

**Coastal Marshlands Protection Act**  
*O.C.G.A. § 12-5-280*

TITLE 12 Chapter 5 Article 4 Part 4 Note

PART NOTES:

ADMINISTRATIVE RULES AND REGULATIONS. --Coastal marshlands protection, Official Compilation of Rules and Regulations of State of Georgia, Department of Natural Resources, Chapter 391-2-3.

LAW REVIEWS. --For article, "Georgia's Environmental Law: A Survey," see *23 Mercer L. Rev. 633 (1972)*. For article, "Public Rights in Georgia's Tidelands," see *9 Ga. L. Rev. 79 (1974)*. For article, "Hazardous Waste Issues in Real Estate Transactions," see *38 Mercer L. Rev. 581 (1987)*. For article, "Georgia Wetlands: Values, Trends, and Legal Status," see *41 Mercer L. Rev. 791 (1990)*.

For notes, "Regulation and Ownership of the Marshlands: The Georgia Marshlands Act," see *5 Ga. L. Rev. 563 (1971)*. For note discussing the historical aspects and current law concerning the state's ownership rights in tidelands, see *17 Ga. L. Rev. 851 (1983)*. For note on 1992 amendment of this part, see *9 Ga. St. U.L. Rev. 205 (1992)*.

OPINIONS OF THE ATTORNEY GENERAL:

GEORGIA PORTS AUTHORITY EXEMPT FROM PART. --Because the Georgia Ports Authority, at time of enactment of O.C.G.A. Pt. 4, Art. 4, Ch. 5, T. 12, was empowered and charged with responsibility of development and improvement of rivers and seaports of this state, as a general matter, it is exempt from requirements of this part. 1981 Op. Att'y Gen. No. 81-85.

LIMITATION ON EXEMPTION OF GEORGIA PORTS AUTHORITY FROM THIS PART. --While the Georgia Ports Authority is generally exempt from provisions of O.C.G.A. Pt. 4, Art. 4, Ch. 5, T. 12, it must obtain prior written approval of the Coastal Marshlands Protection Committee for any proposed alteration of marshlands adjacent to Colonels Island which were conveyed to the Georgia Ports Authority pursuant to Ga. L. 1973, p. 747. 1981 Op. Att'y Gen. No. 81-85.

THE BRUNSWICK PORT AUTHORITY falls within terms of exception to O.C.G.A. Pt. 4, Art. 4, Ch. 5, T. 12 for state agencies responsible for navigation, and is, thus, exempt from provisions of this part. 1982 Op. Att'y Gen. No. 82-21.

RESEARCH REFERENCES

ALR. --Conservation: validity, construction, and application of enactments restricting land development by dredging or tilling, 46 ALR3d 1422.

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### § 12-5-280. Short title

This part shall be known and may be cited as the "Coastal Marshlands Protection Act of 1970."

**HISTORY:** Ga. L. 1970, p. 939, § 1; Ga. L. 1992, p. 2294, § 1.

**NOTES:**

LAW REVIEWS. --For article, "From Marshes to Mountains, Wetlands Come Under State Regulation," see *41 Mercer L. Rev.* 865 (1990).

### § 12-5-281. Legislative findings and declarations

The General Assembly finds and declares that the coastal marshlands of Georgia comprise a vital natural resource system. It is recognized that the estuarine area of Georgia is the habitat of many species of marine life and wildlife and, without the food supplied by the marshlands, such marine life and wildlife cannot survive. The General Assembly further finds that intensive marine research has revealed that the estuarine marshlands of coastal Georgia are among the richest providers of nutrients in the world. Such marshlands provide a nursery for commercially and recreationally important species of shellfish and other wildlife, provide a great buffer against flooding and erosion, and help control and disseminate pollutants. Also, it is found that the coastal marshlands provide a natural recreation resource which has become vitally linked to the economy of Georgia's coastal zone and to that of the entire state. The General Assembly further finds that this coastal marshlands resource system is costly, if not impossible, to reconstruct or rehabilitate once adversely affected by man related activities and is important to conserve for the present and future use and enjoyment of all citizens and visitors to this state. The General Assembly further finds that the coastal marshlands are a vital area of the state and are essential to maintain the health, safety, and welfare of all the citizens of the state. Therefore, the General Assembly declares that the management of the coastal marshlands has more than local significance, is of equal importance to all citizens of the state, is of state-wide concern, and consequently is properly a matter for regulation under the police power of the state. The General Assembly further finds and declares that activities and structures in the coastal marshlands must be regulated to ensure that the values and functions of the coastal marshlands are not impaired and to fulfill the responsibilities of each generation as public trustees of the coastal marshlands for succeeding generations.

