.

e. Each party state must provide to the Commission on an annual basis, any data and information necessary to the implementation of the Commission's responsibilities. Each party state shall establish the capability to obtain any data and information necessary to meet its obligation herein defined.

f. Each party state must, to the extent authorized by federal law, require generators within its borders to use the best available waste management technologies and practices to minimize the volumes of wastes requiring disposal.

ARTICLE IV. THE COMMISSION

a. There is hereby created the Southeast Interstate Low-Level Radioactive Waste Management Commission ('Commission' or 'Compact Commission'). The Commission shall consist of two voting members from each party state to be appointed according to the laws of each state. The appointing authorities of each state must notify the Commission in writing of the identity of its members and any alternates. An alternate may act on behalf of the member only in the member's absence.

b. Each Commission member is entitled to one vote. No action of the Commission shall be binding unless a majority of the total membership cast their vote in the affirmative, or unless a greater than majority vote is specifically required by any other provision of this Compact.

c. The Commission must elect from among its members a presiding officer. The Commission shall adopt and publish, in convenient form, by-laws which are consistent with this Compact.

d. The Commission must meet at least once a year and shall also meet upon the call of the presiding officer, by petition of a majority of the party states, or upon the call of a host state. All meetings of the Commission must be open to the public.

e. The Commission has the following duties and powers:

1. to receive and approve the application of a non-party state to become an eligible state in accordance with the provisions of Article VII(b); and,

2. to receive and approve the application of an eligible state to become a party state in accordance with the provisions of Article VII(c); and

3. to submit an annual report and other communications to the governors and to the presiding officer of each body of the legislature of the party states regarding the activities of the Commission; and

4. to develop and use procedures for determining, consistent with considerations for public health and safety, the type and number of regional facilities which are presently necessary and which are projected to be necessary to manage waste generated within the region; and

5. to provide the party states with reference guidelines for establishing the criteria and procedures for evaluating alternative locations for emergency or permanent regional facilities; and

6. to develop and adopt, within one year after the Commission is constituted as provided in Article VII, Section d., procedures and criteria for identifying a party state as a host state for a regional facility as determined pursuant to the requirements of this Article. In accordance with these procedures and criteria, the Commission shall identify a host state for the development of a second regional disposal facility within three years after the Commission is constituted as provided for in Article VII, Section d. and shall seek to ensure that such facility is licensed and ready to operate as soon as required but in no event later than 1991.

In developing criteria, the Commission must consider the following: the health, safety, and welfare of the citizens of the party states; the existence of regional facilities within each party state; the minimization of waste transportation; the volumes and types of wastes generated within each party state; and the environmental, economic, and ecological impacts on the air, land and water resources of the party states.

The Commission shall conduct such hearings, require such reports, studies, evidence, and testimony, and do what is required by its

approved procedures in order to identify a party state as a host state for a needed regional facility; and

7. in accordance with the procedures and criteria developed pursuant to section (e)(6) of this Article, to designate, by a two-thirds vote, a host state for the establishment of a needed regional facility. The Commission shall not exercise this authority unless the party states have failed to voluntarily pursue the development of such facility. The Commission shall have the authority to revoke the membership of a party state that willfully creates barriers to the siting of a needed regional facility; and

8. to require of and obtain from party states, eligible states seeking to become party states, and non-party states seeking to become eligible states, data and information necessary to the implementation of Commission responsibilities; and

9. notwithstanding any other provision of this Compact, to enter into agreements with any person, state, or similar regional body or group of states for the importation of waste into the region and for the right of access to facilities outside the region for waste generated within the region. The authorization to import requires a two-thirds majority vote of the Commission, including an affirmative vote of both representatives of the host state in which any affected regional facility is located. This shall be done only after an assessment of the affected facilities' capability to handle such wastes; and

10. to act or appear on behalf of any party state or states, only upon written request of both members of the Commission for such state or states, as an intervenor or party in interest before Congress, state legislatures, any court of law, or any federal, state, or local agency, board, or commission which has jurisdiction over the management of wastes. The authority to act, intervene, or otherwise appear shall be exercised by the Commission, only after approval by a majority vote of the Commission; and

11. to revoke the membership of a party state in accordance with Article VII(f).

f. The Commission may establish any advisory committees as it deems necessary for the purpose of advising the Commission on any matters pertaining to the management of low-level radioactive waste.

g. The Commission may appoint or contract for and compensate a limited staff necessary to carry out its duties and functions. The staff shall serve at the Commission's pleasure irrespective of the civil service, personnel, or other merit laws of any of the party states or the federal government and shall be compensated from funds of the Commission. In selecting any staff, the Commission shall assure that

the staff has adequate experience and formal training to carry out such functions as may be assigned to it by the Commission. If the Commission has a headquarters it shall be in a party state.

h. Funding for the Commission shall be provided as follows:

1. each eligible state, upon becoming a party state, shall pay $25,000 to the Commission which shall be used for costs of the Commission's services.

2. each state hosting a regional disposal facility shall annually levy special fees or surcharges on all users of such facility, based upon the volume of wastes disposed of at such facilities, the total of which:

(a) must be sufficient to cover the annual budget of the Commission; and

(b) must represent the financial commitments of all party states to the Commission; and

(c) must be paid to the Commission, provided, however, that each host state collecting such fees or surcharges may retain a portion of the collection sufficient to cover its administrative costs of collection, and that the remainder be sufficient only to cover the approved annual budgets of the Commission.

3. The Commission must set and approve its first annual budget as soon as practicable after its initial meeting. Host states for disposal facilities must begin imposition of the special fees and surcharges provided for in this section as soon as practicable after becoming party states, and must remit to the Commission funds resulting from collection of such special fees and surcharges within 60 days of their receipt.

i. The Commission must keep accurate accounts of all receipts and disbursements. An independent certified public accountant shall annually audit all receipts and disbursements of Commission funds, and submit an audit report to the Commission. Such audit report shall be made a part of the annual report of the Commission required by Article IV(e)(3).

j. The Commission may accept for any of its purposes and functions any and all donations, grants of money, equipment, supplies, materials, and services (conditional or otherwise) from any state, or the United States, or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm or corporation, and may receive, utilize, and dispose of the same. The nature, amount, and condition, if any, attendant upon any donation or grant accepted pursuant to this paragraph, together with the identity of the donor, grantor, or lender, shall be detailed in the annual report of the Commission.

k. The Commission is not responsible for any costs associated with (1) the creation of any facility, (2) the operation of any facility, (3) the stabilization and closure of any facility, (4) the post-closure observation and maintenance of any facility, or (5) the extended institutional control, after post-closure observation and maintenance of any facility.

l. As of January 1, 1986, the management of wastes at regional facilities is restricted to wastes generated within the region, and to wastes generated within non-party states when authorized by the Commission pursuant to the provisions of this compact. After January 1, 1986, the Commission may prohibit the exportation of waste from the region for the purposes of management.

m.1. The Commission herein established is a legal entity separate and distinct from the party states, capable of acting in its own behalf, and is liable for its actions. Liabilities of the Commission shall not be deemed liabilities of the party states. Members of the Commission shall not be personally liable for actions taken by them in their official capacity.

2. Except as specifically provided in this Compact, nothing in this Compact shall be construed to alter the incidence of liability of any kind for any act, omission, course of conduct, or on account of any casual or other relationships. Generators, transporters of wastes, and owners and operators of sites shall be liable for their acts, omissions, conduct, or relationships in accordance with all laws relating thereto.

ARTICLE V. DEVELOPMENT AND OPERATION OF FACILITIES

a. Any party state which becomes a host state in which a regional facility is operated shall not be designated by the Compact Commission as a host state for an additional regional facility until each party state has fulfilled its obligation, as determined by the Commission, to have a regional facility operated within its borders.

b. A host state desiring to close a regional facility located within its borders may do so only after notifying the Commission in writing of its intention to do so and the reasons therefor. Such notification shall be given to the Commission at least four years prior to the intended date of closure. Notwithstanding the four year notice requirement herein provided, a host state is not prevented from closing its facility or establishing conditions of its use and operations as necessary for the protection of the health and safety of its citizens. A host state may terminate or limit access to its regional facility if it determines that Congress has materially altered the conditions of this compact.

c. Each party state designated as a host for a regional facility shall take appropriate steps to ensure that an application for a license to construct and operate a facility of the designated type is filed with and issued by the appropriate authority.

d. No party state shall have any form of arbitrary prohibition on the treatment, storage, or disposal of low-level radioactive waste within its borders.

e. No party state shall be required to operate a regional facility for longer than a 20-year period, or to dispose of more than 32,000,000 cubic feet of low-level radioactive waste, whichever first occurs.

ARTICLE VI. OTHER LAWS AND REGULATIONS

a. Nothing in this Compact shall be construed to:

1. abrogate or limit the applicability of any act of Congress or diminish or otherwise impair the jurisdiction of any federal agency expressly conferred thereon by the Congress;

2. abrogate or limit the regulatory responsibility and authority of the U.S. Nuclear Regulatory Commission or of an agreement state under Section 274 of the Atomic Energy Act of 1954 in which a regional facility is located;

3. make inapplicable to any person or circumstance any other law of a party state which is not inconsistent with this Compact;

4. make unlawful the continued development and operation of any facility already licensed for development or operation on the date this Compact becomes effective, except that any such facility shall comply with Article III, Article IV and Article V and shall be subject to any action lawfully taken pursuant thereto;

5. prohibit any storage or treatment of waste by the generator on its own premises;

6. affect any judicial or administrative proceeding pending on the effective date of this Compact;

7. alter the relations between, and the respective internal responsibilities of, the government of a party state and its subdivisions; and

8. affect the generation, treatment, storage, or disposal of waste generated by the atomic energy defense activities of the Secretary of the U.S. Department of Energy or federal research and development activities as defined in P.L. 96-573;

9. affect the rights and powers of any party state and its political subdivisions to regulate and license any facility within its borders or to affect the rights and powers of any party state and its political subdivisions to tax or impose fees on the waste managed at any facility within its borders.

b. No party state shall pass any law or adopt any regulation which is inconsistent with this Compact. To do so may jeopardize the membership status of the party state.

c. Upon formation of the compact no law or regulation of a party state or of any subdivision or instrumentality thereof may be applied so as to restrict or make more inconvenient access to any regional facility by the generators of another party state than for the generators of the state where the facility is situated.

d. Restrictions of waste management of regional facilities pursuant to Article IV shall be enforceable as a matter of state law.

ARTICLE VII. ELIGIBLE PARTIES, WITHDRAWAL, REVOCATION, ENTRY INTO FORCE, TERMINATION

a. This Compact shall have as initially eligible parties the States of Alabama, Florida, Georgia, Mississippi, North Carolina, South Carolina, Tennessee, and Virginia.

b. Any state not expressly declared eligible to become a party state to this Compact in section (a) of this Article may petition the Commission, once constituted, to be declared eligible. The Commission may establish such conditions as it deems necessary and appropriate to be met by a state wishing to become eligible to become a party state to this Compact pursuant to the provisions of this section. Upon satisfactorily meeting such conditions and upon the affirmative vote of two-thirds of the Commission, including the affirmative vote of both representatives of a host state in which any affected regional facility is located, the petitioning state shall be eligible to become a party state to this Compact and may become a party state in the same manner as those states declared eligible in section (a) of this Article.

c. Each state eligible to become a party state to this Compact shall be declared a party state upon enactment of this Compact into law by the state and upon payment of the fees required by Article IV(h)(1). The Commission is the judge of the qualifications of the party states and of its members and of their compliance with the conditions and requirements of this Compact and the laws of the party states relating to the enactment of this Compact.

d.1. The first three states eligible to become party states to this Compact which enact this Compact into law and appropriate the fees required by Article IV(h)(1) shall immediately, upon the appointment of their Commission members, constitute themselves as the Southeast Interstate Low-Level Radioactive Waste Management Commission, shall cause legislation to be introduced in the Congress which grants the consent of the Congress to this Compact, and shall do those things necessary to organize the Commission and implement the provisions of this Compact.

2. All succeeding states eligible to become party states to this Compact shall be declared party states pursuant to the provisions of section c of this Article.

3. The consent of the Congress shall be required for full implementation of this Compact. The provisions of Article V, Section d. shall not become effective until the effective date of the import ban authorized by Article IV, Section L as approved by Congress. The Congress may by law withdraw its consent only every five years.

e. No state which holds membership in any other regional compact for the management of low-level radioactive waste may be considered by the Compact Commission for eligible state status or party state status.

f. Any party state which fails to comply with the provisions of this Compact or to fulfill the obligations incurred by becoming a party state to this Compact may be subject to sanctions by the Commission, including suspension of its rights under this Compact, and revocation of its status as a party state. Any sanction shall be imposed only upon the affirmative vote of at least two-thirds of the Commission members. Revocation of party state status may take effect on the date of the meeting at which the Commission approves the resolution imposing such sanction, but in no event shall revocation take effect later than 90 days from the date of such meeting. Rights and obligations incurred by being declared a party state to this Compact shall continue until the effective date of the sanction imposed or as provided in the resolution of the Commission imposing the sanction.

The Commission must, as soon as practicable after the meeting at which a resolution revoking status as a party state is approved, provide written notice of the action along with a copy of the resolution to the governors, the presidents of the senates, and the speakers of the houses of representatives of the party states, as well as chairmen of the appropriate committees of the Congress.

g. Subject to the provisions of Article VII, Section h., any party state may withdraw from this Compact by enacting a law repealing the Compact, provided that if a regional facility is located within such state, such regional facility shall remain available to the region for four years after the date the Commission receives notification in writing from the governor of such party state of the rescission of the Compact. The Commission, upon receipt of the notification, shall, as soon as practicable, provide copies of such notification to the governors, the presidents of the senates, and the speakers of the houses of representatives of the party states, as well as the chairmen of the appropriate committees of the Congress.

h. The right of a party state to withdraw pursuant to Article VII Section g. shall terminate thirty days following the commencement of operation of the second host state disposal facility. Thereafter, a party state may withdraw only with the unanimous approval of the Commis-

sion and with the consent of Congress. For purposes of this section, the low-level radioactive waste disposal facility located in Barnwell County, South Carolina shall be considered the first host state disposal facility.

i. This Compact may be terminated only by the affirmative action of the Congress or by the rescission of all laws enacting the Compact in each party state.

Article VIII. Penalties

a. Each party state, consistently with its own law, shall prescribe and enforce penalties against any person not an official of another state for violation of any provision of this Compact.

b. Each party state acknowledges that the receipt by a host state of waste packaged or transported in violation of applicable laws and regulations can result in imposition of sanctions by the host state which may include suspension or revocation of the violator's right of access to the facility in the host state.

Article IX. Severability and Construction

The provisions of this Compact shall be severable and if any phrase, clause, sentence, or provision of this Compact is declared by a court of competent jurisdiction to be contrary to the Constitution of any participating state or of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this Compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If any provision of this Compact shall be held contrary to the Constitution of any state participating therein, the Compact shall remain in full force and effect as to the state affected as to all severable matters. The provisions of this Compact shall be liberally construed to give effect to the purposes thereof."

History. — Code 1981, § 12-8-122, enacted by Ga. L. 1982, p. 2389, § 1; Ga. L. 1983, p. 3, § 9; Ga. L. 1984, p. 876, § 2; Ga. L. 1988, p. 948, §§ 1-4.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, "management" was substituted for "mangagement" in section (e)(10) of Article IV.

Editor's notes. — Ga. L. 1984, p. 876, § 1, not codified by the General Assembly, provided as follows: "The General Assembly of Georgia finds and declares that it is the intent of this Act to revise the text of the Southeast Interstate Low-Level Radioactive Waste Management Compact so as to conform the text of the compact as such appears in the Official Code of Georgia Annotated to the uniform text of the compact as agreed to by the several states."

U.S. Code. — The Atomic Energy Act of 1954, referred to in this Code section, is codified at 42 U.S.C. § 2011 et seq.

The Low-Level Radioactive Waste Policy Act, P.L. 96-573, referred to in this Code section, is codified at 42 U.S.C. § 2021b et seq.

Law reviews. — For survey article on environment, natural resources, and land use, see 34 Mercer L. Rev. 145 (1982).

12-8-123. Appointment of members of Southeast Interstate Low-Level Radioactive Waste Management Commission and their alternates.

The members of the commission from the State of Georgia and their alternates shall be appointed by the Governor to serve as members of the commission and alternates at the pleasure of the Governor.

History. — Code 1981, § 12-8-123, enacted by Ga. L. 1982, p. 2389, § 1.

ARTICLE 6

MITIGATING EFFECT OF HAZARDOUS MATERIALS DISCHARGE

12-8-140. Definitions.

As used in this article, the term:

(1) "Director" means the director of the Environmental Protection Division of the Department of Natural Resources.

(2) "Discharge" means leakage, seepage, or other release of hazardous materials on land or into a river, stream, lake, or other body of water or into the air.

(3) "Hazardous materials" means any material which because of its quantity, concentration, or physical, chemical, or infectious characteristics may:

(A) Cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness; or

(B) Pose a substantial present or potential hazard to human health or to the environment when improperly treated, stored, transported, disposed of, or otherwise managed.

(4) "Person" means an individual, partnership, association, corporation, firm, or other entity.

History. — Code 1981, § 12-8-140, enacted by Ga. L. 1987, p. 810, § 1.

12-8-141. Immunity for persons providing assistance or advice.

(a) Except as otherwise provided in this Code section, no person who upon request provides assistance or advice in mitigating or attempting to mitigate the effects of an actual or threatened discharge of hazardous

materials or in preventing, or in attempting to prevent, such a discharge shall be subject to civil liabilities or penalties of any type.

(b) Nothing in subsection (a) of this Code section shall be construed to limit or otherwise affect the liability of any person for damages or other civil liabilities or penalties of any type resulting from such person's gross negligence or from such person's reckless, wanton, or intentional misconduct.

(c) Nothing in subsection (a) of this Code section shall be construed to limit or otherwise affect the liability for damages or other civil or criminal liabilities or penalties of any type of any person whose conduct caused in whole or in part or contributed to such actual or threatened discharge of hazardous material.

(d) Nothing in subsection (a) of this Code section shall be construed to limit or otherwise affect the liability of any person for civil or criminal liabilities or penalties pursuant to Part 1 of Article 3 of this chapter or the legal responsibility of any person to comply with Part 1 of Article 3 of this chapter.

(e) Nothing in subsection (a) of this Code section shall be construed to limit or otherwise affect the liability for damages or other civil or criminal liabilities or penalties of any person, as defined in this article, who receives or expects to receive compensation or any pecuniary benefit, directly or indirectly, from any source, other than reimbursement for out-of-pocket expenses for services in rendering such assistance or advice.

History. — Code 1981, § 12-8-141, enacted by Ga. L. 1987, p. 810, § 1; Ga. L. 1988, p. 13, § 12; Ga. L. 1992, p. 2234, § 7.

12-8-142. Report of persons providing assistance.

Any person who provides assistance or advice under subsection (a) of Code Section 12-8-141 shall file a written report with the director. The reports shall be filed within five days of the rendering of such assistance or advice and shall detail the assistance and advice rendered and, when applicable, the location and method of disposal of any hazardous materials disposed of as a part of such assistance or advice. This Code section shall not apply to any local, state, or federal agency or government nor to any employee thereof.

History. — Code 1981, § 12-8-142, enacted by Ga. L. 1987, p. 810, § 1.

ARTICLE 7

PRODUCT PACKAGING

12-8-160. Legislative findings and declarations.

The General Assembly finds and declares that:

(1) The management of solid waste can pose a wide range of hazards to public health and safety and to the environment;

(2) Packaging comprises a significant percentage of the overall solid waste stream;

(3) The presence of heavy metals in packaging is a concern in light of the likely presence of heavy metals in emissions or ash when packaging is incinerated or in leachate when packaging is landfilled;

(4) Lead, mercury, cadmium, and hexavalent chromium, on the basis of available scientific and medical evidence, are of particular concern;

(5) It is desirable as a first step in reducing the toxicity of packaging waste to eliminate the addition of heavy metals to packaging; and

(6) It is desirable to achieve reduction in toxicity without impeding or discouraging the expanded use of postconsumer materials in the production of packaging and its components.

History. — Code 1981, § 12-8-160, enacted by Ga. L. 1992, p. 2968, § 1.

12-8-161. Definitions.

As used in this article, the term:

(1) "Board" means the Board of Natural Resources.

(2) "Distributor" means a person who takes title to products or packaging purchased for resale.

(3) "Manufacturer" means a person who offers for sale or sells products or packaging to a distributor.

(4) "Package" means a container which provides a means of marketing, protecting, or handling a product, including a unit package, intermediate package, or a shipping container. The term "package" also includes, but is not limited to, unsealed receptacles such as carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags, and tubs.

(5) "Packaging component" means any individual assembled part of a package, including but not limited to interior and exterior blocking, bracing, cushioning, weatherproofing, exterior strapping except for steel strapping which contains less than 100 ppm lead, coatings, closures, inks, labels, and tinplated steel that meets the American Society for Testing and Materials (ASTM) specification A-623.

History. — Code 1981, § 12-8-161, enacted by Ga. L. 1992, p. 2968, § 1; Ga. L. 1994, p. 1101, § 5.

12-8-162. Prohibition against sale of packages containing lead, cadmium, mercury, or hexavalent chromium; allowable concentration levels.

(a) On and after July 1, 1994, no manufacturer or distributor shall offer for sale, sell, or offer for promotional purposes in this state a package or packaging component which includes, in the package itself or in any packaging component, inks, dyes, pigments, adhesives, stabilizers, or any other additives containing lead, cadmium, mercury, or hexavalent chromium which has been intentionally introduced as an element during manufacturing or distribution as opposed to the incidental presence of any of these elements and which exceeds the concentration level established by the board.

(b) On and after July 1, 1994, no manufacturer or distributor shall offer for sale, sell, or offer for promotional purposes in this state a product in a package which includes, in the package itself or in any of the packaging components, inks, dyes, pigments, adhesives, stabilizers, or any other additives containing lead, cadmium, mercury, or hexavalent chromium which has been intentionally introduced as an element during manufacturing or distribution as opposed to the incidental presence of any of these elements and which exceeds the concentration level established by the board.

(c) The sum of the concentration levels of lead, cadmium, mercury, and hexavalent chromium present in a package or packaging component established by the board shall not exceed the following:

(1) Six hundred parts per million by weight on and after July 1, 1994;

(2) Two hundred fifty parts per million by weight on and after July 1, 1995; and

(3) One hundred parts per million by weight on and after July 1, 1996.

Concentration levels of lead, cadmium, mercury, and hexavalent chromium shall be determined using American standard of testing materi-

als test methods, as revised, or United States Environmental Protection Agency test methods for evaluating solid waste, S-W 846, as revised.

History. — Code 1981, § 12-8-162, enacted by Ga. L. 1992, p. 2968, § 1.

12-8-163. Exempt packaging.

The following packaging and packaging components are exempt from the requirements of this article:

(1) Packaging or packaging components with a code indicating a date of manufacture prior to July 1, 1994;

(2) Packages or packaging components to which lead, cadmium, mercury, or hexavalent chromium have been added in the manufacturing, forming, printing, or distribution process in order to comply with health or safety requirements of federal law or for which there is no feasible alternative if the manufacturer of a package or packaging component petitions the board for an exemption from the provisions of this article for a particular package or packaging component. The board may grant a two-year exemption, if warranted by the circumstances, and an exemption may, upon meeting either criterion of this paragraph, be renewed for two years. For purposes of this paragraph, a use for which there is no feasible alternative is one in which the regulated substance is essential to the protection, safe handling, or function of the package's contents;

(3) Packages and packaging components that would not exceed the maximum contaminant levels established but for the addition of postconsumer materials; or

(4) All alcohol products bottled prior to January 1, 1994.

History. — Code 1981, § 12-8-163, enacted by Ga. L. 1992, p. 2968, § 1.

12-8-164. Certificates of compliance.

On and after July 1, 1994, each manufacturer or distributor of packaging or packaging components shall make available to purchasers, the board, and the general public, upon request, certificates of compliance which state that the manufacturer's or distributor's packaging or packaging components comply with, or are exempt from, the requirements of this article. If the manufacturer or distributor of the package or packaging component reformulates or creates a new package or packaging component, the manufacturer or distributor shall provide an amended or new certificate of compliance for the reformulated or new package or packaging component.

History. — Code 1981, § 12-8-164, enacted by Ga. L. 1992, p. 2968, § 1.

12-8-165. Rules and regulations.

The board shall be authorized to adopt, promulgate, modify, amend, and repeal rules and regulations to implement and enforce the provisions of this article as the board may deem necessary.

History. — Code 1981, § 12-8-165, enacted by Ga. L. 1992, p. 2968, § 1.

12-8-166. Violation of article.

Any person who violates any provision of this article shall be guilty of a misdemeanor.

History. — Code 1981, § 12-8-166, enacted by Ga. L. 1992, p. 2968, § 1.

ARTICLE 8

POLLUTION PREVENTION ASSISTANCE DIVISION

Administrative rules and regulations. — Pollution prevention action grant program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, The Pollution Prevention Assistance Division, Grant Program Division, Sec. 391-7-1-01.

12-8-180. Definitions.

As used in this article, the term:

(1) "Board" means the Board of Natural Resources.

(2) "Commissioner" means the commissioner of natural resources.

(3) "Division" means the Pollution Prevention Assistance Division of the Department of Natural Resources.

(4) "Division director" means the director of the division.

(5) "Environmental Protection Division" means the Environmental Protection Division of the Department of Natural Resources.

History. — Code 1981, § 12-8-180, enacted by Ga. L. 1993, p. 1429, § 1.

12-8-181. Establishment of division; appointment of director; voluntary activities of businesses and industries.

(a) There is established within the Department of Natural Resources the Pollution Prevention Assistance Division. The commissioner shall appoint a division director, subject to the approval of the board, who shall serve at the pleasure of the commissioner.

(b) Any other provision of this article to the contrary notwithstanding, participation by private businesses and industries in the assistance activities of the division shall be voluntary.

History. — Code 1981, § 12-8-181, enacted by Ga. L. 1993, p. 1429, § 1.

12-8-182. Administrative responsibility of division; duty of division director; rules and regulations of board.

(a) The division shall have responsibility for the administration of this article.

(b) The division director shall assist the commissioner in instituting activities to fulfill the purposes of this article.

(c) The board shall have the authority to promulgate and adopt rules and regulations to carry out the purposes of this article.

History. — Code 1981, § 12-8-182, enacted by Ga. L. 1993, p. 1429, § 1; Ga. L. 2002, p. 415, § 12.

12-8-183. Pollution prevention assistance plan.

(a) Not later than October 1, 1994, the division shall complete a pollution prevention assistance plan to achieve voluntary participation by businesses and industries within the state in programs and activities designed to prevent the pollution of the environment by the products and by-products of such businesses and industries. The plan shall establish the objectives of the division and address such matters as the division deems appropriate.

(b) The division shall publish the plan developed pursuant to subsection (a) of this Code section for public comment and shall send a copy of the plan to the board, the Governor, the Speaker of the House of Representatives, and the President of the Senate for comment. The division shall seek and encourage public comment on the plan and shall document and consider such comments.

(c) The division shall present a final plan to the commissioner within 60 days after publication for public comment. If the commissioner

approves, the division shall implement the plan. The plan may be amended from time to time as required or appropriate, after public notice and comment.

History. — Code 1981, § 12-8-183, enacted by Ga. L. 1993, p. 1429, § 1.

12-8-184. Confidentiality of information provided by business or industry; ownership of reports and plans.

The division shall not disclose to the public any information designated by law as confidential or proprietary provided by any business or industry in the course of developing and implementing pollution prevention and environmental waste reduction assessments and activities. Pollution prevention and environmental waste reduction reports and plans developed by or for any business or industry shall be the property of such business or industry, except as otherwise agreed to and except for such reports as otherwise required by law to be the property of the division.

History. — Code 1981, § 12-8-184, enacted by Ga. L. 1993, p. 1429, § 1.

12-8-185. Duty of division to advise on rules and regulations governing toxic substances.

The division shall advise the director of the Environmental Protection Division on rules and regulations of the Environmental Protection Division governing toxic substance production, use, transport, distribution, and release into the workplace or the environment.

History. — Code 1981, § 12-8-185, enacted by Ga. L. 1993, p. 1429, § 1.

12-8-186. Biennial report of division.

On or before November 15, 1994, and biennially thereafter, the division shall prepare and present to the board, the Governor, the Speaker of the House of Representatives, and the President of the Senate a report of the division's operations and activities pursuant to this article and an assessment of the future hazardous waste disposal capacity needs of the state. The report shall review progress toward pollution prevention and environmental waste reduction goals, provide an evaluation of progress by businesses and industries in this state, and make any appropriate recommendations for legislative action. The report shall include a proposed work plan for the following biennium which will provide, to the extent possible, an evaluation of projects and strategies for bringing about voluntary pollution prevention and waste

reduction, alternatives to toxic use, objectives, financing, and institutional innovations. The report may also include amendments to the plan required under Code Section 12-8-183.

History. — Code 1981, § 12-8-186, enacted by Ga. L. 1993, p. 1429, § 1.

12-8-187. Preparation by division of biennial report of hazardous waste generators and capacity assurance plan.

The division may, at the direction of the commissioner, prepare the biennial report of hazardous waste generators required under Section 104(k) of the Superfund Amendments and Reauthorization Act of 1986 and prepare the capacity assurance plan required under 40 C.F.R. 262.41.

History. — Code 1981, § 12-8-187, enacted by Ga. L. 1993, p. 1429, § 1.

12-8-188. Biennial needs assessment report on hazardous waste management facility.

The division shall no less than biennially assess capacity, demand, generation, and other factors which may affect the determination of the need for a hazardous waste management facility in Georgia to be built with state support and involvement and shall include in the biennial report required by Code Section 12-8-186 a needs assessment report relative to the need for such a facility and the continued need for the assessment required by this Code section.

History. — Code 1981, § 12-8-188, enacted by Ga. L. 1993, p. 1429, § 1; Ga. L. 2002, p. 415, § 12.

12-8-189. Transfer of personnel and facilities of Georgia Hazardous Waste Management Authority and other state programs to division.

(a) On October 1, 1993, the staff and physical and financial assets, property, records, and programs of the Georgia Hazardous Waste Management Authority shall be transferred to the division for administration and use by the division. Any funding subsequent to October 1, 1993, designated for or to such authority shall be directed to the division for administration and use by the division. Upon approval of the commissioner, the staff of the division may serve as staff to such authority for such periods of time as is determined by the commissioner to be necessary.

(b) State programs of waste reduction, pollution prevention, and reporting implemented by other agencies, authorities, or divisions may be transferred, along with any financial and physical assets and records which are used in support of said programs, to the division for administration and use by the division.

History. — Code 1981, § 12-8-189, enacted by Ga. L. 2004, p. 631, § 12.

Editor's notes. — The former provisions of Code Section 12-8-189, concerning the transfer of personnel and facilities of the Georgia Hazardous Waste Management Authority and other state programs to the division, were based on Ga. L. 1993, p. 1429, § 1 and were repealed by Ga. L. 2002, p. 415, § 12, effective April 18, 2002.

ARTICLE 9

GEORGIA BROWNFIELD PROGRAM

Law reviews. — For review of 1998 legislation relating to conservation and natural resources, see 15 Ga. St. U.L. Rev. 21 (1998).

12-8-200. Short title.

This article shall be known and may be cited as the "Georgia Brownfield Act."

History. — Code 1981, § 12-8-200, enacted by Ga. L. 2002, p. 927, § 6; Ga. L. 2014, p. 247, § 1/HB 957.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, "Act.'" was substituted for "Act'. "

Law reviews. — For note on the 2002 enactment of this article, see 19 Ga. St. U.L. Rev. 59 (2002).

12-8-201. Public policy.

(a) It is declared to be the public policy of the State of Georgia, in furtherance of its responsibility to protect the public health, safety, and well-being of its citizens and to protect and enhance the quality of its environment, to encourage the clean up, reuse, and redevelopment of properties where there have been releases of hazardous waste, hazardous constituents, and hazardous substances, into the environment.

(b) The General Assembly declares its intent to fund the execution of the public policy set forth in subsection (a) of this Code section by and through the division with application review fees established and collected by the division pursuant to Code Section 12-8-209. The General Assembly further declares its intent to ensure that the funding provided by the application review fees will not be diverted for any purpose other than the administration of this article by the division. Appropriation of funds to the Department of Natural Resources for inclusion in the hazardous waste trust fund continued in existence by

subsection (a) of Code Section 12-8-95 shall be deemed consistent with this declaration of legislative intent.

History. — Code 1981, § 12-8-201, enacted by Ga. L. 2002, p. 927, § 6.

Editor's notes. — Ga. L. 2002, p. 927, § 6, effective July 1, 2002, redesignated former Code Section 12-8-201 as present Code Section 12-8-202.

12-8-202. Definitions.

(a) Unless otherwise provided in this article, the definition of all terms included in Code Sections 12-8-62 and 12-8-92 shall be applicable to this article.

(b) As used in this article, the term:

(1) "Corrective action plan" means the corrective action plan required by Code Section 12-8-207.

(2) "Ground water" means any subsurface water that is in a zone of saturation.

(3) "Petroleum" means petroleum, including crude oil or any fraction thereof (including gasoline, gasohol, diesel fuel, fuel oils including #2 fuel oil, kerosene, or jet turbine fuel), that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

(4) "Preexisting release" means a release, as such term is defined in paragraph (11) of Code Section 12-8-92, which occurred prior to the prospective purchaser's application for a limitation of liability pursuant to this article. The term "preexisting release" includes but is not limited to release of petroleum even if such release is from an underground storage tank system as defined in paragraph (18) of Code Section 12-13-3.

(5) "Property interest" means any interest in real property, without regard to whether such interest is exclusive or possessory.

(6) "Prospective purchaser" means a person who intends to acquire a property interest in a property where there is a preexisting release or a person who has applied for a limitation of liability pursuant to this article within 30 days of acquiring such property interest in a property where there is a preexisting release.

(7) "Qualifying property" means a property which meets the criteria of Code Section 12-8-205.

(8) "Risk reduction standards" means those standards promulgated by the board pursuant to Part 2 of Article 3 of this chapter.

(9) "Soil" means any unconsolidated earth material, together with any unconsolidated plant or animal matter or foreign material that

has been incorporated into it, that either consists of or remains within, or comes to be deposited on, native soil or regolith.

(10) "Source material" means any preexisting release that acts or may likely act as a reservoir for continued releases to ground water, soil, surface water, or air or act as a source for direct exposure.

History. — Code 1981, § 12-8-201, enacted by Ga. L. 1996, p. 993, § 4; Ga. L. 1998, p. 1667, § 2; Code 1981, § 12-8-202, as redesignated by Ga. L. 2002, p. 927, § 6; Ga. L. 2005, p. 1227, § 1/SB 277; Ga. L. 2006, p. 72, § 12/SB 465; Ga. L. 2012, p. 843, § 1C/HB 1102; Ga. L. 2014, p. 247, § 2/HB 957.

Editor's notes. — Ga. L. 2002, p. 927, § 6, effective July 1, 2002, redesignated former Code Section 12-8-202 as present Code Section 12-8-203.

12-8-203. Rules and regulations.

(a) The board shall have the power to adopt, promulgate, modify, amend, and repeal rules and regulations to implement and enforce the provisions of this article as necessary to provide for the redevelopment and return to productive use certain qualifying properties. Such rules and regulations may be applicable to the state as a whole or may vary from region to region, as may be appropriate to facilitate the accomplishment of the provisions, purposes, and policies of this article.

(b) The board's rules and regulations shall include, but shall not be limited to, the following:

(1) Rules and regulations governing the eligibility criteria of prospective purchasers seeking a limitation of liability;

(2) Rules and regulations governing procedures for application and approval of prospective purchasers seeking a limitation of liability; and

(3) Rules and regulations governing procedures and criteria for determining whether a prospective purchaser qualifies for a limitation of liability.

History. — Code 1981, § 12-8-202, enacted by Ga. L. 1996, p. 993, § 4; Ga. L. 1998, p. 1667, § 2; Code 1981, § 12-8-203, as redesignated by Ga. L. 2002, p. 927, § 6.

Editor's notes. — Ga. L. 2002, p. 927, § 6, effective July 1, 2002, redesignated former Code Section 12-8-203 as present Code Section 12-8-204.

12-8-204. Powers and duties of director.

(a) The director shall have the power and duty:

(1) To make determinations, in accordance with procedures and criteria enumerated in this article and rules and regulations promulgated pursuant to this article, as to whether a prospective purchaser qualifies for a limitation of liability;

(2) To make determinations, in accordance with procedures and criteria enumerated in this article and rules and regulations promulgated pursuant to this article, as to whether a proposed corrective action plan is sufficient to bring the qualifying property into compliance with the risk reduction standards;

(3) To ensure that all actions in an approved corrective action plan are completed within the time specified, the corrective action requirements are implemented, and the risk reduction standards are achieved and certified for a qualifying property prior to concurrence with a certification of compliance;

(4) To approve corrective action plans;

(5) To concur with certifications of compliance; and

(6) To assess and collect application review fees from prospective purchasers.

(b) The powers and duties described in subsection (a) of this Code section may be exercised and performed by the director through such duly authorized agents and employees as the director deems necessary and proper.

History. — Code 1981, § 12-8-203, enacted by Ga. L. 1996, p. 993, § 4; Ga. L. 1998, p. 1667, § 2; Code 1981, § 12-8-204, redesignated by Ga. L. 2002, p. 927, § 6.

Editor's notes. — Ga. L. 2002, p. 927, § 6, effective July 1, 2002, redesignated former Code Section 12-8-204 as present Code Section 12-8-205.

12-8-205. Criteria for property to qualify for limitation of liability.

In order to be considered a qualifying property for a limitation of liability as provided in Code Section 12-8-207, a property shall meet the following criteria:

(1) The property shall have a preexisting release;

(2) Any lien filed under subsection (e) of Code Section 12-8-96 or subsection (b) of Code Section 12-13-12 against the property shall be satisfied or settled and released by the director pursuant to Code Section 12-8-94 or 12-13-6, and satisfactory provision shall have been made as determined by the director for the repayment to the division of any funds expended by the division from the federal Leaking Underground Storage Tank Trust Fund;

(3) The property shall not:

(A) Be listed on the federal National Priorities List pursuant to the federal Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. Section 9601, et seq.;

(B) Be currently undergoing response activities required by an order of the regional administrator of the federal Environmental Protection Agency issued pursuant to the provisions of such act; or

(C) Be a hazardous waste facility, as defined in Code Section 12-8-62, that is currently subject to a permit for the treatment, storage, or disposal of hazardous waste issued pursuant to Code Section 12-8-66; and

(4) The property shall meet other criteria as may be established by the board as provided in this article and Article 3 of this chapter.

History. — Code 1981, § 12-8-204, enacted by Ga. L. 1996, p. 993, § 4; Ga. L. 1998, p. 1667, § 2; Code 1981, § 12-8-205, as redesignated by Ga. L. 2002, p. 927, § 6; Ga. L. 2005, p. 1227, § 2/SB 277; Ga. L. 2014, p. 247, § 3/HB 957.

Editor's notes. — Ga. L. 2002, p. 927, § 6, effective July 1, 2002, redesignated former Code Section 12-8-205 as present Code Section 12-8-206.

12-8-206. Criteria for prospective purchasers to qualify for limitation of liability.

(a) To qualify for a limitation of liability as provided in Code Section 12-8-207, a prospective purchaser must meet the following criteria:

(1) The prospective purchaser must not be a person who has contributed or who is contributing to a release at the qualifying property;

(2) Where the prospective purchaser is an individual, the party must not: be a relative by blood within the third degree of consanguinity or by marriage; be an employee, shareholder, officer, or agent; or otherwise be affiliated with a current owner of the subject property or any person who has contributed or is contributing to a release at the subject property;

(3) Where the prospective purchaser is a corporation or other legal entity, the party must not: be a current or former subsidiary, division, parent company, or partner; be the employer or former employer; or otherwise have been affiliated with the current owner of the subject property or any person who has contributed or is contributing to a release at the subject property;

(4) The prospective purchaser must not be in violation of any order, judgment, statute, rule, or regulation subject to the enforcement authority of the director; and

(5) The prospective purchaser must meet such other criteria as may be established by the board pursuant to Code Section 12-8-203.

(b) The director may grant a variance from the eligibility requirements contained in paragraphs (2), (3), (4), and (5) of subsection (a) of

this Code section if the director finds that such criteria would render a prospective purchaser ineligible for a limitation of liability under this article, that no other qualified prospective purchaser has applied for a limitation of liability for the qualifying property, and that:

(1) Such ineligibility would result in the continuation of a condition which poses a threat to human health and the environment;

(2) The director would likely be required to perform the necessary corrective action using funds from the hazardous waste trust fund; and

(3) In all probability, the director would be unable to recover the cost of the corrective action as provided in Code Section 12-8-96.1.

The director may place such conditions upon the grant of a variance as he or she deems appropriate including, without limitation, a provision relating to the time all or a portion of the corrective action must be completed, and if the applicant fails to comply with such conditions the director may modify or withdraw such variance.

History. — Code 1981, § 12-8-205, enacted by Ga. L. 1996, p. 993, § 4; Ga. L. 1998, p. 1667, § 2; Code 1981, § 12-8-206, as redesignated by Ga. L. 2002, p. 927, § 6.

Editor's notes. — Ga. L. 2002, p. 927, § 6, effective July 1, 2002, redesignated former Code Section 12-8-206 as present Code Section 12-8-207.

12-8-207. Limitation of expenses following approval of a corrective action plan.

(a)(1) Upon the director's approval of the prospective purchaser corrective action plan or concurrence with the certification of compliance described in this Code section, whichever first occurs, a prospective purchaser shall not be liable to the state or any third party for costs incurred in the remediation of, equitable relief relating to, or damages resultant from the preexisting release, nor shall the prospective purchaser be required to certify compliance with risk reduction standards for ground water, perform corrective action, or otherwise be liable for any preexisting releases to ground water associated with the qualifying property.

(2) The limitation of liability provided under this Code section shall also benefit a qualifying purchaser who applies for a limitation of liability within 30 days following acquisition of title or any other new property interest in the qualifying property and subsequently receives the director's approval of a prospective purchaser corrective action plan or concurrence with a certification of compliance described in this Code section.

(b)(1) For qualifying properties which the director has designated as needing corrective action in accordance with paragraph (8) of subsec-

tion (a) of Code Section 12-8-97, any party desiring to qualify for a limitation of liability pursuant to this Code section shall submit a prospective purchaser corrective action plan to the division. The corrective action plan shall, at minimum, enumerate and describe in detail those actions planned and proposed to bring any source material or soil found on the qualifying property into compliance with all applicable rules and regulations adopted by the board governing the investigation, cleanup, and corrective action at properties listed on the hazardous site inventory. A corrective action plan submitted by a prospective purchaser under this subsection shall be in such form and meet such criteria as established by the board.

(2) The prospective purchaser shall submit proof of financial assurance, in such form as specified by the director, of his or her ability to implement the corrective action plan.

(3) Upon the director's approval of the prospective purchaser corrective action plan, it shall be the responsibility of the prospective purchaser to implement said plan. The director's approval of a prospective purchaser corrective action plan shall not in any way be construed as a guarantee, promise, or assurance that the director will concur with the prospective purchaser's certification of compliance for source material and soil in accordance with the provisions of this Code section. Compliance with the appropriate risk reduction standards for source material or soil in effect at the time the director's concurrence is sought is the sole responsibility of the prospective purchaser. The prospective purchaser shall not acquire a vested right to the director's concurrence regardless of the expenditure of money. The prospective purchaser shall implement the corrective action plan with the understanding that the requirements of corrective action necessary to obtain a limitation of liability are subject to change because of newly discovered facts or subsequent changes in state or federal laws, rules, or regulations.

(4) The director's approval of the prospective purchaser corrective action plan shall specify a time within which the prospective purchaser must certify the qualifying property to be in compliance with the risk reduction standards for source material or soil in order to maintain the limitation of liability provided for by subsection (a) of this Code section. The director may revoke the limitation of liability provided for by subsection (a) of this Code section if the prospective purchaser fails to certify compliance within such time.

(5) If at any time the director determines that any element of an approved prospective purchaser corrective action plan must be modified in order to achieve compliance with the risk reduction standards for source material or soil or that the corrective action is not being implemented in accordance with the corrective action plan, the

director may revoke his or her approval of the plan and the limitation of liability by providing the prospective purchaser with written notification specifying the basis for making such determination and requesting modification and resubmission of a modified plan or an opportunity to address any deficiencies in implementing the corrective action plan within a specified time. If at any time the prospective purchaser determines that any element of an approved prospective purchaser corrective action plan must be modified in order to achieve compliance with the risk reduction standards for source material or soil, the prospective purchaser shall notify the director and obtain approval of the proposed modification.

(6) A prospective purchaser shall, upon completion of those activities specified in the corrective action plan, submit to the director a compliance status report certifying the compliance of any source material or soil found on the qualifying property with the risk reduction standards for source material or soil and corrective action requirements. The qualifying property will be deemed in compliance with the source or soil contamination risk reduction standards upon the prospective purchaser's receipt of the director's written concurrence with the compliance status report.

(c) For those qualifying properties which the director has not yet designated as being in need of corrective action, any party desiring to qualify for a limitation of liability as provided in this Code section shall certify the qualifying property to be in compliance with the risk reduction standards for source material or soil by submitting a compliance status report to the division in such form as provided by rules and regulations adopted by the board. A compliance status report submitted by a prospective purchaser under this subsection shall be in such form and meet such criteria as established by the board. The qualifying property will be deemed in compliance with the risk reduction standards for source material or soil upon the prospective purchaser's receipt of the director's written concurrence with the compliance status report.

(d) A person who holds indicia of ownership executed by the prospective purchaser primarily to protect said person's security interest in the qualifying property or who acts in good faith solely in a fiduciary capacity and who did not actively participate in the management, disposal, or release of hazardous wastes, hazardous constituents, or hazardous substances on or from the qualifying property shall not be liable to the state or any third party for costs incurred in the remediation of, equitable relief relating to, or damages resultant from the preexisting release at the qualifying property.

(e) When a person who holds indicia of ownership executed by the prospective purchaser primarily to protect said person's security inter-

est in the qualifying property takes title to the qualifying property from the prospective purchaser via foreclosure or a deed in lieu of foreclosure, such new titleholder shall maintain his or her limitation of liability under subsection (d) of this Code section if:

(1) The director is informed in writing of the transfer of title; and

(2) Within 180 days, or such other time period as specified by the director, of said transfer of title, the new titleholder:

(A) Presents the name of a new party who qualifies as a prospective purchaser for the qualifying property along with said new party's written assurance, including financial assurance, that the prospective purchaser corrective action plan will be fully implemented; or

(B) Submits a statement in writing that the new titleholder complies with the requirements applicable to prospective purchasers under this article.

History. — Code 1981, § 12-8-206, enacted by Ga. L. 1996, p. 993, § 4; Ga. L. 1998, p. 1667, § 2; Code 1981, § 12-8-207, as redesignated by Ga. L. 2002, p. 927, § 6; Ga. L. 2006, p. 72, § 12/SB 465; Ga. L. 2014, p. 247, § 4/HB 957.

Editor's notes. — Ga. L. 2002, p. 927, § 6, effective July 1, 2002, redesignated former Code Section 12-8-207 as present Code Section 12-8-208.

12-8-208. Exceptions to limitation of liability.

(a) The limitation of liability provided by subsection (a) of Code Section 12-8-207 shall be contingent upon the prospective purchaser's good faith implementation of the corrective action plan as approved by the director as well as the certification of compliance with the risk reduction standards and corrective action requirements. Such limitation of liability shall not be applicable during any time the director's approval of the corrective action plan has been suspended or revoked.

(b) The limitation of liability provided by this article shall not affect any right of indemnification which any person has or may acquire by contract against any other person who is otherwise liable for creating an environmental hazard; apply to persons who intentionally, wantonly, or willfully violate federal or state regulations in the cleanup process; or apply to any release occurring or continuing after the date of the certification of compliance unless any such continuing release is specifically addressed in the director's concurrence with the certification of compliance.

(c)(1) The limitation of liability provided by this article shall survive any subsequent change in the nature of a prospective purchaser's interest in the qualifying property and shall automatically inure to

the benefit of heirs, assigns, successors in title, and designees of the person to whom such limitation of liability is granted and to any person acquiring any other property interest in the property for which the limitation of liability was granted; provided, however, that in no event shall the director's approval of a corrective action plan or concurrence with a certification of compliance operate to absolve from liability any party deemed to be a person who has contributed or is contributing to a release at the qualifying property.

(2) Any voluntary transfer of the title to a property or any portion thereof for which a limitation of liability has been granted to any party that would be disqualified from obtaining a limitation of liability for such property under Code Section 12-8-206 shall terminate any limitation of liability applicable to the transferor under this article.

(d) For the purpose of determining liability for continuing or future releases of regulated substances upon or from any qualifying property for which the director has concurred with a certification of compliance pursuant to Code Section 12-8-207, the background or baseline concentration for any and all releases for which corrective action was performed or compliance certified or both shall be equivalent to the risk reduction standard for which compliance was certified in order to invoke the limitation of liability.

(e) The limitation of liability provided by this article shall have no effect on liability for releases of hazardous waste, hazardous constituents, or hazardous substances not addressed in the corrective action plan or the certification of compliance. Any such release shall constitute a new, separate, and distinct release, subject to the provisions of Part 2 of Article 3 of this chapter.

(f) Nothing in this article shall limit the authority of the director or the division to take action in response to any release or threat of release. Except as provided in this article, nothing shall limit the authority of the director or the division to seek recovery of costs from persons liable under Part 2 of Article 3 of this chapter.

History. — Code 1981, § 12-8-207, enacted by Ga. L. 1996, p. 993, § 4; Ga. L. 1998, p. 1667, § 2; Code 1981, § 12-8-208, as redesignated by Ga. L. 2002, p. 927, § 6; Ga. L. 2005, p. 1227, § 3/SB 277; Ga. L. 2012, p. 843, § 2/HB 1102; Ga. L. 2014, p. 247, § 5/HB 957.

12-8-209. Initial compliance status report.

The initial compliance status report or a corrective action plan submitted for any qualifying property under Code Section 12-8-207 shall be deemed to be an application to participate in the program described in this article and shall be submitted in such form as may be

prescribed by the director. By making said initial submission, the prospective purchaser agrees to the provisions of this Code section. A nonrefundable application review fee of $3,000.00 shall be submitted with the application. Within 30 days of the receipt of the application, the director shall cause to be prepared and delivered to the applicant an estimate of the projected costs of the division to review the application. The director may, at any time during the application review process, invoice the applicant for any costs of the division in reviewing the application that exceed the initial application review fee. Failure to remit payment within 30 days of receipt of invoice may cause rejection of the application. The director may not issue a written concurrence with a certification of compliance if there is an outstanding fee to be paid by the prospective purchaser.

History. — Code 1981, § 12-8-209, enacted by Ga. L. 2002, p. 927, § 6.

12-8-210. Applicability of limitation of liability to persons who purchased after July 1, 2002, and before July 1, 2005.

The provisions of this article applicable to prospective purchasers shall also apply to any person who purchased a property after July 1, 2002, and before July 1, 2005, where there was a preexisting release at the time of purchase, such purchaser did not cause or contribute to such preexisting release, and such purchaser applies for the limitation of liability provided by this article on or before January 1, 2006.

History. — Code 1981, § 12-8-210, enacted by Ga. L. 2005, p. 1227, § 4/SB 277.

12-8-211. Application to identified purchasers.

The limitation of liability provided under this article shall also apply to any qualifying prospective purchaser who, after May 1, 2012, has applied for a limitation of liability for a qualifying property and who subsequently obtains the director's approval of a prospective purchaser corrective action plan or concurrence with a certification of compliance for the qualifying property.

History. — Code 1981, § 12-8-211, enacted by Ga. L. 2014, p. 247, § 6/HB 957.

