

9-1-2004

CONSERVATION AND NATURAL RESOURCES Stream Buffers: Amend Code Section 12-7-6 of the Official Code of Georgia Annotated Relating to Best Management Practices for Control of Soil Erosion and Sedimentation and Minimum Requirements for Rules, Regulations, Ordinances, or Resolutions to Change Certain Provisions Relating to Twenty-Five Foot Buffers Along State Waters; Repeal Conflicting Laws; and for Other Purposes

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Recommended Citation

Sue B. Smith, *CONSERVATION AND NATURAL RESOURCES Stream Buffers: Amend Code Section 12-7-6 of the Official Code of Georgia Annotated Relating to Best Management Practices for Control of Soil Erosion and Sedimentation and Minimum Requirements for Rules, Regulations, Ordinances, or Resolutions to Change Certain Provisions Relating to Twenty-Five Foot Buffers Along State Waters; Repeal Conflicting Laws; and for Other Purposes*, 21 GA. ST. U. L. REV. (2004).
Available at: <https://readingroom.law.gsu.edu/gsulr/vol21/iss1/13>

CONSERVATION AND NATURAL RESOURCES

Stream Buffers: Amend Code Section 12-7-6 of the Official Code of Georgia Annotated Relating to Best Management Practices for Control of Soil Erosion and Sedimentation and Minimum Requirements for Rules, Regulations, Ordinances, or Resolutions to Change Certain Provisions Relating to Twenty-Five Foot Buffers Along State Waters; Repeal Conflicting Laws; and for Other Purposes

CODE SECTION: O.C.G.A. § 12-7-6 (amended)
BILL NUMBER: SB 460
ACT NUMBER: 472
GEORGIA LAWS: 2004 Ga. Laws 352
SUMMARY: The Act allows individuals and developers to build within the 25 foot stream buffer as long as either the project will not increase the amount of pollutants in the stream or the project will improve water quality.
EFFECTIVE DATE: December 31, 2004

History

When heavy rains occur, the water washes many pollutants into streams and rivers, especially when no trees or shrubs line the waterways.¹ In fact, “runoff from parking lots . . . and lawns . . . contribut[es] to as much as 80% of the pollution in streams.”²

Currently, Georgia attempts to protect the quality of its streams by requiring a 25 foot minimum stream buffer.³ Buffers consist of natural flora such as trees, grass, and bushes.⁴ Furthermore, stream buffers capture 70% of certain pollutants.⁵ The natural vegetation not

1. See Stacy Shelton, *Stream Buffer Battle: Environmentalists Call Foul on Senate Bill*, ATLANTA J. CONST., Mar. 11, 2004, at D1, available at 2004 WL 68887668.

2. *Id.*

3. *See id.*

4. *See id.*

5. *See Streamside Management Zones Filter Nutrients, Not Herbicides*, ENV'T NEWS SERV. (Sept. 19, 2003), available at 2003 WL 64603321 [hereinafter *Streamside Management*].

only helps to filter pollutants but also prevents erosion.⁶ By capturing many of the harmful pollutants, stream buffers are the best way to ensure the quality of Georgia's water.⁷

However, the 25 foot minimum might not be a sufficient buffer zone in all situations.⁸ Even though 95% of the stream buffers are doing their job, it could be beneficial to increase the buffer zone in known problem areas.⁹ As a result, many cities and counties, such as Cobb County, require a larger buffer zone, sometimes ranging from 50 to 200 feet.¹⁰

Several years ago, Georgia law "allowed [] streams [with] less than 25 gallons per minute to be piped for cold-water trout streams."¹¹ This law gave landowners greater access to their property.¹²

Bill Tracking of SB 460

Consideration by the Senate

Senators Casey Cagle, Hugh M. Gillis, Ralph Hudgens, and B. Joseph Brush of the 49th, 20th, 47th and 24th districts, respectively, sponsored SB 460.¹³ The bill, as introduced, provided a mitigation provision which would have allowed land disturbing activities within a buffer if "drainage . . . of the state waters is less than 100 acres at the downstream end of the proposed land-disturbing activity within the buffer and [t]he United States Army Corps of Engineers asserts jurisdiction over the waters."¹⁴ If the Corps lacked jurisdiction, and the person followed the current version of an approved program, or the person has paid a fee, then the landowner could disturb the land.¹⁵

6. See Stacy Shelton, *Environmentalists Hit Water Control Bills, Senate Measure Could Cut Back Stream Buffers*, ATLANTA J. CONST., Apr. 2, 2004, at D12, available at 2004 WL 73419761.

