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STATE GOVERNMENT

Public Property: Provide Definition for Development Activity; Protect Trees; Provide for Landscaping Plans

CODE SECTION: O.C.G.A. § 50-16-19 (new)
BILL NUMBER: HB 279
ACT NUMBER: 170
GEORGIA LAWS: 2001 Ga. Laws 299
SUMMARY: The Act creates a new Code section to require that, beginning December 31, 2001, the State must provide landscape plans to retain or replace trees on certain development sites.
EFFECTIVE DATE: July 1, 2001

History

Throughout the past several decades, the natural environment has suffered considerable losses as developers have clear-cut millions of trees throughout Georgia and the United States.¹ In Georgia alone, over 1000 acres per day are lost as a result of residential and industrial development.² In an effort to combat this problem, many local governments have enacted tree ordinances.³ Among the counties to enact tree ordinances are Rockdale County, Dekalb County, Cherokee County, and Cobb County.⁴ Among the cities to enact tree ordinances are the cities of Covington and Fayetteville.⁵

1. See Telephone Interview with Rep. Terry Coleman, House District No. 142 (Apr. 20, 2001) [hereinafter Coleman Interview]. Trees “help clean the air and ground water, cool the environment and control land erosion.” Leon Stafford, *Clear-Cutting Measures Loom Trend: Rockdale One Of Several Counties Trying to Stem the Loss of Trees Because of Development*, ATLANTA J. CONST., Apr. 12, 1999, at B3. Thus, tree ordinances “keep developers from ignoring the environment when they clear land for development.” *Id.*

2. See Coleman Interview, *supra* note 1. From 1990 to 2000, Georgia has experienced a population upsurge of 26.4%, thereby making it the 10th largest state in the nation. See Maurice Tamman, *Three Metro Counties Among Top 10 in Growth*, ATLANTA J. CONST., Mar. 31, 2001 at H1. Three metro Atlanta counties were ranked second, fourth, and seventh in the nation in population growth. See *id.*

3. See generally Stafford, *supra* note 1, at B3.

4. See *id.* These counties are just a representative sample of the counties to enact such ordinances; this list is by no means exhaustive.

5. See Gita M. Smith, *Fayetteville OKs Tree Protections*, ATLANTA J. CONST., Jan. 27, 2000, at J4.

In January 2000, the city of Fayetteville joined several other counties and cities in enacting ordinances to protect trees.⁶ Because “[r]ampant growth and development in the region has resulted in innumerable loss of trees,” the city enacted the ordinance to impose restrictions on developers and provide for penalties for those who violate the law.⁷

Despite the efforts of many local communities and governments in enacting various tree ordinances to protect trees, until now the State of Georgia had no such laws.⁸ Over the years, local communities became outraged when Georgia authorities, engaged in constructing state buildings, clear-cut trees on development sites.⁹ Following a community outcry when the State built a Georgia Department of Transportation building in Macon, Georgia, Representatives Mark Burkhalter and Terry Coleman decided to introduce a bill in the General Assembly that would require the State to protect trees on such sites.¹⁰

HB 279

Introduction

Representative Mark Burkhalter of the 41st District and Senator Peg Blich of the 7th District sponsored HB 279.¹¹ Representative Burkhalter introduced the bill on the House floor on January 26, 2001.¹² As introduced, HB 279 only contained provisions relating to specimen trees.¹³ The House assigned the bill to its Natural Resources and Environment Committee, which favorably reported the bill on February 8, 2001, as substituted.¹⁴ The House adopted the floor substitute and two floor amendments, and passed the bill unanimously

6. *See id.*

7. *Id.* As Fayetteville officials outlined, “we want people to think about designing around the trees on their property when building rather than tearing down trees.” *Id.*

8. *See* Coleman Interview, *supra* note 1.

9. *See* Audio Recording of House Proceedings, Feb. 14, 2001 (remarks by Rep. Mark Burkhalter), at <http://www.state.ga.us/services/leg/audio/2001archive.html> [hereinafter House Audio].

10. *See* Coleman Interview, *supra* note 1; Telephone Interview with Rep. Mark Burkhalter, House District No. 41 (Apr. 5, 2001) [hereinafter Burkhalter Interview].

11. *See* HB 279, as introduced, 2001 Ga. Gen. Assem.

12. *See* State of Georgia Final Composite Status Sheet, HB 279, Mar. 21, 2001.

