

9-1-1997

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Recommended Citation

Nowell D. Berreth, *CONSERVATION AND NATURAL RESOURCES Georgia Coastal Management Act: Provide for Preservation and Management of the Coastal Zone*, 14 GA. ST. U. L. REV. (1997).

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CONSERVATION AND NATURAL RESOURCES

Georgia Coastal Management Act: Provide for Preservation and Management of the Coastal Zone

CODE SECTIONS: O.C.G.A. §§ 12-5-320, -329 (new)
BILL NUMBER: HB 167
ACT NUMBER: 390
GEORGIA LAWS: 1997 Ga. Laws 1037
SUMMARY: The Act establishes the Georgia Coastal Zone Management Act. The Act provides for the following: a statement of findings of the General Assembly; the management and conservation of the coastal zone; the authority of the Department of Natural Resources, rules and regulations; the coordination and cooperation with other state agencies; and a sunset date.
EFFECTIVE DATE: April 22, 1997¹

History

Prior to the passage of the Act, Georgia was the only state bordering the Atlantic Ocean that was not involved in the federal government's coastal zone management program.² Although the state was a member of the program in the early 1970s, Georgia and the federal government parted ways in the late 1970s.³ In 1992, Duane Harris, Director of Georgia's Coastal Resources Division, realized that Georgia was substantially in compliance with the federal government's requirements for membership in the coastal zone management program and recommended that Georgia reapply for membership.⁴ Successful reapplication would result in the release of substantial federal funding to the state.⁵

For five years, from 1992 to 1997, Georgia's Coastal Resources Division prepared a plan and conducted public hearings to prepare Georgia for its reapplication to the federal program.⁶ Governor Zell

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1. The Act became effective upon approval by the Governor.
 2. See Telephone Interview with Duane Harris, Director, Georgia Coastal Resources Division (Apr. 24, 1997) [hereinafter Harris Interview].
 3. See *id.*
 4. See *id.*
 5. See *id.*
 6. See *id.*

Miller made the plan a part of his 1997 legislative agenda, and HB 167 was submitted for consideration.⁷

HB 167

Legislative Evolution

HB 167 was unusual in that the vast majority of the drafting, including any necessary compromises, was completed before the bill was introduced.⁸ Thus, only one addition to the bill occurred during the legislative session.⁹

Title and Legislative Findings

Code section 12-5-320 provides that the Act may be cited as the "Georgia Coastal Management Act."¹⁰ Code section 12-5-321 provides that the General Assembly finds and declares the following: that Georgia's coastal areas provide a unique and vital natural resource system; that activities affecting the coastal area may damage water quality and coastal resources if not properly planned and managed; that Georgia's coastal area provides a valuable natural recreation resource; that resources in the coastal area are costly to reconstruct or rehabilitate once damaged; and that the coastal area is of vital importance to all Georgians.¹¹

Definitions and Authority

Code section 12-5-322 defines terms used in the Act.¹² Important to note is the "certification of consistency," which shall be based on an examination of an activity's compliance with the coastal management program's policies.¹³

The Act delineates the authority granted to the state Department of Natural Resources (DNR) and provides that such authority shall not be delegated to any other state agency.¹⁴ Such authority includes:

7. *See id.*

8. *See* Telephone Interview with David Baird, Lobbyist, Georgia Department of Natural Resources (Apr. 24, 1997) [hereinafter Baird Interview]. Baird noted that once the Governor agreed to support HB 167, its passage was virtually guaranteed. *See id.* "All the stars were certainly in alignment on this one." *Id.*

9. *See* HB 167 (HCS), 1997 Ga. Gen. Assem.

10. O.C.G.A. § 12-5-320 (Supp. 1997).

11. *Id.* § 12-5-321.

12. *Id.* § 12-5-322.