**HISTORY:** Code 1981, § 12-5-281, enacted by Ga. L. 1992, p. 2294, § 1.

### § 12-5-282. Definitions

As used in this part, the term:

- (1) "Applicant" means any person who files an application under this part.
- (2) "Board" means the Board of Natural Resources.
- (3) "Coastal marshlands" or "marshlands" means any marshland intertidal area, mud flat, tidal water bottom, or salt marsh in the State of Georgia within the estuarine area of the state, whether or not the tidewaters reach the littoral areas through natural or artificial watercourses. "Vegetated marshlands" shall include those areas upon which grow one, but not necessarily all, of the

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following: salt marsh grass (*Spartina alterniflora*), black needlerush (*Juncus roemerianus*), saltmeadow cordgrass (*Spartina patens*), big cordgrass (*Spartina cynosuroides*), saltgrass (*Distichlis spicata*), coast dropseed (*Sporobolus virginicus*), bigelow glasswort (*Salicornia bigelovii*), woody glasswort (*Salicornia virginica*), saltwort (*Batis maritima*), sea lavender (*Limonium nashii*), sea oxeye (*Borrchia frutescens*), silverling (*Baccharis halimifolia*), false willow (*Baccharis angustifolia*), and high-tide bush (*Iva frutescens*). The occurrence and extent of salt marsh peat at the undisturbed surface shall be deemed to be conclusive evidence of the extent of a salt marsh or a part thereof.

(4) "Commissioner" means the commissioner of natural resources.

(5) "Committee" means the Coastal Marshlands Protection Committee created by this part.

(6) "Eligible person" means any person who is the owner of high land adjoining the state owned marshland or water bottoms, or combination thereof, sought to be leased by said person such that at least 100 percent of the landward boundary of the state owned marshland or water bottom, or combination thereof, sought to be leased is bordered by said adjoining high land.

(7) "Estuarine area" means all tidally influenced waters, marshes, and marshlands lying within a tide-elevation range from 5.6 feet above mean tide level and below.

(7.1) "Letter of permission" means written authorization from the department to conduct a proposed activity in an area subject to the jurisdiction of this part, provided such activity is either within the physical perimeter of an existing serviceable project or involves the construction and removal of a project or other temporary activity that concludes within six months, inclusive of the time needed to return all affected areas to a condition approximate to, or better than, that which existed before commencement of the activity.

(8) "Live-aboard" means 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. Live-aboards include but are not limited to monohulls, multihulls, houseboats, floating homes, and other floating structures which are used for human or animal habitation.

(9) "Minor alteration" means any change in the marshlands which, taken singularly or in combination with other changes, involve less than 0.10 acres. Minor alteration also includes renewal of permits previously issued by the committee.

(10) "Person" means any individual, partnership, corporation, municipal corporation, county, association, or public or private authority, and shall include the State of Georgia, its political subdivisions, and all its departments, boards, bureaus, commissions, or other agencies, unless specifically exempted by this part.

(11) "Political subdivision" means the governing authority of a county or a municipality in which the marshlands to be affected or any part thereof are located.

(12) "Private dock" means a structure built onto or over the marsh and submerged lands which is used for recreational fishing and other recreational activities, is not available to the public, does not have enclosures, and does not create a navigation hazard; provided, however, that a private dock may be covered and screened with wainscotting not higher than three feet and may be equipped with a hoist.

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(13) "Serviceable" means usable as is or with only minor maintenance, but not so degraded as to essentially require reconstruction, as determined by the department.

**HISTORY:** Ga. L. 1970, p. 939, § 2; Code 1981, § 12-5-281; Ga. L. 1982, p. 3, § 12; Ga. L. 1989, p. 574, § 1; Ga. L. 1990, p. 8, § 12; Code 1981, § 12-5-282, as redesignated by Ga. L. 1992, p. 2294, § 1.

### JUDICIAL DECISIONS

"ELIGIBLE PERSON." --There are two components of eligibility under *O.C.G.A. § 12-5-282(6)* for a marshland/water bottom lease: (1) the ownership interest in the high land (or upland): and (2) the metes and bounds of the high land contiguous to the water bottom so that at least 100 percent of the landward boundary of the state owned water bottom is bordered by this adjoining high land. *DBL, Inc. v. Carson, 284 Ga. App. 898, 645 S.E.2d 56 (2007)*, cert. denied, *2007 Ga. LEXIS 566 (2007)*.

