

House Bill 1025

By: Representatives Knight of the 130<sup>th</sup>, Houston of the 170<sup>th</sup>, Roberts of the 155<sup>th</sup>, and Shaw of the 176<sup>th</sup>

A BILL TO BE ENTITLED  
AN ACT

1 To amend Chapter 7 of Title 12 of the Official Code of Georgia Annotated, relating to  
2 control of soil erosion and sedimentation, so as to revise minimum standards; to provide for  
3 related matters; to repeal conflicting laws; and for other purposes.

4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

5 SECTION 1.

6 Chapter 7 of Title 12 of the Official Code of Georgia Annotated, relating to control of soil  
7 erosion and sedimentation, is amended by revising Code Section 12-7-6, relating to best  
8 management practices and minimum standards for control of soil erosion and sedimentation,  
9 as follows:

10 "12-7-6.

11 (a)(1) Best management practices as set forth in subsection (b) of this Code section shall  
12 be required for all land-disturbing activities. Proper design, installation, and maintenance  
13 of best management practices shall constitute a complete defense to any action by the  
14 director or to any other allegation of noncompliance with paragraph (2) of this subsection  
15 or any substantially similar terms contained in a permit for the discharge of storm water  
16 issued pursuant to subsection (f) of Code Section 12-5-30. As used in this subsection, the  
17 terms 'proper design' and 'properly designed' mean designed in accordance with the  
18 ~~hydraulic design specifications contained in the 'Manual for Erosion and Sediment~~  
19 ~~Control in Georgia' specified in subsection (b) of this Code section~~ best management  
20 practices provided in this Code section.

21 (2) A discharge of storm-water runoff from disturbed areas where best management  
22 practices have not been properly designed, installed, and maintained shall constitute a  
23 separate violation of any land-disturbing permit issued by a local issuing authority or of  
24 any state general permit issued by the division pursuant to subsection (f) of Code Section  
25 12-5-30 for each day on which such discharge results in the turbidity of receiving waters  
26 being increased by more than 25 nephelometric turbidity units for waters supporting

27 warm water fisheries or by more than ten nephelometric turbidity units for waters  
28 classified as trout waters. The turbidity of the receiving waters shall be measured in  
29 accordance with guidelines to be issued by the director. This paragraph shall not apply  
30 to any land disturbance associated with the construction of single-family homes which  
31 are not part of a larger common plan of development or sale unless the planned  
32 disturbance for such construction is equal to or greater than five acres.

33 (3) Failure properly to design, install, or maintain best management practices shall  
34 constitute a violation of any land-disturbing permit issued by a local issuing authority or  
35 of any state general permit issued by the division pursuant to subsection (f) of Code  
36 Section 12-5-30 for each day on which such failure occurs.

37 (4) The director may require, in accordance with regulations adopted by the board,  
38 reasonable and prudent monitoring of the turbidity level of receiving waters into which  
39 discharges from land-disturbing activities occur.

40 (b) The rules and regulations, ordinances, or resolutions adopted pursuant to this chapter  
41 for the purpose of governing land-disturbing activities shall require, as a minimum,  
42 protections at least as stringent as the state general permit; and best management practices,  
43 including sound conservation and engineering practices to prevent and minimize erosion  
44 and resultant sedimentation, which are consistent with, and no less stringent than, ~~those~~  
45 ~~practices contained in the 'Manual for Erosion and Sediment Control In Georgia' published~~  
46 ~~by the State Soil and Water Conservation Commission as of January 1 of the year in which~~  
47 ~~the land-disturbing activity was permitted, as well as the following:~~

48 (1) Stripping of vegetation, regrading, and other development activities shall be  
49 conducted in such a manner so as to minimize erosion;

50 (2) Cut and fill operations must be kept to a minimum;

51 (3) Development plans must conform to topography and soil type, so as to create the  
52 lowest practicable erosion potential;

53 (4) Whenever feasible, natural vegetation shall be retained, protected, and supplemented;

54 (5) The disturbed area and the duration of exposure to erosive elements shall be kept to  
55 a practicable minimum;

56 (6) Disturbed soil shall be stabilized as quickly as practicable;

57 (7) Temporary vegetation or mulching shall be employed to protect exposed critical  
58 areas during development;

59 (8) Permanent vegetation and structural erosion control measures must be installed as  
60 soon as practicable;

61 (9) To the extent necessary, sediment in run-off water must be trapped by the use of  
62 debris basins, sediment basins, silt traps, or similar measures until the disturbed area is