CHAPTER 9

PREVENTION AND CONTROL OF AIR POLLUTION

Article 1

Air Quality

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Motor Vehicle Emission Inspection and Maintenance

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12-9-53. Review of director's decision.

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12-9-54. Sale of vehicle.
12-9-55. Prohibited acts; registration of vehicle by county without proof of inspection; penalty; withholding of funding.
12-9-56. Rules and regulations.
12-9-57. Effect of federal Clean Air Act requirements; repeal of article.

Article 3

Gasoline Additives

Sec.
12-9-70. Study and review of gasoline additives.

Cross references. — Control of motor vehicle emissions, § 40-8-130 et seq.

Editor's notes. — By resolution (Ga. L. 1990, p. 661), the General Assembly provided that the Department of Natural Resources should not promulgate any rules or regulations requiring the installation of Stage II controls by gasoline service stations until such time as mandated by the United States Congress or the Environmental Protection Agency.

Ga. L. 1992, p. 918, § 2, effective July 1, 1992, repealed and reenacted this chapter. The former provisions of this chapter have been designated as Article 1 thereof and an Article 2, pertaining to motor vehicle emissions, has been added. References in Article 1 to "chapter" were changed to "article" by Ga. L. 1992, p. 918, § 2. Article 1 also reflects amendments made by Ga. L. 1992, p. 2886.

Ga. L. 1992, p. 2886, § 2, provides for severability of the Act.

Law reviews. — For article, "Georgia's Environmental Law: A Survey," see 23 Mercer L. Rev. 633 (1972). For article surveying Georgia cases dealing with environment, natural resources, and land use from June 1977 through May 1978, see 30 Mercer L. Rev. 75 (1978). For article surveying provisions of Air Quality Act of 1978, see 14 Ga. St. B.J. 175 (1978). For article surveying recent legislative and judicial developments in zoning, planning and environmental law, see 31 Mercer L. Rev. 89 (1979).

For note on 1992 amendment of this chapter, see 9 Ga. St. U.L. Rev. 179 (1992).

OPINIONS OF THE ATTORNEY GENERAL

Probate court has no jurisdiction over air pollution violations. — Probate court does not have jurisdiction to try or sentence an individual accused of violating the criminal provisions concerning waste management or air pollution. 1995 Op. Att'y Gen. No. U95-1.

Certification of equipment or facilities for pollution control purposes authorized. — Environmental Protection Division may certify equipment or facilities as necessary and in furtherance of pollution abatement and control purposes, pursuant to Ga. L. 1963, p. 531, § 1 et seq. (see O.C.G.A. § 36-62-1 et seq.), and apposite Internal Revenue Service regulations, if the equipment or facilities enhance the industry's pollution abatement goal and, although possibly having other functions, have as their predominant purpose the assistance or aid of pollution control or abatement. 1973 Op. Att'y Gen. No. 73-175.

Local regulation. — While local governments are not preempted from regulating air quality control, any ordinance in this area which contradicts or detracts from the Georgia Air Quality Act, O.C.G.A. § 12-9-1 et seq., would be unconstitutional and void. 1986 Op. Att'y Gen. No. U86-22.

RESEARCH REFERENCES

ALR. — Validity of regulation of smoke and other air pollution, 78 A.L.R.2d 1305.

Air pollution: evidence as to Ringelmann Chart observations, 51 A.L.R.3d 1026.

Validity and construction of statutes regulating strip mining, 86 A.L.R.3d 27.

When statute of limitations begins to run as to cause of action for nuisance based on air pollution, 19 A.L.R.4th 456.

Standing to sue for violation of state environmental regulatory statute, 66 A.L.R.4th 685.

Validity, construction, and application of variance provisions in state and local air pollution control laws and regulations, 66 A.L.R.4th 711.

Validity of state and local air pollution administrative rules, 74 A.L.R.4th 566.

Liability insurance coverage for violations of antipollution laws, 87 A.L.R.4th 444.

Clean Air Act implementation plans for nonattainment areas, 90 A.L.R. Fed. 481.

What constitutes modification of stationary source, under § 111(a)(3), (4) of Clean Air Act (42 USCS § 7411(a)(3), (4)), so as to subject source to Environmental Protection Agency's new source performance standards, 94 A.L.R. Fed. 750.

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, § 146 et seq.

ARTICLE 1

AIR QUALITY

Administrative rules and regulations. — Air quality control, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-1.

12-9-1. Short title.

This article shall be known and may be cited as "The Georgia Air Quality Act."

History. — Code 1933, 88-901, enacted by Ga. L. 1967, p. 581, § 1; Ga. L. 1978, p. 275, § 2; Ga. L. 1992, p. 918, § 3; Ga. L. 1992, p. 2886, § 1.

JUDICIAL DECISIONS

Action for private recovery is not provided by the federal and Georgia clean air acts. Satterfield v. J.M. Huber Corp., 888 F. Supp. 1567 (N.D. Ga. 1995).

Judicial review of air quality permit. — Trial court decision invalidating an air quality permit issued by the Environmental Protection Division (EPD) of the Georgia Department of Natural Resources to a power company to construct a pulverized coal-fired electric power plant in a particular county contained an erroneous ruling that the permit was invalid because the permit failed to include a limit on the power plant's carbon dioxide gas (CO2) emissions since no provisions of the Clean Air Act (CAA), 42 U.S.C. § 7401 et seq., or the state implementation plan controlled or limited CO2 emissions. Because CO2 was not a pollutant that "otherwise is subject to regulation under the CAA," CO2 was not a regulated new source review pollutant in the Prevention of Significant Deterioration (PSD) program and was not required to be controlled by use of best available control technology (BACT), therefore, the trial court erred by ruling that the PSD permit was required to include a BACT emission limit to control the power company's CO2 emissions. Longleaf Energy Assocs., LLC v. Friends of the Chattahoochee, Inc., 298

Ga. App. 753, 681 S.E.2d 203 (2009), cert. denied, No. S09C1879, 2009 Ga. LEXIS 809 (Ga. 2009).

Lawful business as nuisance per accidens. — Lawful business may, by reason of the business's location in a residential area, cause hurt, inconvenience, and damage to those residing in the vicinity and become a nuisance per accidens (a nuisance by reason of circumstances and surroundings) against which an injunction will be granted. Galaxy Carpet Mills, Inc. v. Massengill, 255 Ga. 360, 338 S.E.2d 428 (1986).

Punitive damages. — Punitive damages are, as a general rule, improper when a defendant has complied with environmental and safety regulations. Accordingly, the award of punitive damages against a quarry operator who had adhered to the applicable laws was not supported by the evidence and warranted reversal. Stone Man, Inc. v. Green, 263 Ga. 470, 435 S.E.2d 205 (1993).

Federal government not subject to punitive fines. — Since the only clearly expressed waiver of sovereign immunity in the federal Clean Air Act, 42 U.S.C. § 7901 et seq., is for coercive fines, punitive fines may not be imposed on the federal government thereunder. United States v. Georgia Dep't of Natural Resources, 897 F. Supp. 1464 (N.D. Ga. 1995).

Cited in Meredith v. Thompson, 312 Ga. App. 697, 719 S.E.2d 592 (2011).

RESEARCH REFERENCES

ALR. — Award of costs and attorney's fees in judicial review of administrative proceedings under § 307(f) of Clean Air Act (42 USCA § 7607(f)), 146 A.L.R. Fed. 531.

Federal requirements for public participation in adoption, submission, and approval of state implementation plans and revisions pursuant to § 110 of Clean Air Act (42 USCA § 7410), 151 A.L.R. Fed. 445.

Decisions of Environmental Protection Agency (EPA) approving or disapproving state implementation plans as interfering with primary role of states to determine how national ambient air quality standards should be met under Clean Air Act (42 USCA § 7401 et seq.), 151 A.L.R. Fed. 495.

Conformity requirements of § 176(c) of Clean Air Act, (42 USCA § 7506(c)), 157 A.L.R. Fed. 217.

12-9-2. Declaration of public policy.

It is declared to be the public policy of the State of Georgia to preserve, protect, and improve air quality and to control emissions to prevent the significant deterioration of air quality and to attain and maintain ambient air quality standards so as to safeguard the public health, safety, and welfare consistent with providing for maximum employment and full industrial development of the state.

History. — Code 1933, 88-901, enacted by Ga. L. 1967, p. 581, § 1; Ga. L. 1978, p. 275, § 1; Ga. L. 1992, p. 918, § 2; Ga. L. 1992, p. 2886, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, § 146 et seq.

12-9-3. Definitions.

(a) As used in this article, the term:

(1) "Administrator" means the administrator of the United States Environmental Protection Agency.

(2) "Air-cleaning device" means any method, process, or equipment which removes, reduces, or renders less noxious air contaminants discharged into the atmosphere.

(3) "Air contaminant" means solid or liquid particulate matter, dust, fumes, gas, mist, smoke, or vapor or any matter or substance either physical, chemical, biological, radioactive, including without limitation source material, special nuclear material, and by-product material, or any combination of any of the above.

(4) "Air pollution" means the presence in the outdoor atmosphere of one or more air contaminants.

(5) "Ambient air" means that portion of the atmosphere external to facilities to which the general public has access.

(6) "Area of the state" means any city or county or portion thereof or other substantial geographical area of the state as may be designated by the division.

(7) "Board" means the Board of Natural Resources of the State of Georgia.

(8) "Compliance plan" means a plan which outlines the methods, procedures, or other means by which the owner, operator, or applicant intends to achieve or maintain compliance with the requirements of this article or the rules and regulations promulgated pursuant to this article.

(9) "Construction" means any fabrication, erection, or installation and includes any modification as defined in paragraph (22) of this Code section.

(10) "Control measure" means any equipment, device, process, procedure, material, or method used to reduce emissions from a source in such a manner that the emission reduction can be verified by the director.

(11) "Director" means the director of the Environmental Protection Division of the Department of Natural Resources of the State of Georgia or his designee.

(12) "Division" means the Environmental Protection Division of the Department of Natural Resources of the State of Georgia.

(13) "Effects on welfare" includes, but is not limited to, effects on soils, water, crops, vegetation, man-made materials, animals, wildlife, weather, visibility, and climate, damage to and deterioration of property, public safety, and hazards to transportation, as well as effects on economic values or development and on personal comfort and well-being.

(14) "Emission" or "emitting" means any discharging, giving off, sending forth, placing, dispensing, scattering, issuing, circulating, releasing, or any other emanation of any air contaminant or contaminants into the atmosphere.

(15) "Emission limitation" means a requirement established which limits the quantity, rate, type, or concentration of emissions of air contaminants, including all means of emission limitation, supplemental or intermittent means of emission limitation, and any requirement relating to the equipment or operation or maintenance of a source to assure emission reduction.

(16) "Emission offset" means a requirement providing for a proportional decrease in the emissions of a quantity or type of air contaminant from a source, facility, or area of the state in order to compensate or counteract the effects of an emission increase from such source, facility, or area of the state.

(17) "Facility" means any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit any air contaminants.

(18) "Federal act" means 42 U.S.C. Section 7401, et seq., as amended.

(19) "Indirect source" means a source or facility which attracts or tends to attract activity that results in emission of any air pollutant for which there is an ambient air standard.

(20) "Manager" means the person appointed, employed, or delegated to the position of small business stationary source technical and environmental compliance office manager.

(21) "Means of emission limitation" means a system of continuous emission reduction, including the use of specific technology or fuels with specified pollution characteristics.

(22) "Modification" means any change in or alteration of fuels, processes, operation, or equipment, including any chemical changes in processes or fuels, which affects the amount or character of any air pollutant emitted or which results in the emission of any air pollutant not previously emitted. No source shall, by reason of a change which decreases emissions, become subject to the new source performance

standards of 42 U.S.C. Section 7411, unless required by the federal act. This definition does not apply where the word "modification" is used to refer to action by the director, division, or Board of Natural Resources in modifying or changing rules, regulations, orders, or permits. In that context the word has its ordinary meaning.

(23) "Person" means any individual, corporation, partnership, association, state, municipality, or political subdivision of a state, and any agency, department, or instrumentality of the United States government, or any other entity, and any officer, agent, or employee of any of the above.

(24) "Schedule and timetable of compliance" means a schedule of remedial measures including an enforceable sequence of actions or operations leading to compliance with an emission limitation, other limitation, prohibition, or standard.

(25) "Small business advisory panel" means the small business stationary source technical and environmental compliance advisory panel created by Code Section 12-9-25.

(26) "Small business stationary source or facility" means an entity that:

(A) Is owned or operated by a person employing 100 or fewer individuals;

(B) Is a small business under the federal Small Business Act;

(C) Does not emit 50 tons or more per year of any regulated pollutant; and

(D) Emits less than 75 tons per year of all regulated pollutants and does not qualify as a major stationary source.

(27) "Source" means any property, building, structure, location, equipment, or installation at, from, or by reason of which emissions of air contaminants are or may reasonably be expected to be emitted into the atmosphere. Such term includes both real and personal property, stationary and mobile sources, and direct and indirect sources and both public or private property.

(28) "Standard of performance" means a requirement of continuous emission reduction, including any requirement relating to the equipment, operation, or maintenance of a source to assure continuous emission reduction. A standard of performance for any fossil fuel fired stationary source subject to 42 U.S.C. Section 7411(b) must also produce and result in a percentage reduction in the emissions from such category of sources from the emissions which would have resulted from the use of fuels which are not subject to treatment prior to combustion, as required by 42 U.S.C. Section 7411(a)(1).

(29) "Stationary source" means any source or facility emitting, either directly or indirectly, from a fixed location.

(30) "Supplemental or intermittent means of emission limitation" means all other means of emission limitation other than systems of continuous emission reduction and includes all dispersion dependent techniques.

(31) "Title V permit" means a permit issued by the director which is subject to the permitting requirements and procedures for such permits pursuant to this article and the regulations promulgated pursuant to this article and in accordance with the federal act, 42 U.S.C. Section 7661, et seq., as amended, and the rules and regulations promulgated pursuant thereto.

(b) The following terms shall have the same meaning as provided for such terms in the federal act:

(1) Hazardous air pollutants;

(2) Major stationary source;

(3) Mobile source; and

(4) Implementing authority.

History. — Code 1933, 88-902, enacted by Ga. L. 1967, p. 581, § 1; Ga. L. 1978, p. 275, § 4; Code 1981, § 12-9-3 enacted by Ga. L. 1992, p. 918, § 2; Ga. L. 1992, p. 2886, § 1; Ga. L. 2001, p. 4, § 12.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "article" was substituted for "chapter" in two places in paragraphs (8) and (31).

U.S. Code. — The "federal act" referred to in this Code section was enacted as the federal Clean Air Act of 1955, 69 Stat. 322, and was originally codified at 42 U.S.C. § 1857 et seq. The federal Clean Air Act of 1955, as amended, was completely revised by an act known as the federal Clean Air Act Amendments of 1977, Pub. L. 95-95, and was reassigned to 42 U.S.C. § 7401 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, §§ 6, 8.

12-9-4. Designation of division as agency to administer article.

The division is designated as the state agency to administer this article consistent with the policy stated in Code Section 12-9-2.

History. — Code 1981, § 12-9-4, enacted by Ga. L. 1992, p. 918, § 2; Ga. L. 1992, p. 2886, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, § 147.

12-9-5. Powers and duties of Board of Natural Resources as to air quality generally.

(a) Any hearing officer appointed by the Board of Natural Resources, and all members of five-member committees of the Board of Natural Resources, shall, and at least a majority of members of the entire Board of Natural Resources shall, represent the public interest and shall not derive any significant portion of their income from persons subject to permits or enforcement orders under this article. All potential conflicts of interest shall be adequately disclosed.

(b) In the performance of its duties, the Board of Natural Resources shall have and may exercise the power to:

(1) Adopt, promulgate, revise, modify, amend, and repeal rules and regulations necessary to abate or control air pollution, or necessary to implement any of the provisions of this article or requirements of the federal act imposed on the state as an implementing authority, consistent with the declaration of public policy. Such requirements may be for the state as a whole or may vary from area to area, as may be appropriate to facilitate accomplishment of the policy of this article;

(2) Establish ambient air quality standards for the state, including schedules and timetables for the state to achieve such ambient air quality standards, provided that they are in all cases not less stringent than provided by the federal act;

(3) Establish such standards of performance, emission limitations, emission control standards, and emission offsets for sources or facilities as are necessary to prevent, control, or abate air pollution, to attain and maintain ambient air quality standards, to protect the public health and welfare, and to fulfill the policy of this article, provided that such standards or limitations are no less stringent than the federal act;

(4) Establish contingency provisions, alternative methods, and control measures sufficient to comply with the federal act which will be implemented should the state fail to attain or maintain an ambient air quality standard in the state or in any area of the state in accordance with this article and the rules and regulations promulgated pursuant to this article;

(5) Establish emission reduction measures which are appropriate, necessary, or beneficial in meeting the provisions of this article,

including, but not limited to, economic incentives, fees, marketable permits, emission allowances, and auctions of emission rights;

(6) Require the owner or operator of any stationary source or facility to establish and maintain such records; provide such information or make such reports; install, use, and maintain such emission or process monitoring equipment or methods, continuous or otherwise; and sample such emissions, continuous or not, in accordance with such methods or procedures, at such locations or intervals as reasonably may be required to implement this article, and make such records, reports, information, or monitoring results available to the director or administrator upon request, provided that no requirement under this paragraph shall be any less stringent than the federal act;

(7) Require the use of air-cleaning devices, means of emission limitation, whether continuous, supplemental, or intermittent, or control measures and standards of performance so as to achieve and maintain compliance with the provisions of this article and the federal act;

(8) Prevent the significant deterioration of the air quality by establishing air quality standards or air quality increments limiting the maximum allowable amounts of air pollutants or air contaminants which a source or facility is allowed to emit; provided, however, that such limits are sufficient to comply with the federal act;

(9) Establish standards of performance, emission limitations, and emission control standards and control measures for mobile sources of air pollution and nonroad engines, provided that no requirement under this paragraph shall be less stringent than those contained in the federal act;

(10) Establish, revise, or modify emission limitations, emission control standards, or control measures for stationary sources or facilities in areas of the state where such sources or facilities significantly contribute to nonattainment of an ambient air quality standard or significantly contribute to a significant deterioration of air quality in the state, an area of the state, or another state; provided, however, that no requirement under this paragraph shall be less stringent than the requirements for such source or facility under this article and the rules and regulations promulgated pursuant to this article;

(11) Establish, revise, modify, and amend emission limitations, emission control standards, or standards of performance limiting the total quantity of air contaminants or emissions which may be emitted by a source, facility, or area of the state;

(12) Establish a program for prevention and mitigation of accidental releases of hazardous air contaminants or air pollutants into the

ambient air or within a facility; establish, revise, amend, and modify rules and regulations for program implementation; and require reasonable precautionary and response measures to safeguard public health and public safety including, but not limited to, monitoring hazardous or potentially hazardous air contaminants and air pollutants, record keeping, inspection, control measures, safety procedures, emergency response procedures, training, prevention planning, education, emission control standards, emission limitations, and other necessary safety measures; and the board may require any source or facility subject to this paragraph to obtain a Title V permit;

(13) Establish training and educational programs to ensure the proper operation and utilization of emission control equipment, safety procedures, emission control alternatives, and the dissemination of air quality information to the public;

(14) Establish standards for the construction of new stationary sources or facilities or modification of an existing source or facility in areas where the national ambient air standards are not met or in other areas contributing to the air pollution of such areas only after imposing requirements and appropriate emission offsets or reductions no less stringent than the requirements of the federal act;

(15) Establish requirements for preconstruction or premodification review procedures prior to the construction of any new stationary source or facility or modification of any existing stationary source or facility sufficient to allow the director to make determinations that the proposed construction or modification will not cause or contribute to a failure to attain or maintain any ambient air quality standard, a significant deterioration of air quality, or a violation of any applicable emission limitation or standard of performance; and to require that prior to commencing construction or modification, any person proposing such construction or modification shall submit required information to the director. Such preconstruction and premodification review requirements shall be no less stringent than and shall require that no proposed source or facility may be permitted unless such source or facility meets all the requirements for review and for obtaining a permit prescribed in this article and in accordance with the federal act;

(16) Establish a program to reduce the adverse effects of acid deposition through the reduction of annual emissions of sulfur dioxide and nitrogen oxides within the state sufficient to comply with the requirements of 42 U.S.C. Section 7651, et seq., of the federal act; and

(17) Establish satisfactory processes of consultation and cooperation with local governments or other designated organizations of

elected officials or federal agencies for purposes of planning, implementing, and determining requirements under this article to the extent required by the federal act.

History. — Code 1933, 88-903, enacted by Ga. L. 1967, p. 581, § 1; Ga. L. 1971, p. 184, § 1; Ga. L. 1972, p. 994, § 1; Ga. L. 1972, p. 1015, § 1529; Ga. L. 1973, p. 1285, § 1; Ga. L. 1978, p. 275, § 5; Ga. L. 1982, p. 3, § 12; Ga. L. 1992, p. 6, § 12; Ga. L. 1992, p. 918, § 2; Ga. L. 1992, p. 2886, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "article" was substituted for "chapter" throughout this Code section and a comma was added following "standards" in paragraph (b)(2).

Pursuant to Code Section 28-9-5, in 1996, "42 U.S.C." was substituted for "42 U.S.C" in paragraph (b)(16).

Administrative rules and regulations. — Air quality control, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection Division, Chapter 391-3-1.

JUDICIAL DECISIONS

Judicial review of air quality permit. — Trial court decision invalidating an air quality permit issued by the Environmental Protection Division (EPD) of the Georgia Department of Natural Resources to a power company to construct a pulverized coal-fired electric power plant in a particular county contained an erroneous ruling that the permit was invalid because the permit failed to include a limit on the power plant's carbon dioxide gas (CO2) emissions since no provisions of the Clean Air Act (CAA), 42 U.S.C. § 7401 et seq., or the state implementation plan controlled or limited CO2 emissions. Because CO2 was not a pollutant that "otherwise is subject to regulation under the CAA," CO2 was not a regulated new source review pollutant in the Prevention of Significant Deterioration (PSD) program and was not required to be controlled by use of best available control technology (BACT), therefore, the trial court erred by ruling that the PSD permit was required to include a BACT emission limit to control the power company's CO2 emissions. Longleaf Energy Assocs., LLC v. Friends of the Chattahoochee, Inc., 298 Ga. App. 753, 681 S.E.2d 203 (2009), cert. denied, No. S09C1879, 2009 Ga. LEXIS 809 (Ga. 2009).

OPINIONS OF THE ATTORNEY GENERAL

Environmental Protection Division has authority to obtain emission and operating information from sources of air pollution. 1980 Op. Att'y Gen. No. U80-19; 1981 Op. Att'y Gen. No. 81-78.

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 147, 207, 212 et seq.

ALR. — Air pollution control: validity of legislation permitting administrative agency to fix permissible standards of pollutant emission, 48 A.L.R.3d 326.

12-9-6. Powers and duties of director as to air quality generally.

(a) The director shall represent the public interest and shall not derive a significant portion of his income from persons subject to rules,

regulations, permits, or orders under this article. Any potential conflict of interest shall be adequately disclosed.

(b) The director shall have and may exercise the following powers and duties:

(1) To exercise general supervision over the administration and enforcement of this article and all rules, regulations, and orders promulgated under this article;

(2) To encourage, participate in, or conduct such studies, reviews, investigations, research, emission inventories, and demonstrations relating to air quality or sources of air pollution in this state as he deems advisable and necessary or as may be required by the federal act and to provide any data or information obtained from such activities to the administrator;

(3) To issue permits contemplated by this article, stipulating in each permit the conditions or limitations under which such permit is issued, and to deny, revoke, modify, or amend permits;

(4) To establish, implement, revise, and amend permit application criteria, forms, procedures, and requirements consistent with this article;

(5) To establish expedited procedures to respond to requests from small business stationary sources for changes in any work practice or technical method of compliance or schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source or facility; provided, however, that no such change shall be granted unless it is in compliance with the applicable requirements;

(6) To advise, consult, cooperate, and contract on air quality matters with persons for purposes of carrying out the powers and duties conferred upon the director pursuant to this article; provided, however, that when negotiating and entering into agreements with the governments of other states or the United States and their several agencies, subdivisions, or designated organizations of elected officials the director shall first obtain the approval of the Governor;

(7) To conduct such public hearings as he deems necessary for the proper administration of this article;

(8) To collect and disseminate information and to provide for public notification in matters relating to air quality. The director shall make publicly available on the division's website information regarding any spill or release of ethylene oxide reported to the division pursuant to paragraph (3) of subsection (a) of Code Section 12-9-7;

(9) To collect fees, assessments, penalties, or other payments provided for by this article;

(10) To issue orders as may be necessary to enforce compliance with this article and all rules and regulations promulgated pursuant to this article;

(11) To institute, in the name of the division, proceedings of mandamus, injunction, or other proper administrative, civil, or criminal proceedings to enforce the provisions of this article;

(12) To exercise all incidental powers necessary to carry out the purposes of this article;

(13) To prepare, develop, amend, modify, submit, and enforce a comprehensive plan or plans sufficient to comply with the federal act including emission control and limitation requirements, standards of performance, preconstruction review, and other requirements for the prevention, abatement, and control of air pollution in this state, for the prevention of significant deterioration of air quality, for protection against hazardous air pollutants, and for the achievement and maintenance of ambient air quality standards;

(14) To encourage voluntary cooperation by persons and affected groups to achieve the purposes of this article; and

(15) To receive, accept, hold, use, and administer on behalf of the state and for purposes provided in this article gifts, grants, donations, devises, and bequests of real, personal, and mixed property of every kind and description.

(c) The powers and duties described in this Code section may be exercised and performed by the director through such duly authorized agents and employees as he deems necessary and proper.

History. — Code 1933, 88-904, 88-905, enacted by Ga. L. 1967, p. 581, § 1; Ga. L. 1978, p. 275, § 6; Ga. L. 1982, p. 3, § 12; Ga. L. 1992, p. 918, § 2; Ga. L. 1992, p. 2886, § 1; Ga. L. 2020, p. 739, § 2/SB 426.

The 2020 amendment, effective January 1, 2021, added the second sentence to paragraph (b)(8).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "article" was substituted for "chapter" throughout this Code section.

JUDICIAL DECISIONS

Judicial review of air quality permit. — Trial court decision invalidating an air quality permit issued by the Environmental Protection Division (EPD) of the Georgia Department of Natural Resources to a power company to construct a pulverized coal-fired electric power plant in a particular county contained an erroneous ruling that the permit was invalid because the permit failed to include a limit on the power plant's carbon dioxide gas (CO2) emissions since no provisions of the Clean Air Act (CAA), 42 U.S.C. § 7401 et seq., or the state implementation plan controlled or limited CO2 emissions. Because CO2 was not a pollutant that "oth-

erwise is subject to regulation under the CAA," CO2 was not a regulated new source review pollutant in the Prevention of Significant Deterioration (PSD) program and was not required to be controlled by use of best available control technology (BACT), therefore, the trial court erred by ruling that the PSD permit was required to include a BACT emission limit to control the power company's CO2 emissions. Longleaf Energy Assocs., LLC v. Friends of the Chattahoochee, Inc., 298 Ga. App. 753, 681 S.E.2d 203 (2009), cert. denied, No. S09C1879, 2009 Ga. LEXIS 809 (Ga. 2009).

Enforceability of emissions limitations. — Permit conditions, which required nitrogen oxide emissions reductions from operating units at each of a power company's plants and which served as the offsets for the main plant's new emissions, were fully enforceable by the Georgia Environmental Protection Division. Sierra Club v. Ga. Power Co., 365 F. Supp. 2d 1287 (N.D. Ga. June 8, 2004).

OPINIONS OF THE ATTORNEY GENERAL

Environmental Protection Division has authority to obtain emission and operating information from sources of air pollution. 1980 Op. Att'y Gen. No. U80-19; 1981 Op. Att'y Gen. No. 81-78.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, § 237 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 323 et seq., 339. 73 C.J.S., Public Administrative Law and Procedure, §§ 147, 190, 207, 212 et seq. 73A C.J.S., Public Administrative Law and Procedure, § 277 et seq.

ALR. — Right to maintain action to enjoin public nuisance as affected by existence of pollution control agency, 60 A.L.R.3d 665.

12-9-7. Permit required; report of spill or release of ethylene oxide; application; issuance; revocation, suspension, or amendment.

(a)(1) As used in this subsection, the term "spill or release" shall have the same meaning as set forth in paragraph (10) of Code Section 12-14-1.

(2) No person shall, and it shall be unlawful and a violation of this article to, construct, install, modify, own, or operate any facility or stationary source or any equipment, device, article, or process capable of causing or contributing to the emission of air contaminants from such source or facility or designed to prevent air pollution from such facility or source unless permitted by and in compliance with a permit from the director. A permit shall be issued to an applicant on evidence satisfactory to the director of compliance with this article and any standards, limitations, requirements, or rules and regulations pursuant to this article. Notwithstanding any other provision of this article, the director shall not issue a Title V permit to a facility or source if the administrator objects in writing and in a timely manner to the issuance of such permit.

(3) As a condition of a permit for operations that include the emission of ethylene oxide, any spill or release of ethylene oxide, regardless of the amount, shall be reported to the division in writing within 24 hours of discovering such spill or release. Any person who violates such reporting requirement shall be subject to penalties under Article 1 of this chapter.

(b) Applications for permits shall be submitted in such manner, on such forms, and contain such information as the director prescribes and which he deems necessary to make a determination of compliance with this article and the rules and regulation promulgated pursuant to this article. The director may develop and require the use of standard application forms and establish evaluation criteria for expediently determining the completeness of such applications; provided, however, that the director at a minimum shall establish forms and criteria necessary to comply with the federal act. In addition to any other criteria established by the director, all permit applications shall be accompanied by:

(1) A compliance plan containing such schedules, reports, plans, documentation, and other information as may be required by the rules or regulations promulgated pursuant to this article and such additional information as the director may require to demonstrate a source's or facility's compliance or proposed compliance with the requirements of this article and the rules and regulations promulgated pursuant to this article; and

(2) Any and all applicable fees for processing the permit application and any other fee which the source or facility must pay pursuant to this article.

(c) Permits shall be issued as follows:

(1) Title V permits shall be issued for a fixed term not to exceed five years, except where a shorter term is provided for by this article or the rules and regulations promulgated pursuant to this article. A single permit may be issued for a facility with multiple sources of air contaminants; provided, however, that the permit requires each source to comply with this article and the rules and regulations promulgated pursuant to this article;

(2) Permits issued by the director in accordance with 42 U.S.C. Section 7651, et seq., to reduce the adverse effects of acid deposition through the reduction of annual emissions of sulphur dioxide and nitrogen oxides within the state shall be for a fixed term of five years;

(3) Permits issued for solid waste combustion incinerators shall be issued for a fixed term of 12 years. The director shall review the permit every five years to determine if such permit needs to be amended, revised, or modified;

(3.1) Permits issued for biomass boilers shall prohibit the use of railroad ties treated with creosote compounds or treated with naphthenate compounds for purposes of commercial electricity generation, unless the boiler also provides steam or electricity to any co-located forest products processing plant;

(4) The board may provide by rule or regulation authority for the director to issue, after notice and opportunity for public hearing, a general permit covering numerous similar sources. Any general permit shall comply with all requirements applicable to permits under 42 U.S.C. Section 7661, et seq., as amended, and the rules and regulations promulgated pursuant thereto. No facility or source covered by a general permit shall be relieved from the obligation to file an application pursuant to the requirements of this article; and

(5) All other permits shall be issued for a term as provided for by this article and the rules and regulations promulgated pursuant to this article.

(d) The director shall provide to the administrator a copy of each Title V permit proposed to be issued and issued as a final permit.

(e) The director may revoke, suspend, or amend any permit issued, for cause, including but not limited to the following:

(1) Violation of any condition of such permit or failure to comply with a final order of the director;

(2) Failure to comply with any applicable rules or regulations in effect pursuant to this article;

(3) Obtaining a permit by misrepresentation, failure to disclose fully all relevant facts, failure to inform the division of modifications affecting emissions, or failure to inform the division of changes in operation which affect emissions and which are required to be reported to the division pursuant to this article and the rules and regulations promulgated pursuant to this article; or

(4) Modifications which affect emissions.

(f) The director may amend or modify any permit issued, for cause, including but not limited to the following:

(1) Modifications which affect emissions; or

(2) Application by the permittee requesting modification or amendment of the permittee's permit.

(g) Except as provided elsewhere in this article, possession of an approved Title V permit shall constitute compliance with the applicable emission limitations or standards of performance or rules and regulations or with any other provision of this article or rules or regulations

adopted pursuant to or in effect under this article, to the extent specifically enumerated and provided in such permit.

(h) Any permit issued by the director or any modification, revocation, suspension, or amendment of a permit shall become final unless a petition for hearing is filed in accordance with Code Section 12-9-15.

(i) Failure by the director to make a decision to issue, deny, or review a permit within 18 months from the date a completed permit application is received shall be considered a refusal to issue, and the permittee may request review in accordance with Code Section 12-9-15. If the permittee does not request such review within 30 days after the expiration of such 18 month period, the permit shall be denied as a final agency action; provided, however, that for initial permit applications submitted pursuant to subsection (j) of this Code section, the director shall have three years from the submission deadline to process and issue or deny all completed permit applications. Of the completed applications submitted pursuant to subsection (j) of this Code section the director shall, at a minimum, process one-third of the applications in the first year, one-third of the applications in the second year, and the remaining applications in the third year.

(j) Every person in possession of an air quality permit issued pursuant to this article prior to July 1, 1992, and who is required to obtain a Title V permit and any person without such permit who has or intends to construct, install, modify, own, or operate any stationary facility or source or any equipment, device, article, or process capable of causing or contributing to the emission of air contaminants from such source or designed to prevent air pollution from said source and which is required to obtain a Title V permit shall submit a completed permit application pursuant to this article to the director within one year after the date this article and the rules and regulations promulgated pursuant to this article are approved by the administrator as complying with the federal act.

History. — Ga. L. 1978, p. 275, § 9; Code 1981, § 12-9-8; Ga. L. 1992, p. 918, § 2; Code 1981, § 12-9-7, as redesignated by Ga. L. 1992, p. 2886, § 1; Ga. L. 1993, p. 91, § 12; Ga. L. 2020, p. 649, § 1/HB 857; Ga. L. 2020, p. 739, § 1/SB 426.

The 2020 amendments. — The first 2020 amendment, effective August 4, 2020, added paragraph (c)(3.1). The second 2020 amendment, effective January 1, 2021, added paragraph (a)(1), redesignated former subsection (a) as paragraph (a)(2) and added paragraph (a)(3).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "article" was substituted for "chapter" throughout this Code section.

Pursuant to Code Section 28-9-5, in 1993, in subsection (a) (now subsection (c)), "et seq.," was substituted for "et seq." in paragraphs (2) and (4) and "U.S.C." was substituted for "U.S.C" in paragraph (4).

Pursuant to Code Section 28-9-5, in 2020, a semicolon was substituted for a period at the end of paragraph (c)(3.1).

Editor's notes. — Former Code Section 12-9-7, specifying factors to be considered in exercising powers and responsibilities relating to prevention, control, etc., of air pollution, was repealed by Ga. L. 1992,

p. 2886, § 1, effective July 1, 1992, and was based on Ga. L. 1967, p. 581, § 1; Ga. L. 1975, p. 1522, § 1; Ga. L. 1978, p. 275, § 8.

12-9-8. Renewal or revision of permit.

(a) Upon proper application, the director may renew, revise, modify, amend, or reissue a permit for an additional term.

(b) If an application for permit renewal has not been denied or a renewal permit issued by the date the current permit expires or if issuance or denial of the permit renewal is contested pursuant to Code Section 12-9-15 and administrative or judicial review has not resulted in a final determination by the date the current permit expires, the conditions of the current permit shall remain binding and enforceable until such time as a final determination on the permit renewal is issued.

History. — Code 1981, § 12-9-8, enacted by Ga. L. 1992, p. 2886, § 1.

Editor's notes. — Ga. L. 1992, p. 2886, § 1, effective July 1, 1992, redesignated former Code Section 12-9-8 as present Code Section 12-9-7.

12-9-9. Notice requirements for permit applications and actions regarding permits.

(a) Upon receipt of a completed application for issuance of a Title V permit or a Title V permit modification, amendment, or renewal and as otherwise provided by rule or regulation, the director shall:

(1) Require a public notice to be published in a paper of general circulation in the county in which the source or facility proposes to operate notifying the citizens that an application for a permit has been received and providing the public with an opportunity to request a public hearing and submit public comment. All such notices shall include a brief description of the proposed activity. Responsibility for publishing such notice shall rest with the applicant;

(2) Transmit to the administrator a copy of the application or such portion thereof as the administrator may require to review the application and to carry out the administrator's responsibility under the federal act; and

(3) Notify all states whose air quality may be affected and that are contiguous to the state or that are within 50 miles of the source of each permit application or proposed permit forwarded to the administrator under this Code section. The director shall provide an opportunity for such states to submit written recommendations respecting the issuance of the permit and its terms and conditions. If any part of those recommendations are not accepted by the director, the director shall notify the state submitting the recommendations

and the administrator in writing of the director's reasons for not accepting those recommendations.

(b) In the event of a modification, amendment, suspension, or a revocation of a permit, the director shall serve written notice of such action on the permit holder and shall set forth in such notice the reasons for the action.

History. — Code 1981, § 12-9-9, enacted by Ga. L. 1992, p. 2886, § 1.

Editor's notes. — Ga. L. 1992, p. 2886, § 1, effective July 1, 1992, redesignated former Code Section 12-9-9 as present Code Section 12-9-10.

12-9-10. Permit related fees; costs of public notice.

(a) The owner or operator of any stationary source shall pay to the division as a condition of any permit required under this article or under Ga. L. 1967, p. 581, as amended, an annual fee, or its equivalent over some other period, sufficient to cover:

(1) The reasonable cost of reviewing and acting upon any application for a permit under this article;

(2) The reasonable cost incurred after July 1, 1978, of implementing and enforcing the terms and conditions of any permit issued under this article or under Ga. L. 1967, p. 581, as amended, regardless of whether the permit was issued before or after July 1, 1978; provided, however, such cost shall not include any court cost or other costs associated with any judicial enforcement action;

(3) The reasonable cost of employing and training adequate personnel to implement the permitting program in accordance with this article;

(4) The reasonable cost of acquiring the necessary equipment and facilities to implement the permitting program in accordance with this article;

(5) Emissions and ambient monitoring;

(6) Preparing generally applicable regulations or guidance;

(7) Modeling, analyses, and demonstrations; and

(8) Preparing inventories and tracking emissions.

(b) The total amount of fees collected shall not be less than $25.00 per ton of emissions allowed in the permit of each regulated pollutant as defined in 42 U.S.C. Section 7661a(b)(3)(B)(ii) of the federal act; provided, however, that to the extent allowed under the federal act, the board may establish a lesser amount which may include fees based on actual emissions, if approved by the United States Environmental Protection Agency as fulfilling the requirements of the federal act. No

fee shall be collected for more than 4,000 tons per year of any individual regulated pollutant emitted by any source or any group of sources located within a contiguous area and under common control. No fee shall be collected for the emission of carbon monoxide which is not a regulated pollutant as defined in 42 U.S.C. Section 7661a(b)(3)(B)(ii) of the federal act.

(c) The fee collected shall be increased consistent with the need to cover the costs authorized in subsection (a) of this Code section by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989. For purposes of this subsection the Consumer Price Index is the average of the Consumer Price Index for all-urban consumers published by the Bureau of Labor Statistics of the Department of Labor, as of the close of the 12 month period ending on August 31 of each calendar year, and the revision of the Consumer Price Index which is most consistent with the Consumer Price Index for 1989 shall be used.

(d) The director may reduce any permit fee required under this article to take into account the financial resources of small business stationary sources as defined under the federal act or regulations promulgated pursuant thereto.

(e) The owner or operator of any stationary source shall, in addition to the fees provided for in subsections (a) through (c) of this Code section, pay any cost or expense associated with public notices or notifications required pursuant to this article or the federal act.

(f) Collection of fees pursuant to this Code section shall preclude collection of any air quality control permit fees by any other state or local governmental authority.

(g) Collection of fees pursuant to this Code section will not begin prior to July 1, 1992, and shall only apply to emissions occurring after January 1, 1991.

(h) The General Assembly declares its intent that the fee provisions of this Code section shall be consistent with and shall meet the requirements of the federal act but shall not duplicate the fees charged thereunder. The General Assembly further declares its intent to ensure that any permit fee collected by the division shall be utilized solely to cover all reasonable direct and indirect costs required to support the permit program as set forth in the federal act.

History. — Ga. L. 1978, p. 275, § 10; Code 1981, § 12-9-9; Ga. L. 1991, p. 1735, § 1; Ga. L. 1992, p. 918, § 2; Code 1981, § 12-9-10, as redesignated by Ga. L. 1992, p. 2886, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "article" was substituted for "chapter" in this Code section.

Editor's notes. — Ga. L. 1992, p. 2886,

§ 1, effective July 1, 1992, redesignated former Code Section 12-9-10 as present Code Section 12-9-11.

RESEARCH REFERENCES

Am. Jur. 2d. — 51 Am. Jur. 2d, Licenses and Permits, § 38 et seq.

C.J.S. — 53 C.J.S., Licenses, § 113.

12-9-11. Inspections and investigations.

For the purpose of (1) determining whether any person subject to the requirements of this article is in compliance with any standard or requirement imposed pursuant to this article, or (2) investigating conditions relating to air pollution or possible air pollution, where the director is in possession of information sufficient to form a reasonable belief that air pollution or possible air pollution in violation of this article is occurring or about to occur, the director or his authorized representative, upon presentation of his credentials, shall have a right to enter into, upon, or through premises of persons subject to this article or premises whereon a violation of this article is reasonably believed to be occurring or is reasonably believed to be about to occur, to investigate, sample emissions, and inspect for compliance with the requirements imposed under this article or to determine whether such a violation or threatened violation exists; provided, however, that this Code section in no way limits the authority of any other person or entity to inspect any source or facility as may be provided by the federal act.

History. — Code 1933, 88-907, enacted by Ga. L. 1967, p. 581, § 1; Ga. L. 1978, p. 275, § 11; Code 1981, § 12-9-10; Ga. L. 1982, p. 3, § 12; Ga. L. 1992, p. 918, § 2; Code 1981, § 12-9-11, as redesignated by Ga. L. 1992, p. 2886, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "this article" was substituted for "the article" in two places near the middle of this Code section.

Editor's notes. — Ga. L. 1992, p. 2886, § 1, effective July 1, 1992, redesignated former Code Section 12-9-11 as present Code Section 12-9-12.

OPINIONS OF THE ATTORNEY GENERAL

Environmental Protection Division has authority to obtain emission and operating information from sources of air pollution. 1980 Op. Att'y Gen. No. U80-19; 1981 Op. Att'y Gen. No. 81-78.

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 190.

12-9-12. Injunctive relief.

Whenever in the judgment of the director any person has engaged in or is about to engage in any act or practice which constitutes or will constitute an unlawful action under this article, he may make application to the superior court of the county in which the unlawful act or practice has been or is about to be engaged in, or in which jurisdiction is appropriate, for an order enjoining such act or practice or for an order requiring compliance with this article. Upon a showing by the director that such person has engaged in or is about to engage in any such act or practice, a permanent or temporary injunction, restraining order, or other order shall be granted without the necessity of showing lack of an adequate remedy of law.

History. — Ga. L. 1978, p. 275, § 13; Code 1981, § 12-9-11; Ga. L. 1992, p. 918, § 2; Code 1981, § 12-9-12, as redesignated by Ga. L. 1992, p. 2886, § 1.

Editor's notes. — Former Code Section 12-9-12, relating to delayed compliance orders, was repealed by Ga. L. 1992, p. 2886, § 1, effective July 1, 1992, and was based on Ga. L. 1978, p. 275, § 13.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, § 385.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, §§ 88, 89, 144, 145. 73A C.J.S., Public Administrative Law and Procedure, §§ 355, 575, 577.

12-9-13. Proceedings for enforcement.

Whenever the director has reason to believe that a violation of any provisions of this article or rule or regulation of the Board of Natural Resources or any order of the director has occurred, he may issue such orders and take such actions as are authorized by this article to require such person or persons to remedy the violation so as to be in compliance with this article. Any order issued by the director under this Code section shall be signed by the director. Any such order shall become final unless the person or persons named therein request in writing a hearing before the department pursuant to Code Section 12-9-15.

History. — Ga. L. 1978, p. 275, § 14; Ga. L. 1992, p. 918, § 2; Ga. L. 1992, p. 2886, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "article" was substituted for "chapter" in this Code section.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 353, 354.

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 226. 73A C.J.S., Public Administrative Law and Procedure, §§ 277 et seq., 355.

ALR. — Air pollution control: sufficiency of evidence of violation in adminis-

trative proceeding in abatement order, 48 A.L.R.3d 795.

12-9-14. Powers of director in situations involving imminent and substantial danger to public health.

Notwithstanding any other provision of this article, the director, upon receipt of evidence that a source or facility or combination of sources or facilities is presenting imminent and substantial danger to the health of persons, may bring an action as provided in Code Section 12-9-12 immediately to restrain any person causing or contributing to the alleged pollution through the emission of air contaminants to stop the emission of air pollutants causing or contributing to such pollution or to take such other action as may be necessary. If it is not practicable to assure prompt protection of the health of persons solely by commencement of such a civil action, the director, with the concurrence of the Governor, may issue such orders as may be necessary to protect the health of persons who are, or may be, affected by such pollution source or facility. Prior to issuing an order under this Code section, the director shall consult with local authorities in order to confirm the correctness of the information on which action proposed to be taken is based and to ascertain the action which such authorities are or will be taking. Notwithstanding Code Sections 12-9-12, 12-9-13, and 12-9-15, such order shall be immediately effective for a period of not more than 24 hours unless the director brings an action under the first sentence of this Code section before the expiration of such period. Whenever the director brings such an action within such period, such order shall be effective for a period of 48 hours or such longer period as may be authorized by the court pending litigation or thereafter.

History. — Ga. L. 1978, p. 275, § 15; Ga. L. 1992, p. 918, § 2; Ga. L. 1992, p. 2886, § 1.

Cross references. — Emergency powers of Governor generally, §§ 38-3-22, 38-3-51, 45-12-29 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 39 Am. Jur. 2d, Health, §§ 86, 88.

ALR. — Air pollution control: validity of legislation permitting administrative agency to fix permissible standards of pollutant emission, 48 A.L.R.3d 326.

12-9-15. Hearing; judicial review.

(a)(1) Any person who is aggrieved or adversely affected by any order or action of the director pursuant to this article shall, upon petition within 30 days after the issuance of such order or the taking of such action, have a right to a hearing before an administrative law judge appointed by the Board of Natural Resources. The hearing before the administrative law judge shall be conducted in accordance with

Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The decision of the administrative law judge shall constitute the final decision of the board. Any party to the hearing, including the director, shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50. Such action shall be filed in the Superior Court of Fulton County or in the superior court of the county of residence of the petitioner.

(2) The provisions of subparagraph (c)(2)(B) of Code Section 12-2-2 shall apply to proceedings under this Code section.

(b) Persons are aggrieved or adversely affected where the challenged action has caused or will cause them injury in fact or where the injury is to an interest within the zone of interests to be protected or regulated by the director pursuant to this article. A person shall also be considered aggrieved or adversely affected solely for purposes of administrative and judicial review pursuant to this article if he actively participated in the public hearing and comment process and the director decided the matter adverse to his interest. A continuous and substantial involvement in the review process, including attendance at public hearings and submission in writing of specific objections to the permit as proposed and specific suggested permit conditions or limitations which the person believes are required to implement the provisions of this article, shall constitute active participation. In the event the director asserts in response to the petition before the administrative law judge that the petitioner is not aggrieved or adversely affected, the administrative law judge shall take evidence and hear arguments on this issue and thereafter make a ruling on this issue before continuing with the hearing. The burden of going forward with evidence on this issue shall rest with the petitioner. The hearing and review procedure provided in this Code section is to the exclusion of all other means of hearing or review.

History. — Ga. L. 1978, p. 275, § 17; Ga. L. 1992, p. 918, § 2; Ga. L. 1992, p. 2886, § 1; Ga. L. 2005, p. 818, § 2/SB 190.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "article" was substituted for "chapter" throughout this Code section.

JUDICIAL DECISIONS

Judicial review of air quality permit. — Trial court decision invalidating an air quality permit issued by the Environmental Protection Division (EPD) of the Georgia Department of Natural Resources to a power company to construct a pulverized coal-fired electric power plant in a particular county contained an erroneous ruling that the permit was invalid because the permit failed to include a limit on the power plant's carbon dioxide gas (CO2) emissions since no provisions of the Clean Air Act (CAA), 42 U.S.C. § 7401 et seq., or the state implementation plan controlled or limited CO2 emissions. Because CO2 was not a pollutant that "otherwise is subject to regulation under the CAA," CO2 was not a regulated new source review pollutant in the Prevention of Significant Deterioration (PSD) pro-

gram and was not required to be controlled by use of best available control technology (BACT), therefore, the trial court erred by ruling that the PSD permit was required to include a BACT emission limit to control the power company's CO2 emissions. Longleaf Energy Assocs., LLC v. Friends of the Chattahoochee, Inc., 298 Ga. App. 753, 681 S.E.2d 203 (2009), cert. denied, No. S09C1879, 2009 Ga. LEXIS 809 (Ga. 2009).

OPINIONS OF THE ATTORNEY GENERAL

Compliance with 1990 Clean Air Act amendment. — Provision in O.C.G.A. § 12-9-15 which grants standing to those individuals who can demonstrate some injury or threatened injury as a result of an action or of interests to be protected by the Georgia Air Quality Act, O.C.G.A. § 12-9-1 et seq., meets the judicial review requirements found in 42 U.S.C. § 7661a, as interpreted by the Environmental Protection Agency. 1993 Op. Att'y Gen. No. 93-13.

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 260, 385.

C.J.S. — 73A C.J.S., Public Administrative Law and Procedure, §§ 277 et seq., 374 et seq.

ALR. — Air pollution control: sufficiency of evidence of violation in administrative proceeding in abatement order, 48 A.L.R.3d 795.

12-9-16. Hearings and review.

Any order of a hearing officer issued after a hearing as provided in Code Section 12-9-15 or 12-9-22, or any order of the director issued under Code Section 12-9-13, 12-9-20, or 12-9-22, either:

(1) Unappealed from, as provided in those Code sections; or

(2) Affirmed or modified pursuant to judicial review provided by this article or Chapter 13 of Title 50 and from which no further review is taken may be filed as a final order by certified copy from the director, in the superior court of the county wherein the person resides, or if the person is a corporation in the county wherein the corporation maintains its principal place of business, or in the county wherein the violation occurred, whereupon the court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall thereafter be the same, as though the judgment had been rendered in an action duly heard and determined by such court.

History. — Ga. L. 1978, p. 275, § 18; Ga. L. 1992, p. 918, § 2; Ga. L. 1992, p. 2886, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "article" was substituted for "chapter" in paragraph (2).

RESEARCH REFERENCES

Am. Jur. 2d. — 2 Am. Jur. 2d, Administrative Law, §§ 301, 359.

C.J.S. — 73A C.J.S., Public Administrative Law and Procedure, §§ 329 et seq.

12-9-17. Legal assistance by Attorney General.

It shall be the duty of the Attorney General to represent the director or designate some member of his staff to represent the director in all actions in connection with this article.

History. — Ga. L. 1978, p. 275, § 19; Ga. L. 1992, p. 918, § 2; Ga. L. 1992, p. 2886, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, § 6.

12-9-18. Powers of Governor as to air quality control generally.