### RESEARCH REFERENCES

AM. JUR. 2D. --*56 Am. Jur. 2d, Municipal Corporations, Counties, and Other Political Subdivisions, § 12.*

### **§ 12-5-283. Coastal Marshlands Protection Committee created; members; powers; per diem and expenses; administrative hearings and review; permits for minor alterations**

(a) There is created the Coastal Marshlands Protection Committee to be composed of five members. The commissioner of natural resources and four persons selected by the board shall be the members of this committee. Each of three persons selected by the board shall be a resident of Camden, Glynn, McIntosh, Liberty, Bryan, or Chatham County. Three members of the committee shall constitute a quorum. The committee shall issue all orders and shall grant, deny, revoke, and amend all permits and leases provided for by this part. The members of the committee shall be entitled to reimbursement of actual expenses and mileage together with a per diem as set by the board to be paid out of funds appropriated for use by the department.

(b) Any person who is aggrieved or adversely affected by any order or action of the committee shall, upon petition within 30 days after the issuance of such order or the taking of such action, have a right to a hearing before an administrative law judge appointed by the board. The hearing before the administrative law judge shall be conducted in accordance with Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," and the rules and regulations adopted by the board pursuant thereto. The decision of the administrative law judge shall constitute the final decision of the board and any party to the hearing, including the committee, shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50.

(c) Persons are "aggrieved or adversely affected" where the challenged action has caused or will cause them injury in fact and where the injury is to an interest within the zone of interests to be protected or regulated by this part. In the event the committee asserts in response to the petition before the administrative law judge that the petitioner is not aggrieved or adversely affected, the

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administrative law judge shall take evidence and hear arguments on this issue and thereafter make a ruling on this issue before continuing with the hearing. The burden of going forward with evidence on this issue shall rest with the petitioner.

(d) Any permit for minor alteration of the marshlands may be issued by the commissioner based on the recommendations of staff, past committee actions, and the results of public comments. The commissioner may refer the application to the committee to decide on permits for minor alterations that, in his judgment, should receive broader consideration. A committee member may choose to have the full committee decide on permit applications for minor alterations that the member feels should receive broader consideration.

**HISTORY:** Ga. L. 1972, p. 1015, § 17; Ga. L. 1973, p. 564, § 1; Code 1981, § 12-5-282; Ga. L. 1984, p. 404, § 5; Ga. L. 1985, p. 1465, § 3; Ga. L. 1989, p. 574, § 2; Code 1981, § 12-5-283, as redesignated by Ga. L. 1992, p. 2294, § 1; Ga. L. 2004, p. 400, § 2.

### NOTES:

THE 2004 AMENDMENT, effective July 1, 2004, in subsection (a), substituted "five members" for "three members" at the end of the first sentence, substituted "four persons" for "two persons" in the second sentence, in the third sentence substituted "Each of three" for "Both" and substituted "a resident" for "residents", and added the fourth sentence.

CODE COMMISSION NOTES. --Pursuant to *Code Section 28-9-5*, in 1989, a comma was inserted following "Act" in the second sentence of subsection (b).

ADMINISTRATIVE RULES AND REGULATIONS. --Procedure for disposition of contested cases, Official Compilation of Rules and Regulations of the State of Georgia, Department of Natural Resources, Chapter 391-1-2.

LAW REVIEWS. --For article surveying Georgia cases dealing with environment, natural resources, and land use from June 1977 through May 1978, see *30 Mercer L. Rev.* 75 (1978).

### JUDICIAL DECISIONS

*BOARD MAY NOT FURTHER REVIEW DECISIONS OF COMMITTEE.* *Department of Natural Resources v. American Cyanamid Co.*, 239 Ga. 740, 238 S.E.2d 886 (1977).

CITED in *Coastal Marshlands Prot. Comm. v. Ctr. for a Sustainable Coast*, 286 Ga. App. 518, 649 S.E.2d 619 (2007).

### RESEARCH REFERENCES

AM. JUR. 2D. --2 *Am. Jur. 2d, Administrative Law*, § 364.

C.J.S. --73A C.J.S., *Public Administrative Law and Procedure*, §§ 313, 314, 316.

## § 12-5-284. Authority of department as to coastal marshlands generally

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(a) The department shall have the following authority:

(1) To administer and enforce this part and all rules, regulations, and orders promulgated under this part and to determine jurisdiction under this part;

(2) To accept moneys that are available from persons, government units, and private organizations;

(3) To conduct public hearings and institute and prosecute court actions as may be necessary to enforce compliance with this part and any rules and regulations promulgated hereunder, provided that all such actions shall be in the name of the department;

(4) To issue letters of permission and impose a reasonable fee for processing such letters of permission; and

(5) To exercise all incidental powers necessary to carry out the purposes of this part.

(b) The foregoing powers and duties may be exercised and performed by the department through such duly authorized agents and employees as it deems necessary and proper.

**HISTORY:** Ga. L. 1970, p. 939, § 4; Ga. L. 1972, p. 991, § 1; Code 1981, § 12-5-283; Code 1981, § 12-5-284, as redesignated by Ga. L. 1992, p. 2294, § 1.

