

House Bill 966

By: Representatives Caldwell of the 131st, Buckner of the 137th, Willard of the 51st,
Wilkinson of the 52nd, Quick of the 117th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 7 of Title 12 of the Official Code of Georgia Annotated, relating to the
2 control of soil erosion and sedimentation, so as to provide for a buffer along all state waters
3 to be measured outward from the ordinary high water mark and within which certain
4 land-disturbing activities are prohibited; to provide for purposes and legislative intent; to
5 provide for uniformity; to provide for related matters; to repeal conflicting laws; and for
6 other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 It is the purpose of this Act to reconcile the language of Code Section 12-7-6 with the
10 original intent of the General Assembly and the corresponding implementation and
11 enforcement of such Code section prior to the decision of the Supreme Court of Georgia in
12 Turner v. Georgia River Network, 297 Ga. 306. In such case, the Court recognized the
13 statutory ambiguity and invited the General Assembly to clarify its intent if buffers were to
14 be consistently applied along all state waters. It is thus the intent of the General Assembly
15 to so clarify the statute to prevent additional costly litigation at taxpayer expense and to
16 protect landowners by providing uniformity and predictability in the law and its application.

17 **SECTION 2.**

18 Chapter 7 of Title 12 of the Official Code of Georgia Annotated, relating to the control of
19 soil erosion and sedimentation, is amended in Code Section 12-7-3, relating to definitions,
20 by revising paragraph (2) and by adding a new paragraph to read as follows:

21 "(2) 'Buffer' means the area of land immediately adjacent to ~~the banks of~~ state waters in
22 its natural state of vegetation, which facilitates the protection of water quality and aquatic
23 habitat."

24 "(10.4) 'Ordinary high water mark' means the line of demarcation along state waters
25 established by the fluctuations of water and indicated by physical characteristics such as

26 a clear, natural line impressed on the bank, shelving, changes in the character of soil,
 27 destruction or wresting of terrestrial vegetation, the presence of litter and debris, or other
 28 appropriate means that consider the characteristics of the surrounding areas."

29 **SECTION 3.**

30 Said chapter is further amended in subsection (b) of Code Section 12-7-6, relating to best
 31 management practices and minimum requirements for erosion and sedimentation control, by
 32 revising subparagraph (15)(A) and paragraph (16) as follows:

33 "(15)(A) There is established a 25 foot buffer along the banks of all state waters, as,
 34 Such buffer shall be measured horizontally from the point where vegetation has been
 35 wrested by normal stream flow or wave action outward from the ordinary high water
 36 mark, except:

- 37 (i) As provided by paragraphs (16) and (17) of this subsection;
 38 (ii) Where the director determines to allow a variance that is at least as protective of
 39 natural resources and the environment;
 40 (iii) Where otherwise allowed by the director pursuant to Code Section 12-2-8;
 41 (iv) Where a drainage structure or a roadway drainage structure must be constructed,
 42 provided that adequate erosion control measures are incorporated in the project plans
 43 and specifications and are implemented;
 44 (v) Along any ephemeral stream. As used in this division, the term 'ephemeral
 45 stream' means a stream:

- 46 (I) That under normal circumstances has water flowing only during and for a short
 47 duration after precipitation events;
 48 (II) That has the channel located above the ground-water table year round;
 49 (III) For which ground water is not a source of water; and
 50 (IV) For which runoff from precipitation is the primary source of water flow; or
 51 (vi) Where shoreline stabilization is installed; provided, however, that this exception
 52 shall be limited to the construction of bulkheads and sea walls only to the extent
 53 required to prevent the erosion of the shoreline. This exception shall be limited to
 54 Lake Oconee and Lake Sinclair and shall be limited to the duration of such
 55 construction.

56 Unless exempted under division (v) of this subparagraph, buffers of at least 25 feet
 57 established pursuant to Part 6 of Article 5 of Chapter 5 of this title shall remain in force
 58 unless a variance is granted by the director as provided in this paragraph."

