

9-1-1990

CONSERVATION AND NATURAL RESOURCES Water Resources: Provide Water Quality Standards for Lakes

S. Erdely

Follow this and additional works at: <http://readingroom.law.gsu.edu/gsulr>

 Part of the [Law Commons](#)

Recommended Citation

Erdely, S. (1990) "CONSERVATION AND NATURAL RESOURCES Water Resources: Provide Water Quality Standards for Lakes," *Georgia State University Law Review*: Vol. 7 : Iss. 1 , Article 27.
Available at: <http://readingroom.law.gsu.edu/gsulr/vol7/iss1/27>

This Peach Sheet is brought to you for free and open access by the Publications at Reading Room. It has been accepted for inclusion in Georgia State University Law Review by an authorized editor of Reading Room. For more information, please contact jgermann@gsu.edu.

CONSERVATION AND NATURAL RESOURCES

Water Resources: Provide Water Quality Standards for Lakes

CODE SECTION:	O.C.G.A. § 12-5-23.1 (new)
BILL NUMBER:	SB 714
ACT NUMBER:	1274
SUMMARY:	The Act provides for the comprehensive studies of lakes of 1000 or more acres; the adoption of water quality standards for each lake and its major tributaries; and the monitoring of each lake on a regular basis to ensure it reaches and maintains such standards.
EFFECTIVE DATE:	Upon appropriation of funds by the General Assembly

History

Growing concern has been expressed over the quality of Georgia's lakes.¹ Pollution and raw sewage from overflowing sewer and storm drain systems flow into rivers which then feed into lakes.² This waste contains phosphorus, fecal chloroform, and other nutrients which stimulate an overgrowth of algae and, in turn, depletes the water of oxygen and kills fish.³ West Point Lake, a 26,000 acre lake near LaGrange, has been particularly affected.⁴ There, pollution from sewer overflow has caused concern as to whether the lake is suitable for fish life.⁵ Additionally, in the summer of 1989, popular recreation beaches at Lake Sidney Lanier, Lake Allatoona, and Stone Mountain Lake were closed due to high bacterial counts in the water.⁶ The aim of the water quality standards is to make lakes and their major tributaries cleaner and safer for both fish and people so that these situations do not recur.⁷

1. Telephone interview with Senator Roy E. Barnes, Senate District No. 33 (Mar. 21, 1990) [hereinafter Barnes Interview].

2. Seabrook, *Water Bills Pit City, Neighbors Downriver*, Atlanta J. & Const., Feb. 10, 1990, at D6, col.3 [hereinafter Seabrook].

3. *Id.*; Barnes Interview, *supra* note 1.

4. Barnes Interview, *supra* note 1; Seabrook, *supra* note 2.

5. Seabrook, *supra* note 2.

6. *Id.*

7. *Id.*; Barnes Interview, *supra* note 1.

SB 714

The Act amends the Georgia Water Quality Control Act⁸ by adding Code section 12-5-23.1 which provides for the establishment of water quality standards for Georgia's lakes.⁹ Initially, standards were to be developed for lakes and reservoirs which were located within the State and had a normal pool level covering 1000 or more acres.¹⁰ A Senate floor substitute revised the definition of "lake" to include only publicly owned lakes with a pool level surface average of 500 or more acres.¹¹ However, the Department of Natural Resources (DNR) lacks adequate resources to perform water quality studies on lakes of less than 1000 acres, so the House Committee on Natural Resources and Environment raised the minimum pool level surface average back to 1000 acres.¹²

The Director of the Environmental Protection Division (EPD) of the DNR is responsible for establishing water quality standards.¹³ Adopted standards will require a lake to be suitable for swimming, fishing, and supplying water for public consumption.¹⁴ A Senate floor substitute amended this requirement by adding that quality standards will not be required for a lake if a use attainability analysis shows that such standards are unattainable.¹⁵ The geographic location of a lake within the State and its location within its watershed are also considered when setting lake standards.¹⁶

The bill, as introduced, required that lake measurements be taken for pH, fecal chloroform bacteria, chlorophyll A, algal growth potential, nitrogen, phosphorus, and any additional factors as necessary to ensure that the lake is suitable for both fish and people.¹⁷ A Senate floor amendment expanded the list of measurements.¹⁸ A House committee substitute shortened this list to just five factors, with a sixth factor subsequently added by the Joint Conference Committee.¹⁹

8. O.C.G.A. §§ 12-5-21 to -30.1 (1988 & Supp. 1989).

9. O.C.G.A. § 12-5-23.1 (Supp. 1990).

10. SB 714, as introduced, 1990 Ga. Gen. Assem.

11. SB 714 (SFS), 1990 Ga. Gen. Assem.

12. O.C.G.A. § 12-5-23.1(a) (Supp. 1990); Barnes Interview, *supra* note 1.

13. O.C.G.A. § 12-5-23.1(b) (Supp. 1990).

14. *Id.*

15. *Id.*

16. O.C.G.A. § 12-5-23.1(d) (Supp. 1990). Also considered are the "horizontal and vertical variations of hydrologic conditions within each lake." *Id.*