### RESEARCH REFERENCES

AM. JUR. 2D. --2 *Am. Jur. 2d, Administrative Law*, §§ 64, 181, 182, 188, 192, 193, 291, 464, 465.

C.J.S. --73 C.J.S., *Public Administrative Law and Procedure*, § 180. 73A C.J.S., *Public Administrative Law and Procedure*, §§ 481, 483. 81A C.J.S., *States*, § 256.

### § 12-5-285. Power of board to promulgate rules and regulations

The board shall have power to promulgate rules and regulations for the implementation and enforcement of this part.

**HISTORY:** Ga. L. 1970, p. 939, § 4; Code 1981, § 12-5-284; Code 1981, § 12-5-285, as redesignated by Ga. L. 1992, p. 2294, § 1.

### RESEARCH REFERENCES

AM. JUR. 2D. --2 *Am. Jur. 2d, Administrative Law*, §§ 64, 181, 182, 188, 192, 193, 291, 464, 465.

C.J.S. --73 C.J.S., *Public Administrative Law and Procedure*, § 180. 73A C.J.S., *Public Administrative Law and Procedure*, §§ 481, 483. 81A C.J.S., *States*, § 256.

### § 12-5-286. Permit required; application; notice; public hearing; issuance; denial; dynamic dune fields

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(a)(1) No person shall remove, fill, dredge, drain, or otherwise alter any marshlands or construct or locate any structure on or over marshlands in this state within the estuarine area thereof without first obtaining a permit from the committee or, in the case of minor alteration of marshlands, the commissioner. A permit may authorize the construction or maintenance of the project proposed in an application. After construction pursuant to a permit, a project may be maintained without an additional permit so long as it does not further alter the natural topography or vegetation at the project site and remains in serviceable condition.

(2) No permit shall be required for any activity conducted pursuant to a letter of permission. At least 15 days prior to the commencement of any activity authorized pursuant to a letter of permission, the department shall provide public notice describing such activity and the location thereof; provided, however, that public notice shall not be required for any such activity that is necessary for public safety or the delivery of public services.

(b) Each application for such permit shall be properly executed and filed with the department on forms prescribed by the department and shall include:

(1) The name and address of the applicant;

(2) A plan or drawing showing the applicant's proposal and the manner or method by which such proposal shall be accomplished. Such plan shall identify the coastal marshlands affected;

(3) A plat of the area in which the proposed work will take place;

(4) A copy of the deed or other instrument under which the applicant claims title to the property or, if the applicant is not the owner, then a copy of the deed or other instrument under which the owner claims title together with written permission from the owner to carry out the project on his land. In lieu of a deed or other instrument referred to in this paragraph, the committee may accept some other reasonable evidence of ownership of the property in question or other lawful authority to make use of the property. The committee will not adjudicate title disputes concerning the property which is the subject of the application; provided, however, that the committee may decline to process an application when submitted documents show conflicting deeds;

(5) A list of all adjoining landowners together with such owners' addresses, provided that if the names or addresses of adjoining landowners cannot be determined, the applicant shall file in lieu thereof a sworn affidavit that a diligent search, including, without limitation, a search of the records of the county tax assessor's office, has been made but that the applicant was not able to ascertain the names or addresses, as the case may be, of adjoining landowners;

(6) A letter from the local governing authority of the political subdivision in which the property is located, stating that the applicant's proposal is not violative of any zoning law;

(7) A nonrefundable application fee to be set by the board in an amount necessary to defray the administrative cost of issuing such permit. Renewal fees shall be equal to application fees, which shall not exceed \$1,000.00 for any one proposal and shall be paid to the department;

(8) A description from the applicant of alternative sites and why they are not feasible and a discussion of why the permit should be granted;

(9) A statement from the applicant that he has made inquiry to the appropriate authorities that the proposed project is not over a landfill or hazardous waste site and that the site is otherwise suitable for the proposed project;

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(10) A copy of the water quality certification issued by the department if required for the proposed project;

(11) Certification by the applicant of adherence to soil and erosion control responsibilities if required for the proposed project; and

(12) Such additional information as is required by the committee to properly evaluate the application.

(c) A copy of each application for a permit shall be delivered to each member of the committee at least seven days prior to any meeting of the committee.

