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CONSERVATION AND NATURAL RESOURCES

Water Resources: Provide Protection for Coastal Marshlands and Beaches

CODE SECTIONS: O.C.G.A. §§ 12-5-230 to -248, -280 to -297
(amended)

BILL NUMBERS: HB 1389, SB 725

ACT NUMBERS: 1250, 1022

SUMMARY: These Acts recognize that the coastal marshlands, sand dunes, beaches, sandbars, and shoals of Georgia comprise important natural resources systems. The Acts provide for management and regulation of these systems by requiring permits for construction in these areas. The Acts provide for committees appointed by the Board of Natural Resources to administer the permit program and to respond to emergency situations. The Acts also establish civil penalties which may be imposed for violations.

EFFECTIVE DATE: July 1, 1992

History

Legislation which first allowed Georgia to protect its marshlands and beaches was introduced more than twenty years ago.¹ Since then, many changes have taken place, from reductions in state government to an expansion of knowledge about the importance of the ecosystems that are present in these coastal areas.² The Georgia Department of Natural Resources (DNR), in response to these changes and with a desire to improve the permitting process, held public hearings to gather input in order to update the legislation that protected this portion of the state's natural resources.³ HB 1389 and SB 725 were introduced as part of the Governor's environmental package to give the state more authority to protect its marshlands and beaches.⁴

1. Telephone Interview with Stuart Stevens, Coastal Resources Division, Department of Natural Resources (Mar. 31, 1992) [hereinafter Stevens Interview]; Telephone Interview with Sen. Joseph Hammill, Senate District No. 3 (Apr. 1, 1992) [hereinafter Hammill Interview]; see 1979 Ga. Laws 1636; 1970 Ga. Laws 939; 1967 Ga. Laws 12.

2. Stevens Interview, *supra* note 1.

3. *Id.* These public hearings drew input from landowners, developers, and environmental groups. *Id.*

4. Hammill Interview, *supra* note 1.

HB 1389

The bill as introduced would have given Georgia more authority to protect both its marshlands and its beaches.⁵ The House Committee on Natural Resources offered an amendment which reduced the coverage of the bill, affecting only the Code section which contains the Coastal Marshlands Protection Act of 1970.⁶ The Act amends the Coastal Marshlands Protection Act of 1970 by providing the State with authority to manage and regulate activities in coastal marshlands areas.⁷ The Act was part of the Governor's environmental legislation package and was designed to provide increased protection for the State's coastal marshlands.⁸ The Act now provides legislative findings,⁹ expands the definition of vegetated marshlands,¹⁰ brings live-aboard vessels and private docks within the reach of regulation,¹¹ and allows permits for minor alterations to be issued by the Commissioner of Natural Resources.¹²

The Act expands coverage of the permit system to cover construction or location of structures on or over marshlands.¹³ Previously, permits were required only for dredge, drain, and fill type activities.¹⁴ In

5. HB 1389, as introduced, 1992 Ga. Gen. Assem.

6. HB 1389 (HCS), 1992 Ga. Gen. Assem. The section of HB 1389, as introduced, 1992 Ga. Gen. Assem., which dealt with beaches became the subject of SB 725. The other areas changed by HB 1389 (HCS) were: O.C.G.A. § 12-5-286(c), which requires permit applications to be made available to the Coastal Marshlands Protection Committee seven days prior to a Committee meeting; O.C.G.A. § 12-5-286(e), which provides for public notices at least seven days prior to the appropriate Committee meeting, and; O.C.G.A. § 12-5-294, which restored language deleted by HB 1389, as introduced, 1992 Ga. Gen. Assem. See O.C.G.A. §§ 12-5-286(c), -286(e), -294 (1992).

7. O.C.G.A. § 12-5-281 (1992).

8. Stevens Interview, *supra* note 1.

9. O.C.G.A. § 12-5-281 (1992).

10. *Id.* § 12-5-282(3) (1992).

11. *Id.* § 12-5-288(b)(8), -295(7) (1992). Amendments made on the floor of the Senate modified the definition of live-aboards by removing any reference to commercial interests. HB 1389 (SCSFA), 1992 Ga. Gen. Assem. The definition now includes "a floating vessel or other water craft which is moored to a dock, tree, or piling or anchored in the estuarine waters of the state and is utilized as a human or animal abode." O.C.G.A. § 12-5-282(8) (1992).