Notwithstanding any other provision of this article relating to the authority, power, and responsibility of the Board of Natural Resources, department, division, or director, the Governor is authorized to designate air quality regions within the state as provided in 42 U.S.C. Section 7407(e); petition the President as provided in 42 U.S.C. Section 7410(f); make application to the administrator pursuant to 42 U.S.C. Section 7411(g); consent to waivers pursuant to 42 U.S.C. Section 7411(j); require measures to prevent economic disruption of employment pursuant to 42 U.S.C. Section 7425; redesignate areas of the state to allow maximum industrial development pursuant to 42 U.S.C. Section 7474; recommend variances pursuant to 42 U.S.C. Section 7475; designate organizations pursuant to 42 U.S.C. Section 7504; and to take such other specific acts required by governors under 42 U.S.C. Section 7401, et seq.; all subject to the Governor's power to delegate such authority by executive order or otherwise to the director.

History. — Ga. L. 1978, p. 275, § 21; Ga. L. 1992, p. 918, § 2; Ga. L. 1992, p. 2886, § 1.

12-9-19. Protection of confidential information obtained by division.

Information relating to secret processes, devices, or methods of manufacture or production obtained by the division in the administration of this article shall be kept confidential; provided, however, reports on the nature and amounts of stationary source emissions obtained by

the division shall be available for public inspection from the division. This Code section shall have no effect on the division's duty to provide such information to the administrator, or his agents or representatives, pursuant to the federal act.

History. — Code 1933, § 88-908, enacted by Ga. L. 1967, p. 581, § 1; Ga. L. 1975, p. 1522, § 2; Ga. L. 1978, p. 275, § 22; Ga. L. 1992, p. 918, § 2; Ga. L. 1992, p. 2886, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Environmental Protection Division has authority under state law to maintain the confidentiality of certain information. 1980 Op. Att'y Gen. No. U80-19; 1981 Op. Att'y Gen. No. 81-78.

12-9-20. Continuation in effect of rules, regulations, and permits.

(a) To the extent that they are consistent with the provisions of this article, all rules and regulations issued by the department before July 1, 1992, shall continue in full force and effect.

(b) Any permit issued by the department pursuant to this article before July 1, 1992, shall continue in effect until the permittee is required by law to obtain a new or amended permit.

History. — Ga. L. 1978, p. 275, § 23; Ga. L. 1992, p. 918, § 2; Ga. L. 1992, p. 2886, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "article" was substituted for "chapter" throughout this Code section.

12-9-21. Effect of article on powers of Board of Natural Resources, department, division, and director.

Nothing contained in this article shall be deemed to grant to the Board of Natural Resources, department, division, or director any jurisdiction or authority to make any rule, regulation, recommendation, or determination or to enter any order:

(1) With respect to air conditions existing solely within the property boundaries of commercial and industrial plants, works, or operations if such locations are not subject to regulation under the federal act;

(2) Affecting the relations between employers and employees with respect to or arising out of any air conditions if such relations are not subject to regulation under the federal act; except that a source which uses a supplemental or intermittent control system for purposes of complying with an order issued by the director under Code Section 12-9-13 or the administrator under 42 U.S.C. Section 7413(d) may not

temporarily reduce the pay of any employee by reason of the use of supplemental or intermittent or other dispersion dependent control systems for control of emissions of air pollutants;

(3) Limiting or restricting the owners of any forest land from burning over their own land, provided that such burning is consistent with the requirements of the federal act; or

(4) Limiting or restricting burning over any agricultural tract, lot, or parcel greater than five acres for purposes of any existing, expanded, or new agricultural operations as such term is defined by Code Section 1-3-3, provided that such burning is consistent with the requirements of the federal act and is limited to vegetative material.

History. — Code 1933, § 88-910, enacted by Ga. L. 1967, p. 581, § 1; Ga. L. 1972, p. 1015, § 1529; Ga. L. 1978, p. 275, § 7; Ga. L. 1992, p. 918, § 2; Ga. L. 1992, p. 2886, § 1; Ga. L. 2018, p. 118, § 1/HB 885.

RESEARCH REFERENCES

C.J.S. — 73 C.J.S., Public Administrative Law and Procedure, § 260 et seq.

ALR. — Air pollution control: validity of legislation permitting administrative agency to fix permissible standards of pollutant emission, 48 A.L.R.3d 326.

12-9-22. Noncompliance penalties.

(a) The following sources shall be subject to noncompliance penalties under the conditions specified in this Code section:

(1) Any major stationary source which is not in compliance with an emission limitation, emission standard, standard of performance, or compliance schedule under any applicable provision of this article or any rule, regulation, permit, consent order, or decree, whether federal or state, or final order adopted, issued, consented to, or otherwise in effect under this article or the federal act;

(2) Any stationary source which is not in compliance with an emission limitation, emission standard, standard of performance, or other requirement applicable to such sources, established under this Code section or any section of the federal act; or

(3) Any source referred to in paragraph (1) or (2) of this subsection which has been granted an exemption, extension, or suspension under subsection (f) of this Code section or which is covered by a consent order or decree, if such source is not in compliance with any interim emission control requirement or schedule of compliance established under such exemption, extension, suspension, or consent order or decree.

(b) Not later than July 1, 1979, or 30 days after the discovery of such noncompliance, whichever is later, the director shall give a brief but

reasonably specific notice of noncompliance to the owner or operator of each source specified in subsection (a) of this Code section. Each person given notice by the director pursuant to this subsection shall either:

(1) Calculate the amount of the penalty owed determined in accordance with subsection (d) of this Code section and the schedule of payments determined in accordance with subsection (d) of this Code section for each source owned or operated by such person and not in compliance, and, within 30 days after the issuance of such notice or within 30 days after a final order or decision denying a petition submitted under paragraph (2) of this subsection, submit that calculation and proposed schedule together with the information necessary for an independent verification thereof to the director; or

(2) Submit a petition, to be filed with the Board of Natural Resources within 30 days, challenging such notice of noncompliance or alleging entitlement to an exemption under subsection (f) of this Code section, with respect to the source. There shall be a hearing on such petition as provided in paragraph (2) of subsection (i) of this Code section.

(c) If the person to whom notice is issued pursuant to subsection (b) of this Code section does not submit a timely petition under paragraph (2) of subsection (b) of this Code section, or submits a petition which is denied, and fails to submit a calculation of the penalty assessment and a schedule for payment and the information necessary for independent verification by the division pursuant to paragraph (1) of subsection (b) of this Code section, then the division may enter into a contract with any person who has no financial interest in the matter to assist in determining the amount of the penalty assessment or payments schedule with respect to such source as provided in subsection (d) of this Code section. In any instance of noncompliance where a calculation by the division is necessary under this subsection, any person to whom notice was given under subsection (b) of this Code section shall make available to division personnel, and allow division personnel and disinterested parties contracted with under this subsection to have access to such financial, operational, and maintenance records as shall be necessary to complete computations under subsection (d) of this Code section. Any such availability or access shall be at a reasonable time and place. The amount of the penalty and payment schedule determined pursuant to a contract entered into by the director under this subsection shall be final and shall be considered as and given the effect of a submittal by such person pursuant to paragraph (1) of subsection (b) of this Code section. The director may issue an assessment pursuant to subsection (d) of this Code section based upon the determined amount and schedule and may add to the penalty, as an additional assessment, the cost of carrying out such contract. The director shall give notice of such assessments to

persons against whom such assessments are ordered. Any person against whom costs are assessed under subsection (d) of this Code section based upon an amount determined pursuant to this subsection may submit a petition, to be filed with the Board of Natural Resources within 30 days after receipt of such notice, challenging that portion of the penalty assessed pursuant to subsection (d) of this Code section which is attributable to the costs of the contract, and a hearing shall be held thereon as provided in paragraph (2) of subsection (i) of this Code section. The filing of a petition as provided in this subsection shall not, however, affect the assessment or payment of noncompliance penalties nor the payment schedule provided in any order assessing those penalties.

(d) Unless there has been a final determination under paragraph (2) of subsection (i) of this Code section on a petition submitted under paragraph (2) of subsection (b) of this Code section finding no noncompliance or finding the existence of an exemption, penalties or costs shall be assessed, and payment schedules prescribed therefor, by order of the director directed to and against the person or persons to whom notice of noncompliance is given. Such penalties or costs shall be computed, assessed, and paid as follows:

(1) For each quarter, or any part of a quarter, of any period of covered noncompliance, the amount of the noncompliance penalty assessment shall be no less than the quarterly equivalent of the capital cost of compliance and debt service over a normal amortization period, not to exceed ten years, and operation and maintenance cost foregone as a result of noncompliance, and any additional economic value or gain which a delay in compliance beyond July 1, 1979, may have or produce for the owner or operator of such source; minus

(2) The amount of any expenditure made by the owner or operator of that source during any such quarter for the purpose of bringing that source into and maintaining compliance with such requirement to the extent that such expenditures have not been taken into account in the calculation of the penalty under paragraph (1) of this subsection. To the extent that any expenditure under this paragraph made during any quarter is not subtracted for such quarter from the costs under paragraph (1) of this subsection, such expenditure may be subtracted for any subsequent quarter for such cost, except that in no event shall the amount paid be less than the quarterly payment minus the amount attributed to actual cost of construction.

(3) The penalties or costs assessed shall be paid to the director in quarterly installments. All quarterly payments, determined without regard to any adjustment or any subtraction under paragraph (2) of this subsection after the first payment, shall be equal. The first

payment shall be due on the date six months after the date of issuance of the notice of noncompliance under subsection (b) of this Code section with respect to any source, or on January 1, 1980, whichever is later. Such first payment shall be in the amount of the quarterly installment for the upcoming quarter, plus the amount owed for a preceding period within the period of covered noncompliance for such source.

(4) The term "period of covered noncompliance" means the period which begins:

(A) On July 1, 1979, in the case of a source for which notice of noncompliance under subsection (b) of this Code section is issued on or before July 1, 1979; or

(B) On the date of issuance of the notice of noncompliance under subsection (b) of this Code section in the case of a source for which such notice is issued after July 1, 1979,

and ending on the date on which such source comes into, or for the purpose of establishing the schedule of payments, is estimated to come into, compliance with such requirement.

(5) The director is authorized to issue a final order of assessment and payment schedule from which no appeal or review may be taken, based upon any of the following:

(A) The calculated amount of penalty and payment schedule submitted, pursuant to paragraph (1) of subsection (b) of this Code section, whether submitted within 30 days after notice or within 30 days after a final order or decision denying a petition submitted under paragraph (2) of subsection (b) of this Code section, by the person to whom notice of noncompliance was given, and to which no adjustment is made by the director under subsection (e) of this Code section;

(B) Upon an adjusted amount and payment schedule computed as provided in subsection (e) of this Code section and becoming final under paragraph (1) of subsection (i) of this Code section or upon any hearing or appeal provided for under subsection (e) of this Code section;

(C) Upon an amount and payment schedule determined and becoming final pursuant to subsection (c) of this Code section; or with respect to assessments of costs authorized under subsection (c) of this Code section, upon an amount and payment schedule for costs assessed as provided in subsection (c) of this Code section, becoming final pursuant to paragraph (1) of subsection (i) of this Code section or upon any hearing or appeal provided for under subsection (c) of this Code section;

(D) Upon an amount of nonpayment penalty and payment schedule therefor computed as provided in subsection (h) of this Code section, becoming final under paragraph (1) of subsection (i) of this Code section, or upon any hearing or appeal provided for under subsection (h) of this Code section; or

(E) Upon an amount of final adjustment and payment schedule therefor computed as provided in subsection (g) of this Code section, becoming final under paragraph (1) of subsection (i) of this Code section or upon any hearing or appeal provided for under subsection (g) of this Code section.

(6) The director is authorized to issue an order of assessment and payment schedule for costs of contracts entered into under subsection (c) of this Code section, adjusted noncompliance penalty amounts determined under subsection (e) of this Code section, final adjustments under subsection (g) of this Code section, and nonpayment penalties computed under subsection (h) of this Code section, or for other amounts authorized in this Code section. Such assessments and payment schedules shall be subject to review as provided in the relevant subsection.

(e) The amount of the penalty assessment calculated or the payment schedule proposed by any person pursuant to paragraph (1) of subsection (b) of this Code section shall be subject to adjustment by the director, if the director finds that the assessment or proposal does not meet the requirements of this Code section. The director shall issue an assessment pursuant to subsection (d) of this Code section based upon such adjustment and shall give notice of such adjusted assessment. Any person making a submittal under paragraph (1) of subsection (b) of this Code section receiving a notice of adjusted assessment may submit a petition to the Board of Natural Resources within 30 days challenging such adjusted assessment and a hearing shall be held thereon as provided in paragraph (2) of subsection (i) of this Code section. The director is authorized to require a final adjustment of the penalty within 180 days after such source comes into compliance, in accordance with subsection (g) of this Code section.

(f)(1) Notwithstanding the requirements of paragraphs (1) and (2) of subsection (a) of this Code section, the owner or operator of any source shall be exempted from the duty to pay any noncompliance penalty, if, in accordance with the procedures of paragraph (2) of subsection (b) of this Code section, the owner or operator demonstrates that the failure of such source to comply with any such requirement is due solely to:

(A) A conversion by such source from the burning of petroleum products or natural gas, or both, as the permanent primary energy

source to the burning of coal pursuant to an order under 42 U.S.C. Section 7413(d)(5), or Section 119 of the federal Clean Air Act, as amended, 88 Stat. 248 (as in effect before the date of enactment of the federal Clean Air Act Amendments of 1977);

(B) In the case of a coal-burning source granted an extension under the second sentence of Section 119(c)(1) of the federal Clean Air Act, as amended, 88 Stat. 248 (as in effect before the date of the enactment of the federal Clean Air Act Amendments of 1977), a prohibition from using petroleum products or natural gas or both, by reason of an order under Section 2(a) and (b) of the federal Energy Supply and Environmental Coordination Act of 1974 or under any legislation which amends or supersedes such provisions;

(C) An inability to comply with such requirement, which inability results from reasons entirely beyond the control of the owner or operator of such source or facility or of an entity controlling, controlled by, or under common control with the owner or operator of such source or facility and an order has been issued under 42 U.S.C. Section 7413 as it existed prior to August 7, 1977; or

(D) The conditions by reason of which a temporary emergency suspension has been authorized with regard to such source, by order of the Governor or his designee in accordance with 42 U.S.C. Section 7410(f) or (g).

(2) Any exemption under paragraph (1) of this subsection ceases to be effective if the person subject to the order fails to comply with the interim emission control requirements or schedules of compliance, including increments of progress, under any extension, order, or suspension.

(3) The director may, after notice and opportunity for public hearing as provided for in this article, exempt any source from the requirements of this Code section with respect to a particular instance of noncompliance if he finds that such instance of noncompliance is de minimis in nature and in duration.

(g) On making a determination that a source, with respect to which a penalty has been paid as assessed under this Code section, is in compliance and is maintaining compliance with the applicable requirement, the director shall review the actual expenditures made by the owner or operator of such source for the purpose of obtaining and maintaining compliance and shall within 180 days after such source comes into compliance provide for a final adjustment of the penalties paid, to be made by order of the director under subsection (d) of this Code section, and shall provide reimbursement, with interest at appropriate prevailing rates, of any overpayment by such person, or shall assess and collect, pursuant to subsection (d) of this Code section, an

additional payment with interest at appropriate prevailing rates for any underpayment by such person. The director shall give notice of any final adjustment under this subsection. Any person receiving such notice may submit a petition, filed with the Board of Natural Resources within 30 days after receipt of such notice, for a hearing pursuant to paragraph (2) of subsection (i) of this Code section challenging such final adjustment. The sole issue on such petition shall be the validity and amount of the final adjustment and any assessment of that amount.

(h) Any person who fails to pay the amount of any penalty or cost assessed with respect to any source under this Code section on a timely basis shall be required to pay, and the director shall assess under subsection (d) of this Code section, an additional quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be in an amount equal to 20 percent of the aggregate amount of such person's penalties, costs, and nonpayment penalties with respect to such source or facility which are unpaid as of the beginning of such quarter. The director shall give notice of the assessment of nonpayment penalties provided for in this subsection. Any person receiving such notice may submit a petition, to be filed with the Board of Natural Resources within 30 days after receipt of such notice, for a hearing pursuant to paragraph (2) of subsection (i) of this Code section challenging such nonpayment penalty. The filing of such a petition shall not, however, affect the assessment or payment of noncompliance penalties nor the payment schedule prescribed for payment in any order assessing those amounts. The sole issue in a petition under this subsection is the validity and amount of the nonpayment penalty assessment.

(i)(1)(A) If any person receiving a notice under subsection (b) of this Code section does not submit a petition as provided in paragraph (2) of subsection (b) of this Code section, and the director issues an assessment for noncompliance penalties pursuant to subsection (d) of this Code section, based upon an amount determined under subsection (c) of this Code section;

(B) If the director makes an adjustment under subsection (e) of this Code section to a submittal made under paragraph (1) of subsection (b) of this Code section and issues an assessment pursuant to subsection (d) of this Code section based on that adjustment, and no petition as provided in subsection (e) of this Code section is filed challenging such adjustment;

(C) If the director enters into a contract pursuant to subsection (c) of this Code section and issues an assessment of costs pursuant to subsection (d) of this Code section based upon the contract entered into under subsection (c) of this Code section and no

petition is filed, as provided in subsection (c) of this Code section challenging the assessed costs;

(D) If the director makes an assessment of nonpayment penalties, computed as provided for in subsection (h) of this Code section, pursuant to subsection (d) of this Code section, and no petition is filed as provided in subsection (h) of this Code section challenging that assessment of nonpayment penalties; or

(E) If the director makes a final adjustment under subsection (g) of this Code section and issues an assessment therefor pursuant to subsection (d) of this Code section based upon that final adjustment and no petition is filed as provided for in subsection (g) of this Code section challenging such final adjustment assessment;

then, in any such case or cases, such assessment or assessments become final and no hearing or appeal may be taken.

(2) In all cases where a petition is filed, as provided in either paragraph (2) of subsection (b) of this Code section, challenging the notice or alleging exemption, or subsection (c) of this Code section, challenging the costs of contract, or subsection (e) of this Code section, challenging the adjustment, or subsection (g) of this Code section, challenging the final adjustment, or subsection (h) of this Code section, challenging the nonpayment penalties, hearing and review of the assessment, based upon such challenge, shall be provided in accordance with Code Section 12-9-15. The hearing officer's initial decision and order shall in all such cases be issued within 90 days after receipt of any petition.

(j) Any order, payments, sanctions, or other requirements under this Code section shall be in addition to any other permits, orders, payments, sanctions, or other requirements established under this article, and shall in no way affect any action for civil penalties pursuant to Code Section 12-9-23, or injunctive relief pursuant to Code Section 12-9-12. The noncompliance penalties provided for in this Code section are intended to be wholly cumulative with any and all remedies, procedures, or requirements of this article.

(k) In the case of any emission limitation or other requirement ordered, approved, adopted, or promulgated by the Board of Natural Resources, department, division, or director under this article after July 1, 1978, which is more stringent than the emission limitation or other requirement for the source in effect prior to such order, approval, adoption, or promulgation, if any, or where there was no emission limitation or other requirement approved, adopted, or promulgated before July 1, 1978, the date for imposition of the noncompliance penalty under this Code section shall be either July 1, 1979, or the date on which the source is required to be in full compliance with such

emission limitation or other requirement, whichever is later, but in no event later than three years after the issuance, approval, or promulgation of such emission limitation or other requirement.

(l) All noncompliance penalties recovered by the director as provided in this Code section shall be paid into the state treasury to the credit of the general fund; provided, however, the director may retain such penalties in an escrow account created for that purpose until a final determination and adjustment has been made under subsection (g) of this Code section with respect to a period of noncompliance by a particular source or facility; and provided, further, that any amounts assessed and collected for costs of contracts entered into by the director under subsection (c) of this Code section may be retained and used by the director to pay the costs of such contracts. After assessment and collection of a final adjustment, the final remaining penalty amount and any accumulated interest thereon shall be paid to the state treasury. During the pendency of such escrow period, the director is authorized to invest such escrow amounts to earn appropriate prevailing rates of interest in institutions in this state insured by the Savings Association Insurance Fund of the Federal Deposit Insurance Corporation.

History. — Ga. L. 1978, p. 275, § 20; Ga. L. 1982, p. 3, § 12; Ga. L. 1992, p. 6, § 12; Ga. L. 1992, p. 918, § 2; Ga. L. 1992, p. 2886, § 1.

U.S. Code. — The federal Energy Supply and Environmental Coordination Act of 1974, referred to in subparagraph (f)(1)(B) of this Code section, is codified principally at 15 U.S.C. §§ 791 through 798. Sections 2(a) and 2(b) of that federal Act, also referred to in subparagraph (f)(1)(B) of this Code section, are codified at 15 U.S.C. §§ 792(a) and 792(b).

Section 119 of the federal Clean Air Act, 69 Stat. 322, referred to in subparagraphs (f)(1)(A) and (B) of this Code section, was added by Pub. L. 93-319, § 3, June 22, 1974, and was codified at 42 U.S.C. § 1857c-10. Section 112(b)(1) of the federal Clean Air Act Amendments of 1977, Pub. L. 95-95, repealed § 119 of the federal Clean Air Act of 1955; however, § 406(b) of Pub. L. 95-95 provided generally that all orders issued pursuant to the federal Clean Air Act as in effect immediately prior to the date of enactment of Pub. L. 95-95 should continue in full force and effect. In addition, § 117(b) of Pub. L. 95-95 enacted a new § 119 of the federal Clean Air Act, dealing with a subject different from that dealt with by the previous § 119.

RESEARCH REFERENCES

ALR. — Recovery of cumulative statutory penalties, 71 A.L.R.2d 986.

Necessity of showing scienter, knowledge, or intent, in prosecution for violation of air pollution or smoke control statute or ordinance, 46 A.L.R.3d 758.

Liability insurance coverage for violations of antipollution laws, 87 A.L.R.4th 444.

12-9-23. Civil penalties; procedures for imposing penalties.

(a) Any person violating any provision of this article or rules or regulations promulgated pursuant to this article or any permit condi-

tion or limitation established pursuant to this article, or failing or refusing to comply with any final order of the director issued as provided in this article shall be liable for a civil penalty of not more than $25,000.00 per day. Each day during which the violation or failure continues shall be a separate violation.

(b) Whenever the director has reason to believe that any person has violated any provision of this article or any rules or regulations promulgated pursuant to this article or any permit condition or has failed or refused to comply with any final order of the director, he may, upon written request, cause a hearing to be conducted before a hearing officer appointed by the Board of Natural Resources. Upon a finding that such person has violated any provisions of this article or any rule or regulation promulgated pursuant to this article or any permit condition, or has failed or refused to comply with any final order of the director, the hearing officer shall issue his initial decision imposing civil penalties as provided in subsection (a) of this Code section. Such hearing and any administrative or judicial review thereof shall be conducted in accordance with Code Section 12-9-15.

(c) In rendering a decision under subsection (b) of this Code section imposing civil penalties, the hearing officer shall consider all factors which are relevant, including, but not limited to, the following:

(1) The amount of assessment necessary to ensure immediate and continued compliance and the extent to which the violator may have profited by failing or delaying compliance;

(2) The character and degree of impact of the violation or failure on the natural resources of the state, especially any rare or unique natural phenomena;

(3) The conduct of the person incurring the civil penalty in taking all feasible steps or procedures necessary or appropriate to comply or to correct the violation or failure;

(4) Any prior violations by such person, or failures by such person to comply with, statutes, regulations, orders, or permits administered, adopted, or issued by the director;

(5) The character and degree of injury to, or interference with, public health, safety, or welfare which is caused or threatened to be caused by such violation or failure;

(6) The character and degree of injury to, or interference with, reasonable use of property which is caused or threatened to be caused by such violation or failure.

(d) All civil penalties recovered by the director as provided in this Code section shall be paid into the state treasury to the credit of the general fund.

History. — Ga. L. 1978, p. 275, § 16; Ga. L. 1992, p. 918, § 2; Ga. L. 1992, p. 2886, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "article" was substituted for "chapter" in subsections (a) and (b).

JUDICIAL DECISIONS

Imposition of a civil penalty was supported by the evidence after the administrative law judge found violations of the Air Quality Act, DNR Rules, and the conditions of a permit and specifically considered each of the factors set forth in subsections (c)(1) through (6) of O.C.G.A. § 12-9-23 and found that evidence adduced on four of these factors weighed in favor of imposing a penalty. Reheis v. Drexel Chem. Co., 237 Ga. App. 87, 514 S.E.2d 867 (1999).

Cited in Action Marine, Inc. v. Cont'l Carbon, Inc., 481 F.3d 1302 (11th Cir. 2007); Meredith v. Thompson, 312 Ga. App. 697, 719 S.E.2d 592 (2011).

RESEARCH REFERENCES

C.J.S. — 36A C.J.S., Fines, § 3.

ALR. — Recovery of cumulative statutory penalties, 71 A.L.R.2d 986.

Air pollution control: sufficiency of evidence of violation in administrative proceeding in abatement order, 48 A.L.R.3d 795.

Validity of state statutory provision permitting administrative agency to impose monetary penalties for violation of environmental pollution statute, 81 A.L.R.3d 1258.

Liability insurance coverage for violations of antipollution laws, 87 A.L.R.4th 444.

12-9-24. Criminal penalties; evidence; affirmative defenses.

(a) Any person who knowingly violates any provision of this article or any permit condition or limitation established pursuant to this article or who fails, neglects, or refuses to comply with any final order of a court lawfully issued as provided in this article or knowingly introduces or releases into the air or atmosphere pollutants or air contaminants or hazardous substances in violation of any provision of this article or any permit condition or limitation established pursuant to this article which cause or may reasonably be anticipated to cause personal injury or property damage shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $25,000.00 per day of violation, imprisoned not more than two years, or both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall be by a fine of not more than $50,000.00 per day of violation, by imprisonment for not more than five years, or both.

(b) Any person who knowingly makes any false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained by this article or by any permit, rule, regulation, or order issued under this article or who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained by this article or by any

permit, rule, regulation, or order issued under this article shall be guilty of a felony and, upon conviction thereof, shall be fined not more than $25,000.00 per day of violation, imprisoned not more than two years, or both. If the conviction is for a violation committed after a first conviction of such person under this subsection, punishment shall be by a fine of not more than $50,000.00 per day of violation, by imprisonment for not more than five years, or both.

(c) Any person who knowingly violates any provision of this article or any permit condition or limitation established pursuant to this article or who knowingly fails, neglects, or refuses to comply with any final order of a court lawfully issued as provided in this article and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall be guilty of a felony and, upon conviction thereof, shall be punished by a fine of not more than $250,000.00, by imprisonment for not more than 15 years, or both. A defendant that is an organization shall, upon conviction of violating this subsection, be subject to a fine of not more than $1 million. The following provisions apply for purposes of this subsection:

(1) In determining whether a defendant who is an individual knew that his conduct placed another person in imminent danger of death or serious bodily injury, the person is responsible only for actual awareness or actual belief that he possessed; and knowledge possessed by a person other than the defendant but not by the defendant himself may not be attributed to the defendant, except that in proving the defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to shield himself from relevant information;

(2) It is an affirmative defense to prosecution that the conduct charged was consented to by the person endangered and that the danger and conduct charged was a reasonably foreseeable hazard of an occupation, a business, a profession, medical treatment, or medical or scientific experimentation conducted by professionally approved methods and that the persons endangered had been made aware of the risk involved prior to giving consent. Such defense must be established by a preponderance of the evidence;

(3) The term "organization" means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint-stock company, foundation, institution, trust, society, union, or any other association of persons; and

(4) The term "serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or protracted loss or

impairment of the function of a bodily member or organ or a mental faculty.

(d) It shall be an affirmative defense under subsections (a) and (b) of this Code section that the introduction of any contaminant or pollutant or hazardous substance into the air was in compliance with all applicable federal, state, and local requirements which govern the introduction of a pollutant or hazardous substance into the air.

History. — Code 1981, § 12-9-24, enacted by Ga. L. 1991, p. 1735, § 2; Ga. L. 1992, p. 918, § 2; Ga. L. 1992, p. 2886, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "of" was substituted for "or" preceding "not more than" in the last sentence of subsection (b) and "article" was substituted for "chapter" throughout this Code section.

JUDICIAL DECISIONS

Cited in Meredith v. Thompson, 312 Ga. App. 697, 719 S.E.2d 592 (2011).

OPINIONS OF THE ATTORNEY GENERAL

For an update of crimes and offenses for which the Georgia Crime Information Center is authorized to collect and file identifying data, see 1991 Op. Att'y Gen. No. 91-35.

12-9-25. Small business stationary source technical and environmental compliance program; manager; advisory panel.

(a) In addition to any other powers which the board may have, the board shall have the authority to establish rules, regulations, standards, policies, and procedures for the implementation of a small business stationary source technical and environmental compliance program, provided that the requirements for the program shall be no less stringent than the requirements of the federal act. The manager of the small business stationary source technical and environmental compliance program may be delegated the following responsibilities:

(1) To develop, collect, coordinate, and disseminate information to small business stationary sources and facilities;

(2) To provide assistance to small business stationary sources and facilities in understanding compliance requirements, permitting procedures, compliance methods and technologies, alternative technologies, allowable modifications, methods of pollution prevention, accidental release prevention and detection, and other areas concerning technical and environmental compliance;

(3) To advise, consult, contract, and cooperate with any private or public organizations or persons, including, but not limited to, federal

and state agencies, political subdivisions of the state, stationary sources and facilities, corporations, associations, partnerships, and individuals, in order to encourage cooperation and assist small businesses with complying with this article;

(4) To develop mechanisms for notifying small business stationary sources and facilities on a timely basis of their rights and obligations under this article, including a program for referring small business stationary sources and facilities to qualified auditors who can determine whether the operation of a small business stationary source or facility is in compliance with this article.

(b) There is established within the Department of Natural Resources a small business stationary source technical and environmental compliance office. The office shall be administered by the manager.

(c) The board shall delegate responsibility for implementing the small business stationary source technical and environmental compliance program to the manager. The manager shall represent the public interest and shall not derive a significant portion of his income from persons subject to the rules, regulations, permits, or orders promulgated under this article.

(d)(1) There is established a small business stationary source technical and environmental compliance advisory panel.

(2) The small business advisory panel shall consist of a panel of not fewer than seven members who shall be appointed to the panel as follows: two members shall be selected by the Governor, and such members shall not be owners or representatives of owners of small business stationary sources or facilities and shall represent the general public; four members shall be selected by the General Assembly, with both the majority and minority leaders in the Senate and House of Representatives selecting one member each, and such members shall be owners or representatives of owners of small business stationary sources or facilities; and one member shall be selected by the director and shall be a representative of the Air Protection Branch of the Environmental Protection Division of the Department of Natural Resources.

(3) The small business advisory panel has the following specific functions:

(A) To render advisory opinions on the effectiveness of the small business stationary source technical and environmental compliance office;

(B) To render advisory opinions on the effectiveness of the state air quality program as it affects small businesses;

(C) To prepare periodic reports to the administrator on the compliance status of the small business stationary source technical and environmental compliance office in following the intent of the provisions of the Paperwork Reduction Act of 1986, Public Laws 99-500 and 99-591; the Regulatory Flexibility Act, Public Law 96-354; and the Equal Access to Justice Act, Public Laws 96-481 and 99-80; and

(D) To review information for small business stationary sources or facilities to assure that such information is understandable to the lay person.

(4) The small business stationary source technical and environmental compliance office will serve as the secretariat for the development and dissemination of small business advisory panel reports and advisory opinions and may provide administrative and logistical support to the panel.

(e) The small business stationary source technical and environmental compliance office and the small business stationary source technical and environmental compliance advisory panel shall be adequately funded in exercising the powers and duties granted in this Code section. The funds to cover the costs of developing and implementing this small business stationary source technical and environmental compliance program shall be provided from funds appropriated to the department.

History. — Code 1981, § 12-9-25, enacted by Ga. L. 1992, p. 2886, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "article" was substituted for "chapter" in this Code section.

Law reviews. — For note on 1992 enactment of this Code section, see 9 Ga. St. U.L. Rev. 179 (1992).

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, § 532 et seq.

ALR. — Attorney's Fees for Environmental Litigation under Equal Access to Justice Act, 28 U.S.C.A. § 2412(d), 47 A.L.R. Fed. 3d Art. 1.

Asylum Claims Based Upon Sexual Orientation and Transgender Status, 47 A.L.R. Fed. 3d Art. 2.

Supreme Court Jurisprudence on Prudential Standing, 47 A.L.R. Fed. 3d Art. 6.

ARTICLE 2

MOTOR VEHICLE EMISSION INSPECTION AND MAINTENANCE

Administrative rules and regulations. — Low emission vehicle certification, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-25.

Law reviews. — For note on 1992 enactment of this article, see 9 Ga. St. U.L. Rev. 186 (1992).

JUDICIAL DECISIONS

No private cause of action. — Trial court erred in denying an auto sales company's motion for a directed verdict on the buyer's claim under the Georgia Motor Vehicle Emission Inspection and Maintenance Act, O.C.G.A. § 12-9-54, because the statute does not provide a civil remedy nor contain an express private cause of action and the appellate court could not allocate the compensatory damages award among the several counts; thus, the jury's verdict had to be reversed in its entirety and the case remanded for a new trial. Gobran Auto Sales, Inc. v. Bell, 335 Ga. App. 873, 783 S.E.2d 389 (2016).

OPINIONS OF THE ATTORNEY GENERAL

No exemption for dual fuel capacity vehicles under this part (now O.C.G.A. § 12-9-40 et seq.) is provided by O.C.G.A. § 40-8-130(d). 1981 Op. Att'y Gen. No. 81-84.

Any motor vehicle that can be propelled by gasoline combustion power is subject to requirements of this part (now O.C.G.A. § 12-9-40 et seq.) even though the vehicle may also be capable of being propelled by natural or liquid petroleum gas. 1981 Op. Att'y Gen. No. 81-84.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Carbon Monoxide Brain Damage, 22 POF2d 135.

12-9-40. Short title.

This article shall be known and may be cited as the "Georgia Motor Vehicle Emission Inspection and Maintenance Act."

History. — Code 1981, § 12-9-40, enacted by Ga. L. 1992, p. 918, § 2.

Law reviews. — For article, "Administrative Law," see 53 Mercer L. Rev. 81 (2001).

JUDICIAL DECISIONS

Refund of fees improperly assessed. — Trial court properly dismissed the testing company's lawsuit brought pursuant to O.C.G.A. § 48-2-35 and seeking a refund of fees improperly assessed under the Motor Vehicle Emission Inspection and Maintenance Act, O.C.G.A. § 12-9-40 et seq., as the state revenue commissioner did not collect or administer the fee at issue and O.C.G.A. § 48-2-35 only applied to the illegal collection of a tax or license made by the state revenue commissioner. Ga. Emission Testing Co. v. Reheis, 268 Ga. App. 560, 602 S.E.2d 153 (2004).

12-9-41. Legislative findings.

With respect to the ambient air quality in this state, the General Assembly finds that:

(1) Some counties of the state have ambient air levels of ozone or carbon monoxide in excess of the National Ambient Air Quality Standards (NAAQS) for such pollutants specified by the United States Environmental Protection Agency (USEPA) pursuant to the federal Clean Air Act, 42 U.S.C. Section 7401, et seq., as amended; and that the USEPA has determined that under certain conditions, such excess levels in such counties are directly related to emissions of hydrocarbons, nitrogen oxides, and carbon monoxide from responsible motor vehicles registered in such counties;

(2) In order to comply with federal health related air standards in counties where the USEPA has determined that excess levels of ozone or carbon monoxide or both are directly related to emissions of hydrocarbons, nitrogen oxides, and carbon monoxide from responsible motor vehicles, it is necessary to monitor and limit emissions of hydrocarbons, nitrogen oxides, and carbon monoxide from responsible motor vehicles registered in such counties;

(3) The USEPA has the duty, by law, to designate those areas of the state violating the NAAQS and has and will, from time to time, as facts dictate, designate those counties or areas of the state violating the NAAQS for ozone and carbon monoxide, and the USEPA has the duty, by law, to establish criteria to determine whether the excess levels of ozone or carbon monoxide or both are directly related to emissions of hydrocarbons, nitrogen oxides, and carbon monoxide from responsible motor vehicles in such counties;

(4) With respect to such designations, when counties or areas are designated to have ambient air levels of pollutants in excess of the NAAQS and according to the criteria established by the USEPA the excess levels of pollution are directly related to emissions of hydrocarbons, nitrogen oxides, and carbon monoxide from responsible motor vehicles, the state is under a duty to provide a plan for reducing the ambient air levels of pollutants found to be in excess of the NAAQS if the state is to maintain its authority to permit new or expanded industry in such county or area; and

(5) Failure of the state to provide a legally enforceable mechanism pursuant to state law for reducing such pollutants in such counties or areas to levels within the NAAQS will result in such a mechanism subsequently being devised by USEPA and enforced in such areas pursuant to federal law and could result in a significant loss of federal funds for sewage treatment plants, transportation projects, and air quality improvement funds; further, new or expanded industry which would contribute to the ambient air level of such pollutants would be subject to significant new emission control requirements to offset increased emissions.

History. — Code 1981, § 12-9-41, enacted by Ga. L. 1992, p. 918, § 2; Ga. L. 1996, p. 336, § 1.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, §§ 123, 126, 132, 135, 139, 155.

12-9-42. Declaration of public policy.

It is declared to be the public policy of the State of Georgia as expressed in this article to preserve, protect, and improve air quality in those counties or areas of the state where the ambient air levels of ozone or carbon monoxide or both are in excess of the NAAQS, as designated by the USEPA and such levels, according to the criteria established by the USEPA, are directly related to the emissions of hydrocarbons, nitrogen oxides, and carbon monoxide from responsible motor vehicles registered in such counties or areas of the state; and to that end to provide a legally enforceable mechanism for the attainment and maintenance of the NAAQS of such pollutants in such counties or areas of the state by requiring that emissions of hydrocarbons, nitrogen oxides, and carbon monoxide from responsible motor vehicles registered in such counties or areas of the state; shall be subject to inspection of exhaust emissions, evaporative emissions, inspection and maintenance of emission control equipment, and inspection and maintenance of on-board diagnostics to ensure compliance with such emission standards.

History. — Code 1981, § 12-9-42, enacted by Ga. L. 1992, p. 918, § 2.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, § 155.

12-9-43. Definitions.

As used in this article, the term:

(1) "Board" means the Board of Natural Resources.

(2) "Certificate of authorization" means a certificate issued by the Department of Natural Resources to each establishment or location designated as an official emission inspection station.

(3) "Certificate of emission inspection" means an official certificate that exhaust emissions, evaporative emissions, emission control equipment, and on-board diagnostic equipment have been inspected

and approved in accordance with this article and the rules and regulations promulgated pursuant to this article. Such certificates will be furnished to official emission inspection stations by the department to be completed and issued by such stations to the owner or operator of a responsible motor vehicle upon inspection and approval certifying that such responsible motor vehicle has been inspected and complies with the inspection and maintenance required by this article.

(4) "Commissioner" means the commissioner of natural resources.

(5) "Department" means the Department of Natural Resources.

(6) "Director" means the director of the Environmental Protection Division of the Department of Natural Resources.

(7) "Emission inspection station" means a motor vehicle dealership, garage, service station, or other establishment designated or operated by the department and which has been issued by the director a certificate of authorization as an emission inspection station authorized to carry out the emission inspections required by this article.

(8) "Emission inspection sticker" means a sticker issued in conjunction with a certificate of emission inspection to be displayed on the responsible motor vehicle.

(9) "Exhaust emission" means:

(A) The act of releasing hydrocarbons, nitrogen oxides, or carbon monoxide into the atmosphere by means of a motor vehicle exhaust system; or

(B) The material so passed into the atmosphere.

(10) "Evaporative emission" means:

(A) The act of releasing hydrocarbons into the atmosphere by means of evaporation from a motor vehicle; or

(B) The material so passed into the atmosphere.

(11) "Federal Clean Air Act" means 42 U.S.C. Section 7401, et seq., as amended.

(12) "Highway" means any road or way publicly maintained and open for use by the public for vehicular traffic.

(13) "Hydrocarbons" means any compound containing carbon and hydrogen.

(14) "Inspection term" means the period of time a certificate of emission inspection shall be considered valid. The specific period of

an inspection term shall be established by the rules and regulations promulgated pursuant to this article; provided, however, an inspection term shall be no less than 12 months.

(15) "Mechanic inspector" means a person approved and issued a license by the department to perform the emission inspections required by this article.

(16) "Model year" means the manufacturer's annual production period, as determined by the director, provided that, if the manufacturer has no annual production period, the term "model year" shall mean the calendar year. The model year shall be determined by the vehicle identification number appearing on the vehicle.

(17) "Motor vehicle" means any contrivance propelled by power other than muscular power, used for transportation of persons or property on highways, and not operated exclusively upon tracks.

(18) "National Ambient Air Quality Standard" or "NAAQS" means those allowable ambient air concentrations for pollutants, including ozone and carbon monoxide, specified by the USEPA pursuant to 42 U.S.C. Section 7401, et seq., as amended.

(19) "Nitrogen oxides" means any of the various compounds which contain only nitrogen and oxygen.

(20) "Nonattainment area" means a geographic area designated by the USEPA in the Code of Federal Regulations as an area which has not attained or maintained the NAAQS for ozone or carbon monoxide or both in accordance with the federal Clean Air Act, as amended.

(21) "Owner" means the registered owner or the individual presenting the responsible motor vehicle for the emission inspection required under this article.

(22) "Person" means any natural person or individual, corporation, partnership, association, state or federal government, political subdivision, agency, or instrumentality of the state or federal government or any other entity.

(23) "Responsible motor vehicle" means any motor vehicle defined by the USEPA and published in the Code of Federal Regulations as a light duty vehicle or light duty truck, excluding any motor vehicle exempted from this article by the rules and regulations promulgated pursuant to this article; provided, however, that no such exemption shall be granted to a motor vehicle unless such exemption is in accordance with the federal Clean Air Act, as amended.

(24) "USEPA" means the United States Environmental Protection Agency.

History. — Code 1981, § 12-9-43, enacted by Ga. L. 1992, p. 918, § 2; Ga. L. 1996, p. 336, § 2.

OPINIONS OF THE ATTORNEY GENERAL

Editor's notes. — In light of the similarity of the statutory provisions, opinions under Ga. L. 1979, p. 1213 are included in the annotations for this section.

"Responsible motor vehicle" includes those powered by alternate power systems. — By using the word, "any" to describe motor vehicles, the statute does not admit to any exceptions. A vehicle is still "propelled by gasoline combustion power" even though it has an alternate power system based on natural gas or liquefied petroleum gas which would otherwise exempt the motor vehicle. 1981 Op. Att'y Gen. No. 81-84 (decided under Ga. L. 1979, p. 1213).

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, §§ 123, 126, 132, 135, 139, 155.

12-9-44. Uniformity and scope of application of article.

This article shall operate uniformly throughout the state. The provisions and requirements of this article shall apply in each county or any portion of a county which has been designated by the USEPA in the Code of Federal Regulations as a county or area included within a nonattainment area and which the board designates, through regulation, as a county or area where the excess levels of ozone or carbon monoxide or both are directly related to emissions of hydrocarbons, nitrogen oxides, or carbon monoxide from responsible motor vehicles registered in such county or area. This article shall continue to apply in each such county or portion of a county so designated until the USEPA removes such county or area from the Code of Federal Regulations as a nonattainment area and approves an air quality implementation plan which allows the state to maintain the NAAQS in such county without a vehicle inspection program.

History. — Code 1981, § 12-9-44, enacted by Ga. L. 1992, p. 918, § 2; Ga. L. 1996, p. 336, § 3.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "article" was substituted for "part" in the first sentence.

12-9-45. Certificate of emission inspection.

(a) In each county to which this article applies, there is required a valid certificate of emission inspection issued by an emission inspection station certified under this article for each responsible motor vehicle registered pursuant to or subject to the requirements of Chapter 2 of Title 40 in such county. A valid certificate of emission inspection is also required for each responsible motor vehicle owned by any federal

agency, state agency, municipality, or other political subdivision registered pursuant to Code Section 40-2-34 or 40-2-35, whichever is applicable, and assigned for use to any federal agency, state agency, municipality, or other political subdivision located in such county and for each responsible motor vehicle which is operated 60 days or more in any calendar year on a federal installation located in whole or in part in any such county.

(b) A certificate of emission inspection shall be valid for one inspection term. The owner of each responsible motor vehicle subject to subsection (a) of this Code section is required to obtain a new certificate of emission inspection on or before the date the current certificate of emission inspection expires or prior to the vehicle registration date in the year following the expiration of the certificate, as determined by the board.

(c) Such certificate of emission inspection must certify that:

(1) An inspection of exhaust emissions of hydrocarbons, nitrogen oxides, and carbon monoxide and evaporative emissions of hydrocarbons, as required by Code Section 12-9-48, has been performed;

(2) The responsible motor vehicle complies, as required by Code Section 12-9-48, with applicable emission standards or emission limitations for hydrocarbons, nitrogen oxides, and carbon monoxide specified for such vehicle by the board pursuant to Code Section 12-9-46;

(3) An inspection, as required by Code Section 12-9-48, of emission control equipment which was required to be installed on such motor vehicle when new by the federal Clean Air Act and is required to be inspected by the board in the regulations promulgated pursuant to this article has been performed and that such equipment is present and has been maintained as required by Code Section 12-9-48; and

(4) An inspection, as required by Code Section 12-9-48, of on-board diagnostic equipment which was required to be installed on such motor vehicle when new by the federal Clean Air Act and is required to be inspected by the board in the regulations promulgated pursuant to this article has been performed, as required by Code Section 12-9-48.

(d) In any county or area not designated by the USEPA as a nonattainment area as of November 1, 1990, which is subsequently designated by the board as a nonattainment area subject to this article, the department shall have 12 months from the date such designation occurs to establish a program for emission inspection of responsible motor vehicles in such county or area; provided, however, that for purposes of this article, the earliest date such county or area shall be

considered as having been designated as a nonattainment area shall be July 1, 1992. Notwithstanding the provisions of subsection (a) of this Code section, in such counties or areas a certificate of emission inspection shall not be required during this initial 12 month period. Following such initial 12 month period, owners of responsible motor vehicles in such counties or areas shall obtain a valid certificate of emission inspection no later than the date established by the board.

(e) In each county or area subject to this article on July 1, 1992, owners of responsible motor vehicles shall obtain a valid certificate of emission inspection issued pursuant to this article not later than June 30, 1993.

(f) The requirements of paragraphs (1) through (4) of subsection (c) of this Code section shall remain in effect in each county or area either during such time as such county or any part of the county continues to be designated by the USEPA pursuant to the federal Clean Air Act as a nonattainment area or during such time as the emission program for each such county is contained in the state's air quality maintenance plan.

(g) Notwithstanding the other provisions of this Code section, the requirements of this article shall not apply to vehicles registered as specified in subsection (a) of this Code section where the owner of such vehicle certifies, under oath and subject to the monetary penalty provided in Code Section 16-10-71 upon conviction for false swearing therein, which certification may be made either by mail and accompanied by a photocopy of the person's military identification card or in person, that:

(1) Such vehicle is so registered by a Georgia resident on active duty in the armed services of the United States then residing outside the State of Georgia;

(2) At the time the provisions of this article are being or are sought to be enforced with respect to such vehicle, the owner's domicile or, if such vehicle is primarily used in connection with some established business enterprise, such established business enterprise is not located in any county wherein any responsible motor vehicle is subject to the requirements of this article; or

(3) Such vehicle is or will be, during the inspection term for which the provisions of this article are being or are sought to be enforced with respect to such motor vehicle, permanently assigned or let for use to a person not domiciled or an established business enterprise not located in any county wherein any responsible motor vehicle is subject to the requirements of this article.

The director shall provide the forms for any such certification.

(h) Vehicles that are driven less than 5,000 miles per year and are ten years old or older will be exempted from testing, provided that the owner of such vehicle is 65 years old or older.

(i) Antique and collector cars and trucks 25 years old or older will be exempted from testing.

History. — Code 1981, § 12-9-45, enacted by Ga. L. 1992, p. 918, § 2; Ga. L. 1996, p. 336, § 4; Ga. L. 2001, p. 4, § 12.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, the undesignated language following subsection (i) was moved to its original location to appear as the undesignated language following paragraph (g)(3).

U.S. Code. — The federal Clean Air Act, referred to in this Code section, is codified at 42 U.S.C. § 7401 et seq.

RESEARCH REFERENCES

Am. Jur. 2d. — 7A Am. Jur. 2d, Automobiles and Highway Traffic, § 202.

61B Am. Jur. 2d, Pollution Control, § 538 et seq.

C.J.S. — 39A C.J.S., Health and Environment, §§ 123, 126, 132, 135, 139.

12-9-46. Powers and duties of board; designation of commissioner or director as board's agent; power and duties of director.

(a) The board shall have the following powers and duties under this article:

(1) To adopt criteria to establish whether emissions of hydrocarbons, nitrogen oxides, and carbon monoxide from responsible motor vehicles in each county or area within a nonattainment area are directly related to excess levels of ozone or carbon monoxide or both in such county or area; provided, however, that such criteria shall in no event be more stringent than the criteria established by the USEPA pursuant to the federal Clean Air Act;

(2) To designate each county or area within a nonattainment area which meets the criteria established pursuant to paragraph (1) of this subsection;

(3) To prescribe by rule or regulation emission standards or emission limitations limiting the amounts of allowable exhaust emissions of hydrocarbons, nitrogen oxides, and carbon monoxide and evaporative emissions of hydrocarbons from responsible motor vehicles as defined in this article. Such standards may specify the amount of allowable emissions by part per million, percentage of total volume or weight of emissions, or such other method as the board selects. In no event shall the emission limitations be stricter than those required by the USEPA pursuant to the federal Clean Air Act, as amended, for the particular vehicle to which such limitations apply. Such emission

limitations and emission standards may distinguish between model years, engine types and sizes, trucks and passenger vehicles, or weights of vehicles and may be applicable to groups of vehicles classed according to any such distinctions. Such emission limitations shall be technically feasible. The board may provide by rule or regulation for the method of application of such standards to vehicles with engines of a model year different from the vehicle model year;

(4) To prescribe by rule or regulation equipment standards, requirements, or specifications for any inspection equipment used to test, measure, inspect for, or determine compliance by a responsible motor vehicle or any responsible motor vehicle equipment with the standards, limitations, or other requirements established by or under the authority of this article;

(5) To prescribe by rule or regulation standards and qualifications for mechanic inspectors licensed to operate inspection equipment to inspect responsible motor vehicles or responsible motor vehicle equipment for compliance with standards, limitations, or other requirements established by or pursuant to this article;

(6) To prescribe by rule or regulation operating techniques, specifications, procedures, requirements for records maintenance, criteria, and other requirements applicable to emission inspection stations authorized to inspect responsible motor vehicles or responsible motor vehicle equipment for compliance with the standards, limitations, or other requirements established by or pursuant to this article;

(7) To prescribe by rule or regulation requirements for record keeping and reporting, including, but not limited to, monitoring, surveys, inventories, inspections, reinspections, the results thereof, certification and licensing of mechanic inspectors, certification of emission inspection stations, and certificates of emission inspection issued;

(8) To prescribe by rule or regulation for the exemption of certain motor vehicles or model years from the requirements of this article; provided, however, that no exemption shall be granted to a motor vehicle unless such exemption is in accordance with the federal Clean Air Act, as amended;

(9) To prescribe by rule or regulation fees to be charged by emission inspection stations for the performance of emission inspections; provided, however, that such fee shall be no less than $10.00 and no more than $25.00 per inspection and shall be based on the cost of performing such inspection in an adequate and proper manner including, without limitation, the cost of equipment, testing, labor, training, record keeping, reporting, and other overhead expenses;

(10) To prescribe by rule or regulation for an inspection term for required emission inspections of responsible motor vehicles. Such

term shall either be annual or biennial as required to meet minimum requirements of the federal Clean Air Act and regulations of the USEPA promulgated pursuant to such act;

(11) To prescribe by rule or regulation an administrative fee to be collected by the director from each emission inspection station in a manner determined by the board by rule or regulation to cover the direct and indirect cost of:

(A) Required and adequate oversight to confirm that inspections are being done in a proper and adequate manner, including, without limitation, the operation and maintenance of a data system and network for emission inspection data and related information; the performance of audits and quality control and quality assurance for certified emission inspection stations and licensed inspectors; the dissemination of information to individuals, corporations, governmental agencies, and any other entity regarding emission inspection requirements and related information; and the issuance of waivers, exemptions, and extensions of the emission inspection requirement;

(B) Activities of the director within designated nonattainment areas that are necessary to achieve compliance with this article and the federal Clean Air Act including, without limitation, ambient monitoring, attainment plan development, maintenance plan development, emission inventories, data analysis, and coordination and consultation with other governmental planning organizations; and

(C) Any other requirements that the board determines are appropriate to implement, enforce, and ensure compliance with the requirements of this article and the rules and regulations promulgated pursuant to this article; provided, however, that $1.00 of each such administrative fee shall be remitted to the county for each responsible motor vehicle that is registered in that county; and

(12) To advise, consult, cooperate, and contract with other state agencies including, but not limited to, the Department of Public Safety, any political subdivision of the state, any designated organizations of elected officials within the state, or any other person as necessary to implement and adequately enforce and ensure compliance with any requirement created, provided, prescribed, or established by the board pursuant to this article.