(d) The department, after receipt of an application, shall notify in writing all adjoining landowners that the application has been received. Such notice shall indicate the use the applicant proposes to make of the property. Should the applicant indicate that any adjoining landowner is unknown or that the address of such landowner is unknown, then the department shall, after receipt of a completed application, cause a notice of the proposed activity and a brief description of the affected land to be published in the legal organ of or a newspaper of general circulation in the county or counties in which such land lies. Cost of such publication shall be paid by the applicant. Should the property to be affected by the applicant be bordered on any side or on more than one side by other property of the applicant, the applicant shall supply the names and addresses of the nearest landowners whose land borders on his land. If the names or addresses, or both, of the nearest landowners cannot be ascertained, the applicant shall supply a sworn statement of diligent search as provided in this Code section. The landowners named by the applicant shall be notified either directly or by advertisement as provided in this Code section. The department may also make inquiry to adjoining landowners to ascertain whether or not there is objection to issuance of a permit.

(e) The committee shall provide notice of applications by either public notice distributed jointly with the United States Army Corps of Engineers or public notice distributed by the committee. In no instance shall a public notice be issued for less than seven days prior to the meeting at which the committee reviews the subject of the public notice. Public notices shall be distributed to all persons who have requested to be placed on the mailing list. Such request shall be made in writing and shall be renewed in December of each year. Failure to renew the request shall result in the removal of such name from the mailing list.

(f) Whenever there appears to be sufficient public interest, the committee may call a public hearing.

(g) In passing upon the application for permit, the committee 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 obstruction to or alteration of the natural flow of navigational water within the affected area will arise as a result of the proposal;

(2) Whether or not unreasonably harmful or increased erosion, shoaling of channels, or stagnant areas of water will be created; and

(3) Whether or not the granting of a permit and the completion of the applicant's proposal will unreasonably interfere with the conservation of fish, shrimp, oysters, crabs, clams, or other marine life, wildlife, or other resources, including but not limited to water and oxygen supply.



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(h) It is the responsibility of the applicant to demonstrate to the committee that the proposed alteration is not contrary to the public interest and that no feasible alternative sites exist. If the committee finds that the application is not contrary to the public interest and no feasible alternative sites exist, as specified in this subsection, it shall issue to the applicant a permit. Such permit may be conditioned upon the applicant's amending the proposal to take whatever measures are necessary to protect the public interest.

(i) The committee shall act upon an application for a permit within 90 days after the application is complete; provided, however, that this provision may be waived upon the written request of the applicant. An application must be complete sufficiently in advance of the committee meeting at which the project will be considered to allow for public notice and evaluation by the department. An application is complete when it contains substantially all of the written information, documents, forms, fees, and materials required by this part.

(j) In the event a majority of the members of the committee determine that a permit should be denied, the application for permit shall be denied. Any applicant who is aggrieved or adversely affected thereby shall have the right to appeal as provided in *Code Section 12-5-283*.

(k) Should a majority of the members of the committee agree that a permit should be conditional, the permit shall be issued on such conditions as a majority of the committee directs. Any applicant who is aggrieved or adversely affected thereby shall have the right to appeal as provided in *Code Section 12-5-283*.

(l) Every permit shall require that the proposed project be completed within five years after the date of the issuance of the permit and such permit shall expire five years after the date of issuance. Such time may be extended an additional five years upon showing that all due efforts and diligence toward the completion of the work have been made. Any permit may be revoked by the committee for noncompliance with or for violation of its terms after written notice of intention to do so has been furnished to the holder thereof.

(m) A permit to alter marshlands that has been granted by the committee becomes final immediately upon issuance, but no construction or alteration may commence until the expiration of 30 days following the date of the committee meeting at which the application is approved; provided, however, that if a timely appeal is filed, no construction or alteration may commence until all administrative and judicial proceedings are terminated.

(n) Issuance of a permit under this part and construction of the permitted project shall not remove the designated property from the jurisdiction of this part. All changes in permitted uses which increase impacts to any land subject to the provisions of this part must be assessed by the committee to determine if the proposed change is consistent with this part and the permit. Each permitted alteration of marshlands shall be reviewed by the department on a five-year basis, or when noncompliance with the purpose for which the permit was issued is evident, to determine if the use of the marshland is consistent with the intent of this part. If the permit holder is found not to be in compliance with this part, the committee shall take action as authorized under *Code Section 12-5-291*.

(o) All plans, documents, and materials contained in any application for any permit required by this part shall be made a part of the permit, if granted, and conformance to such plans, documents, and materials shall be a condition of the permit. No change or deviation from any such plans,

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documents, or materials shall be permitted without the prior notification and approval of the committee.

(p) The permittee shall notify the department of completion of a project within 30 days of completion.

(q) If, prior to completion of review of an application under this part, the committee receives notice of the denial of a permit or authorization necessary for the project, review of the project shall be suspended and, if the denial becomes final, the application shall stand denied.