17. SB 714, as introduced, 1990 Ga. Gen. Assem.

18. SB 714 (SFS), 1990 Ga. Gen. Assem. The list of measurements included secchi depth, dissolved oxygen within a twenty-four hour period, percentage of water column with less than five milligrams of dissolved oxygen per liter, number of vertical feet of water column with less than five milligrams of dissolved oxygen per liter, percent blue-green algal biomass to total algal biomass, and trihalomethane precursors. *Id.*

19. O.C.G.A. § 12-5-23.1(c) (Supp. 1990). The six factors are PH (maximum and

Initially, the Director was to establish nutrient levels for each tributary stream running into a lake.²⁰ Because legislators were aware that the DNR might not have sufficient resources to study all the streams, the bill was amended so that nutrient levels would be established only for a lake's major tributary streams, including streams with permitted discharges.²¹ Once water quality standards are established for each lake and its major tributary streams, the EPD will monitor each lake on a regular basis to ensure that standards are achieved and maintained.²²

The bill, as introduced, established a special monitoring procedure for areas of lakes subjected to high beach and swimming use.²³ Such areas were to be sampled once per week, with bacterial levels available within twenty-four hours after sampling.²⁴ The data was to be distributed on a regular basis to the news media and all other interested persons.²⁵ If the results warranted it, the Director could close a swimming area in the interest of public safety.²⁶ This monitoring procedure was modified by the House Committee on Natural Resources and Environment.²⁷ Although the requirement that beach and swimming areas be sampled once a week was deleted, the Director still has the authority to close swimming areas, if necessary, to ensure public safety.²⁸ Data from all lake monitoring is still public information, but it is no longer actively distributed to the news media and others on a regular basis.²⁹

The Act also sets a timetable for conducting comprehensive lake studies.³⁰ Initially, studies for Lake Sidney Lanier, Lake Walter F. George, and West Point Lake were to be completed by January 1, 1991; the studies for all other lakes were to be completed by January 1, 1992.³¹ A Senate floor substitute modified this timetable.³² The comprehensive studies for Lake Sidney Lanier, Lake Walter F. George, and West Point Lake will be initiated during 1990, and at least three

minimum), fecal coliform bacteria, chlorophyll A for designated areas determined as necessary to protect a specific use, total nitrogen, total phosphorus loading for the lake in pounds per acre feet per year, and dissolved oxygen in the epilimnion during periods of thermal stratification. *Id.*

20. SB 714, as introduced, 1990 Ga. Gen. Assem.

21. O.C.G.A. § 12-5-23.1(d) (Supp. 1990); Barnes Interview, *supra* note 1. Nutrient levels for the major tributary streams will be established concurrently with the lake water quality standards. O.C.G.A. § 12-5-23.1(d) (Supp. 1990).

22. O.C.G.A. § 12-5-23.1(e) (Supp. 1990).

23. SB 714, as introduced, 1990 Ga. Gen. Assem.

24. *Id.*

25. *Id.*

26. *Id.*

27. SB 714 (HCS), 1990 Ga. Gen. Assem.

28. O.C.G.A. § 12-5-23.1(f) (Supp. 1990).

29. *Id.*

30. O.C.G.A. § 12-5-23.1(g) (Supp. 1990).

31. SB 714, as introduced, 1990 Ga. Gen. Assem.

32. SB 714 (SFS), 1990 Ga. Gen. Assem.

studies for the remaining lakes will be initiated in each subsequent year; each study must be completed within two years.³³ Some legislators expressed doubts as to whether the DNR would have sufficient resources to meet the aggressive timetable as originally introduced.³⁴

The DNR does not currently have sufficient funds to perform the lake studies.³⁵ However, with the passage of the Act, the State becomes eligible for federal funding under the Federal Clean Lakes Program.³⁶ Under that program, the Environmental Protection Agency (EPA) will match up to seventy percent of the funds the State spends.³⁷ In recognition of this funding aspect, the House Committee on Natural Resources and Environment further amended the bill to make the studies contingent upon available funding and to include input from local officials and affected organizations in setting study components and procedures.³⁸