(b) With respect to the powers vested in the board pursuant to this Code section, the board may designate the commissioner or the director as its agent in exercising the powers so vested.

(c) The director shall have the following powers and duties:

(1) To exercise general supervision over the administration and enforcement of this article and all rules and regulations and orders promulgated under this article;

(2) To issue certificates and licenses and to deny, suspend, or revoke certificates and licenses;

(3) To issue all orders and processes as may be necessary to enforce compliance with provisions of this article and all rules and regulations promulgated under this article, and to seek collection of all penalties imposed pursuant to this article;

(4) To conduct such public hearings as are deemed necessary for the proper administration of this article;

(5) To make investigations, analyses, and inspections to determine and ensure compliance with this article, rules and regulations promulgated pursuant to this article, and any orders which the director may issue;

(6) To institute and prosecute such administrative and court actions as may be necessary to enforce compliance with any provisions of this article and any rules and regulations promulgated under this article;

(7) To exercise all incidental powers necessary to carry out the purposes of this article; and

(8) To encourage voluntary cooperation by persons and affected groups to achieve the purposes of this article.

History. — Code 1981, § 12-9-46, enacted by Ga. L. 1992, p. 918, § 2; Ga. L. 1996, p. 336, § 5; Ga. L. 1998, p. 1524, § 1; Ga. L. 2002, p. 5, § 1; Ga. L. 2009, p. 71, § 1/SB 198.

U.S. Code. — The federal Clean Air Act, referred to in this Code section, is codified at 42 U.S.C. § 7401 et seq.

JUDICIAL DECISIONS

Cited in Ga. Bd. of Natural Res. v. Ga. Emission Testing Co., 249 Ga. App. 817, 548 S.E.2d 141 (2001).

12-9-47. Further powers and duties of board; designation of department personnel as board's agents.

(a) The board shall have and may exercise the following powers and duties under this article:

(1) To prescribe by rule or regulation standards, requirements, or procedures to ensure the uniform operation of official emission inspection stations in a sufficient number, at such locations, and in a

manner satisfactory to the board and in conformance with all standards, requirements, and specifications prescribed for such inspection stations, procedures, personnel, and equipment by the board pursuant to this article;

(2) To prescribe by rule or regulation procedures for licensing mechanic inspectors under this article;

(3) To prescribe by rule or regulation procedures for certification of authorized emission inspection stations which shall be certified by the department to inspect responsible motor vehicle emissions, responsible motor vehicle emission control equipment, and on-board diagnostic equipment for compliance with the requirements of this article;

(4) To prescribe by rule or regulation forms, applications, certificates, licenses, or other documentation which may be required by the department to administer and implement this article;

(5) To prescribe by rule or regulation procedures, standards, and methods for inspecting emission inspection stations or other establishments to enforce and ensure compliance with the requirements of this article;

(6) To prescribe by rule or regulation procedures or methods of scheduling responsible motor vehicles for emission inspection during any inspection term; and

(7) To prescribe by rule or regulation procedures for identifying, through the use of remote sensing technology or other means, vehicles which are producing excessive exhaust emissions at times other than their regularly scheduled inspection. The board may require that any such vehicle undergo an official emission inspection as prescribed by subsection (a) of Code Section 12-9-48, whether or not such vehicle is covered by a valid certificate of emission inspection. The board may prescribe that the owner of any such vehicle which fails to pass such inspection perform repairs and pass a reinspection in the same manner as provided by subsection (d) of Code Section 12-9-48.

(b) With respect to the powers vested in the board pursuant to subsection (a) of this Code section, the board may designate personnel of the department as the board's agents in exercising the powers so vested.

History. — Code 1981, § 12-9-47, enacted by Ga. L. 1992, p. 918, § 2; Ga. L. 1996, p. 336, § 6.

12-9-48. Requirement of certificate of emission inspection; standards for issuance; inspectors, equipment, and procedures; notice of violation of emission standards; reinspection after repairs; time extension; inspection sticker; new vehicles; replacement stickers.

(a) Each responsible motor vehicle subject to any requirement under Code Section 12-9-45 must receive a certificate of emission inspection once during any inspection term from an emission inspection station holding a valid certificate of authorization from the department. A certificate of emission inspection shall be issued for such a responsible motor vehicle if, upon inspection by a licensed mechanic inspector, the mechanic inspector determines, consistent with the terms of Code Section 12-9-45, with respect to such responsible motor vehicle:

(1) That any emission control equipment required on such responsible motor vehicle when new by the federal Clean Air Act and required to be inspected by the regulations of the board promulgated pursuant to this article has been inspected and the mechanic inspector has determined that such equipment has not been rendered unserviceable by removal, alteration, lack of maintenance, or other interference with its operation unless such equipment was replaced with equivalent equipment which has been certified by the USEPA;

(2) That an inspection and testing of the exhaust emissions of hydrocarbons, nitrogen oxides, and carbon monoxide from such responsible motor vehicle have been performed;

(3) That an inspection and testing of evaporative emissions of hydrocarbons from such responsible motor vehicle have been performed;

(4) That the exhaust emissions and evaporative emissions from the responsible motor vehicle do not exceed any applicable emission standard or emission limitation for allowable emissions of hydrocarbon, nitrogen oxides, or carbon monoxide prescribed by the board pursuant to this article; and

(5) That any on-board diagnostic equipment required on such responsible motor vehicle when new by the federal Clean Air Act and required to be inspected pursuant to the regulations promulgated by the board has been inspected and the mechanic inspector has determined that such equipment meets the inspection criteria prescribed by the board.

(b) Compliance with any applicable emission standards, emission limitations, standards for emission control equipment, or standards for on-board diagnostic equipment shall be determined by mechanic inspectors meeting qualifications; using methods, techniques, and equip-

ment; under conditions; and following inspection procedures prescribed by the board pursuant to this article.

(c) If the inspection discloses any violation of any applicable emission standard, emission limitation, standard of emission control equipment, or standard for on-board diagnostic equipment, then the owner shall be notified, in writing, of the air pollutant which exceeds the allowable emissions and the degree of excess or the specific emission control equipment or on-board diagnostic equipment which is in violation of the standard.

(d) The owner shall have necessary maintenance and repairs performed on any responsible motor vehicle violating any applicable emission standard, emission limitation, standard for emission control equipment, or standard for on-board diagnostic equipment and return the responsible motor vehicle for reinspection at an emission inspection station within 30 days of the initial inspection. Such reinspection shall be at no charge to the owner. If, upon reinspection, such motor vehicle fails to meet the requirements of subsection (a) of this Code section, no certificate of emission inspection shall be issued unless the owner proves, by means of repair facility receipts or other written documents, that:

(1) He or she has replaced any emission control equipment, exhaust system equipment, or on-board diagnostic equipment or part thereof which has been removed, physically damaged, or otherwise rendered inoperable;

(2) He or she has spent at least $450.00 or such amount as the board establishes, consistent with the federal Clean Air Act, in the repair and maintenance of the responsible motor vehicle exhaust and evaporative, as applicable, emission control systems, on-board diagnostic equipment, or related equipment not covered by warranty since the initial inspection in the current inspection term; provided, however, that the $450.00 repair waiver authorized in this paragraph shall be increased annually by the percentage, if any, by which the Consumer Price Index for the most recent calendar year ending before the beginning of such year exceeds the Consumer Price Index for the calendar year 1989. For purposes of this paragraph, the Consumer Price Index is the average of the Consumer Price Index for all urban consumers published by the Bureau of Labor Statistics of the United States Department of Labor, as of the close of the 12 month period ending the last day of August of each calendar year, and the revision of the Consumer Price Index which is most consistent with the Consumer Price Index for 1989 shall be used; and

(3) Such repairs and maintenance have produced a decrease in exhaust and evaporative emissions, as applicable, since the initial inspection.

(e) A time extension, not to exceed the period of the inspection frequency, may be granted to obtain needed repairs on a vehicle in the case of economic hardship when waiver requirements contained in subsection (d) of this Code section have not been met. After having received a time extension under this subsection, a vehicle must fully pass the applicable test standards before becoming eligible for another time extension.

(f) The board may require each responsible motor vehicle to display an emission inspection sticker issued in conjunction with a certificate of emission inspection on the motor vehicle once it has been approved as meeting the requirements of this article. Any emission inspection sticker shall bear such information as shall be required by the director. The mechanic inspector shall remove from the vehicle being inspected any old emission inspection sticker when a new emission inspection sticker is issued.

(g) All certificates of emission inspection shall be issued for the inspection term.

(h) A new responsible motor vehicle otherwise required under Code Section 12-9-45 to have an inspection or certificate of inspection shall not be required to have either that inspection or certificate at the time of the initial retail sale or delivery of that vehicle, but the required emission inspection and certificate of inspection shall be obtained prior to the vehicle registration date in the calendar year two years after the vehicle's model year or at such other time as the board may establish by rule or regulation.

(i) The board may establish methods by which the owner of a responsible motor vehicle who has lost the certificate of emission inspection required in any inspection term may have a duplicate certificate of emission inspection issued. These methods may include, but are not limited to, the following:

(1) Any approved emission inspection station may issue said duplicate certification of emission inspection upon the owner's demonstrating to the mechanic inspector that the responsible motor vehicle has a current and valid inspection sticker affixed to its window;

(2) The director shall issue said duplicate certification of emission inspection upon the owner's demonstrating to the director that said vehicle had been inspected previously and bears a current and valid inspection sticker; or

(3) In the event a windshield bearing a valid emission inspection sticker is replaced, a new emission inspection sticker may be issued for such vehicle within 30 days after the replacement of the wind-

shield without the necessity of reinspection if the owner of the vehicle executes an affidavit in a form furnished by the director stating that the windshield of his or her vehicle has been replaced and giving such other information as the director may require and pays to the inspection station a fee in an amount equal to the actual administrative cost of issuing such a sticker which shall be no less than the cost of the sticker plus the cost of computer access. The vehicle may be operated on the highways without an emission inspection sticker for 30 days after the replacement of the windshield if proof of the date of such replacement is carried in the vehicle.

In all cases, the new emission inspection sticker or duplicate certificate of emission inspection shall be valid only for the remainder of the period for which the replaced emission inspection sticker or certificate of emission inspection was to be valid.

(j) The inspection provided for in subsection (a) of this Code section shall not require any alteration of any portion of the engine or equipping of the engine with any device for the sole purpose of facilitating the conduct of such test during the testing periods for 1997 and 1998.

History. — Code 1981, § 12-9-48, enacted by Ga. L. 1992, p. 918, § 2; Ga. L. 1996, p. 336, § 7; Ga. L. 2009, p. 71, § 2/SB 198.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, "have" was substituted for "has" near the end of paragraphs (a)(2) and (a)(3).

U.S. Code. — The federal Clean Air Act, referred to in this Code section, is codified at 42 U.S.C. § 7401 et seq.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, §§ 81, 82.

12-9-49. Application to conduct emission inspections; certificate of authorization.

(a) Any garage or other establishment which desires to conduct emission inspections shall submit to the director an application for a certificate of authorization under this article. Applications shall be made upon a form designated by the director and shall contain such information as may be required by the director.

(b) A certificate of authorization and certificate of emission inspection shall be issued only after the director has made a determination that the applicant's proposed inspection station will be properly equipped, has the necessary licensed mechanic inspectors to conduct inspections, and meets all other requirements of this article.

(c) The board shall not in any manner limit the number, location, and types of authorized inspection stations certified to operate in any

nonattainment area, county, or any portion of a county or area. In no event shall the board enter into any contract or into a series of contracts the effect of which will be the realization of centralized testing.

(d) The director, prior to issuing a certificate of authorization, shall require proof that the applicant has either filed a bond or has obtained liability insurance in a form and amount satisfactory to the director to ensure compensation for any damage to a vehicle during an inspection or adjustment caused by negligence of the applicant or its agent.

(e) With respect to any certificate of authorization issued to any emission inspection station licensed, authorized, or certified by the department to inspect responsible motor vehicle emissions, responsible motor vehicle emission control equipment, and on-board diagnostic equipment for compliance with the requirements of this article, the following shall apply:

(1) The director shall ensure the operation of such official emission inspection stations of a number, at locations, and in a condition satisfactory to the director and in conformance with all standards, requirements, and specifications prescribed for such inspection stations, procedures, personnel, and equipment by the board pursuant to this article; and each official emission inspection station shall keep a record of inspections, reinspections, the results thereof, and certificates of inspection issued in a manner designated by the department and in conformance with any requirements for such records and reports prescribed by the board. All records required in this article to be maintained by an official emission inspection station shall be available for inspection at all reasonable times;

(2) Any official emission inspection station licensed, permitted, or established under this Code section shall be required to perform inspections on responsible motor vehicles in conformity with regulations or requirements established, prescribed, or promulgated by the board pursuant to this article. Such requirements shall ensure that uniform equipment is utilized and that emission inspections produce consistent results throughout affected areas of the state;

(3) A fee as provided in paragraphs (9) and (10) of subsection (a) of Code Section 12-9-46 shall be charged by each emission inspection station for performance of the emission inspection and inspection of emission control devices and on-board diagnostic equipment on responsible motor vehicles;

(4) The director shall supervise and cause inspections to be made of the emission inspection stations, licensed, authorized, or certified pursuant to this article and shall ensure compliance with all applicable requirements of, under, or pursuant to this article relating to such inspections, inspection stations, and inspection personnel;

(5) No certificate of authorization for an emission inspection station shall be assigned or transferred or used in any location other than the one designated on such certificate; and

(6) Every certificate of authorization for an emission inspection station and mechanic inspector license shall be posted in a conspicuous place in the station.

History. — Code 1981, § 12-9-49, enacted by Ga. L. 1992, p. 918, § 2; Ga. L. 1996, p. 336, § 8.

JUDICIAL DECISIONS

Rule of Department of Natural Resources prohibiting mobile test stations from testing public vehicles and limiting such testing to fleet and car dealer vehicles at fleet and car dealer locations did not conflict with O.C.G.A. § 12-9-49. Ga. Bd. of Natural Res. v. Ga. Emission Testing Co., 249 Ga. App. 817, 548 S.E.2d 141 (2001).

12-9-50. Authority to inspect, monitor, or investigate inspection stations.

Any duly appointed agent of the director, including without limitation any person with whom the board has contracted pursuant to paragraph (12) of subsection (a) of Code Section 12-9-46, may enter private or public property at reasonable times and upon presentation of the agent's credentials to inspect, monitor, or investigate the operation of any emission inspection station or any establishment suspected of holding itself out as being an emission inspection station to determine whether such emission inspection station or establishment is in compliance with the requirements of this article; provided, however, that nothing in this Code section shall prohibit other investigative techniques from being utilized by the director.

History. — Code 1981, § 12-9-50, enacted by Ga. L. 1992, p. 918, § 2; Ga. L. 1996, p. 336, § 9; Ga. L. 1998, p. 1524, § 2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1998, "provided, however" was substituted for "provided however" near the end of this Code section.

12-9-51. Emission inspection required for motor vehicle registration; operation without registration; improper reuse.

(a) Beginning July 1, 1992, it shall be unlawful for any county to and no county shall register any responsible motor vehicle subject to any requirement under Code Section 12-9-45 pursuant to or subject to the requirements of Chapter 2 of Title 40 without proof of a valid certificate of emission inspection issued pursuant to Code Section 12-9-48 indicat-

ing that such responsible motor vehicle satisfied all applicable requirements of Code Section 12-9-45 and Code Section 12-9-48. In applying for a motor vehicle registration for a responsible motor vehicle subject to any requirement under Code Section 12-9-45, the application shall be accompanied by proof of the issuance of a certificate of emission inspection issued pursuant to Code Section 12-9-48. Any county which registers any responsible motor vehicle without proof of a certificate of emission inspection shall be in violation of this article.

(b) It shall be unlawful to and no person shall operate a responsible motor vehicle subject to any requirement under Code Section 12-9-45 on the roadways of this state without a valid registration issued in compliance with this article. Any person who operates a responsible motor vehicle subject to any requirement under Code Section 12-9-45 on the roadways of this state without a valid registration issued in compliance with this article shall be considered to be operating an unregistered motor vehicle.

(c) The board may provide for a procedure to be implemented by each county to ensure that certificates of emission inspection are not improperly reused.

History. — Code 1981, § 12-9-51, enacted by Ga. L. 1992, p. 918, § 2; Ga. L. 1996, p. 336, § 10.

12-9-52. Amendment, modification, revocation, or suspension of certificate of authorization.

The director may amend, modify, revoke, or suspend any certificate of authorization issued to an emission inspection station or any license issued to a mechanic inspector for cause, including but not limited to:

(1) Violating the provisions of this article concerning the inspection of any responsible motor vehicle;

(2) A determination by the board that the number, location, or type of certified inspection stations or licensed mechanic inspectors needs to be limited to ensure effective implementation of this article or to comply with the requirements of the federal Clean Air Act, as amended; or

(3) Receipt of a request for an amendment, modification, suspension, or revocation by the emission inspection station or mechanic inspector.

History. — Code 1981, § 12-9-52, enacted by Ga. L. 1992, p. 918, § 2.

12-9-53. Review of director's decision.

Review of a decision of the director under this article shall be in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History. — Code 1981, § 12-9-53, enacted by Ga. L. 1992, p. 918, § 2; Ga. L. 1998, p. 1524, § 3.

12-9-54. Sale of vehicle.

No person shall sell any motor vehicle which is intended for highway use if such vehicle is at the time of the sale a responsible motor vehicle required to have a certificate of emission inspection under Code Section 12-9-45, unless there appears on such vehicle an unexpired valid certificate of emission inspection issued pursuant to this article. Any person violating this Code section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of $100.00 for a first offense, $500.00 for a second offense, and $1,000.00 for each subsequent offense. If, as a result of the sale of a responsible motor vehicle subject to any requirement under Code Section 12-9-45, such motor vehicle would not, if immediately registered by the purchaser as provided by law, be registered in a county in which the requirements of Code Section 12-9-45 are applicable, this Code section shall not apply.

History. — Code 1981, § 12-9-54, enacted by Ga. L. 1992, p. 918, § 2.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, §§ 123, 126, 132, 135, 139, 155.

JUDICIAL DECISIONS

No private cause of action. — Trial court erred in denying an auto sales company's motion for a directed verdict on the buyer's claim under the Georgia Motor Vehicle Emission Inspection and Maintenance Act, O.C.G.A. § 12-9-54, because the statute does not provide a civil remedy nor contain an express private cause of action and the appellate court could not allocate the compensatory damages award among the several counts; thus, the jury's verdict had to be reversed in its entirety and the case remanded for a new trial. Gobran Auto Sales, Inc. v. Bell, 335 Ga. App. 873, 783 S.E.2d 389 (2016).

12-9-55. Prohibited acts; registration of vehicle by county without proof of inspection; penalty; withholding of funding.

(a)(1) No person shall in any manner represent any place or establishment as an official emission inspection station unless such station has been issued a valid certificate of authorization by the department.

(2) No person shall issue a certificate of emission inspection for any responsible motor vehicle unless such person holds a valid certificate of authorization issued pursuant to this article and such vehicle has been inspected and approved by a licensed mechanic inspector as required by this article.

(b)(1) No person shall make, issue, or knowingly use any imitation or counterfeit of an official certificate of emission inspection.

(2) No person shall possess, display, or cause or permit to be displayed upon any vehicle any emission inspection sticker knowing the same to be counterfeit or issued for another vehicle or issued without the required inspection and approval.

(3) No person shall use for the purpose of proof under subsection (d) of Code Section 12-9-48 any receipt or document purporting to show cost of repair or maintenance or replacement of equipment unless such receipt or document accurately represents costs actually incurred by such person with respect to the responsible motor vehicle for which the certificate of emissions is sought.

(c) It shall be unlawful for any person to operate or permit to be operated on any highway of this state a responsible motor vehicle registered in any county subject to this article pursuant to or subject to the requirements of Chapter 2 of Title 40, which is at the time of operation required to have a certificate of emission inspection under Code Section 12-9-45, without a valid certificate of emission inspection and emission inspection sticker, if required. If the owner of any motor vehicle who has been notified of the requirement of an emission inspection pursuant to paragraph (7) of subsection (a) of Code Section 12-9-47 fails to have the vehicle inspected within 30 days after receipt of such notice, such vehicle shall be in violation of this article and any certificate of emission inspection and any emission inspection sticker previously issued for such vehicle shall be deemed invalid. For purposes of this subsection, each day of operation or permission is a separate offense.

(d) It shall be unlawful to register, or cause to be registered, a responsible motor vehicle in any county other than the county wherein such vehicle is required to be registered by Chapter 2 of Title 40 for the

purpose of avoiding any requirement of this article. Each day of continued unlawful registration shall be a separate offense.

(e) With respect to any responsible motor vehicle subject to any requirement under this article, it shall be unlawful for the purpose of avoiding any requirement of this article to render unserviceable by removal, alteration, lack of maintenance, or other interference with its operation any emission control equipment or on-board diagnostic equipment required on such responsible motor vehicle when such vehicle was new by the federal Clean Air Act and required by the regulations of the board promulgated pursuant to this article to be inspected and maintained. Each day of such unserviceability shall be a separate offense.

(f) Any person violating any provision of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $50.00 nor more than $1,000.00.

(g) Any person violating any provision of this article, or rules or regulations under this article, or refusing to comply with any final order issued under this article shall be liable for a civil penalty of not more than $5,000.00 per day; provided, however, that in no instance shall any person be both liable for a civil penalty under this subsection and subjected to a criminal prosecution pursuant to subsection (f) of this Code section. Upon a showing that a civil proceeding has been commenced to assess a civil penalty, a court to which a criminal citation for a violation of subsection (f) of this Code section has been presented shall stay the criminal proceeding until the civil penalty proceeding has been completed. If a civil penalty is assessed, the criminal proceeding shall be dismissed.

(h) It shall be unlawful for any person to violate any provision of this article or any rule or regulation promulgated pursuant to this article.

(i) If it is determined that any county has registered responsible motor vehicles without receiving proof from the owners that the responsible motor vehicles satisfy all applicable requirements of Code Sections 12-9-45 and 12-9-48, the director shall notify the commissioner of transportation that such an unlawful act has occurred. Upon such notification, the State Transportation Board may at its discretion withhold Department of Transportation funding assistance from any such county.

History. — Code 1981, § 12-9-55, enacted by Ga. L. 1992, p. 918, § 2; Ga. L. 1996, p. 336, § 11; Ga. L. 1998, p. 1524, § 4.

Cross references. — Jurisdiction of recorder's, mayor's, or police courts to dispose of cases under Code section, § 36-32-8.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "for" was deleted preceding "responsible" in the first sentence of subsection (g) (now subsection (i)).

Pursuant to Code Section 28-9-5, in 1998, "Code Sections 12-9-45 and 12-9-48" was substituted for "Code Section 12-9-45

and Code Section 12-9-48" near the middle of subsection (i).

U.S. Code. — The federal Clean Air Act, referred to in this Code section, is codified at 42 U.S.C. § 7401 et seq.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, §§ 123, 126, 132, 135, 139, 155.

12-9-56. Rules and regulations.

When duly promulgated and adopted, all rules and regulations issued pursuant to this article by the board shall have the force of law.

History. — Code 1981, § 12-9-56, enacted by Ga. L. 1992, p. 918, § 2.

RESEARCH REFERENCES

C.J.S. — 39A C.J.S., Health and Environment, §§ 123, 126, 132, 135, 130.

12-9-57. Effect of federal Clean Air Act requirements; repeal of article.

This article shall remain of force and effect only so long as the federal Clean Air Act, 42 U.S.C. Section 7401, et seq., as amended, requires the State of Georgia to maintain and enforce the inspection plan and program provided for in this article in order to reduce the ambient air levels of ozone or carbon monoxide which exceed the levels specified by the National Ambient Air Quality Standards for such pollutants specified by the United States Environmental Protection Agency pursuant to said act. Upon the effective date of an amendment to the federal Clean Air Act which allows the State of Georgia to discontinue the maintenance and enforcement of the inspection program provided for in this article without the imposition of sanctions against the State of Georgia such as the loss of federal funds for sewage treatment plants, transportation projects, air quality improvement projects, a moratorium on development within any area of the state, or other substantial penalty, this article shall be repealed.

History. — Code 1981, § 12-9-57, enacted by Ga. L. 1992, p. 918, § 2; Ga. L. 1996, p. 336, § 12.

Cross references. — National Primary and Secondary Ambient Air Quality Standards, 40 C.F.R. § 50.1 et seq. (1982).

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, a comma was inserted following "as amended" and a period was inserted following "U.S.C" in the first sentence.

Editor's notes. — Ga. L. 1992, p. 918, § 2/HB 1440, provided that this article shall be repealed upon the effective date of an amendment to the federal Clean Air Act allowing the state to discontinue the maintenance and enforcement of the inspection program. As of May, 2021, there

had been no such amendment to the federal Clean Air Act.

U.S. Code. — The federal Clean Air Act, referred to in this Code section, is codified at 42 U.S.C. § 7401 et seq.

ARTICLE 3

GASOLINE ADDITIVES

12-9-70. Study and review of gasoline additives.

(a) As used in this Code section, the term "MTBE" means methyl tertiary butyl ether.

(b) The director of the Environmental Protection Division of the department is authorized and urged to study and review the use of gasoline additives in this state and to develop rules and regulations not later than January 1, 2008, for consideration by the Board of Natural Resources to provide for a phase out of the permissible use of gasoline containing MTBE in a manner designed to coordinate such phase out with other states adjacent to this state to the extent practicable; and the board is authorized to adopt rules and regulations for such purpose. In developing such rules and regulations, the director is urged to consider the need to ensure adequate supplies of gasoline in this state, environmental issues such as air quality and ground-water protection, the overall benefits and concerns with various gasoline additives, the use of additives by adjacent states, and the viability of ethanol for use as an additive to the greatest extent practicable.

History. — Code 1981, § 12-9-70, enacted by Ga. L. 2006, p. 547, § 2/SB 636.

CHAPTER 10

INTERSTATE COMPACTS

Article 1

Southern States Energy Compact

Sec.
12-10-1. Compact enacted and entered into by State of Georgia; text of compact.
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Article 2

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12-10-20 through 12-10-22. [Repealed].

Article 3

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12-10-41. Commissioner as representative of state in compact.

Article 4

Southeastern Interstate Forest Fire Protection Compact

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12-10-61. Authority of Governor to execute compact with designated states; legislative approval of compact; text of compact.
12-10-62. Process.
12-10-63. Authority to exercise powers under compact; cooperation with compact administrator.
12-10-64. Construction of article.

Article 5

Historic Chattahoochee Compact

12-10-80 and 12-10-81. [Repealed].

Article 6

Apalachicola-Chattahoochee-Flint River Basin Compact

12-10-100. Compact enacted and entered into; text of compact.

Article 7

Alabama-Coosa-Tallapoosa River Basin Compact

12-10-110. Compact enacted and entered into; text of compact.

Cross references. — The Southeast Interstate Low-Level Radioactive Waste Management Compact, § 12-8-120 et seq.

ARTICLE 1

SOUTHERN STATES ENERGY COMPACT

Editor's notes. — Ga. L. 1979, p. 806 changed the name of the Southern Interstate Nuclear Compact to the Southern States Energy Compact and made several other changes in the text of the Compact and in this article. Ga. L. 1979, p. 806, § 9 provided that the provisions of Ga. L. 1979, p. 806, § 9 were to become effective "at such time as nine of the party states to the Southern Interstate Nuclear Compact approve substantially the same changes in the Compact as are provided for in this Act and the Congress of the United States consents to the Compact, substantially as amended by this Act." Subsequently, the Compact received the approval of the requisite number of states and by the Congress of the United States; thus, the Act is now binding.

RESEARCH REFERENCES

ALR. — Constitutionality, construction, and application of compacts and statutes involving co-operation between states, 134 A.L.R. 1411.

12-10-1. Compact enacted and entered into by State of Georgia; text of compact.

The Southern States Energy Compact is enacted into law and entered into by the State of Georgia with any and all states legally joining therein in accordance with its terms. The compact is substantially as follows:

"ARTICLE I. POLICY AND PURPOSE.

The party states recognize that the proper employment and conservation of energy and employment of energy-related facilities, materials, and products, within the context of a responsible regard for the environment, can assist substantially in the industrialization of the South and the development of a balanced economy for the region. They also recognize that optimum benefit from and acquisition of energy resources and facilities require systematic encouragements, guidance, and assistance from the party states on a cooperative basis. It is the policy of the party states to undertake such cooperation on a continuing basis; it is the purpose of this compact to provide the instruments and framework for such a cooperative effort to improve the economy of the South and contribute to the individual and community well-being of the region's people.

ARTICLE II. THE BOARD.

(a) There is hereby created an agency of the party states to be known as the 'Southern States Energy Board' (hereinafter called 'the Board'). The Board shall be composed of three representatives from each party state, one of whom shall be appointed or designated in each state to represent the Governor, the State Senate, and the State House of

Representatives, respectively. Each representative shall be designated or appointed in accordance with the law of the state which he represents and serving and subject to removal in accordance with such law. Any member of the Board may provide for the discharge of his duties and the performance of his functions thereon (either for the duration of his membership or for any lesser period of time) by a deputy or assistant, if the laws of his state make specific provision therefor. The federal government may be represented without vote if provision is made by federal law for such representation.

(b) Each party state shall be entitled to one vote on the Board, to be determined by majority vote of each representative or representative's representative from the party state present and voting on any question. No action of the Board shall be binding unless taken at a meeting at which a majority of all party states are represented and unless a majority of the total number of votes on the Board are cast in favor thereof.

(c) The Board shall have a seal.

(d) The Board shall elect annually, from among its members, a chairman, a vice chairman, and a treasurer. The Board shall appoint an Executive Director who shall serve at its pleasure and who shall also act as Secretary, and who, together with the Treasurer, shall be bonded in such amounts as the Board may require.

(e) The Executive Director, with the approval of the Board, shall appoint and remove or discharge such personnel as may be necessary for the performance of the Board's functions irrespective of the civil service, personnel or other merit system laws of any of the party states.

(f) The Board may establish and maintain, independently or in conjunction with any one or more of the party states, a suitable retirement system for its fulltime employees. Employees of the Board shall be eligible for social security coverage in respect of old age and survivors insurance provided that the Board takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The Board may establish and maintain or participate in such additional programs of employee benefits as may be appropriate.

(g) The Board may borrow, accept, or contract for the services of personnel from any state or the United States or any subdivision or agency thereof, from any interstate agency, or from any institution, person, firm or corporation.

(h) The Board may accept for any purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services (conditional or otherwise) from any

state or the United States or any subdivision or agency thereof, or interstate agency, or from any institution, person, firm, or corporation, and may receive, utilize and dispose of the same.

(i) The Board may establish and maintain such facilities as may be necessary for the transacting of its business. The Board may acquire, hold, and convey real and personal property and any interest therein.

(j) The Board shall adopt bylaws, rules, and regulations for the conduct of its business, and shall have the power to amend and rescind these bylaws, rules, and regulations. The Board shall publish its bylaws, rules, and regulations in convenient form and shall file a copy thereof, and shall also file a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(k) The Board annually shall make to the governor of each party state, a report covering the activities of the Board for the preceding year, and embodying such recommendations as may have been adopted by the Board, which report shall be transmitted to the legislature of said state. The Board may issue such additional reports as it may deem desirable.

ARTICLE III. FINANCES.

(a) The Board shall submit to the executive head or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that jurisdiction for presentation to the legislature thereof.

(b) Each of the Board's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. One half of the total amount of each budget of estimated expenditures shall be apportioned among the party states in equal shares; one quarter of each such budget shall be apportioned among the party states in accordance with the ratio of their populations to the total population of the entire group of party states based on the last decennial federal census; and one quarter of each such budget shall be apportioned among the party states on the basis of the relative average per capita income of the inhabitants in each of the party states based on the latest computations published by the federal census-taking agency. Subject to appropriation by their respective legislatures, the Board shall be provided with such funds by each of the party states as are necessary to provide the means of establishing and maintaining facilities, a staff of personnel, and such activities as may be necessary to fulfill the powers and duties imposed upon and entrusted to the Board.

(c) The Board may meet any of its obligations in whole or in part with funds available to it under Article II(h) of this compact, provided that

the Board takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or in part in this manner. Except where the Board makes use of funds available to it under Article II(h) hereof, the Board shall not incur any obligation prior to the allotment of funds by the party jurisdictions adequate to meet the same.

(d) The Board shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the Board shall be subject to the audit and accounting procedures established under its bylaws. However, all receipts and disbursements of funds handled by the Board shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the Board.

(e) The accounts of the Board shall be open at any reasonable time for inspection.

ARTICLE IV. ADVISORY COMMITTEES.

The Board may establish such advisory and technical committees as it may deem necessary, membership on which to include but not be limited to private citizens, expert and lay personnel, representatives of industry, labor, commerce, agriculture, civic associations, medicine, education, voluntary health agencies, and officials of local, state and federal government, and may cooperate with and use the services of any such committees and the organizations which they represent in furthering any of its activities under this compact.

ARTICLE V. POWERS.

The Board shall have power to:

(a) Ascertain and analyze on a continuing basis the position of the South with respect to energy, energy-related industries, and environmental concerns.

(b) Encourage the development, conservation, and responsible use of energy and energy-related facilities, installations, and products as part of a balanced economy and healthy environment.

(c) Collect, correlate, and disseminate information relating to civilian uses of energy and energy-related materials and products.

(d) Conduct, or cooperate in conducting, programs of training for state and local personnel engaged in any aspect of

(1) Energy, environment, and applications of energy, environmental, and related concerns to industry, medicine, or education or the promotion or regulation thereof.

(2) The formulation or administration of measures designed to promote safety in any matter related to the development, use or

disposal of energy and energy-related materials, products, installations, or wastes.

(e) Organize and conduct, or assist and cooperate in organizing and conducting, demonstrations of energy product, material, or equipment use and disposal and of proper techniques or processes for the application of energy resources to the civilian economy or general welfare.

(f) Undertake such nonregulatory functions with respect to sources of radiation as may promote the economic development and general welfare of the region.

(g) Study industrial, health, safety, and other standards, laws, codes, rules, regulations, and administrative practices in or related to energy and environmental fields.

(h) Recommend such changes in, or amendments or additions to the laws, codes, rules, regulations, administrative procedures and practices or ordinances of the party states in any of the fields of its interest and competence as in its judgment may be appropriate. Any such recommendation shall be made through the appropriate state agency with due consideration of the desirability of uniformity but shall also give appropriate weight to any special circumstances which may justify variations to meet local conditions.

(i) Prepare, publish and distribute, (with or without charge) such reports, bulletins, newsletters or other material as it deems appropriate.

(j) Cooperate with the United States Department of Energy or any agency successor thereto, any other officer or agency of the United States, and any other governmental unit or agency or officer thereof, and with any private persons or agencies in any of the fields of its interests.

(k) Act as licensee of the United States government or any party state with respect to the conduct of any research activity requiring such license and operate such research facility or undertake any program pursuant thereto.

(l) Ascertain from time to time such methods, practices, circumstances, and conditions as may bring about the prevention and control of energy and environmental incidents in the area comprising the party states, to coordinate the nuclear, environmental, and other energy-related incident prevention and control plans and the work relating thereto of the appropriate agencies of the party states and to facilitate the rendering of aid by the party states to each other in coping with energy and environmental incidents. The Board may formulate and, in accordance with need from time to time, revise a

regional plan or regional plans for coping with energy and environmental incidents within the territory of the party states as a whole or within any subregion or subregions of the geographic area covered by this compact.

ARTICLE VI. SUPPLEMENTARY AGREEMENTS.

(a) To the extent that the Board has not undertaken an activity or project which would be within its power under the provisions of Article V of this compact, any two or more of the party states (acting by their duly constituted administrative officials) may enter into supplementary agreements for the undertaking and continuance of such an activity or project. Any such agreement shall specify its purpose or purposes; its duration and the procedure for termination thereof or withdrawal therefrom; the method of financing and allocating the costs of the activity or project; and such other matters as may be necessary or appropriate. No such supplementary agreement entered into pursuant to this article shall become effective prior to its submission to and approval by the Board. The Board shall give such approval unless it finds that the supplementary agreement or the activity or project contemplated thereby is inconsistent with the provisions of this compact or a program or activity conducted by or participated in by the Board.

(b) Unless all of the party states participate in a supplementary agreement, any cost or costs thereof shall be borne separately by the states party thereto. However, the Board may administer or otherwise assist in the operation of any supplementary agreement.

(c) No party to a supplementary agreement entered into pursuant to this article shall be relieved thereby of any obligation or duty assumed by said party state under or pursuant to this compact, except that timely and proper performance of such obligation or duty by means of the supplementary agreement may be offered as performance pursuant to the compact.

ARTICLE VII. OTHER LAWS AND RELATIONSHIPS.

Nothing in this compact shall be construed to:

(a) Permit or require any person or other entity to avoid or refuse compliance with any law, rule, regulation, order or ordinance of a party state or subdivision thereof now or hereafter made, enacted or in force.

(b) Limit, diminish, or otherwise impair jurisdiction exercised by the United States Department of Energy, any agency successor thereto, or any other federal department, agency or officer pursuant to and in conformity with any valid and operative act of Congress.

(c) Alter the relations between and respective internal responsibilities of the government of a party state and its subdivisions.

(d) Permit or authorize the Board to exercise any regulatory authority or to own or operate any nuclear reactor for the generation of electric energy; nor shall the Board own or operate any facility or installation for industrial or commercial purposes.

ARTICLE VIII. ELIGIBLE PARTIES, ENTRY INTO FORCE AND WITHDRAWAL.

(a) Any or all of the states of Alabama, Arkansas, Delaware, Florida, Georgia, Kentucky, Louisiana, Maryland, Mississippi, Missouri, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, West Virginia, the Commonwealth of Puerto Rico, and the United States Virgin Islands shall be eligible to become party to this compact.

(b) As to any eligible party state, this compact shall become effective when its legislature shall have enacted the same into law: provided that it shall not become initially effective until enacted into law by seven states.

(c) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall become effective until the governor of the withdrawing state shall have sent formal notice in writing to the governor of each other party state informing said governors of the action of the legislature in repealing the compact and declaring an intention to withdraw.

ARTICLE IX. SEVERABILITY AND CONSTRUCTION.

The provisions of this compact and of any supplementary agreement entered into hereunder shall be severable and if any phrase, clause, sentence or provision of this compact or such supplementary agreement is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact or such supplementary agreement and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact or any supplementary agreement entered into hereunder shall be held contrary to the constitution of any state participating therein, the compact or such supplementary agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. The provisions of this compact and of any supplementary agreement entered into pursuant hereto shall be liberally construed to effectuate the purposes thereof."

History. — Ga. L. 1962, p. 505, § 1; Ga. L. 1964, p. 207, § 1; Ga. L. 1979, p. 806, §§ 1-7.

OPINIONS OF THE ATTORNEY GENERAL

Eligibility for retirement benefits. — Employees of board are eligible for coverage by Employees' Retirement System of Georgia. 1967 Op. Att'y Gen. No. 67-22.

RESEARCH REFERENCES

Am. Jur. 2d. — 61C Am. Jur. 2d, Pollution Control, § 1469 et seq.

C.J.S. — 81A C.J.S., States, § 272.

ALR. — Constitutionality, construction, and application of compacts and statutes involving co-operation between states, 134 A.L.R. 1411.

State regulation of nuclear power plants, 82 A.L.R.3d 751.

12-10-2. Appointment of representatives to Southern States Energy Board; compensation.

(a) The Governor, the Lieutenant Governor, and the Speaker of the House of Representatives shall each appoint a representative from this state to the Southern States Energy Board which is established by Article II of the compact. Each such representative shall serve at the pleasure of the appointing officer. The Governor, the Lieutenant Governor, and the Speaker of the House of Representatives are each authorized to appoint an alternate representative who may serve at and for such time as the regular representative shall designate and who shall have the same power and authority as the regular representative when so serving. The representative appointed by the Lieutenant Governor shall be a member of the Senate, and the representative appointed by the Speaker shall be a member of the House of Representatives.

(b) Each person appointed to represent this state on the Southern States Energy Board shall be entitled to receive the same per diem, travel expenses, and allowances for each day of service on the Southern States Energy Board as are authorized by law for members of the General Assembly. Such expenses and allowances for members of the General Assembly serving on the Southern States Energy Board shall be paid from funds appropriated to the legislative branch of government. The person representing the Governor, if a state officer or employee, shall receive such expenses and allowances out of funds appropriated to or otherwise available to the agency by which he is employed or, if he is not a state officer or employee, out of funds appropriated or otherwise available to the executive office of the Governor.

History. — Ga. L. 1962, p. 505, § 2; Ga. L. 1979, p. 806, § 8.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Officers and Employees, §§ 87 et seq., 258 et seq.

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 47, 374 et seq.

12-10-3. Board employees under merit system; establishment of retirement system.

The employees of the Southern States Energy Board shall be under such merit system as the Southern States Energy Board shall provide and, for the purposes of carrying out Article II(f), the Southern States Energy Board and its employees shall be considered a state agency. The Employees' Retirement System of Georgia is authorized to contract with the Southern States Energy Board in order to further or facilitate the activities of the Southern States Energy Board pursuant to Article II(f) of the compact. No such contract shall take effect prior to its approval by the Governor.

History. — Ga. L. 1962, p. 505, § 3.

OPINIONS OF THE ATTORNEY GENERAL

Eligibility for retirement benefits. — Employees of board are eligible for coverage by the Employees' Retirement System of Georgia. 1967 Op. Att'y Gen. No. 67-22.

RESEARCH REFERENCES

C.J.S. — 67 C.J.S., Officers and Public Employees, §§ 421 et seq.

12-10-4. Board considered state agency for purpose of obtaining personnel services.

For the purposes of facilitating Article II(g) of the compact, the Southern States Energy Board shall be considered a state agency.

History. — Ga. L. 1962, p. 505, § 4.

12-10-5. Budget of estimated expenditures to be submitted to Governor.

Pursuant to Article III(a) of the compact, the Southern States Energy Board shall submit its budgets of estimated expenditures to the Governor for presentation to the General Assembly.

History. — Ga. L. 1962, p. 505, § 5.

12-10-6. Appropriations for supplementary agreements.

Any supplementary agreement entered into pursuant to Article VI of the compact and requiring the expenditure of funds or the assumption of an obligation to expend funds in addition to those already appropriated shall not become effective as to this state prior to the making of an appropriation by the General Assembly therefor.

History. — Ga. L. 1962, p. 505, § 6.

12-10-7. Cooperation by state departments, agencies, officers, and subdivisions with Board.

The departments, agencies, and officers of this state and its subdivisions are authorized to cooperate with the Southern States Energy Board in the furtherance of any of its activities pursuant to the compact.

History. — Ga. L. 1962, p. 505, § 7.

12-10-8. Appropriation of funds to carry out article and compact.

The funds necessary to carry out this article and the compact shall be paid from funds appropriated to or otherwise made available to the executive branch of the state government.

History. — Ga. L. 1962, p. 505, § 8; Ga. L. 1968, p. 475, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 63C Am. Jur. 2d, Public Funds, § 28 et seq.

C.J.S. — 81A C.J.S., States, § 404 et seq.

ARTICLE 2

SOUTHERN GROWTH POLICIES AGREEMENT

12-10-20 through 12-10-22.

Reserved. Repealed by Ga. L. 2021, p. 922, § 12(7)/HB 497, effective May 10, 2021.

Editor's notes. — This article was based on Ga. L. 1973, p. 622, §§ 1—3; Ga. L. 1980, p. 473, §§ 1, 2; Ga. L. 1982, p. 3, § 12; Ga. L. 2002, p. 532, § 2.

ARTICLE 3

INTERSTATE ENVIRONMENT COMPACT

RESEARCH REFERENCES

C.J.S. — 81A C.J.S., States, § 272.
ALR. — Conservation: validity, construction, and application of enactments restricting land development by dredging or tilling, 46 A.L.R.3d 1422.
Validity and construction of statutes regulating strip mining, 86 A.L.R.3d 27.

12-10-40. Compact enacted and entered into; text of compact.

The Interstate Environment Compact is enacted into law and entered into with all other jurisdictions legally joining therein in the form substantially as follows:

"INTERSTATE ENVIRONMENT COMPACT

ARTICLE 1. FINDINGS, PURPOSES AND RESERVATIONS OF POWER.

1.01. *Findings.* The signatory states hereby find and declare:

(a) The environment of every state is affected with local, state, regional and national interests, and its protection, under appropriate arrangements for intergovernmental cooperation, are public purposes of the respective signatories.

(b) Certain environmental pollution problems transcend state boundaries and thereby become common to adjacent states requiring cooperative efforts.

(c) The environment of each state is subject to the effective control of the signatories, and coordinated, cooperative or joint exercise of control measures is in their common interests.

1.02. *Purposes.* The purposes of the signatories in enacting this are:

(a) To assist and participate in the national environment protection programs as set forth in federal legislation; to promote intergovernmental cooperation for multistate action relating to environmental protection through interstate agreements; and to encourage cooperative and coordinated environmental protection by the signatories and the federal government;

(b) To preserve and utilize the functions, powers and duties of existing state agencies of government to the maximum extent possible consistent with the purposes of the compact.

1.03. *Powers of the United States.*

(a) Nothing contained in this compact shall impair, affect or extend the constitutional authority of the United States.

(b) The signatories hereby recognize the power and right of the Congress of the United States at any time by any statute expressly enacted for that purpose to revise the terms and conditions of its consent.

1.04. *Powers of the States.* Nothing contained in this compact shall impair or extend the constitutional authority of any signatory state, nor shall the police powers of any signatory state be affected except as expressly provided in a supplementary agreement under Article 4.

ARTICLE 2. SHORT TITLE, DEFINITIONS, PURPOSES AND LIMITATIONS.

2.01. *Short Title.* This compact shall be known and may be cited as the Interstate Environment Compact.

2.02. *Definitions.* For the purpose of this compact and of any supplemental or concurring legislation enacted pursuant or in relation hereto, except as may be otherwise required by the context:

(a) 'State' shall mean any one of the fifty states of the United States of America, the Commonwealth of Puerto Rico and the Territory of the Virgin Islands, but shall not include the District of Columbia.

(b) 'Interstate environment pollution' shall mean any pollution of a stream or body of water crossing or marking a state boundary, interstate air quality control region designated by an appropriate federal agency or solid waste collection and disposal district or program involving the jurisdiction or territories of more than one state.

(c) 'Government' shall mean the governments of the United States and the signatory states.

(d) 'Federal Government' shall mean the government of the United States of America and any appropriate department, instrumentality, agency, commission, bureau, division, branch or other unit thereof, as the case may be, but shall not include the District of Columbia.

(e) 'Signatory' shall mean any state which enters into this compact and is a party thereto.

ARTICLE 3. INTERGOVERNMENTAL COOPERATION.

3.01. *Agreements with the Federal Government and Other Agencies.* Signatory states are hereby authorized jointly to participate in cooperative or joint undertakings for the protection of the interstate environ-

ment with the federal government or with any intergovernmental or interstate agencies.

ARTICLE 4. SUPPLEMENTARY AGREEMENTS, JURISDICTION AND ENFORCEMENT.

4.01. *Signatory States Empowered to Enter Into Agreements.* Signatories may enter into agreements for the purpose of controlling interstate environmental problems in accordance with applicable federal legislation and under terms and conditions as deemed appropriate by the agreeing states under section 4.06 and section 4.08.

4.02. *Recognition of Existing Non-Environmental Intergovernmental Arrangements.* The signatories agree that existing Federal-state, interstate or intergovernmental arrangements which are not primarily directed to environmental protection purposes as defined herein are not affected by this compact.

4.03. *Recognition of Existing Intergovernmental Agreements Directed to Environmental Objectives.* All existing interstate compacts directly relating to environmental protection are hereby expressly recognized and nothing in this compact shall be construed to diminish or supersede the powers and functions of such existing intergovernmental agreements and the organizations created by them.

4.04. *Modification of Existing Commissions and Compacts.* Recognition herein of multistate commissions and compacts shall not be construed to limit directly or indirectly the creation of additional multistate organizations or interstate compacts, nor to prevent termination, modification, extension, or supplementation of such multistate organizations and interstate compacts recognized herein by the Federal government or states party thereto.

4.05. *Recognition of Future Multistate Commissions and Interstate Compacts.* Nothing in this compact shall be construed to prevent signatories from entering into multistate organizations or other interstate compacts which do not conflict with their obligations under this compact.

4.06. *Supplementary Agreements.* Any two or more signatories may enter into supplementary agreements for joint, coordinated or mutual environmental management activities relating to interstate pollution problems common to the territories of such states and for the establishment of common or joint regulation, management, services, agencies or facilities for such purposes or may designate an appropriate agency to act as their joint agency in regard thereto. No supplementary agreement shall be valid to the extent that it conflicts with the purposes of this compact and the creation of a joint agency by supplementary agreement shall not affect the privileges, powers, responsibilities or

duties under this compact of signatories participating therein as embodied in this compact.

4.07. *Execution of Supplementary Agreements and Effective Date.* The Governor is authorized to enter into supplementary agreements for the State and his official signature shall render the agreement immediately binding upon the State;

Provided that:

(a) The legislature of any signatory entering into such a supplementary agreement shall at its next legislative session by concurrent resolution bring the supplementary agreement before it and by appropriate legislative action reverse, modify or condition the agreement of that state.

(b) Nothing in this agreement shall be construed to limit the right of Congress by Act of law expressly enacted for that purpose to disapprove or condition such a supplementary agreement.

4.08. *Special Supplementary Agreements.* Signatories may enter into special supplementary agreements with the District of Columbia or foreign nations for the same purposes and with the same powers as under section 4.06 upon the condition that such non-signatory party accept the general obligations of signatories under this compact: Provided, that such special supplementary agreements shall become effective only after being consented to by the Congress.

4.09. *Jurisdiction of Signatories Reserved.* Nothing in this compact or in any supplementary agreement thereunder shall be construed to restrict, relinquish or be in derogation of, any power or authority constitutionally possessed by any signatory within its jurisdiction, except as specifically limited by this compact or a supplementary agreement.

4.10. *Complementary Legislation by Signatories.* Signatories may enact such additional legislation as may be deemed appropriate to enable its officers and governmental agencies to accomplish effectively the purposes of this compact and supplementary agreements recognized or entered into under the terms of this Article.

4.11. *Legal Rights of Signatories.* Nothing in this compact shall impair the exercise by any signatory of its legal rights or remedies established by the United States Constitution or any other laws of this Nation.

ARTICLE 5. CONSTRUCTION, AMENDMENT AND EFFECTIVE DATE.

5.01. *Construction.* It is the intent of the signatories that no provision of this compact or supplementary agreement entered into hereun-

der shall be construed as invalidating any provision of law of any signatory and that nothing in this compact shall be construed to modify or qualify the authority of any signatory to enact or enforce environmental protection legislation within its jurisdiction and not inconsistent with any provision of this compact or a supplementary agreement entered into pursuant hereto.