(r) If an area has both marshlands as defined in *Code Section 12-5-282* and dynamic dune fields as defined in *Code Section 12-5-232*, it shall be subject to the jurisdiction of both such parts. In the event of a conflict between this part and Part 2 of this article, the commissioner shall determine which part shall apply so as to best protect the public interest.

**HISTORY:** Ga. L. 1970, p. 939, § 5; Code 1981, § 12-5-285; Code 1981, § 12-5-286, as redesignated by Ga. L. 1992, p. 2294, § 1.

### JUDICIAL DECISIONS

STATE REQUIRES THAT PERMIT BE OBTAINED where improvements to boat repair and maintenance facilities involve filling lands between high and low watermarks which are owned by the state. *Isle of Hope Historical Ass'n v. United States Army Corps of Eng'rs*, 646 F.2d 215 (5th Cir. 1981).

REGULATION OF STORM WATER RUNOFF. --The Coastal Marshlands Protection Act can be construed to regulate storm water runoff into the marshlands under the "otherwise alter" provision of *O.C.G.A. § 12-5-286(a)* only to the extent that the runoff alters the marshlands in a direct physical manner akin to removing, filling, dredging, or draining the marshlands; storm water runoff into the marshlands that does not alter the marshlands in this manner is not regulated under the "otherwise alter" provision, despite the fact that the runoff carries pollutants and may have an adverse impact on the marshlands. *Coastal Marshlands Prot. Comm. v. Ctr. for a Sustainable Coast*, 286 Ga. App. 518, 649 S.E.2d 619 (2007).

Because there was no evidence that storm water runoff generated by a upland residential development "otherwise altered" marshlands in a direct physical manner akin to removing, filling, dredging, or draining under *O.C.G.A. § 12-5-286(a)*, it was error to construe the Coastal Marshlands Protection Act to regulate the runoff from this area. *Coastal Marshlands Prot. Comm. v. Ctr. for a Sustainable Coast*, 286 Ga. App. 518, 649 S.E.2d 619 (2007).

LEASE ON UPLAND PROPERTY. --Having a lease on upland property can satisfy the ownership component of being an "eligible person" for a water bottom lease under *O.C.G.A. § 12-5-287*; the upland lease here, however, could not be construed as a written assignment of rights to the water bottom or as permission to apply for the water bottom lease under *O.C.G.A. § 12-5-286(b)(4)*. *DBL, Inc. v. Carson*, 284 Ga. App. 898, 645 S.E.2d 56 (2007), cert. denied, 2007 Ga. LEXIS 566 (2007).

PERMIT PROPERLY AFFIRMED. --Under an "any evidence" standard of review, an ALJ did not err in affirming portions of a permit issued by the Coastal Marshlands Protection Committee

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where the permit contained conditions to reduce erosion and use of best management practices to comply with the Erosion and Sedimentation Act of 1975, as a biological assessment and other conditions of the permit provided a sufficient basis for the finding that granting the permit and completing the proposed project would not unreasonably interfere with the conservation of gopher tortoises, indigo snakes, shorebirds, and wood storks; private docks were not part of the permitted project and were not regulated to the extent they complied with the provisions of *O.C.G.A. § 12-5-295*, and the developer had agreed to restrict the number and size of the private docks that could be built. *Coastal Marshlands Prot. Comm. v. Ctr. for a Sustainable Coast*, 286 Ga. App. 518, 649 S.E.2d 619 (2007).

### **§ 12-5-287. Leasing of state owned marshland or water bottoms**

(a) The committee, acting for and on behalf of and in the name of the state, is further authorized and empowered to grant and convey to any eligible person a lease of state owned marshland or water bottoms, or a combination thereof, upon such terms and conditions as the committee deems advisable for the purpose of constructing, operating, and maintaining thereupon a marina or marinas or dock providing more than 500 linear feet of dock space, including the installing, maintaining, repairing, removing, and replacing of buildings, structures, piers, docks, floating docks, marine railways, dolphins, pilings, appurtenances thereto, and all facilities and improvements that shall be reasonably used for or in connection therewith, subject always to the initial and continuing compliance by the lessee with all applicable laws pertaining to the use of the leased property and subject always to the use and enjoyment of the public of any navigable waters upon or over the leased property. The applicant for any such lease shall inform the committee of the total linear footage of dock space proposed, but the final decision as to the total dock space available to moor boats shall be in the sound discretion of the committee.

(b) Upon application by any interested person for a lease pursuant to this Code section, the committee shall determine whether or not the applicant is an eligible person. The committee must also determine whether or not the applicant has sufficient lands properly to service the area to be leased. If the committee determines that the applicant is an eligible person and that sufficient lands exist to service the marina or dock, then the committee is authorized to grant and convey to the applicant a lease of the state owned marshland or water bottoms, or a combination thereof, described in the application without the necessity of public bid.