12. O.C.G.A. § 12-5-283(d) (1992). The Commissioner of Natural Resources is a member of the three-person Coastal Marshlands Protection Committee. O.C.G.A. § 12-5-283(a) (1992). The House Committee on Natural Resources' substitute to HB 1389 provided that "a person" chosen for the Committee shall be a resident of listed coastal counties. HB 1389 (HCS), 1992 Ga. Gen. Assem. Amendments made on the floor of the Senate changed this to read "both persons." HB 1389 (SCSFA), 1992 Ga. Gen. Assem. The DNR has always interpreted this section to require that the two members chosen by the Board be residents of the listed coastal counties. Stevens Interview, *supra* note 1.

13. O.C.G.A. § 12-5-286(a) (1992).

14. 1970 Ga. Laws 939, 943-47 (formerly found at O.C.G.A. § 12-5-285 (1988)).

addition to this expansion, the Act strengthens the permitting process by requiring the applicant to describe what alternative sites were considered, why they were not feasible, and why the permit should be granted.¹⁵ The permit must be accompanied by a statement that the project is not over a landfill or hazardous waste site.¹⁶ Also, water quality certification, a certification of proper soil and erosion control, and any additional information required by the Coastal Marshlands Protection Committee (the Committee) must be provided with the permit application.¹⁷

The Act continues to require that adjoining landowners be notified of permit applications, and adds the requirement that public notice of permit applications be provided by the Committee solely, or jointly with the Army Corps of Engineers.¹⁸ If there is sufficient public interest in the application, the Committee may now call a public hearing.¹⁹ The Act places the burden on the permit applicant to "demonstrate to the Committee that the proposed alteration is not contrary to the public interest and that no feasible alternative sites exist."²⁰ Permits issued by the Committee are now effective for five years instead of two.²¹

The Act provides that no construction shall begin for thirty days following an application's approval, and that if an appeal is filed, no construction can begin until "all administrative and judicial proceedings are terminated."²²

The Act provides that a permit should usually not be granted if "the project is not water related or dependent on water for access or can be satisfied by the use of an alternative nonmarshlands site or by use of existing public facilities."²³ The Act also provides a list of activities that are "normally considered to be contrary to the public interest when located in coastal marshlands."²⁴ Under the Act, a superior court to

15. O.C.G.A. § 12-5-286(b)(8) (1992).

16. *Id.* § 12-5-286(b)(9) (1992).

17. *Id.* § 12-5-286(b)(10)-(12) (1992).

18. *Id.* § 12-5-286(d)-(e) (1992).

19. *Id.* § 12-5-286(f) (1992).

20. *Id.* § 12-5-286(h) (1992).

21. *Id.* § 12-5-286(l) (1992).

22. *Id.* § 12-5-286(m) (1992).

23. *Id.* § 12-5-288(a) (1992).

24. *Id.* § 12-5-288(b) (1992). This section provides:

(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;

which the Committee has filed an injunction against a person in violation of the Act may order that person to restore the marshlands affected by the improper activities.²⁵

Problems surrounding the clean up of marshes in South Carolina after Hurricane Hugo highlighted the need for increased emergency powers for the Committee.²⁶ These emergency order powers were added to the Act.²⁷ Finally, the Act is strengthened by a provision that allows damages to be assessed against violators of the Act.²⁸

(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;

(7) Construction of structures which constitute an obstruction of view to adjoining riparian landowners, including signs and enclosures; and

(8) Occupying a live-aboard for more than 30 days during any calendar year; provided, however, that the commissioner may grant extensions of time beyond 30 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.

Id.

25. *Id.* § 12-5-291(a)(5) (1992). Also added to this section is the provision that "[o]wners of property with knowledge of unauthorized activities occurring thereon are responsible under this part." *Id.* § 12-5-291(b) (1992). This provision was modified by amendments made on the floor of the Senate. HB 1389 (SCSFA), 1992 Ga. Gen. Assem. As introduced, the bill provided that "[o]wners of property upon which unauthorized activities occur are responsible under this part." HB 1389, as introduced, 1992 Ga. Gen. Assem.

26. Stevens Interview, *supra* note 1. For example, the Committee now has the power to issue blanket permits which would cover the removal of foreign objects like cars that might be deposited in marshlands following a hurricane. *Id.* Previously an individual permit would have been required for each object. *Id.*

27. O.C.G.A. § 12-5-294 (1992).

28. *Id.* § 12-5-297 (1992). This section provides:

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

SB 725

This Act amends the Shore Protection Act.²⁹ SB 725 was introduced at the request of the DNR to provide increased protection for the state's coastal sand dunes, beaches, sandbars, and shoals.³⁰ A major reason for the introduction of this bill was to incorporate into law the rules and regulations which had been developed since the original act was passed.³¹

One point of contention that arose as the bill passed through the General Assembly concerned techniques to be used to maintain the shoreline.³² A compromise was developed in a committee substitute which stated a preference for the use of beach renourishment over stabilization activities.³³

The permitting process has been changed in several ways. Permit applications must now identify the dynamic dune field that would be affected by construction.³⁴ Also, the applications must include written permission from the State if any of the proposed construction would take place on State of Georgia property,³⁵ the names of all landowners

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.