5.02. *Severability.* The provisions of this compact or of agreements hereunder shall be severable and if any phrase, clause, sentence or provision of this compact, or such an agreement is declared to be contrary to the constitution of any signatory or of the United States or is held invalid, the constitutionality of the remainder of this compact or of any such agreement and the applicability thereof to any participating jurisdiction, agency, person or circumstance shall not be affected thereby and shall remain in full force and effect as to the remaining participating jurisdictions and in full force and effect as to the signatory affected as to all severable matters. It is the intent of the signatories that the provisions of this compact shall be reasonably and liberally construed in the context of its purposes.

5.03. *Amendments.* Amendments to this compact may be initiated by legislative action of any signatory and become effective when concurred in by all signatories and approved by Congress.

5.04. *Effective Date.* This compact shall become binding on a state when enacted by it into law and such state shall thereafter become a signatory and party hereto with any and all states legally joining herein.

5.05. *Withdrawal From the Compact.* A state may withdraw from this compact by authority of an Act of its legislature one year after it notifies all signatories in writing of an intention to withdraw from the compact: Provided, withdrawal from the compact affects obligations of a signatory imposed on it by supplementary agreements to which it may be a party only to the extent and in accordance with the terms of such supplementary agreements."

History. — Ga. L. 1971, p. 194, § 1.

12-10-41. Commissioner as representative of state in compact.

The commissioner of natural resources or his designated representative shall represent the state in the Interstate Environment Compact.

History. — Ga. L. 1972, p. 1015, § 1533.

ARTICLE 4

SOUTHEASTERN INTERSTATE FOREST FIRE PROTECTION COMPACT

OPINIONS OF THE ATTORNEY GENERAL

Scope of definition of "employee". — Compact does not extend the definition of "employee" for the purposes of workers' compensation. 1954-56 Op. Att'y Gen. p. 353.

12-10-60. Required procedure to make compact effective; exchange of documents.

When the Governor shall have executed the compact on behalf of this state and shall have caused a verified copy thereof to be filed with the Secretary of State, and when the compact shall have been ratified by one or more of the states named in Code Section 12-10-61, then the compact shall become operative and effective as between this state and such other state or states. The Governor is authorized and directed to take such action as may be necessary to complete the exchange of official documents as between this state and any other state ratifying the compact.

History. — Ga. L. 1953, Nov.-Dec. Sess., p. 49, § 2.

12-10-61. Authority of Governor to execute compact with designated states; legislative approval of compact; text of compact.

The Governor on behalf of this state is authorized to execute a compact, in substantially the following form, with any one or more of the states of Alabama, Florida, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia, and the General Assembly signifies in advance its approval and ratification of such compact:

"ARTICLE I.

The purpose of this compact is to promote effective prevention and control of forest fires in the Southeastern region of the United States by the development of integrated forest fire plans, by the maintenance of adequate forest fire fighting services by the member States, by providing for mutual aid in fighting forest fires among the compacting States of the region and with States which are party to other regional forest fire protection compacts or agreements, and for more adequate forest protection.

ARTICLE II.

This compact shall become operative immediately as to those States ratifying it whenever any two or more of the States of Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia, which are contiguous have ratified it and Congress has given consent thereto. Any State not mentioned in this article which is contiguous with any member State may become a party to this compact, subject to approval by the legislature of each of the member States.

ARTICLE III.

In each State, the State forester or officer holding the equivalent position who is responsible for forest fire control shall act as compact administrator for that State and shall consult with like officials of the other member States and shall implement cooperation between such States in forest fire prevention and control.

The compact administrators of the member States shall coordinate the services of the member States and provide administrative integration in carrying out the purposes of this compact.

There shall be established an advisory committee of legislators, forestry commission representatives, and forestry or forest products industries representatives which shall meet from time to time with the compact administrators. Each member State shall name one member of the Senate and one member of the House of Representatives who shall be designated by that State's commission on interstate cooperation, or if said commission cannot constitutionally designate the said members, they shall be designated in accordance with laws of that State; and the Governor of each member State shall appoint two representatives, one of whom shall be associated with forestry or forest products industries to comprise the membership of the advisory committee. Action shall be taken by a majority of the compacting States, and each State shall be entitled to one vote.

The compact administrators shall formulate and, in accordance with need, from time to time, revise a regional forest fire plan for the member States.

It shall be the duty of each member State to formulate and put in effect a forest fire plan for that State and take such measures as may be necessary to integrate such forest fire plan with the regional forest fire plan formulated by the compact administrators.

ARTICLE IV.

Whenever the State forest fire control agency of a member State requests aid from the State forest fire control agency of any other

member State in combating, controlling or preventing forest fires, it shall be the duty of the State forest fire control agency of that State to render all possible aid to the requesting agency which is consonant with the maintenance of protection at home.

ARTICLE V.

Whenever the forces of any member State are rendering outside aid pursuant to the request of another member State under this compact, the employees of such State shall, under the direction of the officers of the State to which they are rendering aid, have the same powers (except the power of arrest), duties, rights, privileges and immunities as comparable employees of the State to which they are rendering aid.

No member State or its officers or employees rendering outside aid pursuant to this compact shall be liable on account of any act or omission on the part of such forces while so engaged, or on account of the maintenance, or use of any equipment or supplies in connection therewith: Provided, that nothing herein shall be construed as relieving any person from liability for his own negligent act or omission, or as imposing liability for such negligent act or omission upon any State.

All liability, except as otherwise provided hereinafter, that may arise either under the laws of the requesting State or under the laws of the aiding State or under the laws of a third State on account of or in connection with a request for aid, shall be assumed and borne by the requesting State.

Any member State rendering outside aid pursuant to this compact shall be reimbursed by the member State receiving such aid for any loss or damage to, or expense incurred in the operation of any equipment answering a request for aid, and for the cost of all materials, transportation, wages, salaries, and subsistence of employees and maintenance of equipment incurred in connection with such request: Provided, that nothing herein contained shall prevent any assisting member State from assuming such loss, damage, expense or other cost or from loaning such equipment or from donating such service to the receiving member State without charge or cost.

Each member State shall provide for the payment of compensation and death benefits to injured employees and the representatives of deceased employees in case employees sustain injuries or are killed while rendering outside aid pursuant to this compact, in the same manner and on the same terms as if the injury or death were sustained within such State.

For the purposes of this compact the term employee shall include any volunteer or auxiliary legally included within the forest fire fighting forces of the aiding State under the laws thereof.

The compact administrators shall formulate procedures for claims and reimbursement under the provisions of this article, in accordance with the laws of the member States.

ARTICLE VI.

Ratification of this compact shall not be construed to affect any existing statute so as to authorize or permit curtailment or diminution of the forest fire fighting forces, equipment, services or facilities of any member State.

Nothing in this compact shall be construed to limit or restrict the powers of any State ratifying the same to provide for the prevention, control and extinguishment of forest fires, or to prohibit the enactment or enforcement of State laws, rules or regulations intended to aid in such prevention, control and extinguishment on such State.

Nothing in this compact shall be construed to affect any existing or future cooperative relationship or arrangement between a Federal agency and a member State or States.

ARTICLE VII.

The compact administrators may request the United States Forest Service to act as a research and coordinating agency of the Southeastern Interstate Forest Fire Protection Compact in cooperation with the appropriate agencies in each State, and the United States Forest Service may accept responsibility for preparing and presenting to the compact administrators its recommendations with respect to the regional fire plan. Representatives of any Federal agency engaged in forest fire prevention and control may attend meetings of the compact administrators.

ARTICLE VIII.

The provisions of Articles IV and V of this compact which relate to mutual aid in combating, controlling or preventing forest fires shall be operative as between any State party to this compact and any other State which is party to a regional forest fire protection compact in another region: Provided, that the legislature of such other State shall have given its assent to such mutual aid provisions of this compact.

ARTICLE IX.

This compact shall continue in force and remain binding on each State ratifying it until the legislature or the Governor of such State, as the laws of such State shall provide, takes action to withdraw therefrom. Such action shall not be effective until six months after notice thereof has been sent by the chief executive of the State desiring to withdraw to the chief executives of all States then parties to the compact."

History. — Ga. L. 1953, Nov.-Dec. Sess., p. 49, § 1.

OPINIONS OF THE ATTORNEY GENERAL

State's participation in mutual aid program authorized. — State, as a signatory of this compact, may participate in a mutual aid program with the Middle Atlantic States Forest Fire Protection Compact Commission. 1970 Op. Att'y Gen. No. 70-5.

RESEARCH REFERENCES

Am. Jur. 2d. — 35A Am. Jur. 2d, Fires, § 2.

C.J.S. — 81A C.J.S., States, § 272.

12-10-62. Process.

(a) In pursuance of Article III of the compact, the director of the State Forestry Commission shall act as compact administrator for the State of Georgia of the Southeastern Interstate Forest Fire Protection Compact during his term of office as director, and his successor as compact administrator shall be his successor as director. As compact administrator the director shall be an ex officio member of the advisory committee of the Southeastern Interstate Forest Fire Protection Compact, and chairman ex officio of the Georgia members of said advisory committee.

(b) There shall be four members of the Southeastern Interstate Forest Fire Protection Compact advisory committee from the State of Georgia. Two of the members from the State of Georgia shall be members of the General Assembly, one from the Senate and one from the House of Representatives, designated by the Georgia Commission on Interstate Cooperation; the terms of any such members shall terminate at the time they cease to hold legislative office; and their successors as members shall be named in like manner.

(c) The Governor shall appoint the other two members of the advisory committee from the State of Georgia, one of whom shall be associated with forestry or forest products industries. The terms of such members shall be three years, and such members shall hold office until their respective successors shall be appointed and qualified. Vacancies occurring in the office of such members for any reason or cause shall be filled by appointment by the Governor for the unexpired term.

(d) The director as compact administrator for the State of Georgia may delegate, from time to time, to any deputy or other subordinate in his department or office the power to be present and participate, including voting as his representative or substitute, at any meeting of or hearing by or other proceeding of the compact administrators or of the advisory committee.

(e) The terms of each of the initial four memberships, whether appointed at such time or not, shall begin upon the date upon which the compact shall become effective in accordance with Article II of the compact.

(f) Any member of the advisory committee may be removed from office by the Governor upon charges and after a hearing.

History. — Ga. L. 1953, Nov.-Dec. Sess., p. 49, § 3; Ga. L. 1972, p. 1015, § 1533; Ga. L. 1981, p. 638, § 2.

12-10-63. Authority to exercise powers under compact; cooperation with compact administrator.

(a) There is granted to the director of the State Forestry Commission, as compact administrator and chairman ex officio of the Georgia members of the advisory committee, and to the members from Georgia of the advisory committee all the powers provided for in the compact and all the powers necessary or incidental to the carrying out of the compact in every particular.

(b) All officers of the State of Georgia are authorized and directed to do all things falling within their respective provinces and jurisdiction necessary or incidental to the carrying out of the compact in every particular; it being declared to be the policy of the State of Georgia to perform and carry out the compact and to accomplish the purposes thereof.

(c) All officers, bureaus, departments, and persons of and in the government or administration of the State of Georgia are authorized and directed at convenient times, and upon request of the compact administrator or of the advisory committee, to furnish such information as they may possess regarding the purposes of the compact to the compact administrator or the advisory committee. They are further authorized to aid the compact administrator or the advisory committee by loan of personnel, equipment, or other means in carrying out the purposes of the compact.

History. — Ga. L. 1953, Nov.-Dec. Sess., p. 49, § 4; Ga. L. 1972, p. 1015, § 1533; Ga. L. 1981, p. 638, § 2.

OPINIONS OF THE ATTORNEY GENERAL

State's participation in mutual aid program authorized. — State, as a signatory of this compact, may participate in a mutual aid program with the Middle Atlantic States Forest Fire Protection Compact Commission. 1970 Op. Att'y Gen. No. 70-5.

12-10-64. Construction of article.

Any powers granted by this article to the State Forestry Commission shall be regarded as in aid of and supplemental to and in no case a limitation upon any of the powers vested in the commission by other laws of the State of Georgia or by the laws of the States of Alabama, Florida, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, Virginia, and West Virginia or by the Congress of the United States or by the terms of the compact.

History. — Ga. L. 1953, Nov.-Dec. Sess., p. 49, § 5.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, "States" was substituted for "states" preceding "of Alabama".

ARTICLE 5

HISTORIC CHATTAHOOCHEE COMPACT

Cross references. — Powers and duties of department relating to development of Chattahoochee River Basin, § 12-5-400 et seq.

Administrative rules and regulations. — Chattahoochee Basin Downstream Assistance (CBDA) Grant Program, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Grant Programs, Sec. 391-3-21-06.

12-10-80 and 12-10-81.

Reserved. Repealed by Ga. L. 2018, p. 115, § 1/HB 777, effective July 1, 2018.

Editor's notes. — This article consisted of Code Sections 12-10-80 and 12-10-81, relating to the Historic Chattahoochee Compact, and was based on Ga. L. 1978, p. 1497, §§ 1, 2; Ga. L. 1993, p. 429, § 1.

ARTICLE 6

APALACHICOLA-CHATTAHOOCHEE-FLINT RIVER BASIN COMPACT

Editor's notes. — Ga. L. 1997, p. 29, § 1 enacts the Apalachicola-Chattahoochee-Flint River Basin Compact. That Act became effective on July 1, 1997. Subsequently, as required pursuant to Article V of the compact, the compact has received the approval of the legislatures of the states of Alabama, Florida, and Georgia and by the Congress of the United States of America; thus, the Act is now binding.

Law reviews. — For article commenting on the enactment of this article, see 14 Ga. St. U.L. Rev. 47 (1997).

For note, "The Failings of the Tri-state Water Negotiations: Lessons to be Learned from International Law," see 32 Ga. J. Int'l & Comp. L. 473 (2004).

12-10-100. Compact enacted and entered into; text of compact.

The Apalachicola-Chattahoochee-Flint River Basin Compact is enacted into law and entered into by the State of Georgia with any and all jurisdictions legally joining therein in accordance with its terms. The compact is substantially as follows:

"APALACHICOLA-CHATTAHOOCHEE-FLINT RIVER BASIN COMPACT

The states of Alabama, Florida and Georgia and the United States of America hereby agree to the following compact which shall become effective upon enactment of concurrent legislation by each respective state legislature and the Congress of the United States.

SHORT TITLE

This Act shall be known and may be cited as the 'Apalachicola-Chattahoochee-Flint River Basin Compact' and shall be referred to hereafter in this document as the 'ACF Compact' or 'Compact.'

ARTICLE I

COMPACT PURPOSES

This Compact among the states of Alabama, Florida and Georgia and the United States of America has been entered into for the purposes of promoting interstate comity, removing causes of present and future controversies, equitably apportioning the surface waters of the ACF, engaging in water planning, and developing and sharing common data bases.

ARTICLE II

SCOPE OF THE COMPACT

This Compact shall extend to all of the waters arising within the drainage basin of the ACF in the states of Alabama, Florida and Georgia.

ARTICLE III

PARTIES

The parties to this Compact are the states of Alabama, Florida and Georgia and the United States of America.

ARTICLE IV

DEFINITIONS

For the purposes of this Compact, the following words, phrases and terms shall have the following meanings:

(a) 'ACF Basin' or 'ACF' means the area of natural drainage into the Apalachicola River and its tributaries, the Chattahoochee River and its tributaries, and the Flint River and its tributaries. Any reference to the rivers within this Compact will be designated using the letters 'ACF' and when so referenced will mean each of these three rivers and each of the tributaries to each such river.

(b) 'Allocation formula' means the methodology, in whatever form, by which the ACF Basin Commission determines an equitable apportionment of surface waters within the ACF Basin among the three states. Such formula may be represented by a table, chart, mathematical calculation or any other expression of the Commission's apportionment of waters pursuant to this compact.

(c) 'Commission' or 'ACF Basin Commission' means the Apalachicola-Chattahoochee-Flint River Basin Commission created and established pursuant to this Compact.

(d) 'Ground waters' means waters within a saturated zone or stratum beneath the surface of land, whether or not flowing through known and definite channels.

(e) 'Person' means any individual, firm, association, organization, partnership, business, trust, corporation, public corporation, company, the United States of America, any state, and all political subdivisions, regions, districts, municipalities, and public agencies thereof.

(f) 'Surface waters' means waters upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs shall be considered 'surface waters' when it exits from the spring onto the surface of the earth.

(g) 'United States' means the executive branch of the government of the United States of America, and any department, agency, bureau or division thereof.

(h) 'Water Resource Facility' means any facility or project constructed for the impoundment, diversion, retention, control or regulation of waters within the ACF Basin for any purpose.

(i) 'Water resources,' or 'waters' means all surface waters and ground waters contained or otherwise originating within the ACF Basin.

ARTICLE V

CONDITIONS PRECEDENT TO LEGAL VIABILITY OF THE COMPACT

This Compact shall not be binding on any party until it has been enacted into law by the legislatures of the states of Alabama, Florida and Georgia and by the Congress of the United States of America.

ARTICLE VI

ACF BASIN COMMISSION CREATED

(a) There is hereby created an interstate administrative agency to be known as the 'ACF Basin Commission.' The Commission shall be comprised of one member representing the state of Alabama, one member representing the state of Florida, one member representing the state of Georgia, and one non-voting member representing the United States of America. The state members shall be known as 'State Commissioners' and the federal member shall be known as 'Federal Commissioner.' The ACF Basin Commission is a body politic and corporate, with succession for the duration of this Compact.

(b) The Governor of each of the states shall serve as the State Commissioner for his or her state. Each State Commissioner shall appoint one or more alternate members and one of such alternates as designated by the State Commissioner shall serve in the State Commissioner's place and carry out the functions of the State Commissioner, including voting on Commission matters, in the event the State Commissioner is unable to attend a meeting of the Commission. The alternate members from each state shall be knowledgeable in the field of water resources management. Unless otherwise provided by law of the state for which an alternate State Commissioner is appointed, each alternate State Commissioner shall serve at the pleasure of the State Commissioner. In the event of a vacancy in the office of an alternate, it shall be filled in the same manner as an original appointment.

(c) The President of the United States of America shall appoint the Federal Commissioner who shall serve as the representative of all federal agencies with an interest in the ACF. The President shall also appoint an alternate Federal Commissioner to attend and participate in the meetings of the Commission in the event the Federal Commissioner is unable to attend meetings. When at meetings, the alternate Federal Commissioner shall possess all of the powers of the Federal Commissioner. The Federal Commissioner and alternate appointed by the President shall serve until they resign or their replacements are appointed.

(d) Each state shall have one vote on the ACF Basin Commission and the Commission shall make all decisions and exercise all powers by unanimous vote of the three State Commissioners. The Federal Commissioner shall not have a vote, but shall attend and participate in all meetings of the ACF Basin Commission to the same extent as the State Commissioners.

(e) The ACF Basin Commission shall meet at least once a year at a date set at its initial meeting. Such initial meeting shall take place within ninety days of the ratification of the Compact by the Congress of

the United States and shall be called by the chairman of the Commission. Special meetings of the Commission may be called at the discretion of the chairman of the Commission and shall be called by the chairman of the Commission upon written request of any member of the Commission. All members shall be notified of the time and place designated for any regular or special meeting at least five days prior to such meeting in one of the following ways: by written notice mailed to the last mailing address given to the Commission by each member, by facsimile, telegram or by telephone. The Chairmanship of the Commission shall rotate annually among the voting members of the Commission on an alphabetical basis, with the first chairman to be the State Commissioner representing the State of Alabama.

(f) All meetings of the Commission shall be open to the public.

(g) The ACF Basin Commission, so long as the exercise of power is consistent with this Compact, shall have the following general powers:

(1) to adopt bylaws and procedures governing its conduct;

(2) to sue and be sued in any court of competent jurisdiction;

(3) to retain and discharge professional, technical, clerical and other staff and such consultants as are necessary to accomplish the purposes of this Compact;

(4) to receive funds from any lawful source and expend funds for any lawful purpose;

(5) to enter into agreements or contracts, where appropriate, in order to accomplish the purposes of this Compact;

(6) to create committees and delegate responsibilities;

(7) to plan, coordinate, monitor, and make recommendations for the water resources of the ACF Basin for the purposes of, but not limited to, minimizing adverse impacts of floods and droughts and improving water quality, water supply, and conservation as may be deemed necessary by the Commission;

(8) to participate with other governmental and non-governmental entities in carrying out the purposes of this Compact;

(9) to conduct studies, to generate information regarding the water resources of the ACF Basin, and to share this information among the Commission members and with others;

(10) to cooperate with appropriate state, federal, and local agencies or any other person in the development, ownership, sponsorship, and operation of water resource facilities in the ACF Basin; provided, however, that the Commission shall not own or operate a

federally-owned water resource facility unless authorized by the United States Congress;

(11) to acquire, receive, hold and convey such personal and real property as may be necessary for the performance of its duties under the Compact; provided, however, that nothing in this Compact shall be construed as granting the ACF Basin Commission authority to issue bonds or to exercise any right of eminent domain or power of condemnation;

(12) to establish and modify an allocation formula for apportioning the surface waters of the ACF Basin among the states of Alabama, Florida and Georgia; and

(13) to perform all functions required of it by this Compact and to do all things necessary, proper or convenient in the performance of its duties hereunder, either independently or in cooperation with any state or the United States.

ARTICLE VII

EQUITABLE APPORTIONMENT

(a) It is the intent of the parties to this Compact to develop an allocation formula for equitably apportioning the surface waters of the ACF Basin among the states while protecting the water quality, ecology and biodiversity of the ACF, as provided in the Clean Water Act, 33 U.S.C. Sections 1251 et seq., the Endangered Species Act, 16 U.S.C. Sections 1532 et seq., the National Environmental Policy Act, 42 U.S.C. Sections 4321 et seq., the Rivers and Harbors Act of 1899, 33 U.S.C. Sections 401 et seq., and other applicable federal laws. For this purpose, all members of the ACF Basin Commission, including the Federal Commissioner, shall have full rights to notice of and participation in all meetings of the ACF Basin Commission and technical committees in which the basis and terms and conditions of the allocation formula are to be discussed or negotiated. When an allocation formula is unanimously approved by the State Commissioners, there shall be an agreement among the states regarding an allocation formula. The allocation formula thus agreed upon shall become effective and binding upon the parties to this Compact upon receipt by the Commission of a letter of concurrence with said formula from the Federal Commissioner. If, however, the Federal Commissioner fails to submit a letter of concurrence to the Commission within two hundred ten (210) days after the allocation formula is agreed upon by the State Commissioners, the Federal Commissioner shall within forty-five (45) days thereafter submit to the ACF Basin Commission a letter of nonconcurrence with the allocation formula setting forth therein specifically and in detail the reasons for nonconcurrence; provided, however, the reasons for nonconcurrence as contained in the letter of nonconcurrence shall be based

solely upon federal law. The allocation formula shall also become effective and binding upon the parties to this Compact if the Federal Commissioner fails to submit to the ACF Basin Commission a letter of nonconcurrence in accordance with this Article. Once adopted pursuant to this Article, the allocation formula may only be modified by unanimous decision of the State Commissioners and the concurrence by the Federal Commissioner in accordance with the procedures set forth in this Article.

(b) The parties to this Compact recognize that the United States operates certain projects within the ACF Basin that may influence the water resources within the ACF Basin. The parties to this Compact further acknowledge and recognize that various agencies of the United States have responsibilities for administering certain federal laws and exercising certain federal powers that may influence the water resources within the ACF Basin. It is the intent of the parties to this Compact, including the United States, to achieve compliance with the allocation formula adopted in accordance with this Article. Accordingly, once an allocation formula is adopted, each and every officer, agency, and instrumentality of the United States shall have an obligation and duty, to the maximum extent practicable, to exercise their powers, authority, and discretion in a manner consistent with the allocation formula so long as the exercise of such powers, authority, and discretion is not in conflict with federal law.

(c) Between the effective date of this Compact and the approval of the allocation formula under this Article, the signatories to this Compact agree that any person who is withdrawing, diverting, or consuming water resources of the ACF Basin as of the effective date of this Compact, may continue to withdraw, divert or consume such water resources in accordance with the laws of the state where such person resides or does business and in accordance with applicable federal laws. The parties to this Compact further agree that any such person may increase the amount of water resources withdrawn, diverted or consumed to satisfy reasonable increases in the demand of such person for water between the effective date of this Compact and the date on which an allocation formula is approved by the ACF Basin Commission as permitted by applicable law. Each of the state parties to this Compact further agree to provide written notice to each of the other parties to this Compact in the event any person increases the withdrawal, diversion or consumption of such water resources by more than 10 million gallons per day on an average annual daily basis, or in the event any person, who was not withdrawing, diverting or consuming any water resources from the ACF Basin as of the effective date of this Compact, seeks to withdraw, divert or consume more than one million gallons per day on an average annual daily basis from such resources. This Article shall not be construed as granting any permanent, vested

or perpetual rights to the amounts of water used between January 3, 1992 and the date on which the Commission adopts an allocation formula.

(d) As the owner, operator, licensor, permitting authority or regulator of a water resource facility under its jurisdiction, each state shall be responsible for using its best efforts to achieve compliance with the allocation formula adopted pursuant to this Article. Each such state agrees to take such actions as may be necessary to achieve compliance with the allocation formula.

(e) This Compact shall not commit any state to agree to any data generated by any study or commit any state to any allocation formula not acceptable to such state.

ARTICLE VIII

CONDITIONS RESULTING IN TERMINATION OF THE COMPACT

(a) This Compact shall be terminated and thereby be void and of no further force and effect if any of the following events occur:

(1) The legislatures of the states of Alabama, Florida and Georgia each agree by general laws enacted by each state within any three consecutive years that this Compact should be terminated.

(2) The United States Congress enacts a law expressly repealing this Compact.

(3) The States of Alabama, Florida and Georgia fail to agree on an equitable apportionment of the surface waters of the ACF as provided in Article VII(a) of this Compact by December 31, 1998, unless the voting members of the ACF Basin Commission unanimously agree to extend this deadline.

(4) The Federal Commissioner submits to the Commission a letter of nonconcurrence in the initial allocation formula in accordance with Article VII(a) of the Compact, unless the voting members of the ACF Basin Commission unanimously agree to allow a single 45 day period in which the non-voting Federal Commissioner and the voting State Commissioners may renegotiate an allocation formula and the Federal Commissioner withdraws the letter of nonconcurrence upon completion of this renegotiation.

(b) If the Compact is terminated in accordance with this Article it shall be of no further force and effect and shall not be the subject of any proceeding for the enforcement thereof in any federal or state court. Further, if so terminated, no party shall be deemed to have acquired a specific right to any quantity of water because it has become a signatory to this Compact.

ARTICLE IX

COMPLETION OF STUDIES PENDING ADOPTION OF ALLOCATION FORMULA

The ACF Basin Commission, in conjunction with one or more interstate, federal, state or local agencies, is hereby authorized to participate in any study in process as of the effective date of this Compact, including, without limitation, all or any part of the Alabama-Coosa-Tallapoosa/Apalachicola-Chattahoochee-Flint River Basin Comprehensive Water Resource Study, as may be determined by the Commission in its sole discretion.

ARTICLE X

RELATIONSHIP TO OTHER LAWS

(a) It is the intent of the party states and of the United States Congress by ratifying this Compact, that all state and federal officials enforcing, implementing or administering other state and federal laws affecting the ACF Basin shall, to the maximum extent practicable, enforce, implement or administer those laws in furtherance of the purposes of this Compact and the allocation formula adopted by the Commission insofar as such actions are not in conflict with applicable federal laws.

(b) Nothing contained in this Compact shall be deemed to restrict the executive powers of the President in the event of a national emergency.

(c) Nothing contained in this Compact shall impair or affect the constitutional authority of the United States or any of its powers, rights, functions or jurisdiction under other existing or future laws in and over the area or waters which are the subject of the Compact, including projects of the Commission, nor shall any act of the Commission have the effect of repealing, modifying or amending any federal law. All officers, agencies and instrumentalities of the United States shall exercise their powers and authority over water resources in the ACF Basin and water resource facilities, and to the maximum extent practicable, shall exercise their discretion in carrying out their responsibilities, powers, and authorities over water resources in the ACF Basin and water resource facilities in the ACF Basin in a manner consistent with and that effectuates the allocation formula developed pursuant to this Compact or any modification of the allocation formula so long as the actions are not in conflict with any applicable federal law. The United States Army Corps of Engineers, or its successors, and all other federal agencies and instrumentalities shall cooperate with the ACF Basin Commission in accomplishing the purposes of the Compact and fulfilling the obligations of each of the parties to the Compact regarding the allocation formula.

(d) Once adopted by the three states and ratified by the United States Congress, this Compact shall have the full force and effect of federal law, and shall supersede state and local laws operating contrary to the provisions herein or the purposes of this Compact; provided, however, nothing contained in this Compact shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective signatory states relating to water quality, and riparian rights as among persons exclusively within each state.

ARTICLE XI

PUBLIC PARTICIPATION

All meetings of the Commission shall be open to the public. The signatory parties recognize the importance and necessity of public participation in activities of the Commission, including the development and adoption of the initial allocation formula and any modification thereto. Prior to the adoption of the initial allocation formula, the Commission shall adopt procedures ensuring public participation in the development, review, and approval of the initial allocation formula and any subsequent modification thereto. At a minimum, public notice to interested parties and a comment period shall be provided. The Commission shall respond in writing to relevant comments.

ARTICLE XII

FUNDING AND EXPENSES OF THE COMMISSION

Commissioners shall serve without compensation from the ACF Basin Commission. All general operational funding required by the Commission and agreed to by the voting members shall obligate each state to pay an equal share of such agreed upon funding. Funds remitted to the Commission by a state in payment of such obligation shall not lapse; provided, however, that if any state fails to remit payment within 90 days after payment is due, such obligation shall terminate and any state which has made payment may have such payment returned. Costs of attendance and participation at meetings of the Commission by the Federal Commissioner shall be paid by the United States.

ARTICLE XIII

DISPUTE RESOLUTION

(a) In the event of a dispute between two or more voting members of this Compact involving a claim relating to compliance with the allocation formula adopted by the Commission under this Compact, the following procedures shall govern:

(1) Notice of claim shall be filed with the Commission by a voting member of this Compact and served upon each member of the

Commission. The notice shall provide a written statement of the claim, including a brief narrative of the relevant matters supporting the claimant's position.

(2) Within twenty (20) days of the Commission's receipt of a written statement of a claim, the party or parties to the Compact against whom the complaint is made may prepare a brief narrative of the relevant matters and file it with the Commission and serve it upon each member of the Commission.

(3) Upon receipt of a claim and any response or responses thereto, the Commission shall convene as soon as reasonably practicable, but in no event later than twenty (20) days from receipt of any response to the claim, and shall determine if a resolution of the dispute is possible.

(4) A resolution of a dispute under this Article through unanimous vote of the State Commissioners shall be binding upon the state parties and any state party determined to be in violation of the allocation formula shall correct such violation without delay.

(5) If the Commission is unable to resolve the dispute within 10 days from the date of the meeting convened pursuant to subparagraph (a)(3) of this Article, the Commission shall select, by unanimous decision of the voting members of the Commission, an independent mediator to conduct a non-binding mediation of the dispute. The mediator shall not be a resident or domiciliary of any member state, shall not be an employee or agent of any member of the Commission, shall be a person knowledgeable in water resource management issues, and shall disclose any and all current or prior contractual or other relations to any member of the Commission. The expenses of the mediator shall be paid by the Commission. If the mediator becomes unwilling or unable to serve, the Commission by unanimous decision of the voting members of the Commission, shall appoint another independent mediator.

(6) If the Commission fails to appoint an independent mediator to conduct a non-binding mediation of the dispute within seventy-five (75) days of the filing of the original claim or within thirty (30) days of the date on which the Commission learns that a mediator is unwilling or unable to serve, the party submitting the claim shall have no further obligation to bring the claim before the Commission and may proceed by pursuing any appropriate remedies, including any and all judicial remedies.

(7) If an independent mediator is selected, the mediator shall establish the time and location for the mediation session or sessions and may request that each party to the Compact submit, in writing, to the mediator a statement of its position regarding the issue or

issues in dispute. Such statements shall not be exchanged by the parties except upon the unanimous agreement of the parties to the mediation.

(8) The mediator shall not divulge confidential information disclosed to the mediator by the parties or by witnesses, if any, in the course of the mediation. All records, reports, or other documents received by a mediator while serving as a mediator shall be considered confidential. The mediator shall not be compelled in any adversary proceeding or judicial forum to divulge the contents of such documents or the fact that such documents exist or to testify in regard to the mediation.

(9) Each party to the mediation shall maintain the confidentiality of the information received during the mediation and shall not rely on or introduce in any judicial proceeding as evidence:

a. Views expressed or suggestions made by another party regarding a settlement of the dispute;

b. Proposals made or views expressed by the mediator; or

c. The fact that another party to the hearing had or had not indicated a willingness to accept a proposal for settlement of the dispute.

(10) The mediator may terminate the non-binding mediation session or sessions whenever, in the judgment of the mediator, further efforts to resolve the dispute would not lead to a resolution of the dispute between or among the parties. Any party to the dispute may terminate the mediation process at any time by giving written notification to the mediator and the Commission. If terminated prior to reaching a resolution, the party submitting the original claim to the Commission shall have no further obligation to bring its claim before the Commission and may proceed by pursuing any appropriate remedies, including any and all judicial remedies.

(11) The mediator shall have no authority to require the parties to enter into a settlement of any dispute regarding the Compact. The mediator may simply attempt to assist the parties in reaching a mutually acceptable resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the parties to the mediation and to make oral or written recommendations for a settlement of the dispute.

(12) At any time during the mediation process, the Commission is encouraged to take whatever steps it deems necessary to assist the mediator or the parties to resolve the dispute.

(13) In the event of a proceeding seeking enforcement of the allocation formula, this Compact creates a cause of action solely for

equitable relief. No action for money damages may be maintained. The party or parties alleging a violation of the Compact shall have the burden of proof.

(b) In the event of a dispute between any voting member and the United States relating to a state's noncompliance with the allocation formula as a result of actions or a refusal to act by officers, agencies or instrumentalities of the United States, the provisions set forth in paragraph (a) of this Article (other than the provisions of subparagraph (a) (4)) shall apply.

(c) The United States may initiate dispute resolution under paragraph (a) in the same manner as other parties to this Compact.

(d) Any signatory party who is affected by any action of the Commission, other than the adoption or enforcement of or compliance with the allocation formula, may file a complaint before the ACF Basin Commission seeking to enforce any provision of this Compact.

(1) The Commission shall refer the dispute to an independent hearing officer or mediator, to conduct a hearing or mediation of the dispute. If the parties are unable to settle their dispute through mediation, a hearing shall be held by the Commission or its designated hearing officer. Following a hearing conducted by a hearing officer, the hearing officer shall submit a report to the Commission setting forth findings of fact and conclusions of law, and making recommendations to the Commission for the resolution of the dispute.

(2) The Commission may adopt or modify the recommendations of the hearing officer within 60 days of submittal of the report. If the Commission is unable to reach unanimous agreement on the resolution of the dispute within 60 days of submittal of the report with the concurrence of the Federal Commissioner in disputes involving or affecting federal interests, the affected party may file an action in any court of competent jurisdiction to enforce the provisions of this Compact. The hearing officer's report shall be of no force and effect and shall not be admissible as evidence in any further proceedings.

(e) All actions under this Article shall be subject to the following provisions:

(1) The Commission shall adopt guidelines and procedures for the appointment of hearing officers or independent mediators to conduct all hearings and mediations required under this Article. The hearing officer or mediator appointed under this Article shall be compensated by the Commission.

(2) All hearings or mediations conducted under this article may be conducted utilizing the Federal Administrative Procedures Act, the Federal Rules of Civil Procedure, and the Federal Rules of Evidence.

The Commission may also choose to adopt some or all of its own procedural and evidentiary rules for the conduct of hearings or mediations under this Compact.

(3) Any action brought under this Article shall be limited to equitable relief only. This Compact shall not give rise to a cause of action for money damages.

(4) Any signatory party bringing an action before the Commission under this Article shall have the burdens of proof and persuasion.

ARTICLE XIV

ENFORCEMENT

The Commission may, upon unanimous decision, bring an action against any person to enforce any provision of this Compact, other than the adoption or enforcement of or compliance with the allocation formula, in any court of competent jurisdiction.

ARTICLE XV

IMPACTS ON OTHER STREAM SYSTEMS

This Compact shall not be construed as establishing any general principle or precedent applicable to any other interstate streams.

ARTICLE XVI

IMPACT OF COMPACT ON USE OF WATER WITHIN THE BOUNDARIES OF THE COMPACTING STATES

The provisions of this Compact shall not interfere with the right or power of any state to regulate the use and control of water within the boundaries of the state, providing such state action is not inconsistent with the allocation formula.

ARTICLE XVII

AGREEMENT REGARDING WATER QUALITY

(a) The States of Alabama, Florida, and Georgia mutually agree to the principle of individual State efforts to control man-made water pollution from sources located and operating within each State and to the continuing support of each State in active water pollution control programs.

(b) The States of Alabama, Florida, and Georgia agree to cooperate, through their appropriate State agencies, in the investigation, abatement, and control of sources of alleged interstate pollution within the ACF River Basin whenever such sources are called to their attention by the Commission.

(c) The States of Alabama, Florida, and Georgia agree to cooperate in maintaining the quality of the waters of the ACF River Basin.

(d) The States of Alabama, Florida, and Georgia agree that no State may require another state to provide water for the purpose of water quality control as a substitute for or in lieu of adequate waste treatment.

ARTICLE XVIII

EFFECT OF OVER OR UNDER DELIVERIES UNDER THE COMPACT

No state shall acquire any right or expectation to the use of water because of any other state's failure to use the full amount of water allocated to it under this Compact.

ARTICLE XIX

SEVERABILITY

If any portion of this Compact is held invalid for any reason, the remaining portions, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force, effect, and application.

ARTICLE XX

NOTICE AND FORMS OF SIGNATURE

Notice of ratification of this Compact by the legislature of each state shall promptly be given by the Governor of the ratifying state to the Governors of the other participating states. When all three state legislatures have ratified the Compact, notice of their mutual ratification shall be forwarded to the Congressional delegation of the signatory states for submission to the Congress of the United States for ratification. When the Compact is ratified by the Congress of the United States, the President, upon signing the federal ratification legislation, shall promptly notify the Governors of the participating states and appoint the Federal Commissioner. The Compact shall be signed by all four Commissioners as their first order of business at their first meeting and shall be filed of record in the party states."

History. — Code 1981, § 12-10-100, enacted by Ga. L. 1997, p. 29, § 1.

Law reviews. — For comment, "Who Gets the Hooch?: Georgia, Florida, and Alabama Battle for Water From the Apalachicola-Chattahoochee-Flint River Basin," see 55 Mercer L. Rev. 1453 (2004).

RESEARCH REFERENCES

ALR. — Construction and application of the consultation requirement under Section 7 of the Endangered Species Act, 16 U.S.C.A. § 1536(a) to (d), 1 A.L.R. Fed. 3d 4.

Construction and application of exceptions under § 10 of the Endangered Species Act of 1973, 16 U.S.C.A. § 1539, 2 A.L.R. Fed. 3d 2.

Construction and application of threatened species requirements under Sec. 4(a) and (b) of the Endangered Species Act of 1973, 16 U.S.C.A. § 1533(a) and (b), 6 A.L.R. Fed. 3d 2.

Construction and application of the cooperation with states requirement under Sec. 6 of the Endangered Species Act of 1973, 16 U.S.C.A. § 1535, 8 A.L.R. Fed. 3d 3.

Construction and application of prohibited acts under Sec. 9(a) of the Endangered Species Act of 1973, 16 U.S.C.A. § 1538(a), 9 A.L.R. Fed. 3d 3.

ARTICLE 7

ALABAMA-COOSA-TALLAPOOSA RIVER BASIN COMPACT

Editor's notes. — Ga. L. 1997, p. 15, § 1 enacts the Alabama-Coosa-Tallapoosa River Basin Compact. That Act became effective on July 1, 1997. Subsequently, as required pursuant to Article V of the compact, the compact has received the approval of the legislatures of the states of Alabama and Georgia and by the Congress of the United States of America; thus, the Act is now binding.

Law reviews. — For article commenting on the enactment of this article, see 14 Ga. St. U.L. Rev. 47 (1997).

12-10-110. Compact enacted and entered into; text of compact.

The Alabama-Coosa-Tallapoosa River Basin Compact is enacted into law and entered into by the State of Georgia with any and all jurisdictions legally joining therein in accordance with its terms. The compact is substantially as follows:

"ALABAMA-COOSA-TALLAPOOSA RIVER BASIN COMPACT

The states of Alabama and Georgia and the United States of America hereby agree to the following compact which shall become effective upon enactment of concurrent legislation by each respective state legislature and the Congress of the United States.

SHORT TITLE

This Act shall be known and may be cited as the 'Alabama-Coosa-Tallapoosa River Basin Compact' and shall be referred to hereafter in this document as the 'ACT Compact' or 'Compact.'

ARTICLE I

COMPACT PURPOSES

This Compact among the states of Alabama and Georgia and the United States of America has been entered into for the purposes of

promoting interstate comity, removing causes of present and future controversies, equitably apportioning the surface waters of the ACT, engaging in water planning, and developing and sharing common data bases.

ARTICLE II

SCOPE OF THE COMPACT

This Compact shall extend to all of the waters arising within the drainage basin of the ACT in the states of Alabama and Georgia.

ARTICLE III

PARTIES

The parties to this Compact are the states of Alabama and Georgia and the United States of America.

ARTICLE IV

DEFINITIONS

For the purposes of this Compact, the following words, phrases and terms shall have the following meanings:

(a) 'ACT Basin' or 'ACT' means the area of natural drainage into the Alabama River and its tributaries, the Coosa River and its tributaries, and the Tallapoosa River and its tributaries. Any reference to the rivers within this Compact will be designated using the letters 'ACT' and when so referenced will mean each of these three rivers and each of the tributaries to each such river.

(b) 'Allocation formula' means the methodology, in whatever form, by which the ACT Basin Commission determines an equitable apportionment of surface waters within the ACT Basin among the two states. Such formula may be represented by a table, chart, mathematical calculation or any other expression of the Commission's apportionment of waters pursuant to this compact.

(c) 'Commission' or 'ACT Basin Commission' means the Alabama-Coosa-Tallapoosa River Basin Commission created and established pursuant to this Compact.

(d) 'Ground waters' means waters within a saturated zone or stratum beneath the surface of land, whether or not flowing through known and definite channels.

(e) 'Person' means any individual, firm, association, organization, partnership, business, trust, corporation, public corporation, company, the United States of America, any state, and all political subdivisions, regions, districts, municipalities, and public agencies thereof.

(f) 'Surface waters' means waters upon the surface of the earth, whether contained in bounds created naturally or artificially or diffused. Water from natural springs shall be considered 'surface waters' when it exits from the spring onto the surface of the earth.

(g) 'United States' means the executive branch of the government of the United States of America, and any department, agency, bureau or division thereof.

(h) 'Water Resource Facility' means any facility or project constructed for the impoundment, diversion, retention, control or regulation of waters within the ACT Basin for any purpose.

(i) 'Water resources,' or 'waters' means all surface waters and ground waters contained or otherwise originating within the ACT Basin.

ARTICLE V

CONDITIONS PRECEDENT TO LEGAL VIABILITY OF THE COMPACT

This Compact shall not be binding on any party until it has been enacted into law by the legislatures of the states of Alabama and Georgia and by the Congress of the United States of America.

ARTICLE VI

ACT BASIN COMMISSION CREATED

(a) There is hereby created an interstate administrative agency to be known as the 'ACT Basin Commission.' The Commission shall be comprised of one member representing the state of Alabama, one member representing the state of Georgia, and one non-voting member representing the United States of America. The state members shall be known as 'State Commissioners' and the federal member shall be known as 'Federal Commissioner.' The ACT Basin Commission is a body politic and corporate, with succession for the duration of this Compact.

(b) The Governor of each of the states shall serve as the State Commissioner for his or her state. Each State Commissioner shall appoint one or more alternate members and one of such alternates as designated by the State Commissioner shall serve in the State Commissioner's place and carry out the functions of the State Commissioner, including voting on Commission matters, in the event the State Commissioner is unable to attend a meeting of the Commission. The alternate members from each state shall be knowledgeable in the field of water resources management. Unless otherwise provided by law of the state for which an alternate State Commissioner is appointed, each alternate State Commissioner shall serve at the pleasure of the State Commissioner. In the event of a vacancy in the office of an alternate, it shall be filled in the same manner as an original appointment.

(c) The President of the United States of America shall appoint the Federal Commissioner who shall serve as the representative of all federal agencies with an interest in the ACT. The President shall also appoint an alternate Federal Commissioner to attend and participate in the meetings of the Commission in the event the Federal Commissioner is unable to attend meetings. When at meetings, the alternate Federal Commissioner shall possess all of the powers of the Federal Commissioner. The Federal Commissioner and alternate appointed by the President shall serve until they resign or their replacements are appointed.

(d) Each state shall have one vote on the ACT Basin Commission and the Commission shall make all decisions and exercise all powers by unanimous vote of the two State Commissioners. The Federal Commissioner shall not have a vote but shall attend and participate in all meetings of the ACT Basin Commission to the same extent as the State Commissioners.

(e) The ACT Basin Commission shall meet at least once a year at a date set at its initial meeting. Such initial meeting shall take place within ninety days of the ratification of the Compact by the Congress of the United States and shall be called by the chairman of the Commission. Special meetings of the Commission may be called at the discretion of the chairman of the Commission and shall be called by the chairman of the Commission upon written request of any member of the Commission. All members shall be notified of the time and place designated for any regular or special meeting at least five days prior to such meeting in one of the following ways: by written notice mailed to the last mailing address given to the Commission by each member, by facsimile, telegram or by telephone. The Chairmanship of the Commission shall rotate annually among the voting members of the Commission on an alphabetical basis, with the first chairman to be the State Commissioner representing the State of Alabama.

(f) All meetings of the Commission shall be open to the public.

(g) The ACT Basin Commission, so long as the exercise of power is consistent with this Compact, shall have the following general powers:

(1) to adopt bylaws and procedures governing its conduct;

(2) to sue and be sued in any court of competent jurisdiction;

(3) to retain and discharge professional, technical, clerical and other staff and such consultants as are necessary to accomplish the purposes of this Compact;

(4) to receive funds from any lawful source and expend funds for any lawful purpose;

(5) to enter into agreements or contracts, where appropriate, in order to accomplish the purposes of this Compact;

(6) to create committees and delegate responsibilities;

(7) to plan, coordinate, monitor, and make recommendations for the water resources of the ACT Basin for the purposes of, but not limited to, minimizing adverse impacts of floods and droughts and improving water quality, water supply, and conservation as may be deemed necessary by the Commission;

(8) to participate with other governmental and non-governmental entities in carrying out the purposes of this Compact;

(9) to conduct studies, to generate information regarding the water resources of the ACT Basin, and to share this information among the Commission members and with others;

(10) to cooperate with appropriate state, federal, and local agencies or any other person in the development, ownership, sponsorship, and operation of water resource facilities in the ACT Basin; provided, however, that the Commission shall not own or operate a federally-owned water resource facility unless authorized by the United States Congress;

(11) to acquire, receive, hold and convey such personal and real property as may be necessary for the performance of its duties under the Compact; provided, however, that nothing in this Compact shall be construed as granting the ACT Basin Commission authority to issue bonds or to exercise any right of eminent domain or power of condemnation;

(12) to establish and modify an allocation formula for apportioning the surface waters of the ACT Basin among the states of Alabama and Georgia; and

(13) to perform all functions required of it by this Compact and to do all things necessary, proper or convenient in the performance of its duties hereunder, either independently or in cooperation with any state or the United States.

ARTICLE VII

EQUITABLE APPORTIONMENT

(a) It is the intent of the parties to this Compact to develop an allocation formula for equitably apportioning the surface waters of the ACT Basin among the states while protecting the water quality, ecology and biodiversity of the ACT, as provided in the Clean Water Act, 33 U.S.C. Sections 1251 et seq., the Endangered Species Act, 16 U.S.C. Sections 1532 et seq., the National Environmental Policy Act, 42 U.S.C.

Sections 4321 et seq., the Rivers and Harbors Act of 1899, 33 U.S.C. Sections 401 et seq., and other applicable federal laws. For this purpose, all members of the ACT Basin Commission, including the Federal Commissioner, shall have full rights to notice of and participation in all meetings of the ACT Basin Commission and technical committees in which the basis and terms and conditions of the allocation formula are to be discussed or negotiated. When an allocation formula is unanimously approved by the State Commissioners, there shall be an agreement among the states regarding an allocation formula. The allocation formula thus agreed upon shall become effective and binding upon the parties to this Compact upon receipt by the Commission of a letter of concurrence with said formula from the Federal Commissioner. If, however, the Federal Commissioner fails to submit a letter of concurrence to the Commission within two hundred ten (210) days after the allocation formula is agreed upon by the State Commissioners, the Federal Commissioner shall within forty-five (45) days thereafter submit to the ACT Basin Commission a letter of nonconcurrence with the allocation formula setting forth therein specifically and in detail the reasons for nonconcurrence; provided, however, the reasons for nonconcurrence as contained in the letter of nonconcurrence shall be based solely upon federal law. The allocation formula shall also become effective and binding upon the parties to this Compact if the Federal Commissioner fails to submit to the ACT Basin Commission a letter of nonconcurrence in accordance with this Article. Once adopted pursuant to this Article, the allocation formula may only be modified by unanimous decision of the State Commissioners and the concurrence by the Federal Commissioner in accordance with the procedures set forth in this Article.

(b) The parties to this Compact recognize that the United States operates certain projects within the ACT Basin that may influence the water resources within the ACT Basin. The parties to this Compact further acknowledge and recognize that various agencies of the United States have responsibilities for administering certain federal laws and exercising certain federal powers that may influence the water resources within the ACT Basin. It is the intent of the parties to this Compact, including the United States, to achieve compliance with the allocation formula adopted in accordance with this Article. Accordingly, once an allocation formula is adopted, each and every officer, agency, and instrumentality of the United States shall have an obligation and duty, to the maximum extent practicable, to exercise their powers, authority, and discretion in a manner consistent with the allocation formula so long as the exercise of such powers, authority, and discretion is not in conflict with federal law.

(c) Between the effective date of this Compact and the approval of the allocation formula under this Article, the signatories to this

Compact agree that any person who is withdrawing, diverting, or consuming water resources of the ACT Basin as of the effective date of this Compact, may continue to withdraw, divert or consume such water resources in accordance with the laws of the state where such person resides or does business and in accordance with applicable federal laws. The parties to this Compact further agree that any such person may increase the amount of water resources withdrawn, diverted or consumed to satisfy reasonable increases in the demand of such person for water between the effective date of this Compact and the date on which an allocation formula is approved by the ACT Basin Commission as permitted by applicable law. Each of the state parties to this Compact further agree to provide written notice to each of the other parties to this Compact in the event any person increases the withdrawal, diversion or consumption of such water resources by more than 10 million gallons per day on an average annual daily basis, or in the event any person, who was not withdrawing, diverting or consuming any water resources from the ACT Basin as of the effective date of this Compact, seeks to withdraw, divert or consume more than one million gallons per day on an average annual daily basis from such resources. This Article shall not be construed as granting any permanent, vested or perpetual rights to the amounts of water used between January 3, 1992 and the date on which the Commission adopts an allocation formula.

(d) As the owner, operator, licensor, permitting authority or regulator of a water resource facility under its jurisdiction, each state shall be responsible for using its best efforts to achieve compliance with the allocation formula adopted pursuant to this Article. Each such state agrees to take such actions as may be necessary to achieve compliance with the allocation formula.

(e) This Compact shall not commit any state to agree to any data generated by any study or commit any state to any allocation formula not acceptable to such state.