- 63 stabilized. As used in this paragraph, a disturbed area is stabilized when it is brought to  
64 a condition of continuous compliance with the requirements of this chapter;
- 65 (10) Adequate provisions must be provided to minimize damage from surface water to  
66 the cut face of excavations or the sloping surfaces of fills;
- 67 (11) Cuts and fills may not endanger adjoining property;
- 68 (12) Fills may not encroach upon natural watercourses or constructed channels in a  
69 manner so as to adversely affect other property owners;
- 70 (13) Grading equipment must cross flowing streams by the means of bridges or culverts,  
71 except when such methods are not feasible, provided, in any case, that such crossings  
72 must be kept to a minimum;
- 73 (14) Land-disturbing activity plans for erosion and sedimentation control shall include  
74 provisions for treatment or control of any source of sediments and adequate  
75 sedimentation control facilities to retain sediments on site or preclude sedimentation of  
76 adjacent waters beyond the levels specified in subsection (a) of this Code section;
- 77 (15)(A) There is established a 25 foot buffer along the banks of all state waters, as  
78 measured horizontally from the point where vegetation has been wrested by normal  
79 stream flow or wave action, except:
- 80 (i) As provided by paragraph (16) of this subsection;
- 81 (ii) Where the director determines to allow a variance that is at least as protective of  
82 natural resources and the environment;
- 83 (iii) Where otherwise allowed by the director pursuant to Code Section 12-2-8;
- 84 (iv) Where a drainage structure or a roadway drainage structure must be constructed,  
85 provided that adequate erosion control measures are incorporated in the project plans  
86 and specifications and are implemented;
- 87 (v) Along any ephemeral stream. As used in this division, the term 'ephemeral  
88 stream' means a stream:
- 89 (I) That under normal circumstances has water flowing only during and for a short  
90 duration after precipitation events;
- 91 (II) That has the channel located above the ground-water table year round;
- 92 (III) For which ground water is not a source of water; and
- 93 (IV) For which runoff from precipitation is the primary source of water flow; or
- 94 (vi) Where shoreline stabilization is installed; provided, however, that this exception  
95 shall be limited to the construction of bulkheads and sea walls only to the extent  
96 required to prevent the erosion of the shoreline. This exception shall be limited to  
97 Lake Oconee and Lake Sinclair and shall be limited to the duration of such  
98 construction.

99 Unless exempted under division (v) of this subparagraph, buffers of at least 25 feet  
100 established pursuant to Part 6 of Article 5 of Chapter 5 of this title shall remain in force  
101 unless a variance is granted by the director as provided in this paragraph.

102 (B) No land-disturbing activities shall be conducted within any such buffer; and a  
103 buffer shall remain in its natural, undisturbed state of vegetation until all  
104 land-disturbing activities on the construction site are completed, except as otherwise  
105 provided by this paragraph. Once the final stabilization of the site is achieved, a buffer  
106 may be thinned or trimmed of vegetation ~~as~~ so long as a protective vegetative cover  
107 remains to protect water quality and aquatic habitat and a natural canopy is left in  
108 sufficient quantity to keep shade on the stream bed; provided, however, that any person  
109 constructing a single-family residence, when such residence is constructed by or under  
110 contract with the owner for his or her own occupancy, may thin or trim vegetation in  
111 a buffer at any time ~~as~~ so long as protective vegetative cover remains to protect water  
112 quality and aquatic habitat and a natural canopy is left in sufficient quantity to keep  
113 shade on the stream bed.

114 (C) On or before December 31, 2004, the board shall adopt rules which contain  
115 specific criteria for the grant or denial by the director of requests for variances. After  
116 such date, no variance shall be granted by the director which is not consistent with the  
117 criteria contained in such rules. Such rules shall provide, at a minimum, that the  
118 director shall consider granting a variance in the following circumstances:

119 (i) Where a proposed land-disturbing activity within the buffer would require the  
120 landowner to acquire a permit from the United States Army Corps of Engineers under  
121 Section 404 of the federal Water Pollution Control Act Amendment of 1972, 33  
122 U.S.C. Section 1344, and the Corps of Engineers has approved a mitigation plan to  
123 be implemented as a condition of such a permit;

124 (ii) Where the landowner provides a plan satisfactory to the director that shows that,  
125 even with the proposed land-disturbing activity within the buffer, the completed  
126 project will result in maintained or improved water quality downstream of the project;  
127 or

128 (iii) Where a project with a proposed land-disturbing activity within the buffer is  
129 located in or upstream and within ten linear miles of a stream segment listed as  
130 impaired under Section 303(d) of the federal Water Pollution Control Act  
131 Amendment of 1972, 33 U.S.C. Section 1313(d) and the landowner provides a plan  
132 satisfactory to the director that shows that the completed project will result in  
133 maintained or improved water quality in such listed stream segment and that the  
134 project has no adverse impact relative to the pollutants of concern in such stream  
135 segment.