13. *See* HB 279, as introduced, 2001 Ga. Gen. Assem. Specimen trees are hardwoods greater than forty inches in diameter. *See id.*

14. *See* HB 279 (HCS), 2001 Ga. Gen. Assem.

on February 14, 2001.¹⁵ The House floor substitute added an entirely new provision that would require the State to implement a landscaping plan.¹⁶ On February 15, 2001, the Senate assigned HB 279 to its Natural Resources Committee, which created its own substitute and favorably reported the bill on March 6, 2001.¹⁷ The Senate substitute deleted the specimen tree provision.¹⁸ The Senate adopted the Natural Resources Committee substitute and unanimously passed the bill on March 13, 2001.¹⁹ The bill returned to the House on March 15, 2001, and the House concurred with the Senate substitute.²⁰ The General Assembly forwarded the bill to Governor Roy Barnes, who signed HB 279 into law on April 18, 2001.²¹

Consideration by the House Natural Resources and Environment Committee

After introduction, the House assigned the bill to its Natural Resources and Environment Committee.²² The Committee favorably reported the bill, as substituted, on February 8, 2001.²³ The Natural Resources and Environment Committee substitute added language to the original version of the bill.²⁴ The substitute allowed the State to remove trees or occupy an area without first obtaining a State Forestry Commission written determination or certification—if the Commission failed to provide such approval within thirty days of a written request.²⁵

From the House Natural Resources and Environment Committee to the House Floor

On the House floor, Representative Mark Burkhalter introduced a substitute to HB 279, adding a new section that would require the State

15. See Georgia House of Representatives Voting Record, HB 279 (Feb. 14, 2001); State of Georgia Final Composite Status Sheet, HB 279, Mar. 21, 2001.

16. Compare HB 279 (HCS), 2001 Ga. Gen. Assem., with HB 279 (HFS), 2001 Ga. Gen. Assem.

17. See State of Georgia Final Composite Status Sheet, HB 279, Mar. 21, 2001.

18. Compare HB 279 (HFSFA), 2001 Ga. Gen. Assem., with HB 279 (SCS), 2001 Ga. Gen. Assem.

19. See Georgia Senate Voting Record, HB 279 (Mar. 13, 2001).

20. See State of Georgia Final Composite Status Sheet, HB 279, Mar. 21, 2001.

21. See 2001 Ga. Laws 299, § 2, at 299.

22. See State of Georgia Final Composite Status Sheet, HB 279, Mar. 21, 2001.

23. See *id.*

24. Compare HB 279, as introduced, 2001 Ga. Gen. Assem., with HB 279 (HCS), 2001 Ga. Gen. Assem.

25. Compare HB 279, as introduced, 2001 Ga. Gen. Assem., with HB 279 (HCS), 2001 Ga. Gen. Assem.

to have a landscaping plan to maximize trees to the greatest extent practicable.²⁶ This new section would apply to trees that are not specimen trees.²⁷

Representative Doug Everett of the 163rd District offered an amendment to HB 279 that would eliminate the stated minimum number of trees a site would support, and instead, allowed the State Forestry Commission to determine the minimum number of trees on a case by case basis.²⁸ Representative Carl Rogers of the 20th District offered a second amendment to clarify "State" to mean only the State of Georgia, not just any authority which could include local governments.²⁹ After the House adopted the floor substitute and these floor amendments, the House unanimously passed the bill on February 14, 2001.³⁰

From the House Floor to the Senate Natural Resources Committee

Upon introduction, the Senate assigned the bill to its Natural Resources Committee, which favorably reported the bill, as substituted, on March 6, 2001.³¹ Because HB 279 appeared to be too prescriptive,³² the Committee substitute deleted a substantial portion of the bill, including the language regarding specimen trees.³³ Originally, HB 279 had a provision regarding specimen trees.³⁴ This provision specifically protected such trees by requiring that every reasonable effort be undertaken to save specimen trees from removal or destruction.³⁵ If removal could not have been avoided, then state developers would have been required, wherever practical, to plant ten hardwood trees for each specimen tree removed.³⁶ According to Senator Billy Ray, a member of the Senate Natural Resources Committee, the Committee was concerned

26. Compare HB 279 (HCS), 2001 Ga. Gen. Assem., with HB 279 (HFS), 2001 Ga. Gen. Assem.; see also House Audio, *supra* note 9 (remarks by Rep. Mark Burkhalter).