ARTICLE VIII

CONDITIONS RESULTING IN TERMINATION OF THE COMPACT

(a) This Compact shall be terminated and thereby be void and of no further force and effect if any of the following events occur:

(1) The legislatures of the states of Alabama and Georgia each agree by general laws enacted by each state within any three consecutive years that this Compact should be terminated.

(2) The United States Congress enacts a law expressly repealing this Compact.

(3) The States of Alabama and Georgia fail to agree on an equitable apportionment of the surface waters of the ACT as provided in Article VII(a) of this Compact by December 31, 1998, unless the voting members of the ACT Basin Commission unanimously agree to extend this deadline.

(4) The Federal Commissioner submits to the Commission a letter of nonconcurrence in the initial allocation formula in accordance with Article VII(a) of the Compact, unless the voting members of the ACT Basin Commission unanimously agree to allow a single 45 day period in which the non-voting Federal Commissioner and the voting State Commissioners may renegotiate an allocation formula and the Federal Commissioner withdraws the letter of nonconcurrence upon completion of this renegotiation.

(b) If the Compact is terminated in accordance with this Article it shall be of no further force and effect and shall not be the subject of any proceeding for the enforcement thereof in any federal or state court. Further, if so terminated, no party shall be deemed to have acquired a specific right to any quantity of water because it has become a signatory to this Compact.

ARTICLE IX

COMPLETION OF STUDIES PENDING ADOPTION OF ALLOCATION FORMULA

The ACT Basin Commission, in conjunction with one or more interstate, federal, state or local agencies, is hereby authorized to participate in any study in process as of the effective date of this Compact, including, without limitation, all or any part of the Alabama-Coosa-Tallapoosa/Apalachicola-Chattahoochee-Flint River Basin Comprehensive Water Resource Study, as may be determined by the Commission in its sole discretion.

ARTICLE X

RELATIONSHIP TO OTHER LAWS

(a) It is the intent of the party states and of the United States Congress by ratifying this Compact, that all state and federal officials enforcing, implementing or administering other state and federal laws affecting the ACT Basin shall, to the maximum extent practicable, enforce, implement or administer those laws in furtherance of the purposes of this Compact and the allocation formula adopted by the Commission insofar as such actions are not in conflict with applicable federal laws.

(b) Nothing contained in this Compact shall be deemed to restrict the executive powers of the President in the event of a national emergency.

(c) Nothing contained in this Compact shall impair or affect the constitutional authority of the United States or any of its powers, rights, functions or jurisdiction under other existing or future laws in and over the area or waters which are the subject of the Compact, including projects of the Commission, nor shall any act of the Commission have the effect of repealing, modifying or amending any federal law. All officers, agencies and instrumentalities of the United States shall exercise their powers and authority over water resources in the ACT Basin and water resource facilities, and to the maximum extent practicable, shall exercise their discretion in carrying out their responsibilities, powers, and authorities over water resources in the ACT Basin and water resource facilities in the ACT Basin in a manner consistent with and that effectuates the allocation formula developed pursuant to this Compact or any modification of the allocation formula so long as the actions are not in conflict with any applicable federal law. The United States Army Corps of Engineers, or its successors, and all other federal agencies and instrumentalities shall cooperate with the ACT Basin Commission in accomplishing the purposes of the Compact and fulfilling the obligations of each of the parties to the Compact regarding the allocation formula.

(d) Once adopted by the two states and ratified by the United States Congress, this Compact shall have the full force and effect of federal law, and shall supersede state and local laws operating contrary to the provisions herein or the purposes of this Compact; provided, however, nothing contained in this Compact shall be construed as affecting or intending to affect or in any way to interfere with the laws of the respective signatory states relating to water quality, and riparian rights as among persons exclusively within each state.

ARTICLE XI

PUBLIC PARTICIPATION

All meetings of the Commission shall be open to the public. The signatory parties recognize the importance and necessity of public participation in activities of the Commission, including the development and adoption of the initial allocation formula and any modification thereto. Prior to the adoption of the initial allocation formula, the Commission shall adopt procedures ensuring public participation in the development, review, and approval of the initial allocation formula and any subsequent modification thereto. At a minimum, public notice to interested parties and a comment period shall be provided. The Commission shall respond in writing to relevant comments.

ARTICLE XII

FUNDING AND EXPENSES OF THE COMMISSION

Commissioners shall serve without compensation from the ACT Basin Commission. All general operational funding required by the

Commission and agreed to by the voting members shall obligate each state to pay an equal share of such agreed upon funding. Funds remitted to the Commission by a state in payment of such obligation shall not lapse; provided, however, that if any state fails to remit payment within 90 days after payment is due, such obligation shall terminate and any state which has made payment may have such payment returned. Costs of attendance and participation at meetings of the Commission by the Federal Commissioner shall be paid by the United States.

ARTICLE XIII

DISPUTE RESOLUTION

(a) In the event of a dispute between the voting members of this Compact involving a claim relating to compliance with the allocation formula adopted by the Commission under this Compact, the following procedures shall govern:

(1) Notice of claim shall be filed with the Commission by a voting member of this Compact and served upon each member of the Commission. The notice shall provide a written statement of the claim, including a brief narrative of the relevant matters supporting the claimant's position.

(2) Within twenty (20) days of the Commission's receipt of a written statement of a claim, the party or parties to the Compact against whom the complaint is made may prepare a brief narrative of the relevant matters and file it with the Commission and serve it upon each member of the Commission.

(3) Upon receipt of a claim and any response or responses thereto, the Commission shall convene as soon as reasonably practicable, but in no event later than twenty (20) days from receipt of any response to the claim, and shall determine if a resolution of the dispute is possible.

(4) A resolution of a dispute under this Article through unanimous vote of the State Commissioners shall be binding upon the state parties and any state party determined to be in violation of the allocation formula shall correct such violation without delay.

(5) If the Commission is unable to resolve the dispute within 10 days from the date of the meeting convened pursuant to subparagraph (a)(3) of this Article, the Commission shall select, by unanimous decision of the voting members of the Commission, an independent mediator to conduct a non-binding mediation of the dispute. The mediator shall not be a resident or domiciliary of any member state, shall not be an employee or agent of any member of the Commission, shall be a person knowledgeable in water resource management

issues, and shall disclose any and all current or prior contractual or other relations to any member of the Commission. The expenses of the mediator shall be paid by the Commission. If the mediator becomes unwilling or unable to serve, the Commission by unanimous decision of the voting members of the Commission, shall appoint another independent mediator.

(6) If the Commission fails to appoint an independent mediator to conduct a non-binding mediation of the dispute within seventy-five (75) days of the filing of the original claim or within thirty (30) days of the date on which the Commission learns that a mediator is unwilling or unable to serve, the party submitting the claim shall have no further obligation to bring the claim before the Commission and may proceed by pursuing any appropriate remedies, including any and all judicial remedies.

(7) If an independent mediator is selected, the mediator shall establish the time and location for the mediation session or sessions and may request that each party to the Compact submit, in writing, to the mediator a statement of its position regarding the issue or issues in dispute. Such statements shall not be exchanged by the parties except upon the unanimous agreement of the parties to the mediation.

(8) The mediator shall not divulge confidential information disclosed to the mediator by the parties or by witnesses, if any, in the course of the mediation. All records, reports, or other documents received by a mediator while serving as a mediator shall be considered confidential. The mediator shall not be compelled in any adversary proceeding or judicial forum to divulge the contents of such documents or the fact that such documents exist or to testify in regard to the mediation.

(9) Each party to the mediation shall maintain the confidentiality of the information received during the mediation and shall not rely on or introduce in any judicial proceeding as evidence:

a. Views expressed or suggestions made by another party regarding a settlement of the dispute;

b. Proposals made or views expressed by the mediator; or

c. The fact that another party to the hearing had or had not indicated a willingness to accept a proposal for settlement of the dispute.

(10) The mediator may terminate the non-binding mediation session or sessions whenever, in the judgment of the mediator, further efforts to resolve the dispute would not lead to a resolution of the dispute between or among the parties. Any party to the dispute may

terminate the mediation process at any time by giving written notification to the mediator and the Commission. If terminated prior to reaching a resolution, the party submitting the original claim to the Commission shall have no further obligation to bring its claim before the Commission and may proceed by pursuing any appropriate remedies, including any and all judicial remedies.

(11) The mediator shall have no authority to require the parties to enter into a settlement of any dispute regarding the Compact. The mediator may simply attempt to assist the parties in reaching a mutually acceptable resolution of their dispute. The mediator is authorized to conduct joint and separate meetings with the parties to the mediation and to make oral or written recommendations for a settlement of the dispute.

(12) At any time during the mediation process, the Commission is encouraged to take whatever steps it deems necessary to assist the mediator or the parties to resolve the dispute.

(13) In the event of a proceeding seeking enforcement of the allocation formula, this Compact creates a cause of action solely for equitable relief. No action for money damages may be maintained. The party or parties alleging a violation of the Compact shall have the burden of proof.

(b) In the event of a dispute between any voting member and the United States relating to a state's noncompliance with the allocation formula as a result of actions or a refusal to act by officers, agencies or instrumentalities of the United States, the provisions set forth in paragraph (a) of this Article (other than the provisions of subparagraph (a)(4)) shall apply.

(c) The United States may initiate dispute resolution under paragraph (a) in the same manner as other parties to this Compact.

(d) Any signatory party who is affected by any action of the Commission, other than the adoption or enforcement of or compliance with the allocation formula, may file a complaint before the ACT Basin Commission seeking to enforce any provision of this Compact.

(1) The Commission shall refer the dispute to an independent hearing officer or mediator, to conduct a hearing or mediation of the dispute. If the parties are unable to settle their dispute through mediation, a hearing shall be held by the Commission or its designated hearing officer. Following a hearing conducted by a hearing officer, the hearing officer shall submit a report to the Commission setting forth findings of fact and conclusions of law, and making recommendations to the Commission for the resolution of the dispute.

(2) The Commission may adopt or modify the recommendations of the hearing officer within 60 days of submittal of the report. If the

Commission is unable to reach unanimous agreement on the resolution of the dispute within 60 days of submittal of the report with the concurrence of the Federal Commissioner in disputes involving or affecting federal interests, the affected party may file an action in any court of competent jurisdiction to enforce the provisions of this Compact. The hearing officer's report shall be of no force and effect and shall not be admissible as evidence in any further proceedings.

(e) All actions under this Article shall be subject to the following provisions:

(1) The Commission shall adopt guidelines and procedures for the appointment of hearing officers or independent mediators to conduct all hearings and mediations required under this Article. The hearing officer or mediator appointed under this Article shall be compensated by the Commission.

(2) All hearings or mediations conducted under this article may be conducted utilizing the Federal Administrative Procedures Act, the Federal Rules of Civil Procedure, and the Federal Rules of Evidence. The Commission may also choose to adopt some or all of its own procedural and evidentiary rules for the conduct of hearings or mediations under this Compact.

(3) Any action brought under this Article shall be limited to equitable relief only. This Compact shall not give rise to a cause of action for money damages.

(4) Any signatory party bringing an action before the Commission under this Article shall have the burdens of proof and persuasion.

ARTICLE XIV

ENFORCEMENT

The Commission may, upon unanimous decision, bring an action against any person to enforce any provision of this Compact, other than the adoption or enforcement of or compliance with the allocation formula, in any court of competent jurisdiction.

ARTICLE XV

IMPACT ON OTHER STREAM SYSTEMS

This Compact shall not be construed as establishing any general principle or precedent applicable to any other interstate streams.

ARTICLE XVI

IMPACT ON COMPACT ON USE OF WATER WITHIN THE BOUNDARIES OF THE COMPACTING STATES

The provisions of this Compact shall not interfere with the right or power of any state to regulate the use and control of water within the

boundaries of the state, providing such state action is not inconsistent with the allocation formula.

ARTICLE XVII

AGREEMENT REGARDING WATER QUALITY

(a) The States of Alabama and Georgia mutually agree to the principle of individual State efforts to control man-made water pollution from sources located and operating within each State and to the continuing support of each State in active water pollution control programs.

(b) The States of Alabama and Georgia agree to cooperate, through their appropriate State agencies, in the investigation, abatement, and control of sources of alleged interstate pollution within the ACT River Basin whenever such sources are called to their attention by the Commission.

(c) The States of Alabama and Georgia agree to cooperate in maintaining the quality of the waters of the ACT River Basin.

(d) The States of Alabama and Georgia agree that no State may require another state to provide water for the purpose of water quality control as a substitute for or in lieu of adequate waste treatment.

ARTICLE XVIII

EFFECT OF OVER OR UNDER DELIVERIES UNDER THE COMPACT

No state shall acquire any right or expectation to the use of water because of any other state's failure to use the full amount of water allocated to it under this Compact.

ARTICLE XIX

SEVERABILITY

If any portion of this Compact is held invalid for any reason, the remaining portions, to the fullest extent possible, shall be severed from the void portion and given the fullest possible force, effect, and application.

ARTICLE XX

NOTICE AND FORMS OF SIGNATURE

Notice of ratification of this Compact by the legislature of each state shall promptly be given by the Governor of the ratifying state to the Governor of the other participating state. When the two state legislatures have ratified the Compact, notice of their mutual ratification shall be forwarded to the Congressional delegation of the signatory states for

submission to the Congress of the United States for ratification. When the Compact is ratified by the Congress of the United States, the President, upon signing the federal ratification legislation, shall promptly notify the Governors of the participating states and appoint the Federal Commissioner. The Compact shall be signed by all three Commissioners as their first order of business at their first meeting and shall be filed of record in the party states."

History. — Code 1981, § 12-10-110, enacted by Ga. L. 1997, p. 15, § 1.

Editor's notes. — See notes following article head for information as to effective date and binding effect of compact.

RESEARCH REFERENCES

ALR. — Construction and application of the consultation requirement under Section 7 of the Endangered Species Act, 16 U.S.C.A. § 1536(a) to (d), 1 A.L.R. Fed. 3d 4.

Construction and application of exceptions under § 10 of the Endangered Species Act of 1973, 16 U.S.C.A. § 1539, 2 A.L.R. Fed. 3d 2.

Construction and application of threatened species requirements under Sec. 4(a) and (b) of the Endangered Species Act of 1973, 16 U.S.C.A. § 1533(a) and (b), 6 A.L.R. Fed. 3d 2.

Construction and application of the cooperation with states requirement under Sec. 6 of the Endangered Species Act of 1973, 16 U.S.C.A. § 1535, 8 A.L.R. Fed. 3d 3.

Construction and application of prohibited acts under Sec. 9(a) of the Endangered Species Act of 1973, 16 U.S.C.A. § 1538(a), 9 A.L.R. Fed. 3d 3.

CHAPTER 11

GEORGIA YOUTH CONSERVATION CORPS

Sec.
12-11-1. Short title.
12-11-2. Legislative findings.
12-11-3. Definitions.
12-11-4. Corps created; purposes; rules and regulations.
12-11-5. Director; administration of corps programs; energy savings initiatives.
12-11-6. Identification of projects.
12-11-7. Enrollment of members; considerations in development of corps program; education component; independent participation by youth served by state agencies.
12-11-8. Location of and contracts for projects; prohibited uses of corps members.
12-11-9. Grants, donations, bequests; insignia.
12-11-10. Coordinated job training and placement services.
12-11-11. Conservation Corps Advisory Council.

12-11-1. Short title.

This chapter shall be known and may be cited as the "Georgia Youth Conservation Corps Act."

History. — Code 1981, § 12-11-1, enacted by Ga. L. 1987, p. 922, § 1.

12-11-2. Legislative findings.

The General Assembly finds and declares that:

(1) A central element in the development of the state's young persons is the provision of meaningful work experience to teach the value of labor and membership in a productive society;

(2) There is a need for a comprehensive youth development program including meaningful work experience and basic education to address unemployment, undereducation, and lack of life-coping skills among young adults;

(3) This state has a continuing need for involvement by young persons in public works and services, especially relating to conservation, the enhancement of our natural resources, and the provision of human services;

(4) The state is still benefiting from the wide range of public works accomplished by the conservation corps many years ago and that a similar program will likewise benefit future generations; and

(5) Values of hard work, public spiritedness, group achievement and cooperation, resource conservation, and environmental appreciation can and should be transmitted to society's youth through a conservation corps program.

History. — Code 1981, § 12-11-2, enacted by Ga. L. 1987, p. 922, § 1.

12-11-3. Definitions.

As used in this chapter, the term:

(1) "Board" means the Board of Natural Resources.

(2) "Commissioner" means the commissioner of natural resources.

(3) "Corps" means the Georgia Youth Conservation Corps.

(4) "Council" means the Conservation Corps Advisory Council.

(5) "Director" means the director of the Georgia Youth Conservation Corps.

History. — Code 1981, § 12-11-3, enacted by Ga. L. 1987, p. 922, § 1.

12-11-4. Corps created; purposes; rules and regulations.

(a) There is created within the department the Georgia Youth Conservation Corps.

(b) The purposes and objectives of the corps authorized by this chapter shall be to:

(1) Encourage and develop work skills, discipline, cooperation, and educational opportunities for corps members;

(2) Conserve, rehabilitate, and enhance the state's natural, historic, environmental, and recreational resources;

(3) Develop the state's youth resources through meaningful work experiences and training;

(4) Make outdoor and historic resources of the state available for public enjoyment;

(5) Assist agencies of the state and its political subdivisions in carrying out statutory assignments with limited funding resources;

(6) Provide needed public services in both urban and rural settings;

(7) Protect air, fish, forest, land, water, and wildlife;

(8) Help maintain and improve botanical gardens, historic sites, libraries, museums, parks, parkways, refuges, trails, zoos, and other recreational investments;

(8.1) Assist in residential home improvement weatherization projects having the purpose of reducing energy consumption for home

heating and cooling, to the extent authorized by subsection (a.1) of Code Section 12-11-8;

(9) Aid agricultural, fishing, forestry, and tourist industries;

(10) Provide job training for young men and women to act as a stepladder to permanent employment;

(11) Help eradicate fire ants; and

(12) Cooperate specifically with state conservation agencies, the United States Forest Service and the Soil Conservation Service of the federal Department of Agriculture, and with the National Park Service and the Fish and Wildlife Service of the federal Department of Interior.

(c) The board is authorized to promulgate rules and regulations not inconsistent with this chapter for the implementation and operation of the corps program.

History. — Code 1981, § 12-11-4, enacted by Ga. L. 1987, p. 922, § 1; Ga. L. 2010, p. 321, § 1/HB 493; Ga. L. 2011, p. 752, § 12/HB 142.

12-11-5. Director; administration of corps programs; energy savings initiatives.

(a) There is created the position of director of the Georgia Youth Conservation Corps. The director shall be appointed by the commissioner and shall be in the unclassified service as defined by Code Section 45-20-2.

(b) The commissioner shall be charged with the overall administration of corps programs under the provisions of this chapter and such rules and regulations as are adopted by the board. The commissioner may delegate to the director any or all of the duties and functions prescribed by this chapter. Such duties and functions may include, but are not limited to, the following:

(1) Recruiting and employing staff and corps member leaders and specialists;

(2) Adopting criteria for the selection of applicants to the corps;

(3) Executing agreements for furnishing the services of the corps to any federal, state, or local agency or to any local organization concerned with the overall objectives of the corps and all other agreements necessary and proper for the implementation and administration of this chapter;

(4) Applying for and accepting grants or contributions of funds from any source, public or private;

(5) Providing funds and matching funds to other corps programs meeting the specifications of this chapter and the rules and regulations of the board; and

(6) Reporting annually to the council, the Governor, and the General Assembly on the activities undertaken by the corps in the preceding fiscal year, including a cost-effectiveness analysis of all completed, ongoing, and proposed projects.

(c) The commissioner shall have the authority to contract with the Georgia Environmental Finance Authority and the Department of Labor for purposes of management and installation of energy saving material or devices or other projects under this chapter. The commissioner, the Georgia Environmental Finance Authority, and the Department of Labor are encouraged to use the corps for such purposes.

History. — Code 1981, § 12-11-5, enacted by Ga. L. 1987, p. 922, § 1; Ga. L. 2009, p. 745, § 1/SB 97; Ga. L. 2010, p. 321, § 2/HB 493; Ga. L. 2012, p. 446, § 2-8/HB 642.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 2010, "the Georgia Environmental Finance Authority" was substituted for "the Georgia Environmental Facilities Authority" in the first and second sentences of subsection (c).

Editor's notes. — Ga. L. 2012, p. 446, § 3-1/HB 642, not codified by the General Assembly, provides that: "Personnel, equipment, and facilities that were assigned to the State Personnel Administration as of June 30, 2012, shall be transferred to the Department of Administrative Services on the effective date of this Act." This Act became effective July 1, 2012.

Ga. L. 2012, p. 446, § 3-2/HB 642, not codified by the General Assembly, provides that: "Appropriations for functions which are transferred by this Act may be transferred as provided in Code Section 45-12-90."

12-11-6. Identification of projects.

The commissioner shall identify conservation, public improvement, or community service projects which will provide long-term benefits to the public, will yield tangible, result oriented works, will provide productive training and work experiences to the corps members involved, will be labor intensive and suitable for a crew of corps members to accomplish, may result in payments to the state for service performed, and can be promptly completed.

History. — Code 1981, § 12-11-6, enacted by Ga. L. 1987, p. 922, § 1.

12-11-7. Enrollment of members; considerations in development of corps program; education component; independent participation by youth served by state agencies.

(a)(1) Corps members shall be residents of the state between 14 and 25 years of age at the time of enrollment who are citizens or lawful permanent residents of the United States. No person shall be

enrolled in the corps if such person has been convicted of a felony or has been adjudicated as delinquent for an offense which, if such person had been tried as an adult, would have been a felony.

(2) Under such rules as are promulgated by the board, the commissioner shall be authorized to enroll persons 14 to 17 years of age as corps members with the following prerequisites:

(A) Enrollment in the corps does not have the effect of encouraging the person to leave school;

(B) If the person is unemancipated, the express written permission from a parent or guardian is obtained; and

(C) Compliance is achieved with applicable federal and state labor laws and education laws.

(3) The maximum age requirement may be waived for corps leaders and specialists with special leadership or occupational skills; such leaders and specialists shall be given special responsibility for providing leadership, character development, and a sense of community responsibility to the corps members, groups, and work crews to which they are assigned.

(4) Special effort shall be made to recruit a broad cross section of the youth of this state who meet selection criteria of the corps. Preference shall be given to youths residing in areas, both urban and rural, in which there exists unemployment substantially exceeding the state average unemployment rate. Members shall be unemployed at the time of enrollment.

(b) Corps members, leaders, and specialists shall be considered state employees solely for the purpose of including such corps members, leaders, and specialists within policies of liability insurance which may be provided to state employees under Code Section 45-9-1. Other provisions of law relating to civil service, hours of work, rate of compensation, sick leave, state retirement plans, and vacation leave do not apply to corps members. Notwithstanding other laws to the contrary, corps members shall not be eligible for unemployment compensation by corps enrollment and service, and employer wage percentage deductions shall not be required as provided under Chapter 8 of Title 34, the "Employment Security Law." Corps members shall be eligible for workers' compensation. This subsection shall not apply to employees of the department.

(c) Initial enrollment in the corps shall be for a period not to exceed one year, which period may be extended for not more than one additional year by mutual agreement of the commissioner and the corps member for the purpose of promoting the member to a position of leader or specialist. Corps members shall be paid at least the minimum wage

rate established by federal law. Merit and performance incentive pay raises may be awarded in the discretion of the commissioner.

(d) Corps members shall be selected based on their orientation towards public service, development of job skills and productive work habits, and character development. Special effort shall be made at the time of initial screening to explain rigorous productivity standards and special expectations and obligations of corps membership. An employment agreement shall be entered into by the corps member indicating the member's understanding of and willingness to abide by such standards.

(e) In the development of the corps program, consideration shall be given to providing corps members with a beneficial and meaningful work experience. Standards of productivity, behavior, and punctuality shall be developed and observed. Consideration shall be given to the development of a program that deserves the respect of the public, both in terms of service provided and personal development of corps members.

(f) Education shall be a mandatory but flexible component of the corps program, but classes shall be scheduled after corps working hours. For members participating in primary or secondary education, at least one day or eight hours per week shall be devoted to classroom instruction. Tuition or other fees for postsecondary classes for corps members shall be paid for by the corps. Participation in the education component shall be a primary factor in determining whether the opportunity for extended corps membership shall be offered. Instruction related to the specific role of the department and the various agencies involved in resource conservation shall also be offered either in a classroom setting or as is otherwise appropriate.

(g) The commissioner shall by contract or agreement with the Department of Juvenile Justice and other state agencies serving youth provide for youth served by such department or agencies to participate independently in projects of the Georgia Youth Conservation Corps. When participating independently in projects of the corps, such youth served by the department or other agencies shall be compensated in the same manner and from the same funds as corps members.

History. — Code 1981, § 12-11-7, enacted by Ga. L. 1987, p. 922, § 1; Ga. L. 1992, p. 1983, § 35; Ga. L. 1997, p. 1453, § 1; Ga. L. 2010, p. 321, § 2A/HB 493.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "department" was substituted for "division" in two places in subsection (g).

12-11-8. Location of and contracts for projects; prohibited uses of corps members.

(a) Corps projects may take place on any property owned or used by the federal government, by the state or any of its departments, agencies, or political subdivisions, or by nonprofit agencies which otherwise qualify for contracting of services by the corps.

(a.1) Corps projects may take place on private residential property for purposes of paragraph (8.1) of subsection (b) of Code Section 12-11-4 but only to the extent that federal funds are available for such purposes. No public funds other than federal funds made available to the state shall be expended on such corps projects on private residential property.

(b) The commissioner may, subject to this chapter and the rules and regulations of the board, contract with the federal government, with any department or agency of the state or its political subdivisions, or with nonprofit agencies for projects by the corps or by other corps programs meeting the specifications of this chapter and the rules and regulations of the board.

(c) The assignment of corps members shall not result in the displacement of currently employed workers, including partial displacement such as reduction in hours of nonovertime work, wages, or other employment benefits. Agencies that participate in the corps program may not terminate, lay off, or reduce the working hours of any employee for the purpose of using a corps member with available funds. In circumstances where substantial efficiencies or a public purpose may result, agencies may use corps members to carry out essential agency work or contractual functions without displacing current employees.

(d) No corps members may be used in any manner in connection with a work or labor dispute or to impair existing contracts or collective bargaining agreements with existing employees.

History. — Code 1981, § 12-11-8, enacted by Ga. L. 1987, p. 922, § 1; Ga. L. 2010, p. 321, § 3/HB 493.

12-11-9. Grants, donations, bequests; insignia.

(a) The corps may receive grants, donations, bequests, and any other forms of funds or assistance from any sources, public or private.

(b) The corps may employ an insignia or logo of appropriate design identifying specifically the Georgia Youth Conservation Corps. Control of the use of such insignia shall be governed by the commissioner.

History. — Code 1981, § 12-11-9, enacted by Ga. L. 1987, p. 922, § 1.

12-11-10. Coordinated job training and placement services.

Whenever available and appropriate, job training and placement services and education opportunities provided through other federal, state, and local programs such as through the Department of Education, the Department of Labor, the Technical College System of Georgia, and the Board of Regents of the University System of Georgia shall be coordinated with projects and programs developed under this chapter to assist eligible corps members. Coordinated services may include, but are not limited to, remedial and postsecondary education, job placement assistance, adult literacy training, job search skills, and job application skills. Whenever possible, eligible corps members without a high school diploma shall receive coordinated services that provide an opportunity to obtain an equivalent high school diploma.

History. — Code 1981, § 12-11-10, enacted by Ga. L. 1987, p. 922, § 1; Ga. L. 1990, p. 1256, § 1; Ga. L. 2008, p. 335, § 4/SB 435.

12-11-11. Conservation Corps Advisory Council.

(a) There is created the Conservation Corps Advisory Council, to consist of the following members:

(1) The commissioner of natural resources;

(2) The chairman of the State Board of Education;

(3) The chairman of the State Board of the Technical College System of Georgia;

(4) The Commissioner of Labor;

(5) The Commissioner of Agriculture;

(6) The director of the State Forestry Commission;

(7) The executive director of the State Soil and Water Conservation Committee;

(8) The chairman of the Natural Resources and Environment Committee of the House of Representatives;

(9) The chairman of the Senate Natural Resources and the Environment Committee;

(10) Two members of the House of Representatives appointed by the Speaker of the House of Representatives;

(11) Two members of the Senate appointed by the President of the Senate; and

(12) Two members of the public appointed by the Governor representing the business community.

(b) Members of the council other than members appointed under paragraphs (10), (11), and (12) of subsection (a) of this Code section may designate persons to serve in their place. Members appointed pursuant to paragraph (10) or (11) of subsection (a) of this Code section shall serve for their corresponding two-year term as members of the General Assembly. Members appointed pursuant to paragraph (12) of subsection (a) of this Code section shall serve for terms of two years.

(c) It shall be the duty of the council to:

(1) Meet at such times as necessary in its discretion;

(2) Organize and elect a chairman and such other officers from its membership as it deems necessary;

(3) Advise the board regarding needed rules and regulations for the corps;

(4) Review, analyze, and discuss the operation of the corps;

(5) Advise the department and the director on matters affecting the efficient operation of the corps and the accomplishment of its purposes;

(6) Assist in the promotion of the objectives of the corps; and

(7) Review and recommend appropriate levels of funding and expenditures.

(d) Members of the council shall receive no compensation but for each day of meeting shall receive the same per diem expense amounts and transportation or mileage costs at the legal rate as are granted to members of interim legislative committees.

History. — Code 1981, § 12-11-11, enacted by Ga. L. 1987, p. 922, § 1; Ga. L. 1990, p. 1256, § 2; Ga. L. 2009, p. 303, § 13/HB 117; Ga. L. 2011, p. 632, § 3/HB 49.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, "State Soil and Water Conservation Committee" was substituted for "Georgia Soil and Water Conservation Committee" in paragraph (a)(7).

Editor's notes. — Ga. L. 2009, p. 303, § 20/HB 117, not codified by the General Assembly, provides that: "This Act is intended to reflect the current internal organization of the Georgia Senate and House of Representatives and is not otherwise intended to change substantive law. In the event of a conflict with any other Act of the 2009 General Assembly, such other Act shall control over this Act."

CHAPTER 12

ASBESTOS SAFETY

Sec.
12-12-1. Short title.
12-12-2. Purpose of chapter.
12-12-3. Definitions.
12-12-4. Rules and regulations; schedule of contractor license and project fees.
12-12-5. Powers and duties of director.
12-12-6. License requirement; application; renewal; exception.
12-12-7. Training requirements.
12-12-8. Reciprocity.
12-12-9. Denial, revocation, or suspension of license; grounds; review of decision.
12-12-10. Notice of commencement of project; contents; project fee; certification of completion.
12-12-11. Compliance with chapter required.
12-12-12. Investigation rights of director; contractor to make records available.
12-12-13. Cease and desist orders.
12-12-14. Injunctions; restraining and other orders.
12-12-15. Imminent and substantial danger; remedies of director.
12-12-16. Civil penalty for violation; hearing and judicial review; disposition of penalties.
12-12-17. Hearing and judicial review procedure.
12-12-18. Judgment in accordance with order of director or administrative law judge.
12-12-19. Attorney General to provide legal representation.
12-12-20. Sovereign immunity not waived; legal duties of contractor, project monitor, or asbestos worker not relieved by chapter.
12-12-21. Sovereign immunity.

Editor's notes. — Ga. L. 1996, p. 238, § 1, effective April 1, 1996, repealed the Code sections formerly codified at this chapter and enacted the current chapter. The former chapter consisted of Code Sections 12-12-1 through 12-12-26 and was based on Ga. L. 1986, p. 1157, § 1; Ga. L. 1987, p. 3, § 12; Ga. L. 1987, p. 964, § 1; Ga. L. 1990, p. 285, § 1; Ga. L. 1992, p. 6, § 12; Ga. L. 1993, p. 91, § 12.

Administrative rules and regulations. — Asbestos removal and encapsulation, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-14.

RESEARCH REFERENCES

Am. Jur. Trials. — Contractor's Liability for Mishandling Toxic Substance, 37 Am. Jur. Trials 115.

Cost Recovery Litigation: Abatement of Asbestos Contamination, 40 Am. Jur. Trials 317.

Handling Toxic Tort Litigation, 57 Am. Jur. Trials 395.

Asbestos Injury Litigation, 60 Am. Jur. Trials 73.

12-12-1. Short title.

This chapter shall be known and may be cited as the "Georgia Asbestos Safety Act."

History. — Code 1981, § 12-12-1, enacted by Ga. L. 1986, p. 1157, § 1; Ga. L. 1996, p. 238, § 1.

12-12-2. Purpose of chapter.

The purpose of this chapter is to protect the public health, safety, and environment of the people of this state by authorizing the Board of Natural Resources to adopt, administer, and enforce a program for licensing contractors and for requiring training for asbestos supervisors, and by managing the removal or encapsulation of friable asbestos-containing materials from facilities and residential dwellings in the safest manner possible. This chapter establishes a program of contractor licensing and a program of notification, fees, and certification for asbestos removal or encapsulation projects to be administered by the director of the Environmental Protection Division of the Department of Natural Resources.

History. — Code 1981, § 12-12-2, enacted by Ga. L. 1986, p. 1157, § 1; Ga. L. 1996, p. 238, § 1.

12-12-3. Definitions.

As used in this chapter, the term:

(1) "Asbestos" means any naturally occurring hydrated mineral silicates separable into commercially used fibers, specifically the asbestiform varieties of serpentine, chrysotile; cummingtomite-grunerite; amosite; riebeckite, crocidolite; anthophyllite; tremolite; and actinolite.

(2) "Asbestos supervisor" means any individual who is employed or engaged by a contractor to supervise the removal, encapsulation, cleaning, or disposal of friable asbestos-containing materials.

(3) "Board" means the Board of Natural Resources.

(4) "Contractor" means any person who contracts with an owner or operator of a facility or residential dwelling to perform the removal or encapsulation of friable asbestos-containing material from any such facility or residential dwelling. Such term shall not include any employee of such owner or operator.

(5) "Director" means the director of the Environmental Protection Division of the Department of Natural Resources or his or her designee.

(6) "Division" means the Environmental Protection Division of the Department of Natural Resources.

(7) "Emergency project" means the removal or encapsulation of friable asbestos-containing material from any facility where such activity must be conducted immediately in order to prevent disruption of a commercial or industrial process or activity or destruction of property.

(8) "Encapsulation" means the process of coating, binding, or resurfacing walls, ceilings, pipes, or other structures with a sealant to prevent friable asbestos from becoming airborne.

(9) "Facility" means any institutional, commercial, or industrial structure, installation, or building, including an apartment building having more than four dwelling units.

(10) "Friable asbestos-containing material" means any material which is applied onto ceilings, walls, structural members, piping, boilers, tanks, pumps, ductwork, or any other part of the building containing more than 1 percent asbestos, by weight, and which when dry may be crumbled, pulverized, or reduced to powder by hand pressure.

(11) "Person" means any individual, partnership, association, trust, firm, corporation, county, municipality, or other entity, including the state and federal governments.

(12) "Project" means the removal or encapsulation by a contractor of friable asbestos-containing material from any facility or residential dwelling.

(13) "Removal" means the process of taking out, stripping, cleaning up, or disposing friable or potentially friable asbestos-containing materials from any facility or residential dwelling.

(14) "Residential dwelling" means any family residence or apartment building with four or fewer dwelling units.

(15) "Small project" means any asbestos removal or encapsulation project involving less than 160 square feet or 260 linear feet of friable asbestos-containing materials.

History. — Code 1981, § 12-12-3, enacted by Ga. L. 1986, p. 1157, § 1; Ga. L. 1996, p. 238, § 1; Ga. L. 2006, p. 72, § 12/SB 465.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, the hyphen was deleted from "naturally occurring" in paragraph (1).

12-12-4. Rules and regulations; schedule of contractor license and project fees.

The board shall have the power to adopt and amend rules and regulations necessary to license contractors, to ensure proper training for asbestos supervisors, and to ensure proper performance of asbestos

removal and encapsulating projects and compliance with any provision of this chapter, to implement programs of inspection and enforcement, and to adopt a schedule of contractor license and project fees. The board is expressly empowered to promulgate the rules and regulations consistent with this chapter to ensure the proper performance of asbestos removal and encapsulating projects commenced on and after April 1, 1986.

History. — Code 1981, § 12-12-4, enacted by Ga. L. 1986, p. 1157, § 1; Ga. L. 1996, p. 238, § 1.

12-12-5. Powers and duties of director.

The director shall have the following powers and duties:

(1) To collect all fees authorized by this chapter and remit such fees to the state treasury;

(2) To exercise general supervision over the administration and enforcement of this chapter and all rules and regulations and orders promulgated under this chapter;

(3) To license contractors, and to deny, suspend, or revoke licenses;

(4) To issue all orders and processes as may be necessary to enforce compliance with provisions of this chapter and all rules and regulations promulgated under this chapter;

(5) To conduct such public hearings as are deemed necessary for the proper administration of this chapter;

(6) To make investigations, analyses, and inspections to determine and ensure compliance with this chapter, rules and regulations promulgated pursuant to this chapter, and any orders which the director may issue;

(7) To institute and prosecute such court actions as may be necessary to enforce compliance with any provisions of this chapter and any rules and regulations promulgated under this chapter;

(8) To exercise all incidental powers necessary to carry out the purpose of this chapter; and

(9) To encourage voluntary cooperation by persons in affected groups to achieve the purpose of this chapter.

History. — Code 1981, § 12-12-5, enacted by Ga. L. 1986, p. 1157, § 1; Ga. L. 1996, p. 238, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Role of director concerning revocation or suspension of license or certificate. — Director of the Environmental Protection Division may bring to the Asbestos Licensing Board's attention those licensed contractors or certified asbestos foremen that may be subject to license or certificate suspension or revocation. 1992 Op. Att'y Gen. No. 92-20.

12-12-6. License requirement; application; renewal; exception.

(a) From and after July 1, 1996, any contractor shall obtain a license as required by rules and regulations established under this chapter prior to engaging in the removal or encapsulation of friable asbestos-containing materials from any facility or residential dwelling in this state. Any contractor holding a valid license on June 30, 1996, shall be considered to hold a valid license until June 30, 1999.

(b) The application for a license or renewal of a license shall be accompanied by an application fee in an amount required by the board which reflects the cost of issuing the license and shall be submitted in such manner, on such forms, and containing such information as the director prescribes.

(c) A license or renewal license shall be issued to an applicant on evidence satisfactory to the director of compliance with this chapter and any rules and regulations pursuant to this chapter. Licenses shall be valid for a period not to exceed three years.

(d) Notwithstanding any other provisions of this chapter, any person who is licensed under Chapter 14 of Title 43 shall be exempt from the licensing and training requirements and other provisions of this chapter when performing asbestos removal or installation which is incidental to the performance of the business or profession for which said person is licensed and when the project involved includes less than:

(1) Ten continuous linear feet of material constructed of asbestos; or

(2) Ten square feet of material constructed of asbestos.

History. — Code 1981, § 12-12-6, enacted by Ga. L. 1986, p. 1157, § 1; Ga. L. 1996, p. 238, § 1.

12-12-7. Training requirements.

From and after July 1, 1996, no person may be employed as an asbestos supervisor unless that person has satisfied the training requirements as required by rules and regulations established under this chapter. Any asbestos supervisor holding a valid certificate on June 30, 1996, shall be considered to have satisfied the training require-

ments as required by rules and regulations established under this chapter.

History. — Code 1981, § 12-12-7, enacted by Ga. L. 1986, p. 1157, § 1; Ga. L. 1992, p. 6, § 12; Ga. L. 1996, p. 238, § 1.

Administrative rules and regulations. — Asbestos removal and encapsulation, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Chapter 391-3-14.

12-12-8. Reciprocity.

The director, upon application, may issue a license to any person who holds a license in any state, territory, or possession of the United States, provided that the licensing requirements of asbestos abatement contractors under which the person's license was issued do not conflict with this chapter and are of a standard not lower than that specified by regulation adopted under this chapter; provided, further, that reciprocal privileges are granted to licensed asbestos abatement contractors of this state.

History. — Code 1981, § 12-12-8, enacted by Ga. L. 1986, p. 1157, § 1; Ga. L. 1996, p. 238, § 1.

Administrative rules and regulations. — Asbestos removal and encapsulation, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-14.

12-12-9. Denial, revocation, or suspension of license; grounds; review of decision.

(a) The director may refuse to grant a license to an applicant or may revoke or suspend the license of a person licensed by the director for cause, including but not limited to the following:

(1) Making any false statement or giving any false information in connection with an application for license, including an application for renewal;

(2) Violation of this chapter or violation of any rule or regulation promulgated pursuant to the authority contained in this chapter; or

(3) Failure to demonstrate the qualifications or standards for licensure contained in this chapter or in the rules and regulations of the board. It shall be incumbent upon the applicant to demonstrate to the satisfaction of the director that he or she meets all the requirements for licensure; and, if the director is not satisfied as to the applicant's qualifications, he or she shall have the power to deny such licensure.

(b) Review of a decision of the director under this chapter shall be in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History. — Code 1981, § 12-12-9, enacted by Ga. L. 1986, p. 1157, § 1; Ga. L. 1996, p. 238, § 1.

OPINIONS OF THE ATTORNEY GENERAL

Basis for suspension or revocation. — Although the Asbestos Licensing Board has the authority to suspend or revoke a license or certificate based upon a knowing violation of this chapter or the rules and regulations promulgated thereto, such a suspension may be based upon "poor work practices" only when such work practices constitute a violation of the work practice rules and regulations established by the Department of Natural Resources. 1992 Op. Att'y Gen. No. 92-20.

Additional regulations not required. — O.C.G.A. § 12-12-9 establishes the basis upon which the Asbestos Licensing Board may seek to revoke or suspend a license or certificate and provides the hearing procedures to be followed; therefore, the Board need not enact additional regulations. 1992 Op. Att'y Gen. No. 92-20.

12-12-10. Notice of commencement of project; contents; project fee; certification of completion.

From and after April 1, 1986, no contractor shall engage in a project prior to notifying the director of such activity at least seven calendar days prior to commencement of same. Such prior notice need not be provided for an emergency project; provided, however, that the contractor shall notify the director of the activity within seven calendar days after the commencement of such emergency project. The notification shall be made in the manner and form required by the director and shall be accompanied by a project fee established by the board not to exceed $50.00 for asbestos abatement in a residential dwelling or any small project or $1,000.00 for any other project. The notification shall state the location of the project, the owner's name and address, the expected dates on which the project will begin and end, and any other information as may be required by the director. The contractor shall comply with this chapter, regulations promulgated pursuant to this chapter, and any regulation pertaining to asbestos removal promulgated under Article 1 of Chapter 9 of this title. Upon completion of the project, the contractor shall certify to the director, on forms specified by the director, that the project was conducted in accordance with this chapter and the rules and regulations promulgated pursuant to this chapter and Article 1 of Chapter 9 of this title.

History. — Code 1981, § 12-12-10, enacted by Ga. L. 1986, p. 1157, § 1; Ga. L. 1987, p. 964, § 1; Ga. L. 1996, p. 238, § 1.

12-12-11. Compliance with chapter required.

It shall be unlawful for any person, acting either as an asbestos supervisor or contractor, to engage in the removal, encapsulation, cleaning, or disposal of friable asbestos-containing materials or conduct quality assurance activities or air sampling in conjunction with such activities, except in such a manner as to conform to and comply with this chapter and all rules, regulations, and orders established under this chapter.

History. — Code 1981, § 12-12-11, enacted by Ga. L. 1986, p. 1157, § 1; Ga. L. 1996, p. 238, § 1.

12-12-12. Investigation rights of director; contractor to make records available.

The director or his or her authorized employees, upon a presentation of his or her credentials, shall have a right to enter the premises of persons subject to this chapter or premises where a violation of this chapter is reasonably believed to be occurring or about to occur; to investigate, sample, and inspect for compliance with the requirements imposed under this chapter; or to determine whether such a violation or threatened violation exists. A contractor shall make available to the director or his or her authorized representative such records, data, and other information as may be required by this chapter or rules and regulations issued pursuant to this chapter.

History. — Code 1981, § 12-12-12, enacted by Ga. L. 1986, p. 1157, § 1; Ga. L. 1996, p. 238, § 1.

Cross references. — Cooperation between Georgia and other states generally, T. 28, C. 6.

12-12-13. Cease and desist orders.

Whenever the director determines that a person is violating any provision of this chapter or any rule or regulation established under this chapter, he or she may issue an order requiring such person to cease and desist such activity within such a period of time as the director deems reasonable.

History. — Code 1981, § 12-12-13, enacted by Ga. L. 1986, p. 1157, § 1; Ga. L. 1996, p. 238, § 1.

12-12-14. Injunctions; restraining and other orders.

Whenever in the judgment of the director any person has engaged in or is about to engage in any act or practice which constitutes or will

constitute an unlawful action under this chapter, the director may make application to the superior court of the county in which such person resides or in which jurisdiction is appropriate for an order enjoining such an act or practice or for an order requiring compliance with this chapter. Upon a showing by the director that such person has engaged in or is about to engage in any such act or practice, a permanent or temporary injunction, restraining order, or other order shall be granted without the necessity of showing lack of an adequate remedy at law.

History. — Code 1981, § 12-12-14, enacted by Ga. L. 1986, p. 1157, § 1; Ga. L. 1993, p. 91, § 12; Ga. L. 1996, p. 238, § 1.

12-12-15. Imminent and substantial danger; remedies of director.

Notwithstanding any other provision of this chapter, the director, upon receipt of evidence that a project is presenting an imminent and substantial endangerment to the health of persons, may bring an action as provided in Code Section 12-12-14 to restrain immediately any person causing or contributing to the alleged danger or to take such other action as may be necessary. If it is not practicable to assure prompt protection of the health of persons solely by commencement of such a civil action, the director may issue such orders as may be necessary to protect the health of persons who are or may be affected by such project. Notwithstanding Code Section 12-12-17, such order shall be immediately effective for a period of not more than 48 hours unless the director brings an action under Code Section 12-12-14 before the expiration of such period. Whenever the director brings such an action within such period, such order shall be effective for such a period of time as may be authorized by the court pending litigation or thereafter.

History. — Code 1981, § 12-12-15, enacted by Ga. L. 1986, p. 1157, § 1; Ga. L. 1996, p. 238, § 1.

12-12-16. Civil penalty for violation; hearing and judicial review; disposition of penalties.

(a) Any person violating any provision of this chapter or rules or regulations under this chapter or failing or refusing to comply with any final order issued under this chapter shall be liable for a civil penalty of not more than $25,000.00 per day. Each day during which the violation or failure continues shall be a separate violation.

(b) Whenever the director has reason to believe that any person has violated any provision of this chapter or any rules or regulations under

this chapter or has failed or refused to comply with any final order issued under this chapter, he or she may, upon written notice, require a hearing before an administrative law judge appointed by the board to determine whether applicable civil penalties should be imposed. The decision of the administrative law judge shall constitute the final decision of the board and any party to the hearing, including the director, shall have a right of judicial review as provided in this chapter. Such hearing and judicial review shall be conducted in accordance with subsection (c) of Code Section 12-2-2.

(c) All civil penalties recovered by the director as provided in this Code section shall be paid into the state treasury.

History. — Code 1981, § 12-12-16, enacted by Ga. L. 1986, p. 1157, § 1; Ga. L. 1996, p. 238, § 1.

12-12-17. Hearing and judicial review procedure.

All hearings on and judicial review of orders or other administrative enforcement actions of the director under this chapter shall be provided and conducted in accordance with subsection (c) of Code Section 12-2-2.

History. — Code 1981, § 12-12-17, enacted by Ga. L. 1986, p. 1157, § 1; Ga. L. 1996, p. 238, § 1.

12-12-18. Judgment in accordance with order of director or administrative law judge.

Any order of the director or an administrative law judge issued in accordance with this chapter which is unappealed from or affirmed or modified on appeal or review may be filed by the director by certified copy in the superior court of the county wherein the person resides or, if said person is a corporation, in the county wherein the corporation maintains its principal place of business or in the county wherein the violation occurred. The court shall then render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereto shall be the same, as though said judgment had been rendered in an action duly heard and determined by the court.

History. — Code 1981, § 12-12-18, enacted by Ga. L. 1986, p. 1157, § 1; Ga. L. 1996, p. 238, § 1.

12-12-19. Attorney General to provide legal representation.

It shall be the duty of the Attorney General to provide legal representation to the director in connection with this chapter.

History. — Code 1981, § 12-12-19, enacted by Ga. L. 1986, p. 1157, § 1; Ga. L. 1996, p. 238, § 1.

12-12-20. Sovereign immunity not waived; legal duties of contractor, project monitor, or asbestos worker not relieved by chapter.

Nothing in this chapter is intended to conflict with rules and regulations promulgated by the United States Environmental Protection Agency pursuant to the federal Toxic Substances Control Act or the federal Clean Air Act or by the Occupational Safety and Health Administration of the United States Department of Labor pursuant to the federal Occupational Safety and Health Act or by other applicable federal statutes.

History. — Code 1981, § 12-12-20, enacted by Ga. L. 1986, p. 1157, § 1; Ga. L. 1987, p. 3, § 12; Ga. L. 1992, p. 6, § 12; Ga. L. 1996, p. 238, § 1.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — Citizens' Suits Under the Toxic Substances Control Act (TSCA), 50 POF3d 237.

12-12-21. Sovereign immunity.

Nothing in this chapter shall be construed to constitute a waiver of the sovereign immunity of the state, the board, or the division. No action shall be brought against the state, the board, the division, or any member, officer, or employee thereof for damages sustained from the improper or unlawful removal or encapsulation of friable asbestos-containing materials from facilities or residential dwellings governed by this chapter. Nothing in this chapter and no order, action, license, or advice of the director, the division, or any representative thereof shall be construed to relieve a contractor, project monitor, or asbestos worker of the legal duties, obligations, or liabilities incident to removal or encapsulation of friable asbestos-containing materials from facilities or residential dwellings.

History. — Code 1981, § 12-12-21, enacted by Ga. L. 1986, p. 1157, § 1; Ga. L. 1987, p. 3, § 12; Ga. L. 1996, p. 238, § 1.

Law reviews. — For comment, "Keeping the Arms in Touch: Taking Political Accountability Seriously in the Eleventh Amendment Arm of the State Doctrine," see 64 Emory L.J. 819 (2015).

CHAPTER 13

UNDERGROUND STORAGE TANKS

Sec.
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12-13-18. Required compliance with chapter; proof that petroleum subjected to environmental fee; violations of chapter; access to property.
12-13-19. Violations; imposition of penalties.
12-13-20. Emergency orders; hearing.
12-13-21. Public access to records.
12-13-22. Representation by Attorney General.

Code Commission notes. — Two 1988 Acts added a new Chapter 13 to this title. Pursuant to Code Section 28-9-5, the chapter enacted by Ga. L. 1988, p. 2072 has retained the Chapter 13 designation, but the chapter enacted by Ga. L. 1988, p. 354 has been redesignated as Chapter 14 and the Code sections have been renumbered accordingly.

Administrative rules and regulations. — Underground gas storage, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-12.

Underground storage tank management, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-15.

RESEARCH REFERENCES

Am. Jur. 2d. — 61C Am. Jur. 2d, Pollution Control, § 1045 et seq.

Am. Jur. Proof of Facts. — Leaking Underground Gasoline Storage Tanks, 3 POF3d 517.

12-13-1. Short title.

This chapter shall be known as and may be cited as the "Georgia Underground Storage Tank Act."

History. — Code 1981, § 12-13-1, enacted by Ga. L. 1988, p. 2072, § 1.

Law reviews. — For survey article on construction law for the period from June 1, 2002 through May 31, 2003, see 55 Mercer L. Rev. 85 (2003).

12-13-2. Public policy.

(a) It is declared to be the public policy of the State of Georgia, in furtherance of its responsibility to protect the public health, safety, and well-being of its citizens and to protect and enhance the quality of its environments, to institute and maintain a comprehensive state-wide program for the management of regulated substances stored in underground tanks.