136 All projects covered under divisions (i), (ii), and (iii) of this subparagraph shall meet  
137 all criteria set forth in rules for specific variance criteria adopted by the board by  
138 December 31, 2004.

139 (D) The buffer shall not apply to the following land-disturbing activities, provided that  
140 they occur at an angle, as measured from the point of crossing, within 25 degrees of  
141 perpendicular to the stream; cause a width of disturbance of not more than 50 feet  
142 within the buffer; and adequate erosion control measures are incorporated into the  
143 project plans and specifications and are implemented:

144 (i) Stream crossings for water lines; or

145 (ii) Stream crossings for sewer lines; and

146 (16) There is established a 50 foot buffer, as measured horizontally from the point where  
147 vegetation has been wrested by normal stream flow or wave action, along the banks of  
148 any state waters classified as 'trout streams' pursuant to Article 2 of Chapter 5 of this title  
149 except where a roadway drainage structure must be constructed; provided, however, that  
150 small springs and streams classified as trout streams which discharge an average annual  
151 flow of 25 gallons per minute or less shall have a 25 foot buffer or they may be piped, at  
152 the discretion of the landowner, pursuant to the terms of a rule providing for a general  
153 variance promulgated by the board providing for notice to the division or local issuing  
154 authority of the location and extent of the piping and prescribed methodology for  
155 minimizing the impact of such piping and for measuring the volume of water discharged  
156 by the stream. Any such pipe must stop short of the downstream landowner's property,  
157 and the landowner must comply with the buffer requirement for any adjacent trout  
158 streams. The director may grant a variance from such buffer to allow land-disturbing  
159 activity, provided that adequate erosion control measures are incorporated in the project  
160 plans and specifications and are implemented. The following requirements shall apply  
161 to any such buffer:

162 (A) No land-disturbing activities shall be conducted within a buffer and a buffer shall  
163 remain in its natural, undisturbed, state of vegetation until all land-disturbing activities  
164 on the construction site are completed. Once the final stabilization of the site is  
165 achieved, a buffer may be thinned or trimmed of vegetation as so long as a protective  
166 vegetative cover remains to protect water quality and aquatic habitat and a natural  
167 canopy is left in sufficient quantity to keep shade on the stream bed; provided, however,  
168 that any person constructing a single-family residence, when such residence is  
169 constructed by or under contract with the owner for his or her own occupancy, may thin  
170 or trim vegetation in a buffer at any time as so long as protective vegetative cover  
171 remains to protect water quality and aquatic habitat and a natural canopy is left in  
172 sufficient quantity to keep shade on the stream bed;

173 (B) On or before December 31, 2000, the board shall adopt rules which contain  
174 specific criteria for the grant or denial by the director of requests for variances. After  
175 such date, no variance shall be granted by the director which is not consistent with the  
176 criteria contained in such rules; provided, however, that, should the board fail to adopt  
177 rules which contain specific criteria for the grant or denial of requests for variances by  
178 the director on or before December 31, 2000, the authority of the director to issue such  
179 variances shall be suspended until the board adopts such rules; and

180 (C) The buffer shall not apply to the following land-disturbing activities, provided that  
181 they occur at an angle, as measured from the point of crossing, within 25 degrees of  
182 perpendicular to the stream; cause a width of disturbance of not more than 50 feet  
183 within the buffer; and adequate erosion control measures are incorporated into the  
184 project plans and specifications and are implemented:

185 (i) Stream crossings for water lines; or

186 (ii) Stream crossings for sewer lines.

187 (c) Nothing contained in this chapter shall prevent any local issuing authority from  
188 adopting rules and regulations, ordinances, or resolutions which contain stream buffer  
189 requirements that exceed the minimum requirements in subsection (b) of this Code section.

190 (d) The fact that land-disturbing activity for which a permit has been issued results in  
191 injury to the property of another shall neither constitute proof of nor create a presumption  
192 of a violation of the standards provided for in this Code section or the terms of the permit."

193 **SECTION 2.**

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