13. *Id.* § 12-5-322(3). A "certification of consistency is necessary in order to receive 'a federally administered permit to conduct an activity or activities as defined in this Code section.'" *Id.*

14. *Id.* § 12-5-323.

preparing, administering, and monitoring the coastal management program; administering moneys used to carry out the provisions of the Act; conducting public hearings; concurring or objecting to certifications of consistency; and exercising all incidental powers necessary to carry out the provisions of the Act.¹⁵

Board Authority, Coordination, and Cooperation

Code section 12-5-324 provides that the Board of Natural Resources has the authority to promulgate rules and regulations for implementation of the Act in accordance with the Georgia Administrative Procedure Act.¹⁶ The Act further provides that the DNR shall coordinate and cooperate with other state agencies to conduct reasonable inspections of coastal areas where activities have been proposed.¹⁷ These inspections shall be used to determine whether the proposed activities are consistent with the Act.¹⁸ The Act provides that all state agencies shall cooperate with the DNR in the administration of the Act.¹⁹

Governor's Approval

Code section 12-5-327 provides that the DNR shall prepare a document reflecting the coastal management program for submission to the Governor.²⁰ If the Governor approves this document, he has the authority to submit it to the Secretary of Commerce for approval as outlined in the federal Coastal Zone Management Act of 1972, as amended.²¹ The Governor, with the concurrence of the General Assembly, may also withdraw Georgia from participation in the Coastal Zone Management Act of 1972 if it is determined that continued participation is not in the best interest of the state.²²

This Code section also provides that the DNR shall submit a report every three years outlining the effectiveness of the program and including a user survey and the Department's opinion as to the value of Georgia's continued participation in the program.²³

15. *See id.*

16. *Id.* § 12-5-324.

17. *Id.* § 12-5-325.

18. *Id.*

19. *Id.* § 12-5-326.

20. *Id.* § 12-5-327(a).

21. *See id.*

22. *See id.*

23. *Id.* § 12-5-327(b).

Immunity and Sunset Date

The majority of opposition to HB 167 came from industrial interests along the Georgia coast.²⁴ Some of these industries were afraid that HB 167 would “concede certain rights to South Carolina.”²⁵ Other industries were afraid that HB 167 would create another layer of bureaucracy and unnecessarily complicate regulatory matters along the Georgia coast.²⁶ In response to these concerns, the General Assembly added Code section 12-5-328, which provides:

Nothing contained in this part shall be construed as a consent to waiver of immunity under the Eleventh Amendment of the United States Constitution or consent for any other state to exercise regulatory jurisdiction within the boundaries of this state.²⁷

After these concerns were satisfactorily addressed, HB 167 met no further significant resistance as it proceeded through the General Assembly.²⁸ Furthermore, Code section 12-5-329 provides that unless otherwise provided by the General Assembly, the Act will stand repealed in its entirety on July 1, 2004.²⁹

Effect of the Act

The Act gives Georgia the authority to submit its plan to the federal government’s National Oceanic and Atmospheric Administration (NOAA).³⁰ NOAA will then conduct a six to nine month review of Georgia’s application.³¹ If NOAA accepts the plan, Georgia officially becomes a part of the federal government’s Coastal Zone Management Plan, and will be eligible for approximately \$1.4 million in federal funds.³²

Georgia will use the federal funds to open a Savannah permitting office, which will ease the pressures at the Brunswick permitting office—currently the only permitting office on the Georgia coast.³³

24. See Harris Interview, *supra* note 2.

25. Baird Interview, *supra* note 8.

26. See Harris Interview, *supra* note 2. Harris noted that instead of creating more bureaucracy, HB 167 actually will streamline the regulatory process. *Id.* “We did not want more bureaucracy either.” *Id.* “The intent of this bill is definitely not to increase the bureaucracy load.” *Id.*

27. O.C.G.A. § 12-5-328 (Supp. 1997).

28. See Harris Interview, *supra* note 2.

29. O.C.G.A. § 12-5-329 (Supp. 1997).

30. See Harris Interview, *supra* note 2.

31. See *id.*

32. See *id.*

33. See *id.* These permitting offices are used to issue marsh and shore building

Also, the state will hire one additional staff member and convert five current staff members from temporary to full-time employees who will implement the plan.³⁴ Some of the federal money will also be used to support local governments, which will receive grants of up to \$50,000.³⁵

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permits by the state. *Id.*

34. *See id.*

35. *See id.*