(b) It is the intent of the General Assembly that the Environmental Protection Division of the Department of Natural Resources shall be designated as the state agency to administer the provisions of this chapter. The director of the Environmental Protection Division of the Department of Natural Resources shall be the official charged with the primary responsibility for the enforcement of this chapter. In exercising any authority or power granted by this chapter and in fulfilling duties under this chapter, the director shall conform to and implement the policies outlined in this chapter.

(c) It is the intent of the General Assembly to create an environmental assurance fund which, in addition to those purposes set forth in subsections (f) and (g) of Code Section 12-13-9, may also be used by owners and operators as an alternate to insurance purchased from insurance companies for purposes of evidencing financial responsibility for taking corrective action and compensation of third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating underground storage tanks.

History. — Code 1981, § 12-13-2, enacted by Ga. L. 1988, p. 2072, § 1; Ga. L. 1989, p. 14, § 12.

12-13-3. Definitions.

As used in this chapter, the term:

(1) "Board" means the Board of Natural Resources of the State of Georgia.

(2) "Corrective action" means those activities required for response to and cleanup of releases of regulated substances from underground storage tanks, including, but not limited to, initial response, initial abatement measures and site check, initial site characterization, free product removal, investigations for soil and ground-water cleanup, and preparation and implementation of a corrective action plan.

(3) "Department" means the Department of Natural Resources of the State of Georgia.

(4) "Director" means the director of the Environmental Protection Division of the Department of Natural Resources.

(5) "Division" means the Environmental Protection Division of the Department of Natural Resources of the State of Georgia.

(6) "Federal act" means the Solid Waste Disposal Act, 42 U.S.C. Section 3152, et seq., as amended, particularly by the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616, 42 U.S.C. Section 6991, et seq., as amended by Public Law 99-499, 1986.

(7) "Guarantor" means any person, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator.

(8) "Nonoperational storage tank" means any underground storage tank in which regulated substances will not be deposited or from which regulated substances will not be dispensed after November 8, 1984.

(9) "Operator" means any person in control of or having daily responsibility for the operation of the underground storage tank.

(10) "Owner" means, in the case of an underground storage tank in use on November 8, 1984, or brought into use or capable of being used after that date, any person who owns an underground storage tank used for or capable of being used for the storage or dispensing of regulated substances and, in the case of any underground storage tank in use before November 8, 1984, but no longer in use or capable of being used on November 8, 1984, any person who owned such tank immediately before the discontinuation of its use; provided, however, that such term shall not include any person who, without participating in the management of an underground storage tank and otherwise not engaged in petroleum production, refining, and marketing, holds indicia of ownership primarily to protect that person's security interest in the underground storage tank.

(11) "Person" means an individual, trust, firm, joint-stock company, corporation, including a government corporation, partnership, association, municipality, commission, political subdivision, or any agency, board, department, or bureau of this state or of any other state or of the federal government.

(12) "Petroleum" means petroleum, including crude oil or any fraction thereof which is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute).

(13) "Petroleum product" means petroleum, including gasoline, gasohol, diesel fuel, fuel oils including #2 fuel oil, and kerosene, including jet turbine fuel.

(14) "Regulated substance" means any substance defined in Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601, as amended by P.L. 99-499, 1986, et seq., and petroleum, including crude oil or any fraction thereof which is liquid at the standard conditions of temperature and pressure of 60 degrees Fahrenheit and 14.7 pounds per square inch absolute, but not including any substance regulated as a hazardous waste under Part 1 of Article 3 of Chapter 8 of this title, the "Georgia Hazardous Waste Management Act," as amended.

(15) "Release" means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into ground water, surface water, or subsurface soils.

(16) "Terminal" means a bulk storage facility for storing petroleum products supplied by pipeline or marine vessel.

(17) "Third-party liability" means:

(A) As to bodily injury, specific physical bodily injury proximately resulting from exposure, explosion, or fire caused by the presence of a release from a regulated underground storage tank and which is incurred by a person other than the owner or operator, the landlord of the owner or operator, employees or agents of an owner or operator, or employees or agents of the landlord of an owner or operator; and

(B) As to property damage, actual physical damage or damage due to specific loss of normal use of property owned by a person other than either the owner or operator of an underground storage tank from which a release has occurred or the landlord of an owner or operator of the underground storage tank from which a release has occurred.

(18) "Underground storage tank" means any one or combination of tanks, including underground pipes connected thereto, which is used to contain an accumulation of regulated substances and the volume of which, including the volume of the underground pipes connected thereto, is 10 percent or more beneath the surface of the ground.

History. — Code 1981, § 12-13-3, enacted by Ga. L. 1988, p. 2072, § 1; Ga. L. 1989, p. 14, § 12; Ga. L. 1989, p. 256, § 1; Ga. L. 1993, p. 91, § 12; Ga. L. 1994, p. 804, § 1; Ga. L. 2013, p. 141, § 12/HB 79; Ga. L. 2019, p. 1056, § 12/SB 52.

The 2019 amendment, effective May 12, 2019, part of an Act to revise, modernize, and correct the Code, substituted "provided, however, that such term" for "provided, however, such term" in the middle of paragraph (10).

Editor's notes. — Ga. L. 1994, p. 804, § 14, not codified by the General Assembly, provides for severability.

12-13-4. Exceptions to chapter.

This chapter shall not apply to the following:

(1) Any farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(2) Any tank used for storing heating oil for consumptive use on the premises where stored;

(3) Any septic tank;

(4) Any pipeline facility, including gathering lines:

(A) Regulated under the Natural Gas Pipeline Safety Act of 1968, 49 U.S.C. Section 1671, et seq.;

(B) Regulated under the Hazardous Liquid Pipeline Safety Act of 1979, 49 U.S.C. Section 2001, et seq.; or

(C) Which is an intrastate pipeline facility regulated under state law comparable to the provisions of law referred to in subparagraph (A) or (B) of this paragraph;

(5) Any surface impoundment, pit, pond, or lagoon;

(6) Any storm-water or waste-water collection system;

(7) Any flow-through process tank;

(8) Any liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

(9) Any storage tank situated in an underground area (such as a basement, cellar, mine working, drift, shaft, or tunnel), if the storage tank is situated upon or above the surface of the floor.

History. — Code 1981, § 12-13-4, enacted by Ga. L. 1988, p. 2072, § 1; Ga. L. 1989, p. 14, § 12.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "Section" was inserted following "U.S.C." in subparagraphs (4)(A) and (4)(B).

12-13-5. Rules and regulations; enforcement powers.

In the performance of its duties, the board shall have and may exercise the power to:

(1) Adopt, promulgate, modify, amend, and repeal rules and regulations to implement and enforce the provisions of this chapter as the board may deem necessary to provide for the management of regu-

lated substances stored in underground tanks to protect the environment and health of humans. Such rules and regulations may be applicable to the state as a whole or may vary from area to area, as may be appropriate to facilitate the accomplishment of the provisions, purposes, and policies of this chapter. The rules and regulations shall include all requirements necessary for consistency with applicable federal law and federal regulations and shall include, but shall not be limited to, the following:

(A) Standards and control measures applicable to underground storage tanks and owners or operators of underground storage tanks. These standards and control measures may include, but are not limited to:

(i) Requirements for maintaining a leak detection system, an inventory control system together with tank testing, or a comparable system or method designed to identify releases in a manner consistent with the protection of human health and the environment;

(ii) Requirements for maintaining records of any monitoring or leak detection system or inventory controls or inventory control system or tank testing or comparable system;

(iii) Requirements for reporting of any releases and corrective actions taken in response to a release from an underground storage tank; and

(iv) Requirements for notification regarding the existence of operational or nonoperational underground storage tanks;

(B) Requirements for maintaining evidence of financial responsibility consistent with applicable federal law and federal regulation; and

(C) Performance standards for underground storage tanks brought into use on or after the effective date of such standards. The performance standards for new underground storage tanks shall include, but are not limited to, design, construction, installation, release detection, and compatibility standards; and

(2) Take all necessary steps to ensure the effective enforcement of this chapter.

History. — Code 1981, § 12-13-5, enacted by Ga. L. 1988, p. 2072, § 1.

Administrative rules and regulations. — Underground storage tank management, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-15.

12-13-6. Powers and duties of director.

(a) The director shall have and may exercise the following powers and duties:

(1) To exercise general supervision over the administration and enforcement of this chapter and all rules, regulations, and orders issued under this chapter;

(2) To encourage, participate in, or conduct studies, reviews, investigations, research, and demonstrations relating to underground tank storage of regulated substances in this state as he deems advisable and necessary;

(3) To make investigations, analyses, and inspections to determine and ensure compliance with this chapter, the rules and regulations promulgated under this chapter, and any orders which the director may issue;

(4) To enter into such contracts as may be convenient, required, or necessary to effectuate the provisions of this chapter or the rules and regulations promulgated under this chapter, including the administration of the state underground storage tank program;

(5) To prepare, develop, amend, modify, submit, and enforce any comprehensive plan or program sufficient to comply with this chapter and the federal act for the control, regulation, and monitoring of underground tank storage of regulated substances in this state;

(6) To conduct such public hearings as are required by this chapter or as he deems necessary for the proper administration of this chapter and to control and manage the conduct procedure for such public hearings;

(7) To advise, consult, cooperate, and contract on underground tank storage of regulated substance matters with other agencies of this state, political subdivisions thereof, and other designated organizations or entities; and, with the approval of the Governor, to negotiate and enter into agreements with the governments of other states and the United States and their several agencies, subdivisions, or designated organizations or entities;

(8) To collect and disseminate information and to provide for public notification in matters relating to underground tank storage of regulated substances;

(9) To issue, amend, modify, or revoke orders as may be necessary to ensure and enforce compliance with the provisions of this chapter and all rules and regulations promulgated under this chapter;

(10) To institute, in the name of the division, proceedings of mandamus, injunction, or other proper administrative and civil

proceedings to enforce the provisions of this chapter, the rules and regulations promulgated under this chapter, or any orders issued under this chapter;

(11) To accept, receive, administer, or disperse funds obtained from bond issues of the state or authorities of the state or from general appropriations or grants from public or private sources for the purpose of proper administration of this chapter or for carrying out any of the duties, powers, or responsibilities under this chapter, to enter into such agreements as the director deems appropriate to accomplish such purpose, and to repay such funds when the terms of the grant, bond issue, or general appropriation require repayment;

(12) To grant variances in accordance with the provisions of this chapter and the rules and regulations promulgated under this chapter, provided such variances are not inconsistent with the federal act and rules or regulations promulgated under such act;

(13) To encourage voluntary cooperation by persons and affected groups to achieve the purposes of this chapter;

(14) To assure that the State of Georgia complies with the federal act and retains maximum control under such act and receives all desired federal grants, aid, and other benefits;

(15) To require any person who is an owner or operator of an underground storage tank to notify the division in writing as provided by this chapter;

(16) To require any person who is an owner of an underground storage tank taken out of operation after January 1, 1974, to notify the division in writing as provided by this chapter;

(17) To maintain an inventory of underground tanks within the state, including such information as location, identity, quantity, method of storage, owners and operators, and any other information which the director may deem necessary to administer and enforce this chapter;

(18) To adopt, promulgate, modify, amend, and repeal criteria for the identification of regulated substances and the determination of whether any substance or combination of substances is regulated for the purposes of this chapter;

(19) To establish underground storage tank technical standards for the state provided they are in all cases consistent with those provided by the federal act;

(20) To take all necessary steps to ensure that the administration of this chapter is consistent with and equivalent to the provisions of

the federal act and any standards, rules, or regulations, promulgated under such act; and

(21) To exercise all incidental powers necessary to carry out the purposes of this chapter.

(b) The powers and duties provided for in subsection (a) of this Code section may be exercised and performed by the director through such duly authorized employees of the department as the director deems necessary and proper.

History. — Code 1981, § 12-13-6, enacted by Ga. L. 1988, p. 2072, § 1; Ga. L. 1999, p. 658, § 1.

12-13-7. Performance standards applicable until rules and regulations effective.

Until the effective date of rules and regulations adopted by the board pursuant to Code Section 12-13-5, no person may install an underground storage tank for the purpose of storing regulated substances unless such tank meets the performance standards established pursuant to the federal act.

History. — Code 1981, § 12-13-7, enacted by Ga. L. 1988, p. 2072, § 1.

12-13-8. Investigations.

(a) The director, an authorized employee of the department, or an authorized contractor or agent of the department, upon presentation of his or her credentials, shall have a right to enter upon, to, or through premises of persons subject to this chapter, or premises whereon a violation of this chapter or the rules and regulations adopted pursuant to this chapter is reasonably believed to be occurring or is reasonably believed to be about to occur, to investigate, take samples of, and copy all records relating to the storage of regulated substances in underground tanks, and to inspect for compliance with the requirements imposed under this chapter or the rules and regulations adopted pursuant to this chapter, or to determine whether such a violation or threatened violation exists.

(b) In the event any person does not consent to an inspection or investigation, the director or an authorized employee of the department shall have the power to seek a warrant authorizing the inspection or investigation.

(c) The director, an authorized employee of the department, or an authorized contractor or agent of the department, upon presentation of

his or her credentials, shall have a right to enter upon, to, or through premises of persons subject to this chapter or premises whereon a release of a regulated substance in violation of this chapter or the rules and regulations adopted pursuant to this chapter is reasonably believed to be occurring or is reasonably believed to have previously occurred to investigate, take samples, copy all records relating to storage of regulated substances in underground storage tanks, and inspect for compliance with the requirements imposed under this chapter or the rules and regulations adopted pursuant to this chapter in order to determine whether such a current release or past release exists and to conduct appropriate corrective action for any release which may currently exist or may have existed.

History. — Code 1981, § 12-13-8, enacted by Ga. L. 1988, p. 2072, § 1; Ga. L. 1994, p. 804, § 2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, "regulations" was substituted for "regulation" near the middle of subsection (a).

Editor's notes. — Ga. L. 1994, p. 804, § 14, not codified by the General Assembly, provides for severability.

12-13-9. Establishing financial responsibility; claims against guarantor; Underground Storage Tank Trust Fund.

(a) The board shall promulgate regulations containing requirements for maintaining evidence of financial responsibility as deemed necessary and desirable for taking corrective action and for compensation of third parties for bodily injury and property damage caused by sudden and nonsudden accidental releases arising from operating an underground storage tank.

(b) Financial responsibility required by this Code section may be established in accordance with regulations promulgated by the board by any one or combination of the following: insurance, guarantee, surety bond, letter of credit, qualification as a self-insurer, or any other method satisfactory to the board. In promulgating requirements under this Code section, the board is authorized to specify policy or other contractual terms, conditions, or defenses which are necessary or are acceptable in establishing such evidence of financial responsibility in order to effectuate the purposes of this chapter and comply with financial responsibility requirements.

(c) Financial responsibility programs established pursuant to this chapter and administered by the division may be submitted as evidence of financial responsibility required under this chapter.

(d) In any case where the owner or operator is in bankruptcy, reorganization, or arrangement pursuant to the federal Bankruptcy Code or where, with reasonable diligence, jurisdiction in any state court or the federal courts cannot be obtained over an owner or operator likely to be solvent at the time of judgment, any claim arising from conduct for

which evidence of financial responsibility must be provided under this Code section may be asserted directly against the guarantor providing such evidence of financial responsibility. In the case of any action pursuant to this subsection, such guarantor shall be entitled to invoke all rights and defenses which would have been available to the owner or operator if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if any action had been brought against the owner or operator by the claimant and which would have been available to the guarantor if an action had been brought against the guarantor by the owner or operator.

(e) The total liability of any guarantor shall be limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator under this Code section. Nothing in this Code section shall be construed to limit any other state or federal statutory, contractual, or common law liability of a guarantor to its owner or operator including, but not limited to, the liability of such guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim. Nothing in this Code section shall be construed to diminish the liability of any person under Sections 107 and 111 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. Section 9601, et seq., as amended by P.L. 99-499, 1986.

(f) There is hereby established the Underground Storage Tank Trust Fund. The director shall serve as trustee of this fund. The principal of the moneys deposited in such fund pursuant to Code Section 12-13-10 may be expended by the director for the following purposes:

(1) To take whatever emergency action is necessary or appropriate to assure that the public health or safety is not threatened whenever there is a release or substantial threat of a release of regulated substances from an underground storage tank;

(2) To take preventive or corrective actions where the release of the regulated substances presents an actual or potential threat to human health or the environment where the owner or operator has not been identified or is unable, as determined by the director, to perform corrective action, including but not limited to, provisions for providing alternative water supplies;

(3) To provide compensation for third-party liabilities; provided, however, that any such expenditure shall be subject to the following limitations:

(A) A property owner shall not be considered a third party if the property was transferred by the owner or operator of an underground storage tank in anticipation of damage due to a release;

(B) Third-party liability property damage shall be reimbursed from the Underground Storage Tank Trust Fund based on the rental costs of comparable property during the period of loss of use up to a maximum amount equal to the fair market value. In the case of property that is actually destroyed as a result of a petroleum release, reimbursement shall be an amount necessary to replace or repair the destroyed property, whichever is less; and

(C) Payments for third-party liability damages, as defined in this chapter, shall never exceed the amount of the Underground Storage Tank Trust Fund coverage as provided in this chapter for any owner or operator and shall not include payments for any claims for attorney's fees for third-party claimants or punitive damages or mental anguish;

(4) To pay for any portion of the administrative cost of administering the Underground Storage Tank Trust Fund which exceeds the amount of interest earned on the corpus of such fund; provided, however, that no more than 10 percent of the fees collected annually pursuant to subsection (a) of Code Section 12-13-10 shall be used for such purpose;

(5) To provide reimbursements to eligible participating owners and operators who have conducted corrective action;

(6) To provide payments to state contractors for eligible participating owners and operators who are unable, as determined by the director, to conduct corrective action for petroleum releases from underground storage tanks; and

(7) To provide repayments for any grant, general appropriation, or bond issue as are authorized by general law which are advanced to the principal of the Underground Storage Tank Trust Fund to accomplish any of the purposes enumerated in paragraphs (1) through (6) of this subsection when the terms of the grant, appropriation, or bond issue require such repayment.

(g) Any interest earned upon the corpus of the Underground Storage Tank Trust Fund shall not become a part thereof but shall be paid over to the division to be utilized by the division for administration of the state Underground Storage Tank Program. Any such funds not expended for this purpose in the fiscal year in which they are generated shall be deposited in the state treasury, provided that nothing in this Code section shall be construed so as to allow the division to retain any funds required by the Constitution of Georgia to be paid into the state treasury; provided, further, that the division shall comply with all provisions of Part 1 of Article 4 of Chapter 12 of Title 45, known as the "Budget Act," except Code Section 45-12-92, prior to expending any such funds.

(h) If any person chooses to make a claim against the fund and accepts payment from the fund, then the state shall be subrogated to any cause of action that the claimant may have to the extent of such payment or judgment. In any such action, the amount of damages shall be proved by the division by submitting to the court a written report of the amounts paid or owed from the fund to claimants. Such written report shall be admissible in evidence and the amounts paid from or owed by the fund to the claimants stated therein shall be presumed to be the amount of the damages.

(i) Notwithstanding any other provisions of law to the contrary, the Underground Storage Tank Trust Fund shall not be considered an insurance company or insurer under the laws of this state.

History. — Code 1981, § 12-13-9, enacted by Ga. L. 1988, p. 2072, § 1; Ga. L. 1989, p. 14, § 12; Ga. L. 1994, p. 804, §§ 3, 4; Ga. L. 1999, p. 658, § 2; Ga. L. 2013, p. 141, § 12/HB 79.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, in the last sentence of subsection (e), "et seq.," was substituted for "et. seq.,".

Pursuant to Code Section 28-9-5, in 1999, "require" was substituted for "requires" in paragraph (f)(7).

Editor's notes. — Ga. L. 1994, p. 804, § 14, not codified by the General Assembly, provides for severability.

Law reviews. — For article on CERCLA liability for secured creditors, see 41 Emory L.J. 167 (1992).

RESEARCH REFERENCES

ALR. — Private entity's status as owner or operator under § 107(a)(1,2) of Comprehensive Environmental Response, and Liability Act (42 USCS § 9607(a)(1,2)) (CERCLA), 140 A.L.R. Fed 181.

Application of Statutes of Limitations (42 USCS § 9613(g)) in action under § 113(f) of Comprehensive Environmental Response Compensation, and Liability Act (CERCLA) (42 USCS § 9613(f)) for contribution for response costs or damages, 143 A.L.R. Fed. 591.

Construction and application of Statute of Limitations (42 USCS § 9613(g)(1)) for action under § 107 of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCS § 9607) for Natural Resource Damages, 144 A.L.R. Fed. 285.

12-13-10. Environmental assurance fees; late participation fee.

(a) In order to participate in the liability limitations and reimbursement benefits of the Underground Storage Tank Trust Fund, a potential claimant shall pay to the division his or her share of an environmental assurance fee on each gallon of petroleum products imported into this state. Such fees shall be established by the board in such amount as is sufficient to assure the funding of emergency, preventive, or corrective actions necessary when public health or safety is, or potentially may be, threatened from a release of regulated substances from an underground storage tank, at a rate not to exceed 1.0¢ per gallon. This fee shall be collected by the terminal operator upon request of the owner or operator when the petroleum is removed from a terminal by the person who sells

the petroleum, or if the petroleum product will never be stored in a terminal in this state then by the importer thereof, and paid to the department. Proof of such payment shall be provided the owner or operator. Exchanges of petroleum products on a gallon-for-gallon basis within a terminal shall be exempt from this fee. Petroleum product which is subsequently exported from this state is exempt from this fee.

(b) Environmental assurance fees as specified in subsection (a) of this Code section shall be paid into the trust fund until the unobligated principal balance of the environmental assurance fees contained in the trust fund equals or exceeds $50 million, regardless of the total balance of the trust fund, at which time no environmental assurance fees shall be levied unless the unobligated balance of environmental assurance fees in the trust fund is less than or equal to $30 million, in which case the collection of the environmental assurance fee will resume within 180 days following the end of the month in which such unobligated balance of environmental assurance fees occurs. No funds paid into the trust fund from any source other than the environmental assurance fees shall be considered in calculating either the $50 million or $30 million balance of environmental assurance fees in the trust fund as provided in this subsection.

(c) If an underground storage tank was in use for the storage of jet turbine fuel prior to the owner's or operator's participation in the Underground Storage Tank Trust Fund, the director shall require, as a condition for beginning participation in the fund, the owner or operator to pay into the fund a late participation fee which shall be an amount equal to the environmental assurance fee provided for in subsection (a) of this Code section which would have been paid by the owner or operator, as if the owner or operator had been a participant in the fund, during a period beginning on July 1, 1988, and ending on the beginning date of participation in the fund or beginning on the date the jet turbine fuel underground storage tank was first used, if after July 1, 1988, and ending on the beginning date of participation in the fund.

History. — Code 1981, § 12-13-10, enacted by Ga. L. 1988, p. 2072, § 1; Ga. L. 1989, p. 256, § 2; Ga. L. 1991, p. 1421, § 1; Ga. L. 1994, p. 804, § 5; Ga. L. 1999, p. 658, § 3.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, capitalization changes were made throughout subsection (a).

Editor's notes. — Ga. L. 1994, p. 804, § 14, not codified by the General Assembly, provides for severability.

JUDICIAL DECISIONS

Constitutionality. — Fee provided for by O.C.G.A. § 12-13-10 is not a motor fuel tax within the meaning of Ga. Const. 1983, Art. III, Sec. IX, Para. VI(b). Luke v. Georgia Dep't of Natural Resources, 270 Ga. 647, 513 S.E.2d 728 (1999).

Participation fee provided for in O.C.G.A. § 12-13-10 does not constitute

an impermissible burden on interstate commerce in violation of Article I, Section VIII, and Article VI, of the United States Constitution. Luke v. Georgia Dep't of Natural Resources, 270 Ga. 647, 513 S.E.2d 728 (1999).

12-13-11. Corrective action for release of petroleum product into environment.

(a) Whenever the director has reason to believe that there is or has been a release of a petroleum product into the environment from an underground tank, regardless of the time at which storage of such material occurred, and has reason to believe that such release poses a danger to health or the environment, the director shall obtain corrective action for such release from any current owner or operator or from any past owner or operator who has contributed to such release, either individually or jointly. Such corrective action shall be performed in accordance with a plan approved by the director.

(b) If the tank owner or operator is unable, as determined by the director, to perform corrective action as provided for in subsection (a) of this Code section, the director may undertake preventive or corrective actions utilizing funds from the Underground Storage Tank Trust Fund.

(b.1) The owner or operator of an underground storage tank shall be liable for all costs of preventive, corrective, and enforcement actions incurred by the State of Georgia as a result of a release or a substantial threat of release of a petroleum product from an underground storage tank unless the owner or operator, or both, are participants in the Underground Storage Tank Trust Fund and enter into a consent agreement with the state. In such consent agreement, at a minimum, the owner or operator, or both, must agree that:

(1) Whenever costs have been incurred by the director pursuant to this subsection for taking corrective or enforcement action, the owner or operator shall be liable for the first $10,000.00 per occurrence for corrective action, such funds to be paid into the Underground Storage Tank Trust Fund within 90 days of notice by the director;

(2) The State of Georgia and the Underground Storage Tank Trust Fund are relieved of all liability for loss of business, damages, and taking of property associated with the corrective action;

(3) The division or its contractors may enter upon the property of the owner or operator or the real property where the underground storage tank of the owner or operator is located if the real property owner and the underground storage tank owner or operator are not the same person, at such time and in such manner as deemed necessary to effectuate corrective action to protect health and the environment, such right-of-entry by the division or its contractors

being implied by the willingness of the real property owner to allow the underground storage tank of the owner or operator to be placed on the real property of the real property owner;

(4) The owner or operator shall be fully responsible for replacement or retrofitting or both of leaking tanks and associated piping or shall allow division contractors to refill excavated areas resulting from removal of leaking tanks and associated piping with clean earth to its original elevation;

(5) The liability of the state and the state Underground Storage Tank Trust Fund shall not exceed $1 million per occurrence; and

(6) Such other provisions as are deemed appropriate by the board to ensure adequate protection of health and the environment.

(c) To encourage voluntary corrective action, an owner or operator conducting corrective action under this chapter and participating in the Underground Storage Tank Trust Fund, either through the owner's or operator's own personnel or through response action contractors or subcontractors, is entitled, as evidenced by an executed corrective action agreement with the division, to reimbursement of reasonable cost from the trust fund, subject to the following provisions:

(1) Prior to initiating such corrective action, the owner or operator must submit to and receive approval from the division of the proposed corrective action plan, together with projected costs of the corrective action, and once approved the owner or operator shall not substantially deviate from the approved costs and corrective actions without the prior approval of the division;

(2) The owner or operator or the owner's or operator's agents shall keep and preserve suitable records demonstrating compliance with the approved corrective action plan and all invoices and financial records associated with costs for which reimbursement will be requested;

(3) Upon receipt of a complete corrective action plan, the director shall make a determination and provide written notice as to whether the owner or operator responsible for corrective action is eligible or ineligible for reimbursement of costs. Should the director determine the owner or operator is ineligible, he or she shall include in his or her written notice an explanation setting forth in detail the reasons for the determination;

(4) The owner or operator shall submit to the director a written notice that corrective action has been completed within 30 days of completing corrective action;

(5) No later than 30 days from the submission of the notice as required by paragraph (4) of this subsection, the owner or operator

must submit an application for reimbursement of costs in accordance with criteria established by the director. The application for reimbursement must include the total amount of the corrective action and the amount of reimbursement sought;

(6) The first $10,000.00 of eligible costs incurred by the owner or operator are not eligible for reimbursement from the trust fund nor are costs for replacement or retrofitting of leaking tanks and associated piping; and

(7) No costs may be reimbursed to the owner or operator until such time as corrective action has been completed in accordance with the plan approved by the division; provided, however, that interim payments may be made if the corrective action is being conducted in accordance with a plan approved by the division which allows interim payments.

(d) Notwithstanding the provisions of subsections (b), (b.1), and (c) of this Code section, should the division find that any of the following situations exist, the owner or operator, or both, shall be liable for 100 percent of costs associated with preventive, corrective, or enforcement actions necessary to protect health or the environment:

(1) The release was due to willful or negligent actions by the owner or operator;

(2) The owner or operator is in arrears for moneys owed to the Underground Storage Tank Trust Fund;

(3) The owner or operator moves in any way to obstruct the efforts of the division or its contractors to effectuate corrective action; or

(4) The owner or operator of a petroleum product underground tank has stored a petroleum product, after July 1, 1988, in such tank which has not been subjected to the environmental assurance fee imposed in subsection (a) of Code Section 12-13-10 and the late participation fee provided for in subsection (c) of Code Section 12-13-10.

(e) Notwithstanding the provisions of subsections (b), (b.1), and (c) of this Code section, should the division find, based upon rules promulgated by the board, that any of the following situations exist, the owner or operator, or both, may be liable for up to 100 percent of costs associated with preventive, corrective, or enforcement actions necessary to protect health or the environment:

(1) The release is from a tank not registered in accordance with Code Section 12-13-13;

(2) The owner or operator fails to comply with any provision of the agreement required by subsection (b.1) or (c) of this Code section; or

(3) The owner or operator has failed to comply with any provisions of this chapter or rules promulgated under this chapter.

(f) If no underground storage tank owner or operator can be found, the director may undertake preventive or corrective actions utilizing funds from the Underground Storage Tank Trust Fund or any appropriate federal funds as provided by the federal act, and any real property owner by virtue of the fact that he or she has allowed these underground storage tanks to exist or be placed on his or her real property shall be deemed to have granted permission to the division or its contractors or agents to enter its real property to investigate and take samples and, when deemed necessary by the director, to effectuate the necessary corrective action to protect health and the environment.

History. — Code 1981, § 12-13-11, enacted by Ga. L. 1988, p. 2072, § 1; Ga. L. 1989, p. 256, § 3; Ga. L. 1994, p. 804, § 6; Ga. L. 1995, p. 10, § 12; Ga. L. 1996, p. 6, § 12.

Editor's notes. — Ga. L. 1994, p. 804, § 14, not codified by the General Assembly, provides for severability.

12-13-12. Recovery in event of discharge or threat of discharge of regulated substance; lien.

(a) Except as otherwise provided for in subsections (b), (b.1), and (c) of Code Section 12-13-11, in the event of any discharge or threatened discharge of a regulated substance, the state or any of its agencies may recover in a civil action from any owner, operator, or other responsible person all costs incurred by the state or any of its agencies or moneys from the federal Leaking Underground Storage Tank Trust Fund in the assessment and the cleanup of any release of a regulated substance and all costs incurred in the prevention, abatement, or removal of any threatened discharge of a regulated substance, including reasonable attorney's fees and any other necessary costs of response incurred by the state or any of its agencies. All moneys recovered for costs incurred under the Underground Storage Tank Trust Fund shall be deposited into the principal of the Underground Storage Tank Trust Fund. The state shall have a lien on the real property on which the underground storage tanks which caused the discharge are located, even if owned by a person other than the owner or operator, provided the owner or operator is in privity with the real property owner.

(b) The lien provided for above shall be perfected by filing a certified copy of any judgment obtained against the owner or operator with the clerk of superior court for entry on the general execution docket in the county in which any real property of the owner or operator is located or where the real property on which the leaking underground storage tanks were operated is located.

History. — Code 1981, § 12-13-12, enacted by Ga. L. 1988, p. 2072, § 1; Ga. L. 1994, p. 804, § 7; Ga. L. 1995, p. 10, § 12; Ga. L. 2000, p. 136, § 12.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1996, "clerk of superior court" was substituted for "Clerk of Superior Court" in subsection (b).

Editor's notes. — Ga. L. 1994, p. 804, § 14, not codified by the General Assembly, provides for severability.

12-13-13. Notification by owner of underground storage tank.

(a) Unless such notification has been previously provided to the division or to the U.S. Environmental Protection Agency in accordance with the federal act, any person who owns an underground storage tank shall notify the division, on forms provided by the division, within a reasonable number of days which the director shall specify, indicating the age, size, type, location, and uses of such tanks, identifying the regulated substances stored, and providing any other information which may be deemed relevant under such conditions as the director may prescribe.

(b) Unless such notification has been previously provided to the division or to the U.S. Environmental Protection Agency in accordance with the federal act, any person who owns an underground storage tank taken out of service after January 1, 1974, shall notify the division in writing, on forms provided by the division, within a reasonable number of days which the director shall specify, indicating the date the tank was taken out of operation, the age of the tank at the date taken out of operation, the size, type, and location of the tank, and the type and quantity of substances left stored in such tank on the date taken out of operation and shall provide any other information which may be deemed relevant under such conditions as the director may prescribe.

(c) Any owner who brings into use an underground storage tank after July 1, 1988, shall notify the division, on forms provided by the division, within 30 days of the existence of such tank, specifying the age, size, type, location, and uses of such tank.

(d) Beginning 30 days after the board issues new tank performance standard rules and regulations pursuant to Code Section 12-13-5, any person who sells a tank intended to be used as an underground storage tank shall notify the purchaser of such tank of the owner's notification requirements pursuant to this Code section.

(e)(1) The owner or operator of an underground storage tank in use or capable of being used shall provide to the division an annual underground storage tank notification for all underground storage tanks for which an initial notification has previously been given or should have been given pursuant to this Code section. Such notification shall be provided on forms as prescribed by the division and shall be submitted in accordance with rules and regulations promulgated

by the board. It shall be a violation of this Code section for an owner or operator of an underground storage tank to fail to file an annual notification for an underground storage tank in accordance with such rules and regulations. The division shall issue confirmation of notification to the owner or operator for each facility with regulated underground storage tanks for which annual underground storage tank notifications have been submitted.

(2) Beginning 180 days after rules and regulations are promulgated by the board establishing the requirements for annual tank notification and confirmation of notification as provided in paragraph (1) of this subsection, it shall be a violation of this Code section for any person to place or cause to be placed regulated substances in an underground storage tank for which the tank owner or operator has failed to provide the annual tank notification to the division as required in this subsection.

History. — Code 1981, § 12-13-13, enacted by Ga. L. 1988, p. 2072, § 1; Ga. L. 1989, p. 14, § 12; Ga. L. 1994, p. 804, § 8.

Editor's notes. — Ga. L. 1994, p. 804, § 14, not codified by the General Assembly, provides for severability.

12-13-14. Corrective action for violations of chapter, rules and regulations, or orders and for release of regulated substance into environment.

(a) Whenever the director has reason to believe that a violation of any provision of this chapter, any rule or regulation of the board, or any order of the director has occurred, he shall attempt to remedy the same by conference, conciliation, or persuasion. In case of failure of such conference, conciliation, or persuasion to correct or remedy any violation, the director may issue an order directed to such violator or violators. The order shall specify the provisions of the chapter or rules or regulations or order alleged to have been violated and may order that necessary corrective action be taken within a reasonable time to be prescribed in the order. An order issued by the director under this Code section shall be signed by the director. Any such order shall become final unless the person or persons named therein request in writing a hearing pursuant to Code Section 12-13-16.

(b) Whenever the director has reason to believe that there is or has been a release of a regulated substance into the environment from an underground tank, regardless of the time at which storage of such material occurred, and has reason to believe that such release poses a danger to health or the environment, the director shall attempt to obtain corrective action for such release by conference, conciliation, or persuasion. In the case of failure of such conference, conciliation, or persuasion to obtain corrective action, the director may issue an order directed to any person, including any current owner or operator or any

past owner or operator who has contributed to such release. The order may direct that necessary corrective action may be taken within a reasonable time to be prescribed in the order.

History. — Code 1981, § 12-13-14, enacted by Ga. L. 1988, p. 2072, § 1; Ga. L. 1994, p. 804, § 9.

Editor's notes. — Ga. L. 1994, p. 804, § 14, not codified by the General Assembly, provides for severability.

12-13-15. Injunctions and restraining orders.

Whenever, in the judgment of the director, any person has engaged in or is about to engage in any act or practice which constitutes or would constitute a violation of this chapter, the rules and regulations, or any order or permit conditions, he may make application to the superior court of the county in which the violative act or practice has been or is about to be engaged in or in which the owner or operator resides for an order enjoining such act or practice or for an order requiring compliance with this chapter, the rules and regulations, or the order; and upon a showing by the director that such person has engaged in or is about to engage in any such violative act or practice, a permanent or temporary injunction, restraining order, or other order shall be granted without the necessity of showing the lack of an adequate remedy at law.

History. — Code 1981, § 12-13-15, enacted by Ga. L. 1988, p. 2072, § 1.

12-13-16. Hearings and review.

All hearings on and review of contested matters and orders and all hearings on and review of any other enforcement actions or orders under this chapter shall be provided and conducted in accordance with subsection (c) of Code Section 12-2-2. The hearing and review procedure provided in such Code section is to the exclusion of all other means of hearing or review.

History. — Code 1981, § 12-13-16, enacted by Ga. L. 1988, p. 2072, § 1; Ga. L. 1989, p. 14, § 12.

12-13-17. Judgment in accordance with division's order.

Any order of a hearing officer issued after a hearing as provided in Code Section 12-13-16 or any order of the director issued pursuant to Code Section 12-13-14, either unappealed from as provided in those Code sections or affirmed or modified on any review or appeal pursuant to Code Section 12-13-16, from which no further review is taken or allowed under Code Section 12-13-16 may be filed, as unappealed from or as affirmed or modified, if reviewed or appealed, by certified copy

from the director in superior court of the county wherein the person under order resides or, if said person is a corporation, in the county wherein the corporation maintains its principal place of business or in the county wherein the violation occurred. The superior court shall then render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect and all proceedings in relation thereto shall be the same as though said judgment had been rendered in an action duly heard and determined by such court.

History. — Code 1981, § 12-13-17, enacted by Ga. L. 1988, p. 2072, § 1.

12-13-18. Required compliance with chapter; proof that petroleum subjected to environmental fee; violations of chapter; access to property.

(a) It shall be unlawful for any person to engage in the storage of regulated substances in underground tanks except in such a manner so as to conform to and comply with any provisions of this chapter or any of the rules, regulations, and orders established under this chapter. The owner or operator of any underground storage tank for petroleum shall maintain proof that all petroleum stored in such tank after July 1, 1988, was subjected to the environmental fee imposed in subsection (a) of Code Section 12-13-10.

(b) Notwithstanding the provisions of subsection (a) of this Code section, it shall be a violation of this chapter to:

(1) Cause or permit the release of a regulated substance from an underground storage tank into the environment; or

(2) Install an underground storage tank that does not meet the minimum standards pursuant to this chapter or the rules promulgated pursuant to this chapter.

(c) Any real property owner adjoining a leaking underground storage tank site who refuses to allow either the owner or operator or the division, through its agents or contractors, access for purposes of providing corrective action for any pollution that may have migrated onto the adjoining real property from the leaking underground storage tank site shall be responsible for the remediation and cleanup of that pollution plume should it migrate off that real property onto the real property of another.

History. — Code 1981, § 12-13-18, enacted by Ga. L. 1988, p. 2072, § 1; Ga. L. 1994, p. 804, § 10.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1988, "July 1, 1988" was substituted for "the effective date of this chapter" in the second sentence of present subsection (a).

Pursuant to Code Section 28-9-5, in 1992, "1988," was substituted for "1988" in the second sentence of subsection (a).

Editor's notes. — Ga. L. 1994, p. 804,

§ 14, not codified by the General Assembly, provides for severability.

12-13-19. Violations; imposition of penalties.

(a) If a person fails to comply with an order under Code Section 12-13-14 within the time specified in the order, he shall be liable for a civil penalty of not more than $25,000.00 for each day of continued noncompliance.

(b) Any person who fails to notify or submits false information pursuant to any provision of this chapter shall be subject to a civil penalty not to exceed $10,000.00 for each tank for which notification is not given or for each time false information is submitted.

(c) Any person who violates any provision of this chapter or any requirement, standard, rule, or regulation promulgated by the board pursuant to this chapter shall be subject to a civil penalty not to exceed $10,000.00 for each day of violation for each underground storage tank in violation thereof.

(d) Any person not subject to the provisions of 18 U.S.C. Section 1905 who knowingly and willfully divulges or discloses any information entitled to protection under Code Section 12-13-21 shall, upon conviction, be subject to a fine of not more than $5,000.00 or to imprisonment not to exceed one year, or both.

(e) Whenever the director has reason to believe that any person has violated any provision of this chapter or any rule or regulation effective under this chapter or has failed or refused to comply with any final order or emergency order of the director, he may upon written request cause a hearing to be conducted before a hearing officer appointed by the board. Upon finding that said person has violated any provision of this chapter or any rule or regulation effective under this chapter or has failed or refused to comply with any final order or emergency order of the director, said hearing officer shall issue his decision imposing civil penalties as provided in this Code section. Such hearing and any administrative or judicial review thereof shall be conducted in accordance with Code Section 12-13-16.

(f) In rendering a decision under this Code section imposing civil penalties, the hearing officer shall consider all factors which are relevant including, but not limited to, the following:

(1) The amount of civil penalty necessary to ensure immediate and continued compliance and the extent to which the violator may have profited by failing or delaying to comply;

(2) The character and degree of impact of the violation or failure on the natural resources of the state, especially any rare or unique natural phenomena;

(3) The conduct of the person incurring the civil penalty in promptly taking all feasible steps or procedures necessary or appropriate to comply or to correct the violation or failure;

(4) Any prior violations or failures to comply by such person with statutes, rules, regulations, or orders administered, adopted, or issued by the director;

(5) The character and degree of injury to or interference with public health or safety which is caused or threatened to be caused by such violation or failure; and

(6) The character and degree of injury to or interference with reasonable use of property which is caused or threatened to be caused by such violation or failure.

(g) All civil penalties recovered by the director as provided in this Code section shall be paid into the Underground Storage Tank Trust Fund established pursuant to the provisions of Code Section 12-13-9.

History. — Code 1981, § 12-13-19, enacted by Ga. L. 1988, p. 2072, § 1; Ga. L. 1994, p. 804, §§ 11, 12.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "Section" was inserted following "U.S.C." in subsection (d).

Editor's notes. — Ga. L. 1994, p. 804, § 14, not codified by the General Assembly, provides for severability.

12-13-20. Emergency orders; hearing.

Whenever the director finds that an emergency exists requiring immediate action to protect the public health, safety, or well-being, the director may issue an order declaring the existence of such an emergency and requiring that such action be taken to meet the emergency as the director specifies. Such order shall be effective immediately. Any person to whom such order is directed shall comply therewith immediately but on application to the director shall be afforded a hearing within 48 hours. On the basis of such hearing, the director may continue such order in effect, revoke it, or modify it.

History. — Code 1981, § 12-13-20, enacted by Ga. L. 1988, p. 2072, § 1; Ga. L. 1994, p. 804, § 13.

Editor's notes. — Ga. L. 1994, p. 804, § 14, not codified by the General Assembly, provides for severability.

12-13-21. Public access to records.

(a) Any records, reports, or information obtained from any person pursuant to this chapter shall be available to the public, except that upon a showing satisfactory to the director by any person that such records, reports, or information or a particular part thereof to which the director or any officer, employee, or representative thereof has access pursuant to this chapter, if made public, would divulge information

entitled to protection under 18 U.S.C. Section 1905, such information or particular portion thereof shall be considered confidential in accordance with the purposes of that statute. However, such confidential record, report, document, or information may be disclosed to other officers, employees, or authorized representatives of the State of Georgia or the United States concerned with carrying out this chapter or the federal act or, when relevant, in any proceedings under this chapter or the federal act.

(b) In submitting information pursuant to this chapter, a person required to provide such information may:

(1) Designate the information which such person believes is entitled to protection under this Code section; and

(2) Submit such designated information separately from other data submitted under this Code section.

History. — Code 1981, § 12-13-21, enacted by Ga. L. 1988, p. 2072, § 1.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1992, "Section" was inserted following "U.S.C." in subsection (a).

12-13-22. Representation by Attorney General.

It shall be the duty of the Attorney General or his representative to represent the director in all actions in connection with this chapter.

History. — Code 1981, § 12-13-22, enacted by Ga. L. 1988, p. 2072, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 7 Am. Jur. 2d, Attorney General, § 6.

CHAPTER 14

OIL OR HAZARDOUS MATERIAL SPILLS OR RELEASES

Sec.
12-14-1. Definitions.
12-14-2. Reporting spilled or released oil or hazardous substance; promulgation of rules and regulations by Board of Natural Resources.
12-14-3. Notification of Environmental Protection Division of spill or release; exceptions; development of procedures to notify other governmental agencies.
12-14-4. Civil penalties; procedures for imposing penalties.

Code Commission notes. — Two 1988 Acts added a new Chapter 13 to this title. Pursuant to Code Section 28-9-5, the chapter enacted by Ga. L. 1988, p. 2072 has retained the Chapter 13 designation, but the chapter enacted by Ga. L. 1988, p. 354 has been redesignated as Chapter 14 and the Code sections have been renumbered accordingly.

RESEARCH REFERENCES

ALR. — Recovery of punitive damages for injuries resulting from transport, handling, and storage of toxic or hazardous substances, 39 A.L.R.5th 763.

Arranger liability of nongenerators pursuant to § 107(a)(3) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCS § 9607(a)(3)), 132 A.L.R. Fed. 77.

Am. Jur. 2d. — 61C Am. Jur. 2d, Pollution Control, §§ 988, 989, 993, 995 et seq.

12-14-1. Definitions.

As used in this chapter, the term:

(1) "Animal waste" means feces, urine, or other excrement, digestive emission, urea, or similar substances emitted by animals, including any form of livestock, poultry, or fish. This term includes animal waste that is mixed or commingled with bedding, compost, feed, soil, or any other material typically mixed or commingled with animal waste on a farm.

(2) "Board" means the Board of Natural Resources of the State of Georgia.

(3) "Director" means the director of the Environmental Protection Division of the Department of Natural Resources.

(4) "Division" means the Environmental Protection Division of the Department of Natural Resources.

(5) "Farm" means a site or area, including associated structures, that is used for:

(A) The production of one or more crops; or

(B) The raising or selling of animals, including livestock, poultry, or fish.

(6) "Hazardous substance" means any substance designated pursuant to Section 311(b)(2)(A) of the federal Clean Water Act, 33 U.S.C. Section 1321(b)(2)(A); any element, compound, mixture, solution, or substance designated pursuant to Section 102 of 42 U.S.C. Section 9602; any hazardous waste having the characteristics identified under or listed pursuant to Section 3001 of the Solid Waste Disposal Act, 42 U.S.C. Section 6921, but not including any waste the regulation of which under the Solid Waste Disposal Act has been suspended by act of Congress; any toxic pollutant listed under Section 307(a) of the federal Clean Water Act, 33 U.S.C. Section 1317(a); any hazardous air pollutant listed under Section 112 of the federal Clean Air Act, 42 U.S.C. Section 7412; and any imminently hazardous chemical substance or mixture with respect to which the administrator of the United States Environmental Protection Agency has taken action pursuant to Section 7 of the Toxic Substance Control Act, 15 U.S.C. Section 2606. The term does not include petroleum, including crude oil or any fraction thereof, which is not otherwise specifically listed or designated as a hazardous substance in the first sentence of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, synthetic gas usable for fuel, or mixtures of natural gas and such synthetic gas.

(7) "Oil" includes but is not limited to gasoline, crude oil, fuel oil, diesel oil, lubricating oil, sludge, oil refuse, oil mixed with wastes, and any other petroleum related product.

(8) "Person" includes an individual, trust, firm, joint-stock company, corporation, partnership, association, county, municipal corporation, political subdivision, interstate body, the state and any agency or authority thereof, and the federal government and any agency thereof.

(9) "Reportable quantity" means the amount of a hazardous substance which, if released into the environment in such quantity within any 24 hour period, must be reported to the division in the event of a spill or release. The reportable quantity for mixtures is the amount of the hazardous substance components of a mixture. Reportable quantities are those listed in 40 C.F.R. Part 302 - Designation, Reportable Quantities and Notification.

(10) "Spill or release" means the discharge, deposit, injection, dumping, spilling, emitting, releasing, leaking, or placing of any hazardous substance into the air or into or on any land or water of the state, except from an underground storage tank and all plumbing and

piping relating thereto or except high-level or low-level radioactive waste from a federally licensed nuclear facility or as authorized by state or federal law or a permit from the division. This term shall also mean the discharge of oil into waters of this state which will cause a significant film or sheen upon or discoloration of the surface of such waters or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of such waters or upon adjoining shorelines. Accidental discharges of oil made by an individual during maintenance of that individual's personal vehicle or farm machinery shall be exempt.

History. — Code 1981, § 12-14-1, enacted by Ga. L. 1988, p. 354, § 1; Ga. L. 1991, p. 1371, § 1; Ga. L. 1992, p. 6, § 12; Ga. L. 1993, p. 91, § 12; Ga. L. 2019, p. 565, § 1/HB 223.

The 2019 amendment, effective July 1, 2019, added paragraph (1); redesignated former paragraphs (1) through (3) as present paragraphs (2) through (4), respectively; added paragraph (5); and redesignated former paragraphs (4) through (8) as present paragraphs (6) through (10), respectively.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1991, "usable" was substituted for "usuable" in paragraph (4) (now paragraph (6)).

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — CERCLA Liability of Parent, Subsidiary and Successor Corporation, 34 POF3d 387.

Citizens' Suits Under the Toxic Substances Control Act (TSCA), 50 POF3d 237.

Citizens' Suit Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Emergency Planning and Community Right-To-Know Act (EPCRA), 55 POF3d 155.

ALR. — Necessity of proof of scienter under statute fixing criminal penalties for hazardous waste violations (42 USCS § 6928(d)), 106 A.L.R. Fed. 836.

Arranger liability of sellers pursuant to § 107(a)(3) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCS § 9607(a)(3)), 125 A.L.R. Fed. 315.

What constitutes "disposal" for purposes of owner or operator liability under § 107(a)(2) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCS § 9607(a)(2)), 136 A.L.R. Fed 117.

What constitutes "facility" within meaning of § 101(9) of the Comprehensive, Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCA § 9601(9)), 147 A.L.R. Fed. 469.

12-14-2. Reporting spilled or released oil or hazardous substance; promulgation of rules and regulations by Board of Natural Resources.

Oil or any hazardous substance spilled or released shall be reported under Code Section 12-14-3. The board is authorized to promulgate rules and regulations necessary for the enforcement of this chapter.

History. — Code 1981, § 12-14-2, enacted by Ga. L. 1988, p. 354, § 1; Ga. L. 1991, p. 1371, § 2.

RESEARCH REFERENCES

ALR. — Necessity of proof of scienter under statute fixing criminal penalties for hazardous waste violations (42 USCS § 6928(d)), 106 A.L.R. Fed. 836.

12-14-3. Notification of Environmental Protection Division of spill or release; exceptions; development of procedures to notify other governmental agencies.

(a) Any person owning or having control over any oil or hazardous substance who has knowledge of any spill or release of such oil or who has knowledge of any spill or release of such hazardous substance in a quantity equal to or exceeding the reportable quantity or who has knowledge of a spill or release of an unknown quantity of oil or a hazardous substance shall immediately notify the division through the Department of Natural Resources Emergency Operations Center as soon as that person knows of the spill or release.

(b) This Code section shall not apply to:

(1) The application of a pesticide product registered under the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. Section 136, et seq., or the Georgia Pesticide Control Act, Code Section 2-7-50, et seq., or both, when the application of such pesticide is made in a manner consistent with its label or labeling; or

(2) Air emissions from animal waste, including decomposing animal waste, at a farm.

(c) The division shall develop procedures to provide notice to other state, federal, or local governmental agencies.

History. — Code 1981, § 12-14-3, enacted by Ga. L. 1988, p. 354, § 1; Ga. L. 1991, p. 1371, § 3; Ga. L. 2019, p. 565, § 2/HB 223.

The 2019 amendment, effective July 1, 2019, added subsection (b); and redesignated former subsection (b) as present subsection (c).

12-14-4. Civil penalties; procedures for imposing penalties.