(c) The application for the lease shall be in writing and shall contain a request for a lease of the state owned property described therein. Such application shall include all of the information required for a permit under this part. The entire application must be in a form acceptable to the committee.

(d) Each lease granted under this Code section shall be upon such provisions, requirements, and conditions as the committee shall make and shall, except as provided in subsections (g) and (h) of this Code section, provide for a primary term of not more than ten years. Each lease, except as provided in subsections (g) and (h) of this Code section, shall require the payment of an annual rental fee which, as of May 5, 2009, shall be \$1,000.00 per acre, which acreage shall consist of the covered area of dock structures and a ten-foot buffer surrounding such dock structures; and the committee shall in each calendar year thereafter adjust the amount of the annual rental fee per acre

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to reflect the effect of annual inflation or deflation for the immediately preceding calendar year in accordance with rules and regulations adopted by the board, which rules and regulations may use for this purpose the Consumer Price Index as reported by the Bureau of Labor Statistics of the United States Department of Labor or any other similar index established by the federal government, if the board determines that such federal index reflects the effect of inflation and deflation on the lessees. Except as provided in subsections (g) and (h) of this Code section, an initial lease shall be for the annual fee in effect and established by the committee at the time such lease is entered into. Such lease shall be adjusted annually thereafter as provided in this subsection. Each lease may provide for two renewal terms, each of which shall not be for a term of more than equal duration to the primary term. Rental fees shall be paid in one installment to the department not later than July 15 of each year. A penalty of 10 percent of the annual rental shall be assessed for late payment. Failure to pay rental by August 1 of the year due shall result in the cancellation of the lease.

(e) Each lease granted under this Code section shall protect the interest of owners of marshland and high land adjoining the high land of the lessee upon which the lessee's eligibility for lease was based to a right of access to the state owned marshland or water bottoms adjoining the state owned marshland or water bottoms leased to the applicant; provided, however, said owners of adjoining high land may assign their rights in writing in favor of the applicant and such written assignment may be used to determine the percentage of landward boundary required for eligibility to lease the state owned marshland and water bottoms described in the application.

(f) If the eligible person desires the ability to transfer or convey ownership interests in the leasehold to individuals purchasing or leasing on a long-term basis the slips of the marina or marinas, each lease granted under this Code section shall require the formation of a condominium pursuant to Code Section 44-3-72.

(g) Upon application of any eligible person who either is the owner of a marina in existence on March 1, 1989, or holds a permit subsequently granted by the committee under this part on an application for a permit filed with the committee prior to March 1, 1989, the committee shall grant to that eligible person a lease of the state owned marshland or water bottoms upon which such marina is actually located for a term of 20 years beginning March 1, 1989, with a nominal rental of \$1.00 per year; provided, however, that any extensions of the dock space or expansion of the area of state owned marshland or water bottoms actually used in conjunction with the marina shall be subject to the provisions of subsection (d) of this Code section; and provided, further, that any such application made on or after January 1, 1999, shall be subject to the provisions of subsection (d) of this Code section.

(h) Upon application of any eligible person who is either a nonprofit corporation, a nonprofit organization, or a public entity, the committee may grant a lease of state owned marshland or water bottoms for the construction and operation of a marina as a community or public dock. Each lease granted under this subsection shall be for a term of ten years from the date of its execution with a nominal rental of \$1.00 for the entire term.

(i) The department shall make an annual report of its activities each calendar year to the General Assembly. The report shall include a summary of all applications received and leases granted,

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including length of terms, rentals, and locations. Copies of the annual report shall be provided to the director of the State Properties Commission, the chairperson of the House Natural Resources and Environment Committee, the chairperson of the House Committee on State Institutions and Property, the chairperson of the Senate Natural Resources and the Environment Committee, and the chairperson of the Senate Committee on State and Local Governmental Operations. The department shall not be required to distribute copies of the annual report to the members of the General Assembly but shall notify the members of the availability of the annual report in the manner which it deems to be most effective and efficient.

(j) The committee may place such terms, limitations, restrictions, and conditions in such leases as are deemed necessary to ensure that the utilization of the property is in the public interest. Leased areas shall be deemed to be areas where resources are managed by the state and lessee for the protection of wildlife and other natural resources.

(k) The committee may designate staff of the department to act on its behalf to evaluate, enforce, and execute leases issued under this part.

(l) A lease granted under this part shall be issued only to applicants who agree not to discriminate against any person on the basis of race, gender, color, national origin, religion, or disability. Discrimination by lessee may be punished by termination of the lease, by injunction, or by any other legal remedy available to the committee.