As introduced, the bill provided that a scientific report, which included draft recommendations for lake quality standards, would be published within 120 days after the completion of each study and distributed to local officials and other interested persons.³⁹ Before the final standards would be adopted, a public hearing would be held in the lake area.⁴⁰ Notification of the time and place of the hearing would be given at least forty-five days before the hearing, and the hearing would be publicized in newspapers and on the broadcast media.⁴¹ Copies of the scientific report would be distributed upon request before the hearing, and would also be available at the hearing.⁴² The Director's final recommendations for lake quality standards would be presented to the Board of Natural Resources within sixty days of the public hearing.⁴³ Within sixty days after receiving the recommendations, the Board would make any necessary modifications and then adopt them as standards.⁴⁴

33. O.C.G.A. § 12-5-23.1(g) (Supp. 1990).

34. Barnes Interview, *supra* note 1.

35. Telephone interview with Allen Henderson, Executive Director, Georgians for Clean Water, A Nonprofit Organization (Apr. 13, 1990) [hereinafter Henderson Interview].

36. *Id.* The Environmental Protection Agency (EPA) offers financial assistance to states that submit a report detailing the methods and procedures that they intend to use to control lake pollution. 33 U.S.C.A. § 1324(a)(1), (b) (West Supp. 1989). Once the EPA approves these methods and procedures, the states receive federal financial assistance in order to implement them. 33 U.S.C.A. § 1324(b) (West Supp. 1989).

37. 33 U.S.C.A. § 1324(c)(1) (West Supp. 1989). The Callaway Foundation of LaGrange has provided approximately \$43,000 in funds for the West Point Lake study. Henderson Interview, *supra* note 35.

38. O.C.G.A. § 12-5-23.1(g) (Supp. 1990).

39. SB 714, as introduced, 1990 Ga. Gen. Assem.

40. *Id.*

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

The final version of the standards would be available to interested local officials and lake area citizens.⁴⁵

A Senate floor substitute modified this review procedure by requiring that public notice and copies of draft recommendations be made available to state colleges and universities, state and federal agencies, and scientific institutions.⁴⁶ It also added a comment period of forty-five to sixty days between the public notice of the recommendations and the public hearing.⁴⁷ Notification of the public hearing is given at least thirty days in advance, and an additional ten-day public comment period follows the hearing.⁴⁸ After this last comment period, the DNR evaluates all of the comments and develops final standards for submission to the Board of Natural Resources for consideration and approval.⁴⁹ Copies of the recommended final standards would be provided to each person who offered comments and to each participant in the public hearing fifteen days before the Board meeting.⁵⁰ The Director makes final recommendations for lake quality standards, to be addressed to the Board of Natural Resources, within sixty days after the ten-day comment period following the public hearing.⁵¹ The Senate floor substitute also empowers the Director to extend deadlines and comment periods at his discretion, so long as the final recommendations are adopted within one year of the completion of the lake study.⁵²

The House Committee on Natural Resources and Environment further revised this review process by extending the publication deadline of the scientific report from 120 days to 180 days after the completion of a lake study.⁵³ Further, draft recommendations are made available to persons only upon written request, and public notice of the hearing is made in accordance with Chapter 13 of Title 50, the Georgia Administrative Procedure Act.⁵⁴ The comment periods before and after the hearing remain the same, but copies of the recommended final standards are not actively distributed to each person who offered comments and to each participant in the public hearing.⁵⁵

The Senate Committee on Natural Resources made one final revision to the bill.⁵⁶ Due to federal funding considerations, the Senate committee amendment made the Act effective only upon the General Assembly's

45. *Id.*

46. SB 714 (SFS), 1990 Ga. Gen. Assem.

47. *Id.*; see also O.C.G.A. § 12-5-23.1(g) Supp. 1990).

48. *Id.*; see also O.C.G.A. § 12-5-23.1(h) (Supp. 1990).

49. *Id.*; see also O.C.G.A. § 12-5-23.1(i) (Supp. 1990).

50. SB 714 (SFS), 1990 Ga. Gen. Assem.

51. *Id.*; see also O.C.G.A. § 12-5-23.1(j) (Supp. 1990).

52. *Id.*; see also O.C.G.A. § 12-5-23.1(k) (Supp. 1990).

53. SB 714 (HCS), 1990 Ga. Gen. Assem.; see also O.C.G.A. § 12-5-23.1(g) (Supp. 1990).

54. *Id.*

55. O.C.G.A. § 12-5-23.1(h) (Supp. 1990).

56. SB 714 (CA), 1990 Ga. Gen. Assem.

appropriation of funds for lake studies.⁵⁷ This appropriation will take place once the EPA approves Georgia's methods and procedures for conducting lake studies, the State obtains funds to perform the studies from sources within the State, and matching federal funds are received under the Federal Clean Lakes Program.⁵⁸ Once the funds are appropriated, the State will contract with state colleges and universities to actually perform the lake studies.⁵⁹

S. Erdely

57. *Id.*

58. Henderson Interview, *supra* note 35.

59. *Id.*