(a) Any person knowingly violating any provision of this chapter or rules or regulations established pursuant to this chapter shall be liable for a civil penalty of not more than $1,000.00 per day. Each day during which the violation continues may be considered a separate violation.

(b) Whenever the director has probable cause to believe that a violation of any provision of this chapter, a violation of any rule or regulation of the board, or a violation of any order of the director has occurred, he may attempt to remedy the same by conference, conciliation, and persuasion. In the case of failure of such conference, conciliation, or persuasion to correct or remedy any violation, the director may

issue an order directed to such violator or violators. The order shall specify the provisions of the chapter, the rules and regulations, or the order alleged to have been violated and the director may direct that necessary corrective action be taken within a reasonable time to be prescribed in the order. Any order issued by the director under this subsection shall be signed by the director. Any such order shall become final unless the person or persons named therein request in writing a hearing which shall be conducted in accordance with Code Section 12-2-2.

(c) Whenever the director has probable cause to believe that any person has violated any provision of this chapter or any rules or regulations adopted pursuant to this chapter, he may, upon written request, cause a hearing to be conducted before a hearing officer appointed by the board. Upon a finding that such person has violated any provisions of this chapter or any rule or regulation adopted pursuant to this chapter, the hearing officer shall issue his initial decision imposing civil penalties as provided in subsection (a) of this Code section. Such hearing and any administrative or judicial review thereof shall be conducted in accordance with Code Section 12-2-2.

(d) In rendering a decision under subsection (c) of this Code section imposing civil penalties, the hearing officer shall consider all factors which are relevant, including, but not limited to, the following:

(1) The amount of assessment necessary to ensure immediate and continued compliance and the extent to which the violator may have profited by failing or delaying compliance;

(2) The character and degree of impact of the violation on the natural resources of the state, especially any rare or unique natural phenomena;

(3) The conduct of the person incurring the civil penalty in taking all feasible steps or procedures necessary or appropriate to correct the violation;

(4) Any prior violations by such person, or failures by such person to comply with, statutes or regulations;

(5) The character and degree of injury to, or interference with, public health, safety, or welfare which is caused or threatened to be caused by such violation; and

(6) The character and degree of injury to, or interference with, reasonable use of property which is caused by such violation.

(e) All civil penalties recovered by the director as provided in this Code section shall be paid into the state treasury to the credit of the general fund.

History. — Code 1981, § 12-14-4, enacted by Ga. L. 1988, p. 354, § 1.

RESEARCH REFERENCES

Am. Jur. 2d. — 61C Am. Jur. 2d, Pollution Control, § 1022.

CHAPTER 15

SEWAGE HOLDING TANKS AND COMMERCIAL WASTE

Article 1

Sewage Holding Tanks

Sec.
12-15-1. Short title.
12-15-2. Legislative findings.
12-15-3. Definitions.
12-15-4. When sewage holding tanks may be utilized.
12-15-5. Sewage holding tank specifications; removal of sewage from tanks; disposal of sewage; manifests.
12-15-6. Responsibility for ensuring compliance with article.
12-15-7. Enforcement of compliance with article.
12-15-8. Violations.

Article 2

Commercial Waste

12-15-20. Definitions.
12-15-21. Removal of commercial waste in clean and sanitary fashion; registration of waste transporter; disposal; manifest system; penalty for violations.
12-15-22. Promulgation of rules and regulations.
12-15-23. Enforcement of compliance with article.
12-15-24. Enactment and enforcement of local ordinances.

ARTICLE 1

SEWAGE HOLDING TANKS

Editor's notes. — Ga. L. 2004, p. 357, § 1, not codified by the General Assembly, designated the existing provisions of Chapter 15 as Article 1, effective July 1, 2004.

12-15-1. Short title.

This article shall be known and may be cited as the "Sewage Holding Tank Act."

History. — Code 1981, § 12-15-1, enacted by Ga. L. 1990, p. 861, § 1; Ga. L. 2004, p. 357, § 2.

12-15-2. Legislative findings.

The General Assembly finds that there is a need for sewage holding tanks to accommodate the sewage from flush toilets which serve the needs of employees at construction sites during the temporary period of construction and the needs of the public at special events, and that such sewage holding tanks should be regulated to ensure that they are maintained in a clean, sanitary, and functional condition for the protection of human health, safety, and welfare. Where such sewage holding tanks are utilized, their construction, maintenance, and operation shall meet the standards of this article and all health and safety regulations applicable thereto.

History. — Code 1981, § 12-15-2, enacted by Ga. L. 1990, p. 861, § 1; Ga. L. 2004, p. 357, § 2.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, a period was substituted for a colon at the end of the second sentence.

12-15-3. Definitions.

As used in this article, the term:

(1) "Construction period" means the period of time during which a valid construction permit is in effect for a construction site.

(2) "Construction site" means the property designated in a valid construction permit issued by the local government having jurisdiction of construction.

(3) "Department" means the Department of Natural Resources.

(4) "Sewage" means human excreta, all water carried wastes, and liquid waste, including gray water or similar waste by-products.

(5) "Sewage holding tank" means a portable receptacle used on a temporary basis for containing sewage from flush toilets not connected to a public sewer system or an approved on-site sewage management system.

(6) "Sewage holding tank system" means a closed system including the plumbing fixtures and connections to the sewage holding tanks.

(7) "Special event" means any activity attracting more than 50 persons which is sponsored, organized, promoted, managed, or financed by any person, group, partnership, organization, corporation, business, or government entity where individuals congregate to participate in or observe an activity in outdoor or portable enclosed or semienclosed structures for more than two consecutive hours.

History. — Code 1981, § 12-15-3, enacted by Ga. L. 1990, p. 861, § 1; Ga. L. 2004, p. 357, § 2; Ga. L. 2012, p. 775, § 12/HB 942.

Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, a comma was inserted following "business" in paragraph (7).

12-15-4. When sewage holding tanks may be utilized.

Sewage holding tanks may be utilized for construction trailers only at a construction site during the construction period, and at the site of any special event during the period of the special event and for 48 hours before and after the special event. Sewage holding tanks shall not be used as an approved method of sewage disposal in obtaining an occupancy permit or permanent power for any structure.

History. — Code 1981, § 12-15-4, enacted by Ga. L. 1990, p. 861, § 1.

12-15-5. Sewage holding tank specifications; removal of sewage from tanks; disposal of sewage; manifests.

(a) Sewage holding tanks shall be maintained in a clean, sanitary, and functional condition and shall be constructed of impervious materials. Sewage holding tanks shall be watertight and capable of containing the sewage in a sanitary manner and shall be adequate in size to contain the sewage from the flush toilets being served by the tank and shall be serviced at least once per week while in use so that the tank will not be filled to more than one-half of its volume between regularly scheduled service. The prime contractor at a construction site or sponsor at a special event must monitor sewage holding tank capacity and ensure that the tank volume will not exceed one-half of the tank capacity at any time.

(b) Any defective or inadequate holding tank shall be repaired immediately or removed from service.

(c) Removal of sewage from sewage holding tanks shall be accomplished in a clean and sanitary manner by means of a vacuum hose and shall be received into a leakproof tank truck, approved and licensed for such service by the local health department for transport. Any sewage spilled, leaked, discharged, or otherwise released or removed from a sewage holding tank to any location other than a leakproof tank truck shall be deemed a violation of Article 2 of Chapter 5 of this title, the "Georgia Water Quality Control Act," and such violation shall be punishable under the provisions of said Article 2.

(d) The sewage from sewage holding tanks carried by tank trucks shall be disposed only at a sewage treatment plant which is owned and operated by a city or county government and which holds a valid permit from the division. Such disposal shall occur only with the permission of the city or county government which owns the sewage treatment plant. Any disposal of sewage from a tank truck at any location other than the place inside the property boundaries of a sewage treatment plant designated by the plant's owner shall be deemed to be a violation of Article 2 of Chapter 5 of this title. Such violation shall be punishable under the provisions of said Article 2.

(e) The sewage holding tank provider shall be responsible for maintaining a manifest system to ensure that all sewage pumped from a holding tank is disposed of in accordance with subsection (d) of this Code section. A responsible employee of the city or county sewage treatment plant which receives the sewage must sign a manifest for each load of sewage received, and the sewage holding tank provider

must make the manifests available on each tank truck at any time for inspection by the division or any county board of health.

History. — Code 1981, § 12-15-5, enacted by Ga. L. 1990, p. 861, § 1.
Code Commission notes. — Pursuant to Code Section 28-9-5, in 1990, a comma was deleted following "owner" in the third sentence of subsection (d).

12-15-6. Responsibility for ensuring compliance with article.

The prime contractor named in the construction permit or the sponsor of a special event and the sewage holding tank service provider shall be responsible for ensuring that the appropriate provisions of this article are complied with.

History. — Code 1981, § 12-15-6, enacted by Ga. L. 1990, p. 861, § 1; Ga. L. 2004, p. 357, § 2.

12-15-7. Enforcement of compliance with article.

The department and respective county boards of health and their duly authorized agents are authorized to enforce compliance with this article and rules and regulations promulgated and adopted pursuant to this article.

History. — Code 1981, § 12-15-7, enacted by Ga. L. 1990, p. 861, § 1; Ga. L. 2004, p. 357, § 2.

12-15-8. Violations.

Any person violating the provisions of this article shall be deemed to be in violation of Article 2 of Chapter 5 of this title. Any such violation shall be punishable under the provisions of said Article 2.

History. — Code 1981, § 12-15-8, enacted by Ga. L. 1990, p. 861, § 1; Ga. L. 2004, p. 357, § 2.

ARTICLE 2

COMMERCIAL WASTE

12-15-20. Definitions.

As used in this article, the term:

(1) "Commercial waste" means:

(A) Nontoxic, nonhazardous liquid waste water from commercial facilities;

(B) Grease interceptor contents generated by a commercial food operation or institutional food preparation facility including without limitation fats, oil, grease, and food scraps; or

(C) Any oil waste residue produced from vehicle maintenance or washing that discharges to an oil-water separator or sand trap.

(2) "Department" means the Department of Natural Resources.

(3) "Division" means the Environmental Protection Division of the department.

(4) "Local governing authority" means the governing authority of a county or municipality.

(5) "Transporter" means any person or firm which owns or operates one or more waste tank trucks which receive or dispose of commercial waste in this state.

History. — Code 1981, § 12-15-20, enacted by Ga. L. 2004, p. 357, § 3.

12-15-21. Removal of commercial waste in clean and sanitary fashion; registration of waste transporter; disposal; manifest system; penalty for violations.

(a)(1) Removal of commercial waste from any grease interceptor, sand trap, oil-water separator, or grit trap that is not connected to an on-site sewage management system for the purpose of transporting such waste to a disposal site shall be accomplished in a clean and sanitary manner by means of a vacuum hose or pump that shall remove the entire contents of the holding tank or pretreatment system being serviced; and such waste removed shall be received, unmingled with any hazardous waste or septic waste, into a leakproof tank truck approved and permitted for such service as provided by paragraph (2) of this subsection. Any commercial waste spilled, leaked, discharged, or otherwise released or removed from a grease interceptor, sand trap, oil-water separator, or grit trap that is not connected to an on-site sewage management system to any location other than a licensed leakproof tank truck shall be deemed a violation of this Code section.

(2) Any transporter shall register with the division or the local governing authority or its designee of any county or municipality in this state in which the transporter receives or disposes of commercial waste, and registration with the division or any such local governing authority shall be valid for operation throughout the state. Such registration shall be made on a standard form prescribed by rule or regulation of the department.

(3) Any commercial waste tank truck which receives or disposes of commercial waste in this state shall be inspected and permitted annually for purposes of compliance with the requirements of this subsection by the local governing authority or its designee of any county or municipality in this state in which the tank truck receives or disposes of commercial waste, and a single permit issued by any such local governing authority shall be valid for operation of such truck throughout the state. Such permit shall be on a standard form prescribed by rule or regulation of the department. The permit applicant shall be required to identify the facilities at which waste carried by such truck will be disposed, and such facilities shall be identified on and be a condition of such permit. For any transporter, the amount of such annual permit fee shall be $250.00 for the first truck and $100.00 for each additional truck.

(b) Commercial waste vacuumed or pumped from any grease interceptor, sand trap, oil-water separator, or grit trap that is not connected to an on-site sewage management system and which waste is carried by tank trucks and disposed therefrom in this state shall be disposed only at a facility which is authorized by law to receive and process such waste. No person shall dispose of commercial waste from a tank truck at any location in this state other than the place inside the property boundaries designated for such waste by the authorized facility's owner.

(c) Any originator in this state, transporter, or disposal site operator in this state of any load of commercial waste vacuumed or pumped from any grease interceptor, sand trap, oil-water separator, or grit trap that is not connected to an on-site sewage management system shall be each responsible for maintaining a manifest system for such load of commercial waste, and the transporter shall certify on its manifest that such load of commercial waste is disposed in accordance with subsection (b) of this Code section or in accordance with the law of such other state in which it is disposed. The forms for such manifests shall be prescribed by rule or regulation of the department. Such manifests shall be maintained at the principal places of business of the originator, transporter, and disposal site operator for not less than three years from the date of waste removal, transport, or disposal; except that the transporter's manifests covering not less than the immediately preceding 30 day period for a particular truck shall be kept in the transporter's tank truck at all times when operating in this state. Such manifests shall be made available at any time for inspection by the division or any local governing authority or the designee thereof.

(d) Any person who violates any provision of this article, the rules and regulations adopted pursuant to this article, or any permit condition or limitation established pursuant to this article shall be liable for a civil penalty not to exceed $2,500.00 per violation. For the purpose of

enforcing the provisions of this article, notwithstanding any provision in Code Section 36-35-6, any other provision of law, or any municipal charter to the contrary, municipal courts shall have jurisdiction in cases of violations committed within municipalities and shall be authorized to impose a civil penalty not to exceed $2,500.00 for each violation. Magistrate courts shall have jurisdiction in cases of violations of this article committed within unincorporated areas of counties and shall be authorized to impose a civil penalty not to exceed $2,500.00 for each violation.

History. — Code 1981, § 12-15-21, enacted by Ga. L. 2004, p. 357, § 3.

12-15-22. Promulgation of rules and regulations.

The department shall promulgate such rules and regulations as are reasonable and necessary for purposes of enforcement of this article not later than December 31, 2004.

History. — Code 1981, § 12-15-22, enacted by Ga. L. 2004, p. 357, § 3.

12-15-23. Enforcement of compliance with article.

The respective local governing authorities and their duly authorized agents are authorized to enforce compliance with this article and rules and regulations promulgated and adopted pursuant to this article.

History. — Code 1981, § 12-15-23, enacted by Ga. L. 2004, p. 357, § 3.

12-15-24. Enactment and enforcement of local ordinances.

This article shall be cumulative and shall not prohibit the enactment and enforcement of local ordinances by the governing authority of a county or municipality on this subject which are not in conflict with this article; provided, however, that such local governing authority shall be required to provide timely written notice to the division of any enforcement action taken pursuant to such an ordinance against an operator permitted under this article who is alleged to be in violation of such local ordinance. The division shall be notified of the initiation of any such local enforcement action and of the final conclusions or ultimate outcome of any such action.

History. — Code 1981, § 12-15-24, enacted by Ga. L. 2004, p. 357, § 3.

CHAPTER 16

ENVIRONMENTAL POLICY AND REGULATIONS

Article 1

Environmental Policy

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12-16-2. Legislative findings.
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Article 2

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12-16-20. Definitions.
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12-16-22. Exceptions allowed for public health and welfare.
12-16-23. Construction with Administrative Procedure Act.

Law reviews. — For annual eleventh circuit survey of environmental law, see 42 Mercer L. Rev. 1411 (1991). For annual survey article on local government law, see 52 Mercer L. Rev. 341 (2000).

RESEARCH REFERENCES

Am. Jur. 2d. — 61B Am. Jur. 2d, Pollution Control, § 80 et seq.

OPINIONS OF THE ATTORNEY GENERAL

Acquisition of land by state agencies. — State Properties Commission may require state agencies to demonstrate compliance with the Environmental Policy Act, O.C.G.A. T. 12, C. 16, before acquiring real property for activities which will be subject to the Act. 1992 Op. Att'y Gen. No. 92-5.

ARTICLE 1

ENVIRONMENTAL POLICY

Editor's notes. — Ga. L. 2004, p. 329, § 1, not codified by the General Assembly, designated the existing provisions of Chapter 16 as Article 1, effective July 1, 2004.

Law reviews. — For comment, "NEPA and Gentrification: Using Federal Environmental Review to Combat Urban Displacement," see 70 Emory L.J. 711 (2021).

12-16-1. Short title.

This article shall be known and may be cited as the "Environmental Policy Act."

History. — Code 1981, § 12-16-1, enacted by Ga. L. 1991, p. 1728, § 1; Ga. L. 2004, p. 329, § 2.

OPINIONS OF THE ATTORNEY GENERAL

Construed with O.C.G.A. §§ 27-3-132 and 32-2-3. — Factors enumerated in O.C.G.A. T. 12, C. 16 must be considered when evaluating environmental concerns under O.C.G.A. § 32-2-3, and the provisions of O.C.G.A. § 27-3-132 are not repealed by implication by the Georgia Environmental Policy Act, O.C.G.A. § 12-16-1. 1991 Op. Att'y Gen. No. 91-29.

Government agencies included in Act. — As the definition of "government agency" in O.C.G.A. § 12-16-3(5) includes the Department of Transportation, Board of Regents, Department of Corrections, and other departments of state government, such entities are covered under the Georgia Environmental Policy Act, O.C.G.A. § 12-16-1 et seq. 1993 Op. Att'y Gen. No. U93-9.

RESEARCH REFERENCES

Am. Jur. Proof of Facts. — CERCLA Liability of Parent, Subsidiary, and Successor Corporation, 34 POF3d 387.

Citizens' Suit Under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and the Emergency Planning and Community Right-To-Know Act (EPCRA), 55 POF3d 155.

ALR. — Third-party defense to liability under § 107 of Comprehensive Environmental Response, Compensation, and Liability Act (42 USCS § 9607), 105 A.L.R. Fed 21.

Arranger liability of state government under § 107(a) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCS § 9607(a)), 130 A.L.R. Fed. 431.

Liability of local government under § 107(a) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCS § 9607(a)), 133 A.L.R. Fed. 293.

Equitable allocation of response costs in contribution action under § 113(f) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USCA § 9613(f): Factors affecting response cost liability of generator, broker or arranger, and transporter in single waste stream cases, 146 A.L.R. Fed. 363.

Supreme Court's views as to validity, construction and application of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USCA § 9601 et seq., 157 A.L.R. Fed. 291.

Amount and characteristics of wastes as equitable factors in allocation of response costs pursuant to § 113(f)(1) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 USCA § 9613(f)(1): multiple waste streams, 162 A.L.R. Fed. 371.

12-16-2. Legislative findings.

The General Assembly finds that:

(1) The protection and preservation of Georgia's diverse environment is necessary for the maintenance of the public health and welfare and the continued viability of the economy of the state and is a matter of the highest public priority;

(2) State agencies should conduct their affairs with an awareness that they are stewards of the air, land, water, plants, animals, and environmental, historical, and cultural resources;

(3) Environmental evaluations should be a part of the decision-making processes of the state; and

(4) Environmental effects reports can facilitate the fullest practicable provision of timely public information, understanding, and participation in the decision-making processes of the state.

History. — Code 1981, § 12-16-2, enacted by Ga. L. 1991, p. 1728, § 1.

12-16-3. Definitions.

As used in this article, the term:

(1) "A proposed governmental action which may significantly adversely affect the quality of the environment" means a project proposed to be undertaken by a government agency or agencies, for which it is probable to expect a significant adverse impact on the natural environment, including the state's air, land, water, plants, animals, historical sites or buildings, or cultural resources. Such actions shall not include: (A) emergency measures undertaken in response to an immediate threat to public health or safety; or (B) activities in which government agency participation is ministerial in nature, involving no exercise of discretion on the part of the government agency.

(2) "Director" means the director of the Environmental Protection Division of the Department of Natural Resources.

(3) "Division" means the Environmental Protection Division of the Department of Natural Resources.

(4) "Environmental effects report" means a report on a proposed governmental action which may significantly adversely affect the quality of the environment.

(5) "Government agency" means any department, board, bureau, commission, authority, or other agency of the state.

(6) "Land-disturbing activity" means scraping, plowing, clearing, dredging, grading, excavating, transporting, or filling of land or placement of any structure or impervious surface, dam, obstruction,

or deposit or placement of or alteration to any structure on or eligible for the Georgia Register of Historic Places; provided, however, that agricultural practices involving the establishment, cultivation, or harvesting of products of the field or orchard; the preparation and planting of pasture land; farm ponds; dairy operations; livestock and poultry management practices; and forestry land management practices, including harvesting of less than five acres of trees over two inches in diameter at breast height, are excluded from the definition of land-disturbing activity.

(7) "Proposed governmental action" means any proposed land-disturbing activity by a government agency or funded by a grant from a government agency, any proposed sale or exchange of more than five acres of state owned land, or any proposed harvesting of five acres or more of trees over two inches in diameter at breast height, but the term proposed governmental action does not include, among other things, the following:

(A) Any action or undertaking of a nongovernmental entity, even if that action or undertaking requires a permit, license, or other approval by a government agency;

(B) Any action or undertaking of a municipality, a county, or an authority of a municipality or county, unless more than 50 percent of the total cost is funded by a grant of a government agency or a grant of more than $250,000.00 is made by a government agency;

(C) The permitting or licensing by a government agency of an action or undertaking;

(D) The promulgation and implementation of rules and regulations by a government agency;

(E) The sale of bonds by a government agency or any program of loans funded by the sale of bonds by a government agency; or

(F) Litigation decisions made by a government agency.

(8) "Responsible official" means the official or body in charge of or authorized to act on behalf of a government agency.

History. — Code 1981, § 12-16-3, enacted by Ga. L. 1991, p. 1728, § 1; Ga. L. 2004, p. 329, § 2.

JUDICIAL DECISIONS

Cited in Georgia Council of Professional Archaeologists v. Board of Regents of Univ. Sys., 271 Ga. 757, 523 S.E.2d 879 (1999).

12-16-4. Determination of adverse effect on quality of environment; environmental effects report; consultation with other agencies; publication of notice of proposed action.

(a) The responsible official of the government agency shall determine if a proposed governmental action is a proposed governmental action which may significantly adversely affect the quality of the environment. If the responsible official determines that the proposed governmental action is a proposed governmental action which may significantly adversely affect the quality of the environment, the government agency responsible for such project shall prepare an environmental effects report including, but not limited to, a discussion of:

(1) The environmental impact of the proposed governmental action;

(2) Alternatives to the proposed governmental action, including no action;

(3) Any adverse environmental effects which cannot be avoided if the proposed governmental action is undertaken;

(4) Mitigation measures proposed to avoid or minimize the adverse impact of the proposed governmental action;

(5) The relationship between the value of the short-term uses of the environment involved in the proposed governmental action and the maintenance and enhancement of its long-term value;

(6) The effect of the proposed governmental action on the quality and quantity of water supply;

(7) The effect of the proposed governmental action on energy use or energy production; and

(8) Any beneficial aspects of the proposed governmental action, both short-term and long-term, and its economic advantages and disadvantages.

(b) Prior to the issuance of the environmental effects report, the responsible official should consult with and obtain the comments of any agency which has jurisdiction by law, special expertise, or other interest with respect to any environmental impact or resource.

(c) At least 45 days prior to making a decision as to whether to proceed with a proposed governmental action which may significantly adversely affect the quality of the environment, the responsible official shall publish in the legal organ of each county in which the proposed governmental action or any part thereof is to occur notice that an environmental effects report has been prepared. The responsible official

shall provide a copy of the environmental effects report and all other comments to the director. The responsible official shall also make the environmental effects report available to the public and to counties, municipalities, institutions, and individuals, upon request.

History. — Code 1981, § 12-16-4, enacted by Ga. L. 1991, p. 1728, § 1.

12-16-5. Public hearing; notice of decision; challenge to decision.

(a) If the responsible official receives, within 30 days of the publication of the notice in the legal organ of an affected county or counties, requests in writing for a public hearing from at least 100 persons who are residents of the State of Georgia, a public hearing shall be held by the responsible official or his designee in each county where the proposed governmental action for which an environmental effects report has been prepared or any part thereof is to take place. The responsible official or his designee may, in the sole discretion of the responsible official, hold a public hearing in each such county at any time after 30 days from the date of publication of the notice has elapsed even if less than 100 requests are received in writing from residents of the State of Georgia but only one public hearing in a county shall be required regardless of whether it is a mandatory or discretionary hearing.

(b) The responsible official shall consider all comments received either in writing or during the public hearing or hearings, if held. After considering these comments, the responsible official shall decide whether to proceed with the proposed governmental action as originally proposed, whether to proceed with changes, or whether not to proceed. Notice of the decision of the responsible official shall be given in writing to the director and published in the legal organ of each county in which the proposed governmental action or any part thereof is to occur.

(c) The decision of the responsible official to proceed with the proposed governmental action shall not create a cause of action in any person, corporation, association, county, or municipal corporation; provided, however, the actions of the responsible official in the procedure of giving notice by publication of the environmental effects report and notice by publication of the decision made based upon the report and public comments, if any, may be challenged pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," if the responsible official acts on behalf of a government agency which is subject to that act or by mandamus otherwise; but any such challenge must be commenced within 30 days after the date notice of the responsible official's decision made pursuant to subsection (b) of this Code section is first published in a legal organ of any affected county or counties.

History. — Code 1981, § 12-16-5, enacted by Ga. L. 1991, p. 1728, § 1.

JUDICIAL DECISIONS

Suit challenging a decision of the Board of Regents that a sale of state land was not a "proposed governmental action which may significantly adversely affect the quality of the environment" was barred by subsection (c) of O.C.G.A. § 12-16-5. Georgia Council of Professional Archaeologists v. Board of Regents of Univ. Sys., 271 Ga. 757, 523 S.E.2d 879 (1999).

12-16-6. Reconciliation of existing authority required.

All government agencies shall review their present statutory authority, administrative regulations, and current policies and procedures for the purpose of determining whether there are any deficiencies or inconsistencies therein which prohibit or hinder full compliance with the intent, purposes, and provisions of this article, including the guidelines issued pursuant to Code Section 12-16-8, and shall propose to the Governor not later than January 1, 1992, such measures as may be necessary to bring their authority, regulations, policies, and procedures into conformity with the intent, purposes, and procedures set forth in this article.

History. — Code 1981, § 12-16-6, enacted by Ga. L. 1991, p. 1728, § 1; Ga. L. 2004, p. 329, § 2.

12-16-7. Effect of article on federal environmental policy requirements.

Nothing in this article shall in any way affect or detract from specific statutory obligations of any government agency to comply with criteria or standards of environmental quality or to perform other statutory obligations imposed upon it, except those specified in Code Section 12-16-6; to coordinate or consult with any other government agency or federal agency; or to act, or refrain from acting, contingent upon the recommendations or certification of any other government agency or federal agency. A government agency shall be deemed to have complied with the requirements of this article for a proposed governmental action that requires and has received federal approval of an environmental document prepared in accordance with the National Environmental Policy Act of 1969, as amended, and its implementing regulations.

History. — Code 1981, § 12-16-7, enacted by Ga. L. 1991, p. 1728, § 1; Ga. L. 2004, p. 329, § 2.

RESEARCH REFERENCES

ALR. — Third-party defense to liability under § 107 of Comprehensive Environmental Response, Compensation, and Liability Act (42 USCS § 9607), 105 A.L.R. Fed 21.

Arranger liability of state government under § 107(a) of Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) (42 USCS § 9607(a)), 130 A.L.R. Fed. 431.

12-16-8. Director to issue guidelines to assist government agencies.

Prior to July 1, 1991, the director shall issue guidelines to assist government agencies in the preparation of environmental effects reports in accordance with this article, including, but not limited to, provisions for:

(1) Criteria for determining if a proposed governmental action may significantly adversely affect the quality of the environment;

(2) Comment upon the proposed governmental action by public and private organizations and individuals;

(3) The possibility of the preparation of single-program environmental effects reports if a series of governmental actions taken individually are of minimal adverse significance on the environment but the cumulative effect of the proposed government actions on the environment is significantly adverse or if a series of proposed government actions are related either geographically or as logical parts in a chain of contemplated actions; and

(4) The possibility of the preparation of modified environmental effects reports on remaining decisions significantly adversely affecting the quality of the environment that are parts of actions begun before but not completed before July 1, 1991.

History. — Code 1981, § 12-16-8, enacted by Ga. L. 1991, p. 1728, § 1; Ga. L. 2004, p. 329, § 2.

12-16-9. Limitation on requirement for environmental evaluation.

When a project of a department, municipality, county, or authority to construct or improve a public road or airport does not exceed $100 million in costs, such project shall not constitute a proposed governmental action which may significantly adversely affect the quality of the environment and the requirements of this article shall not be applicable, except that an environmental evaluation shall be considered in the decision-making process, consistent with paragraph (3) of Code

Section 12-16-2, when it is probable to expect significant adverse impact on historical sites or buildings and cultural resources.

History. — Code 1981, § 12-16-9, enacted by Ga. L. 2016, p. 147, § 1/SB 346.

ARTICLE 2

PROCEDURE FOR AMENDING REGULATIONS

12-16-20. Definitions.

As used in this article, the term:

(1) "Board" means the Board of Natural Resources.

(2) "Commissioner" means the commissioner of natural resources.

(3) "Covered action" means the issuance by the department or the division of any state-wide or regional permit or any standard or other policy contemplated by any state environmental law or environmental regulation.

(4) "Department" means the Department of Natural Resources.

(5) "Division" means the Environmental Protection Division of the Department of Natural Resources.

(6) "Environmental regulation" means a rule or regulation promulgated by the board to enforce or implement a state environmental law.

(7) "State environmental law" means any of the following Acts of the General Assembly, as now or hereafter amended:

(A) Part 3 of Article 2 of Chapter 4 of this title, the "Georgia Surface Mining Act of 1968";

(B) Article 2 of Chapter 5 of this title, the "Georgia Water Quality Control Act";

(C) Part 2 of Article 3 of Chapter 5 of this title, the "Ground-water Use Act of 1972";

(D) Code Section 12-5-31, relating to permits for withdrawal, diversion, or impoundment of surface waters and monitoring, recording, and reporting water withdrawn by certain irrigation systems;

(E) Part 3 of Article 3 of Chapter 5 of this title, the "Water Well Standards Act of 1985";

(F) Part 5 of Article 3 of Chapter 5 of this title, the "Georgia Safe Drinking Water Act of 1977";

(G) Part 3 of Article 5 of Chapter 5 of this title, the "Georgia Safe Dams Act of 1978";

(H) Chapter 7 of this title, the "Erosion and Sedimentation Act of 1975";

(I) Part 1 of Article 2 of Chapter 8 of this title, the "Georgia Comprehensive Solid Waste Management Act";

(J) Part 2 of Article 3 of Chapter 8 of this title, the "Georgia Hazardous Site Response Act";

(K) Article 9 of Chapter 8 of this title, the "Georgia Brownfield Act";

(L) Article 1 of Chapter 9 of this title, "The Georgia Air Quality Act";

(M) Article 2 of Chapter 9 of this title, the "Georgia Motor Vehicle Emission Inspection and Maintenance Act";

(N) Chapter 12 of this title, the "Georgia Asbestos Safety Act";

(O) Chapter 13 of this title, the "Georgia Underground Storage Tank Act";

(P) Chapter 14 of this title, relating to oil or hazardous material spills or releases;

(Q) Chapter 13 of Title 31, the "Georgia Radiation Control Act"; and

(R) Any Act of the General Assembly empowering and directing the board to comply with federal statutes relating to clean water, clean air, or the environment.

History. — Code 1981, § 12-16-20, enacted by Ga. L. 2004, p. 329, § 3; Ga. L. 2017, p. 774, § 12/HB 323.

12-16-21. Detailed statement of rationale for regulatory change required.

(a)(1) Prior to the board's promulgation or amendment of any environmental regulation or the department or division taking any covered action, the board, the department, or the division, as appropriate, shall prepare a detailed statement of rationale:

(A) Whenever the proposed environmental regulation or covered action will exceed or differ from the requirements of any federal regulation, standard, or policy on the same subject; or

(B) Whenever an environmental regulation or a covered action will:

(i) Result in the removal of any specific requirement, prohibition, or duty imposed by an existing environmental regulation, standard, or policy;

(ii) Result in any prohibition, requirement, or duty imposed by an existing environmental regulation, standard, or policy becoming narrower in scope of applicability;

(iii) Decrease or render any requirement imposed by an existing environmental regulation, standard, or policy less stringent or restrictive; or

(iv) Repeal an existing environmental regulation, standard, or policy.

(2) Such statement shall accompany any notice required by Code Section 50-13-4.

(b) The detailed statement of rationale shall state the basis for the regulation or covered action, including the scientific or technical basis, alternative policy considerations, and estimated cost to implement to the department and the regulated community and shall identify any studies, reports, policies, or statements of professional judgment or administrative need relied upon in developing the environmental regulation or covered action.

(c) The scope and level of detail of each detailed statement of rationale shall be determined by the director of the division or the commissioner.

History. — Code 1981, § 12-16-21, enacted by Ga. L. 2004, p. 329, § 3.

12-16-22. Exceptions allowed for public health and welfare.

Any other provision of this article to the contrary notwithstanding, the board may adopt an environmental regulation, and the department or division may take a covered action, without presenting the required statement of rationale if the commissioner or the director of the division determines that an emergency action is necessary to protect the public health and welfare.

History. — Code 1981, § 12-16-22, enacted by Ga. L. 2004, p. 329, § 3.

12-16-23. Construction with Administrative Procedure Act.

The provisions of this article are in addition to, and not in lieu of, any applicable provisions for promulgation of rules in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

History. — Code 1981, § 12-16-23, enacted by Ga. L. 2004, p. 329, § 3.

CHAPTER 17

PETROLEUM PIPELINES

Sec.
12-17-1. Definitions.
12-17-2. Permit required.
12-17-3. Permit application requirements; notice.
12-17-4. Considerations in permitting.
12-17-5. Aggrieved or adversely affected defined; administrative review.
12-17-6. Regulations for enforcement.

Cross references. — Eminent domain for petroleum pipelines, § 22-3-80.

Administrative rules and regulations. — Petroleum Pipeline Eminent Domain Permit Procedures, Official Compilation of the Rules and Regulations of the State of Georgia, Georgia Department of Natural Resources, Environmental Protection, Subject 391-3-23.

RESEARCH REFERENCES

ALR. — Validity, construction, and application of Pipeline Safety Act, 49 U.S.C.A. §§ 60101 et seq., and other acts subsumed therein, 186 A.L.R. Fed. 361.

12-17-1. Definitions.

As used in this chapter, the term:

(1) "Board" means the Board of Natural Resources.

(2) "Director" means the director of the Environmental Protection Division of the Department of Natural Resources.

(3) "Division" means the Environmental Protection Division within the Department of Natural Resources.

(4) "Existing petroleum pipeline" means a petroleum pipeline constructed and in use prior to January 1, 2016.

(5) "Expansion" means a modification to an existing petroleum pipeline within the existing easement or right of way that increases the supply of petroleum by:

(A) Increasing the diameter of an existing petroleum pipeline; or

(B) Constructing a parallel petroleum pipeline.

(6) "Extension" means a modification to an existing petroleum pipeline that increases the length or footprint of the existing petroleum pipeline by a distance greater than one linear mile.

(7) "Maintenance" means:

(A) The care or upkeep of an existing petroleum pipeline and its appurtenances;

(B) The replacement of an existing petroleum pipeline within the same easement or right of way; or

(C) The relocation of an existing petroleum pipeline for repair within one linear mile of the existing petroleum pipeline's alignment.

(8) "New petroleum pipeline" means a petroleum pipeline that was not constructed and in use prior to January 1, 2016. The term "new petroleum pipeline" shall not include an expansion, an extension, or any maintenance.

(9) "Parallel petroleum pipeline" means a petroleum pipeline that runs side by side to an existing petroleum pipeline.

(10) "Petroleum pipeline" means a fixed conduit constructed to transport petroleum or petroleum products in or through this state.

(11) "Petroleum pipeline company" means a corporation organized under the laws of this state or which is organized under the laws of another state and is authorized to do business in this state and which is specifically authorized by its charter or articles of incorporation to construct and operate petroleum pipelines for the transportation of petroleum and petroleum products.

History. — Code 1981, § 12-17-1, enacted by Ga. L. 2017, p. 744, § 1/HB 413.

12-17-2. Permit required.

On or after July 1, 2017, any construction of a new petroleum pipeline or an extension in this state shall require a permit from the director as provided in this chapter. No construction activity on any portion of a new petroleum pipeline or any extension shall occur unless and until such permit is obtained. Such permit shall be required without regard to whether the petroleum pipeline company intends to exercise any power of eminent domain pursuant to Article 4 of Chapter 3 of Title 22 and shall be in addition to any other permits or authorization required under this title or any other provision of state or federal law.

History. — Code 1981, § 12-17-2, enacted by Ga. L. 2017, p. 744, § 1/HB 413.

12-17-3. Permit application requirements; notice.

(a) Any application to the division for a permit under this chapter shall contain, at a minimum, the following:

(1) Siting information, including, but not limited to, a map showing the proposed location of the route of the new petroleum pipeline or of the extension;

(2) Information obtained from a cultural resource assessment conducted along the proposed route of the new petroleum pipeline or of the extension;

(3) Information as to geological and hydrologic features along the proposed route of the new petroleum pipeline or of the extension;

(4) Information on the presence of threatened and endangered species along the proposed route of the new petroleum pipeline or of the extension;

(5) Environmental information described in 40 C.F.R. Sections 1502.12 through 1502.18 as such provisions existed on January 1, 2017, to the extent required by rules and regulations of the board;

(6) Evidence of financial responsibility by the petroleum pipeline company; and

(7) Any other information that the board may require by rules and regulations.

(b) Within ten days of applying for a permit, the applicant shall provide:

(1) Public notice in the legal organ of each county through which the proposed route of the new petroleum pipeline or of the extension is to be located; and

(2) Written notice of the filing of an application under this Code section to all landowners whose property is located within 1,000 feet of the proposed route of the new petroleum pipeline or of the extension. Such notice shall be delivered to each landowner and contain the following language in boldface type:

"YOUR PROPERTY IS LOCATED WITHIN 1,000 FEET OF A PROPOSED PETROLEUM PIPELINE FOR WHICH AN APPLICATION FOR A PERMIT HAS BEEN FILED PURSUANT TO CHAPTER 17 OF TITLE 12 OF THE OFFICIAL CODE OF GEORGIA ANNOTATED. SAID CHAPTER ALONG WITH ARTICLE 4 OF CHAPTER 3 OF TITLE 22 OF THE OFFICIAL CODE OF GEORGIA ANNOTATED PROVIDE SPECIFIC REQUIREMENTS WHICH MUST BE FOLLOWED BY PETROLEUM PIPELINE COMPANIES BEFORE THEY MAY BUILD A NEW PETROLEUM PIPELINE OR MODIFY AN EXISTING PETROLEUM PIPELINE. THESE PROVISIONS OF THE OFFICIAL CODE OF GEORGIA ANNOTATED ALSO PROVIDE SPECIFIC RIGHTS

FOR YOUR PROTECTION. YOU SHOULD FAMILIARIZE YOURSELF WITH THOSE REQUIREMENTS AND YOUR RIGHTS."

History. — Code 1981, § 12-17-3, enacted by Ga. L. 2017, p. 744, § 1/HB 413.

12-17-4. Considerations in permitting.

(a) In making the decision as to whether to grant any permits required by this chapter, the director shall determine whether the portion of the petroleum pipeline for which the permit is sought is consistent with and not an undue hazard to the environment and natural resources of this state after consideration of the following factors:

(1) The information required to be contained in the petroleum pipeline company's application under Code Section 12-17-3;

(2) The direct environmental impacts of the proposed new petroleum pipeline or the proposed extension;

(3) Alternative alignments to the proposed new petroleum pipeline or the proposed extension;

(4) Public comment; and

(5) Such other factors that the director deems reasonable and applicable or that the board by rules and regulations has established in order to protect the best interests of this state, its citizens, and its natural resources.

(b) The applicant shall bear the burden of proof to demonstrate that the director should issue a permit as provided under this chapter.

(c) The director's decision shall be based on the record before the director, which shall include, but not be limited to, the applicant's submissions, written comments submitted to the director, and research the director may conduct in analyzing the application.

History. — Code 1981, § 12-17-4, enacted by Ga. L. 2017, p. 744, § 1/HB 413.

12-17-5. Aggrieved or adversely affected defined; administrative review.

(a) As used in this Code section, the term "aggrieved or adversely affected" means a challenged action has caused or will cause persons injury in fact and where the injury is to an interest within the zone of interests to be protected or regulated by the provisions of this chapter that the director is empowered to administer and enforce.

(b) Any person who is aggrieved or adversely affected by a decision or action of the director under this chapter shall, upon filing a petition within 30 days after the issuance of such order or taking of such action, have a right to a hearing before an administrative law judge appointed by the board. The hearing before the administrative law judge shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act." The decision of the administrative law judge shall constitute the final decision of the director, and any party to the hearing, including the department, shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act."

(c) In the event the director asserts in response to the petition before the administrative law judge that the petitioner is not aggrieved or adversely affected, the administrative law judge shall take evidence and hear arguments on this issue and thereafter make a ruling on same before continuing with the hearing. The burden of going forward with evidence on this issue shall rest with the petitioner.

History. — Code 1981, § 12-17-5, enacted by Ga. L. 2017, p. 744, § 1/HB 413.

12-17-6. Regulations for enforcement.

(a) No later than July 1, 2018, the board shall, pursuant to Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," promulgate such rules and regulations as are necessary and reasonable for purposes of enforcement of this chapter, which shall include, but may not be limited to:

(1) The submission of a permit application and provisions for the application review process, not to exceed 150 days in length;

(2) Provisions for a nonrefundable application fee which shall be sufficient to defray the administrative costs of review of the application by the division;

(3) Reasonable public notice of the filing of permit applications to any landowner who, after reasonable efforts, cannot personally be given the notice required in subsection (b) of Code Section 12-17-3;

(4) Provisions for public meetings to be held prior to any action on any permits; and

(5) Evidence of financial responsibility as required by paragraph (6) of subsection (a) of Code Section 12-17-3.

(b) No permit shall be granted by the division prior to the promulgation of rules and regulations as provided for in this Code section; provided, however, that once such rules and regulations have been

promulgated and applications are accepted for filing, if any application is not approved or is denied within 150 days of the date such application is filed with the division under Code Section 12-17-3, the application shall be deemed to be approved by operation of law.

History. — Code 1981, § 12-17-6, enacted by Ga. L. 2017, p. 744, § 1/HB 413.

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Fee.
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Field.
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Forest.
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Georgia scenic rivers act of 1969, §12-5-351.
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Guarantor.
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Harvest.
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Hazardous waste facility.
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Hazardous waste generation.
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Height.
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Human remains.
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Hydraulic fracturing.
Oil and gas and deep drilling act of 1975, §12-4-42.
Hydrocarbons.
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Illegal mineral.
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Oil and gas and deep drilling act of 1975, §12-4-42.
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Industrial wastes.
Georgia water quality control act, §12-5-22.
Industrial well.
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Inspection term.
Motor vehicle emission control, §12-9-43.
Inspector.
Georgia surface mining act of 1968, §12-4-72.
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Intensive-use area.
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DEFINED TERMS —Cont'd
Inventory.
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Irrigated land.
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Irrigation efficiency.
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Irrigation well.
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Islands.
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Lake.
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Landfill.
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Landowner.
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Large quantity generator.
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Larger common plan of development or sale.
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Leachate collection system.
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Lessee.
Georgia water supply act of 2008, §12-5-471.
Letter of permission.
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Local issuing authority.
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Local jurisdiction.
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Historic preservation grant program, §12-3-58.
Local unit of government.
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Shore protection, §12-5-232.
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Major stream.
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Georgia air quality act, §12-9-3.
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Erosion and sedimentation act of 1975, §12-7-3.
Manufacturers.
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Marshlands.
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Materials recovery facility.
Georgia comprehensive solid waste management act, §12-8-22.
May.
Georgia water supply act of 2008, §12-5-471.
Means of emission limitation.
Georgia air quality act, §12-9-3.
Mechanic inspector.
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Mined land use plan.
Georgia surface mining act of 1968, §12-4-72.
Mineral.
Georgia surface mining act of 1968, §12-4-72.
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Mineral product.
Oil and gas and deep drilling act of 1975, §12-4-42.
Mining operator.
Georgia surface mining act of 1968, §12-4-72.
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Model year.
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Modification.
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Georgia comprehensive solid waste management act, §12-8-22.
Municipal corporations.
Georgia water supply act of 2008, §12-5-471.
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Municipality.
Georgia safe drinking water act of 1977, §12-5-172.
Georgia water supply act of 2008, §12-5-471.
Municipal solid waste.
Georgia comprehensive solid waste management act, §12-8-22.
Municipal solid waste disposal facility.
Georgia comprehensive solid waste management act, §12-8-22.
Municipal solid waste landfill.
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Museum.
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NAAQS.
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National ambient air quality standard.
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Native forest.
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Nonattainment area.
Motor vehicle emission control, §12-9-43.
Nonconsumptive use.
Ground water use act of 1972, §12-5-92.
Nongame wildlife.
Conservation and natural resources, §12-3-601.
Nongovernmental entity.
Outdoor stewardship act, §12-6A-4.
Nonoperational storage tank.
Georgia underground storage tank act, §12-13-3.
Nonpoint source.
Georgia water quality control act, §12-5-22.
Nonprofit organization.
Historical and cultural museum assistance programs, §12-3-57.
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Nonpublic water well.
Water well standards act of 1985, §12-5-122.
Nonrecycled feedstock.
Georgia comprehensive solid waste management act, §12-8-22.
NPDES permit, §12-5-23.3.
Nutrient.
Water pollution, §12-5-27.1.
Object of cultural patrimony.
Historic site protection, §12-3-620.
Obligation.
Georgia water supply act of 2008, §12-5-471.
Oil.
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Oil and gas and deep drilling act of 1975, §12-4-42.
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Onshore facility.
Georgia hazardous site response act, §12-8-92.
Operate.
Georgia safe dams act of 1978, §12-5-372.

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Operations.
Georgia safe dams act of 1978, §12-5-372.
Operator.
Erosion and sedimentation act of 1975, §12-7-3.
Georgia comprehensive solid waste management act, §12-8-22.
Georgia hazardous site response act, §12-8-92.
Georgia underground storage tank act, §12-13-3.
Ordinary high-water mark.
Shore protection, §12-5-232.
Ordinary low-water mark.
Shore protection, §12-5-232.
Organization.
Georgia hazardous waste management act, §12-8-62.
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Other wastes.
Georgia water quality control act, §12-5-22.
Outdoor recreation equipment establishments.
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Out-of-state generator.
Georgia hazardous waste management act, §12-8-65.3.
Overburden.
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Owners.
Cave protection act of 1977, §12-4-142.
Georgia hazardous site response act, §12-8-92.
Georgia underground storage tank act, §12-13-3.
Metropolitan river protection act, §12-5-441.
Motor vehicle emission control, §12-9-43.
Oil and gas and deep drilling act of 1975, §12-4-42.
Package.
Product packaging, §12-8-161.
Packaging component.
Product packaging, §12-8-161.
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Park.
State parks and recreational areas, §12-3-30.

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Park, historical site or recreational area.
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Participant.
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Peak.
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Period of covered noncompliance.
Georgia air pollution act of 1978, §12-9-22.
Permanently protected conservation areas.
Outdoor stewardship act, §12-6A-4.
Permittee.
Flint river drought protection act, §12-5-542.
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Person.
Alabama-Coosa-Tallapoosa river basin compact, §12-10-110.
Appalachicola-Chattahoochee-Flint river basin compact, §12-10-100.
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Costs of oil spill response, §12-5-500.
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Georgia air quality act, §12-9-3.
Georgia asbestos safety act, §12-12-3.
Georgia comprehensive solid waste management act, §12-8-22.
Georgia hazardous site response act, §12-8-92.
Georgia hazardous waste management act, §12-8-62.
Georgia safe dams act of 1978, §12-5-372.
Georgia safe drinking water act of 1977, §12-5-172.
Georgia underground storage tank act, §12-13-3.
Georgia water quality control act, §12-5-22.
Ginseng protection act of 1979, §12-6-151.
Ground water use act of 1972, §12-5-92.
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Person —Cont'd
Metropolitan river protection act, §12-5-441.
Motor vehicle emission control, §12-9-43.
Oil and gas and deep drilling act of 1975, §12-4-42.
Palmetto berries, §12-6-250.
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Shore protection, §12-5-232.
Water well standards act of 1985, §12-5-122.
Wildflower preservation act of 1973, §12-6-171.
Person who has contributed or is contributing to a release.
Georgia hazardous site response act, §12-8-92.
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Petroleum.
Brownfields, §12-8-202.
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Petroleum pipeline company, §12-17-1.
Petroleum pipelines, §12-17-1.
Petroleum product.
Georgia underground storage tank act, §12-13-3.
Pine straw.
Harvest and sale of pine straw, §12-6-200.
Pine straw dealer.
Harvest and sale of pine straw, §12-6-200.
Pit.
Georgia surface mining act of 1968, §12-4-72.
Plan.
Erosion and sedimentation act of 1975, §12-7-3.
Metropolitan river protection act, §12-5-441.
PMP.
Georgia safe dams act of 1978, §12-5-376.1.
Point of demonstration wells.
Voluntary remediation program, §12-8-102.
Point of exposure.
Voluntary remediation program, §12-8-102.

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Point source.
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Policy.
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Political subdivision.
Coastal marshlands protection act, §12-5-282.
Metropolitan river protection act, §12-5-441.
Pollutant.
Georgia water quality control act, §12-5-22.
Water well standards act of 1985, §12-5-122.
Pollution.
Georgia water quality control act, §12-5-22.
Pollution prevention.
Georgia hazardous site response act, §12-8-92.
Pool.
Oil and gas and deep drilling act of 1975, §12-4-42.
Postclosure.
Georgia comprehensive solid waste management act, §12-8-22.
Post-use plastics.
Georgia comprehensive solid waste management act, §12-8-22.
POTW.
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Preexisting release.
Brownfields, §12-8-202.
Prescribed burning.
Forest resources, §12-6-147.
Preservation.
Historic preservation grant program, §12-3-58.
Private dock.
Coastal marshlands protection act, §12-5-282.
Private entity.
Heritage trust program, §12-3-72.
Private industry solid waste disposal facility.
Georgia comprehensive solid waste management act, §12-8-22.
Process scrap tires, §12-8-40.1.
Producer.
Oil and gas and deep drilling act of 1975, §12-4-42.

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Professional engineer.
Water well standards act of 1985, §12-5-122.
Professional forestry.
Practice of professional forestry, §12-6-41.
Professional geologist.
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Program.
Historical and cultural museum assistance programs, §12-3-57.
Project proposal.
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Georgia music hall of fame authority, §12-3-521.
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North Georgia mountains authority, §12-3-291.
Oconee river greenway authority, §12-3-401.
Regional solid waste management authorities act, §12-8-52.
Solid waste management authorities, §12-8-59.2.
Sports hall of fame authority, §12-3-561.
Stone Mountain Memorial Association, §12-3-191.
Proof of compliance.
Forestry licenses, §12-6-49.1.
Proof of financial assurance.
Voluntary remediation program, §12-8-102.
Property interest.
Brownfields, §12-8-202.
Proposed governmental action.
Environmental policy act, §12-16-3.
Prospective purchaser.
Brownfields, §12-8-202.
Protected mountain.
Conservation and natural resources, §12-2-8.
Protected species.
Wildflower preservation act of 1973, §12-6-171.
Protective casing.
Water well standards act of 1985, §12-5-122.

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Public lands.
Wildflower preservation act of 1973, §12-6-171.
Publicly owned treatment works.
Water pollution, §12-5-30.1.
Public notice.
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