7. See Shelton, *supra* note 1.

8. See *id.*; *Streamside Management*, *supra* note 5.

9. See *Streamside Management*, *supra* note 5.

10. See Shelton, *supra* note 1.

11. See Telephone Interview with Sen. Ralph Hudgens, Senate District No. 47 (Apr. 22, 2004) [hereinafter Hudgens Interview].

12. *Id.*

13. SB 460, as introduced, 2004 Ga. Gen. Assem.

14. *Id.*

15. See *id.*

The fees would be deposited into a fund for the preservation of easements or enhancing natural buffers along state waters.¹⁶

The Senate first read and referred the bill on February 2, 2004.¹⁷ The Natural Resources and Environment Committee favorably reported the bill, by substitute, on March 2, 2004.¹⁸ The Committee substitute removed the mitigation provision found in the original bill, and added minimum requirements for consideration of variances.¹⁹ On March 4, 2004, the Senate read the bill a second time; on March 15, 2004 the Senate read the bill a third time.²⁰ The Senate passed and adopted the bill, as amended by three floor amendments, on March 15, 2004 by a vote of 35 to 21.²¹

The bill, as passed in the Senate, amended the original Code section to incorporate the piping of “[s]prings and streams which discharge an average annual flow of 25 gallons per minute or less . . . at the discretion of the landowner, pursuant to the terms of a rule providing for a general variance promulgated by the board”²² The individual must also show “that the completed project will result in improved water quality for the affected stream.”²³

Additionally, the director of variance requests would be able to grant a variance in the following circumstances: (1) where the landowner must acquire a permit from the Corps of Engineers; (2) where the completed plan advances water quality; or (3) where

[the] land disturbing activity within the buffer is located in or upstream and within ten linear miles of a stream segment listed as impaired under . . . the federal Water Pollution Control Act . . . and the landowner provides a plan satisfactory to the director that shows that the completed project will result in improved

16. *See id.*

17. State of Georgia Final Composite Status Sheet, SB 460, Feb. 2, 2004 (May 19, 2004).

18. State of Georgia Final Composite Status Sheet, SB 460, Mar. 2, 2004 (May 19, 2004).

19. *See* SB 460 (SCS), 2004 Ga. Gen. Assem.

20. State of Georgia Final Composite Status Sheet, SB 460, Mar. 4, 2004 (May 19, 2004); State of Georgia Final Composite Status Sheet, SB 460, Mar. 15, 2004 (May 19, 2004).

21. State of Georgia Final Composite Status Sheet, SB 460, Mar. 15, 2004 (May 19, 2004); Georgia Senate Voting Record, SB 460 (Mar. 15, 2004).

22. SB 460 (SCSFA), 2004 Ga. Gen. Assem.

23. *Id.*

water quality . . . and that the project has no adverse impact relative to the pollutants of concern in such stream segment.²⁴

The Senate version ensured that the board will grant variances, but also maintained that the board will not grant any variances inconsistent with the rules established on or before December 31, 2004.²⁵

Consideration by the House

The House first read SB 460 on March 17, 2004.²⁶ The bill was assigned to the Natural Resources and Environment Committee, and the Committee favorably reported a substitute on March 19, 2004.²⁷ On April 7, 2004, Representatives Jimmy Skipper, DuBose Porter, and Bob Hanner, of the 116th, 119th, and 133rd districts, respectively, introduced a floor substitute.²⁸ The floor substitute removed the language relating to the piping of “springs and streams which discharge an average annual flow of 25 gallons per minute or less.”²⁹ “Everyone in the House was content after the removal of the 25 gallon provision.”³⁰ The House passed the floor substitute on April 7, 2004 by a vote of 122 to 36.³¹