Id.

29. SB 725, as passed, 1992 Ga. Gen. Assem., also incorporated a name change for the Shore Protection Act and the Shore Protection Committee by replacing the word "assistance" with "protection." See O.C.G.A. § 12-5-230, -235(a) (1992).

30. Hammill Interview, *supra* note 1. Only minor changes were made during the bill's consideration. For example, amendments made on the floor of the Senate provided nine wording changes. The most significant of these changes strengthens a section of the legislative findings which recognizes the need to regulate activities affecting the sand-sharing system by adding the phrase "by allowing only activities and alterations of the ocean sand dunes and beaches which are considered to be in the best interest of the state." SB 725 (SFA), 1992 Ga. Gen. Assem.; O.C.G.A. § 12-5-231 (1992).

31. Stevens Interview, *supra* note 1. For instance, the definition of dynamic dune field, although new to the legislation, has been in use by the DNR in its rules and regulations. *Id.*

32. Environmental groups wanted no hard structures to be used to this end, but the DNR did not agree with that position. Stevens Interview, *supra* note 1.

33. Amendments made on the floor of the House added the language stating the preference: "Permits may be granted for shoreline stabilization activities when the applicant has demonstrated that no reasonable or viable alternative exists." SB 725 (HCSFA), 1992 Ga. Gen. Assem.; O.C.G.A. § 12-5-239(c)(3)(C) (1992). Construction and maintenance of seawalls and riprap protection are considered examples of stabilization activities. O.C.G.A. § 12-5-232(17)(e) (1992).

34. O.C.G.A. § 12-5-238(3) (1992).

35. *Id.* § 12-5-238(4) (1992).

adjacent to the property where the construction is proposed,³⁶ a letter from local authorities stating that the proposal does not violate zoning law,³⁷ and a statement that the "proposed project is not over a landfill or hazardous waste site."³⁸ An application fee of up to \$1000 may now be charged.³⁹

The Act now requires that the applications be submitted in time to allow public notice and "evaluation by the permit-issuing authority."⁴⁰ Thirty days prior to consideration of the application, adjacent landowners must be notified.⁴¹ Public notice will be required by posting on the property, and publication in a local newspaper may be required.⁴²

The permit expiration date has been extended from two years to five years.⁴³ The Act now specifically requires the permit-issuing authority to consider the public interest when reviewing permit applications.⁴⁴

The Act now provides that no construction shall begin for thirty days following the application approval and that if an appeal is filed, no construction can begin until "all administrative proceedings are terminated."⁴⁵ Additionally, emergency powers are strengthened under the Act by allowing the Committee to issue orders which are effective immediately upon issuance where immediate action is needed to

36. *Id.* § 12-5-238(6) (1992).

37. *Id.* § 12-5-238(11) (1992).

38. *Id.* § 12-5-238(12) (1992).

39. *Id.* § 12-5-238(7) (1992). The permit fee should reflect the costs involved in evaluating a permit application. *Id.*

40. *Id.* § 12-5-239(a) (1992).

41. *Id.* § 12-5-239(b) (1992).

42. *Id.*

43. *Id.* § 12-5-239(e) (1992).

44. *Id.* § 12-5-239(i) (1992). This section provides:

(i) In passing upon the application for a permit, the permit-issuing authority 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.

Id.

45. *Id.* § 12-5-239(k) (1992).

“protect the public or private interest where the public interest is served.”⁴⁶

The Act provides the following civil penalties for violations:

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 . . . 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.⁴⁷

Property owners with knowledge of unauthorized activities occurring on their land will also be responsible under the Act.⁴⁸

Finally, the Act makes it a misdemeanor to operate motorized vehicles on dunes or beaches, and further makes it a misdemeanor to store boats on dunes.⁴⁹

Rose Marie Wade

46. *Id.* § 12-5-247(a)(2) (1992).

47. *Id.* § 12-5-247(c) (1992).

48. *Id.* § 12-5-247(d) (1992).

49. *Id.* § 12-5-248 (1992). This section provides:

(a) It shall be unlawful for any person to:

(1) Operate any motorized vehicle or other motorized machine on, over, or across the dynamic dune field or beaches except as authorized by the permit-issuing authority, except that individual handicap vehicles, emergency vehicles, and governmental vehicles utilized for beach maintenance or research may operate within the dynamic dune field and beaches without authorization from the permit-issuing authority as 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 in any dynamic dune field.

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

Id.