

## LEGAL ASPECTS OF NATURAL RESOURCES LEGISLATION ENACTED BY THE 1989 GEORGIA GENERAL ASSEMBLY

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The "bottom-line" of new legislation affecting Georgia's water resources is *accommodation*. From the foothills of the Mountain Province to the low-water mark of the coastal tidelands, the General Assembly has initiated changes in several statutes that indicate a willingness to facilitate development activities that could have significant negative impacts on various systems' natural functions.

The new statute is: The Georgia Aquaculture Development Act (Conference Substitute to SB 86). The amendments include several designed to encourage and require implementation of existing comprehensive planning authority by local governments (Conference Substitute to HB 215), the Erosion and Sedimentation Act amendments (Conference Substitute to SB 84), The Georgia Environmental Facilities Authority Act (SB 83) and The Coastal Marshland Protection Act (HB 272).

The impacts will be on tidal and fresh waters and water courses, coastal and upland wetlands, and on the many arrangements of uses of the urban environment accomplished through planning and zoning processes. If wisely administered, these new laws or amendments can also have many positive, systems-preserving effects.

The provisions for construction of water supply reservoirs in the Georgia Water Supply Act suggest the likely destruction of significant acreages of fresh water wetlands. The projects will raise questions of appropriate siting, land use, navigation and recreation uses and mitigation of negative impacts on wetlands and wildlife.

The Aquaculture Development Act is, at this time, only an exploration, study and recommendation statute. However, its enactment is in response to growing interest in expanding aquaculture opportunities in the state's fresh and marine waters. Thus,

the findings and recommendations of the Commission established by the Act will reveal the potential for conflict and competition among diverse water interests in the State. At the least, in fresh water courses, conflicts can arise between competing aquaculturists and between aquaculturists and other users such as fishermen, canoeists and other recreation users.

In the marine or intertidal zone, the potential conflicts will come from among those asserting various property interests, commercial and sport fishermen and the numerous and expanding recreation users of these water resources. The amendment to the Coastal Marshland Protection Act respecting marinas is an apt example of what the aquaculture study act portends - at least in the coastal zone. Pressure for additional marina facilities has been growing for years, and legislative accommodation of such interests effectively tilts state response in favor of this relatively exclusive use of these state resources.

The remaining statutes and amendments are intended to affect an array of development and construction activities. While the Soil Erosion and Sedimentation Act amendments include several "tightening-up" provisions, it exempts many if not most of the major sources of sediment subject to erosional forces. It is obvious that farming, forestry, mining, quarry and transportation lobbies substantially influenced this legislation.

The Georgia Environmental Facilities Authority Act amendments relate to the establishment and management of systems to collect, move or transport water, wastewater and solid wastes. Impacts arise from construction activities and other environmental effects inherent in disposal of treated sewerage components and various solid wastes.

The statute designed to encourage and facilitate the adoption by all local governing authorities of

comprehensive growth control mechanisms can have many positive, environmentally sound effects. These affected activities, generally included in the terms "zoning and planning" can influence for the better most human initiated alterations of land and water resources.

Opportunities in these new statutory provisions include the spectrum of human actions traditionally regulated through constitutionally derived powers of local governments to adopt general plans for development and to implement zoning guidance and limitations. Decisions regarding where industrial development will occur, where residential areas are to be located along with selection of transportation corridors and sewerage and water service routes are examples of application of the goals of this new emphasis on sound community growth planning.

The statute entitled the "Georgia Water Supply Act", when viewed in conjunction with the 1977 amendments of the Georgia Water Quality Control Act, reveals a new and expansive role for the Department of Natural Resources in that the DNR will now be in a position of regulating its own environmental impacting activities. In this new role, the department will no doubt test and be tested with respect to the exercise of its new authorities. The challenges and opportunities will arise in part because of the DNR's dual role of developer/advocate and protector/trustee. In an era of natural resources management in which development advocacy functions have been separated from regulatory functions, the DNR's success in this new role requires open, thorough and even-handed procedures and wise policy choices.

Another set of issues arising from the DNR's new role (which will produce increasing concern as the public becomes informed of the practical implications of the policy directives behind this rather expansive legislation) is the extent of consideration of alternative solutions to the perceived problems. Foremost in such a list of concerns will be whether withdrawal and return of ground and surface water resources could be arranged so as to preclude the necessity for construction of reservoirs.

The debate about several aspects and implications of transbasin diversions will no doubt be rekindled.

New interests in, appreciation of and limitations on conversion and destruction of wetlands, found in Section 404 of the federal Clean Water Act of 1977 (CWA), will feature critically in any proposal respecting construction of water reservoirs that

destroy wetlands. With respect to reservoir construction, the National Environmental Policy Act (NEPA), and Section 404 of the Clean Water Act (CWA) impose formidable requirements of scientific analysis and environmental protection. NEPA requires a level of environmental effects disclosure and discussion not normally performed by state and local governments in Georgia. Under Section 404 of the CWA, delineation of wetlands requires careful analysis of soil types, hydrology of affected sites and identification of relevant vegetation.

Similar challenges and opportunities are evident in the provisions of statutes amending the Soil Erosion and Sedimentation Act, the Georgia Environmental Facilities Authority Act and the Coastal Marshlands Protection Act. Then there is the belated but important first step of the legislature to require all governing authorities of the state to exercise rationally their powers to control various aspects of development within their jurisdictions. This last requirement is found in the new law relating to comprehensive planning described above which prohibits arbitrary and inconsistent application of decision standards in land use control activities.

In a state still blessed with genuine, environmentally sound options, we should all seize upon these new opportunities to contribute to wise, ecologically sound natural resource allocation choices.