27. Compare HB 279 (HCS), 2001 Ga. Gen. Assem., with HB 279 (HFS), 2001 Ga. Gen. Assem.

28. See House Audio, *supra* note 9 (remarks by Rep. Doug Everett).

29. See *id.* (remarks by Rep. Carl Rogers).

30. See Georgia House of Representatives Voting Record, HB 279 (Feb. 14, 2001).

31. See State of Georgia Final Composite Status Sheet, HB 279 Mar. 21, 2001.

32. See Telephone Interview with Sen. Thomas E. Price, Senate District No. 56 (Apr. 18, 2001) [hereinafter Price Interview].

33. Compare HB 279 (HFSFA), 2001 Ga. Gen. Assem., with HB 279 (SCS), 2001 Ga. Gen. Assem. Thus, the only remaining changes from the original bill were those previously added in the House floor substitute.

34. See HB 279, as introduced, 2001 Ga. Gen. Assem.

35. See *id.*

36. See *id.*

that the specimen tree section was too intrusive.³⁷ Because of the extensive detail within the specimen tree section, it appeared to be a more intrusive mandate from the state than the newly added landscaping provision.³⁸ Although it approved the landscaping provision, the Committee concluded that the specimen tree provision encompassed matters best suited to local government control through zoning, development, and land use planning.³⁹

From the Senate Natural Resources Committee to the Senate Floor

The Senate unanimously adopted the Committee substitute and passed HB 279, as substituted, on March 13, 2001.⁴⁰ Senator Thomas E. Price of the 56th District introduced HB 279 to the Senate on March 13, 2001.⁴¹ As substituted, HB 279 made it necessary for the State to provide landscaping plans to replace those trees removed during any state activities and required that the State make reasonable efforts to salvage as many trees as possible on a site.⁴²

From the Senate Floor Back to the House

The Senate sent the bill back to the House on March 15, 2001 and the House concurred with the Senate version.⁴³ Representative Burkhalter encouraged the House to support the Senate substitute, which was essentially a substitute that Representative Burkhalter prepared for the Senate.⁴⁴ With no opposition to the Senate substitute, the House unanimously passed the bill.⁴⁵ Governor Roy Barnes signed HB 279 into law on April 18, 2001.⁴⁶

37. See Telephone Interview with Sen. Billy Ray, Senate District No. 48 (Apr. 20, 2001) [hereinafter Ray Interview].

38. See *id.*

39. See *id.*

40. See Georgia Senate Voting Record, HB 279 (Mar. 13, 2001).

41. See Audio Recording of Senate Proceedings, Mar. 13, 2001, at <http://www.state.ga.us/services/leg/audio/2001archive.html> [hereinafter Senate Audio].

42. See *id.* (comments by Sen. Thomas E. Price).

43. See State of Georgia Final Composite Status Sheet, HB 279, Mar. 21, 2001.

44. See Audio Recording of House Proceedings, Mar. 15, 2001 (remarks by Rep. Mark Burkhalter), at <http://www.state.ga.us/services/leg/audio/2001archive.html>.

45. See *id.*

46. See 2001 Ga. Laws 299, § 2, at 299.

The Act

The Act amends Chapter 16 of Title 50 by adding new Code section 50-16-19.⁴⁷ Due to concern over the rapid disappearance of trees in Georgia, the legislation now requires a landscape plan for any State development project.⁴⁸ The landscape plan must make all reasonable efforts to conserve as many of the area's trees as possible.⁴⁹ The goal behind HB 279 was to have the State set an example in protecting trees, as they were under no previous obligation to do so.⁵⁰

The Act defines development activity as "the construction of a structure having an area occupied and defined by the exterior of such structure of at least 1000 square feet or of a parking lot, other than roadway, street, or bridge construction."⁵¹ Code section 50-16-19(b) requires that the State have a landscaping plan for any development activity in order to retain the greatest number of trees possible.⁵² In addition, Code section 50-16-19(b) requires the State, on any state-sponsored development site, to plant and replace trees indigenous to that particular region.⁵³

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47. See O.C.G.A. § 50-16-19 (Supp. 2001).

48. See Burkhalter Interview, *supra* note 10; Coleman Interview, *supra* note 1; Daily Report No. 21, available at http://www.legis.state.ga.us/Legis/2001_02/house/hinfo/daily21a.htm [hereinafter Daily Report No. 21].

49. See Burkhalter Interview, *supra* note 10; Coleman Interview, *supra* note 1; Daily Report No. 21, *supra* note 48.

50. See House Audio, *supra* note 9 (remarks by Rep. Mark Burkhalter).

51. O.C.G.A. § 50-16-19(a) (Supp. 2001).

52. See *id.* § 50-16-19(b).

53. See *id.*