Analysis

Stream buffers permit Georgia’s wildlife to prosper and develop in healthy streams.³² The passage of SB 460, nicknamed the “Mud Bill,” concerned many environmentalists because they believed that

24. *Id.*

25. *Id.*

26. State of Georgia Final Composite Status Sheet, SB 460, Mar. 17, 2004 (May 19, 2004).

27. State of Georgia Final Composite Status Sheet, SB 460, Mar. 19, 2004 (May 19, 2004).

28. SB 460 (HFS), 2004 Ga. Gen. Assem.

29. *Compare* SB 460 (SCSFA), 2004 Ga. Gen. Assem., *with* SB 460 (HFS), 2004 Ga. Gen. Assem.

30. Telephone Interview with Rep. Nick Moraitakis, House District No. 42 (May 2, 2004).

31. State of Georgia Final Composite Status Sheet, SB 460, Apr. 7, 2004 (May 19, 2004); Georgia House of Representatives Voting Record, SB 460 (Apr. 7, 2004).

32. *Stream Buffers*, ENVTL. HEALTH & SAFETY NEWSLETTER, (OMNI Professional Environmental Associates, P.A., Raleigh, N.C.) Vol. 1, Issue 3, Spring 2000, at 3, *available at* <http://www.environmentalengineers.com/newsletter%20vol%201%20%20issue%203.pdf> (Nov. 3, 2004) [hereinafter *Stream Buffers*].

development would destroy many of Georgia's small streams, resulting in increased flooding and reduced water quality.³³

There are also some economic benefits to keeping Georgia's streams protected. Keeping riparian habitats protected ensures recreational opportunities for hunting and fishing.³⁴ The total economic impact on the Georgia fishing industry is over \$900 million per year.³⁵

Effects on Development

The recent surging economy and low interest rates have increased development in Georgia.³⁶ The environmental impact of new development concerns many communities.³⁷ Consequently, they have adopted stronger buffer requirements to prohibit the increased "runoff from impervious surfaces [that are] sending mud, trash, oil, and other pollutants into streams."³⁸ However, as a result of the new provisions in SB 460, property owners will retain more of their property rights, and they can make certain repairs or modifications to their homes without having to wait months for the approval process.³⁹

Developers justified the legislation by asserting that a simplification of the rules will decrease violations.⁴⁰ Yet, currently when a developer wants to encroach upon a buffer they must go through 55 state, federal, and local agencies.⁴¹ Consumers pay a higher price for development because developers must pass on the additional costs associated with these bureaucratic procedures.⁴² Finally, proponents believed that the new provisions will not affect

33. See Jay Bookman, *Don't Dismiss EPD Chief or Her Advice*, ATLANTA J. CONST., Mar. 25, 2004, at A15, available at 2004 WL 73418552; Shelton, *supra* note 6.

34. See RIPARIAN HABITAT BENEFITS WILDLIFE, GEORGIA STREAM BUFFER INITIATIVE, available at http://www.riversalive.org/CRN/links/riparian_habitat_benefits_wldlf.htm (last visited Mar. 20, 2004).

35. *Id.*

36. *Stream Buffers*, *supra* note 32, at 3.

37. *Id.*

38. *Id.*

39. See Bookman, *supra* note 33; Audio Recording of Senate Proceedings, Mar. 15, 2004 (remarks by Sen. Casey Cagle), at http://www.georgia.gov/00/channel_title/0,2094,4802_6107103,00.html [hereinafter Senate Audio].

40. Shelton, *supra* note 1.

41. Senate Audio, *supra* note 39 (remarks by Sen. B. Joseph Brush).

42. *Id.*

2004]

LEGISLATIVE REVIEW

13

the erosion of the streams because warm water streams naturally erode less than trout streams.⁴³

Sue B. Smith

43. *See id.* (remarks by Sen. Tommie Williams).