

House Bill 271 (COMMITTEE SUBSTITUTE) (AM)

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

A BILL TO BE ENTITLED
AN ACT

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

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

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

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

26 ~~erosion, the landward boundary of the dynamic dune field shall be determined as though~~
 27 ~~such structure had not been in existence on July 1, 1979 along a line that:~~

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

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

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

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

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

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

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

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

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

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

49 SECTION 2.

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

52 "12-5-235.

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

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

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

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

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

78 SECTION 3.

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

81 "12-5-238.

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

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

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

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

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

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

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

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

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

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

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

137 **SECTION 4.**

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

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

151 **SECTION 5.**

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

154 **SECTION 6.**

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

157 "12-5-247.

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

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

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

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

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

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

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

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

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

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

224 **SECTION 7.**

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

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

232 **SECTION 8.**

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

237 **SECTION 9.**

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