59 "(16) There is established a 50 foot buffer, as measured horizontally from the point
 60 where vegetation has been wrested by normal stream flow or wave action, along the
 61 banks of any all state waters classified as 'trout streams' pursuant to Article 2 of Chapter

62 5 of this title except where a roadway drainage structure must be constructed; provided,
63 however, that small springs and streams classified as trout streams which discharge an
64 average annual flow of 25 gallons per minute or less shall have a 25 foot buffer or they
65 may be piped, at the discretion of the landowner, pursuant to the terms of a rule providing
66 for a general variance promulgated by the board providing for notice to the division or
67 local issuing authority of the location and extent of the piping and prescribed
68 methodology for minimizing the impact of such piping and for measuring the volume of
69 water discharged by the stream. Any such pipe must stop short of the downstream
70 landowner's property, and the landowner must comply with the buffer requirement for
71 any adjacent trout streams. The director may grant a variance from such buffer to allow
72 land-disturbing activity, provided that adequate erosion control measures are incorporated
73 in the project plans and specifications and are implemented. Any buffer established
74 pursuant to this paragraph shall be measured outward from the ordinary high water mark.

75 The following requirements shall apply to any such buffer:

76 (A) No land-disturbing activities shall be conducted within a buffer and a buffer shall
77 remain in its natural, undisturbed; state of vegetation until all land-disturbing activities
78 on the construction site are completed. Once the final stabilization of the site is
79 achieved, a buffer may be thinned or trimmed of vegetation as long as a protective
80 vegetative cover remains to protect water quality and aquatic habitat and a natural
81 canopy is left in sufficient quantity to keep shade on the stream bed; provided, however,
82 that any person constructing a single-family residence, when such residence is
83 constructed by or under contract with the owner for his or her own occupancy, may thin
84 or trim vegetation in a buffer at any time as long as protective vegetative cover remains
85 to protect water quality and aquatic habitat and a natural canopy is left in sufficient
86 quantity to keep shade on the stream bed;

87 (B) On or before December 31, 2000, the board shall adopt rules which contain
88 specific criteria for the grant or denial by the director of requests for variances. After
89 such date, no variance shall be granted by the director which is not consistent with the
90 criteria contained in such rules; provided, however, that, should the board fail to adopt
91 rules which contain specific criteria for the grant or denial of requests for variances by
92 the director on or before December 31, 2000, the authority of the director to issue such
93 variances shall be suspended until the board adopts such rules; and

94 (C) The buffer shall not apply to the following land-disturbing activities, provided that
95 they occur at an angle, as measured from the point of crossing, within 25 degrees of
96 perpendicular to the stream; they cause a width of disturbance of not more than 50 feet
97 within the buffer; and adequate erosion control measures are incorporated into the
98 project plans and specifications and are implemented:

- 99 (i) Stream crossings for water lines; or
 100 (ii) Stream crossings for sewer lines; and"

101 **SECTION 4.**

102 Said chapter is further amended in Code Section 12-7-17, relating to exemptions, by revising
 103 paragraph (4) as follows:

104 "(4) The construction of single-family residences, when such construction disturbs less
 105 than one acre and is not a part of a larger common plan of development or sale with a
 106 planned disturbance of equal to or greater than one acre and not otherwise exempted
 107 under this paragraph; provided, however, that construction of any such residence shall
 108 conform to the minimum requirements as set forth in subsection (b) of Code Section
 109 12-7-6 and this paragraph. For single-family residence construction covered by the
 110 provisions of this paragraph, there shall be a buffer zone between the residence and any
 111 state waters classified as trout streams pursuant to Article 2 of Chapter 5 of this title. In
 112 any such buffer zone, no land-disturbing activity shall be constructed between the
 113 residence and the ~~point where vegetation has been wrested by normal stream flow or~~
 114 ~~wave action from the banks~~ ordinary high water mark of the trout waters. For primary
 115 trout waters, the buffer zone shall be at least 50 horizontal feet, and no variance to a
 116 smaller buffer shall be granted. For secondary trout waters, the buffer zone shall be at
 117 least 50 horizontal feet, but the director may grant variances to no less than 25 feet.
 118 Regardless of whether a trout stream is primary or secondary, for first order trout waters,
 119 which are streams into which no other streams flow except for springs, the buffer shall
 120 be at least 25 horizontal feet, and no variance to a smaller buffer shall be granted. The
 121 minimum requirements of subsection (b) of Code Section 12-7-6 and the buffer zones
 122 provided by this paragraph shall be enforced by the issuing authority;"

123 **SECTION 5.**

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