**HISTORY:** Code 1981, § 12-5-285.1, enacted by Ga. L. 1989, p. 574, § 3; Code 1981, § 12-5-287, as redesignated by Ga. L. 1992, p. 2294, § 1; Ga. L. 1995, p. 10, § 12; Ga. L. 1995, p. 462, § 1; Ga. L. 2005, p. 1036, § 6/SB 49; Ga. L. 2006, p. 72, § 12/SB 465; Ga. L. 2009, p. 778, § 1/HB 170.

**NOTES:**

THE 2005 AMENDMENT, effective July 1, 2005, added the last sentence in subsection (i).

THE 2006 AMENDMENT, effective April 14, 2006, part of an Act to revise, modernize, and correct the Code, substituted "Senate Natural Resources and the Environment Committee" for "Senate Natural Resources Committee" in the next-to-last sentence of subsection (i).

### JUDICIAL DECISIONS

**STANDING TO CHALLENGE LEASE.** --As landowners had a property interest in the water fronting their property, which *O.C.G.A. § 12-5-287(e)* protected, and they showed that this interest was being harmed by the operation of a marina in front of their property, they had standing to sue the marina operator and to challenge the validity of its water bottom lease. *DBL, Inc. v. Carson*, 262 Ga. App. 252, 585 S.E.2d 87 (2003).

**ELIGIBILITY TO APPLY FOR WATER BOTTOM LEASE.** --Having a lease on upland property can satisfy the ownership component of being an "eligible person" for a water bottom lease under *O.C.G.A. § 12-5-287*; the upland lease here, however, could not be construed as a written assignment of rights to the water bottom or as permission to apply for the water bottom lease under *O.C.G.A. § 12-5-286(b)(4)*. *DBL, Inc. v. Carson*, 284 Ga. App. 898, 645 S.E.2d 56 (2007), cert. denied, 2007 Ga. LEXIS 566 (2007).

**§ 12-5-288. Restriction on granting of permits; size restriction; activities and structures considered contrary to public interest**

(a) If the project is not water related or dependent on waterfront access or can be satisfied by the use of an alternative nonmarshland site or by use of existing public facilities, a permit usually should not be granted pursuant to *Code Section 12-5-286*.

(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;
- (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 90 days during any calendar year; provided, however, that the commissioner may grant extensions of time beyond 90 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.

**HISTORY:** Code 1981, § 12-5-288, enacted by Ga. L. 1992, p. 2294, § 1.

**§ 12-5-289. Inspection of marshlands**

The department, through its officers, staff, and conservation rangers, shall, in addition to its other duties prescribed by law, make reasonable inspections of the marshlands to ascertain whether the requirements of this part and the rules, regulations, and permits promulgated or issued under this part are being faithfully complied with.

**HISTORY:** Ga. L. 1970, p. 939, § 6; Code 1981, § 12-5-286; Code 1981, § 12-5-289, as redesignated by Ga. L. 1992, p. 2294, § 1.

RESEARCH REFERENCES

AM. JUR. 2D. --2 *Am. Jur. 2d, Administrative Law, § 264.*

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C.J.S. --73 C.J.S., Public Administrative Law and Procedure, § 145.

### § 12-5-290. Jurisdiction to restrain violation of part

The superior court of the county in which land or any part thereof lies or in which jurisdiction is appropriate shall have jurisdiction to restrain a violation of this part at the action of any person.

**HISTORY:** Ga. L. 1970, p. 939, § 7; Code 1981, § 12-5-287; Code 1981, § 12-5-290, as redesignated by Ga. L. 1992, p. 2294, § 1.

#### RESEARCH REFERENCES

C.J.S. --21 C.J.S., Courts, § 186 et seq.

### § 12-5-291. Enforcement of part

(a) In order to enforce this part or any orders issued under this part or any rules and regulations promulgated under this part, any one or any combination of any or all of the following methods may be employed:

(1) Whenever any person not exempted from this part by *Code Section 12-5-295* is altering the marshlands without a permit, altering the marshlands in violation of the terms and conditions of a permit, or violating this part in any other manner, the committee may, prior to any hearing, issue a cease and desist order or other appropriate order to such person; provided, however, that the issuance of such order shall not affect the availability of relief under paragraph (4) of this subsection. Any such order becomes final unless the person named therein requests in writing a hearing before a hearing officer appointed by the board no later than ten days after the issuance of such order. Review of such order shall be available as provided in subsection (b) of *Code Section 12-5-283*;

(2) Whenever, after a hearing is held in accordance with *Code Section 12-5-283* and Chapter 13 of Title 50, the "Georgia Administrative Procedure Act," at the request of the committee, for the imposition of civil penalties, the administrative law judge determines that any person has failed, neglected, or refused to comply with any provision of this part or any order of the committee or administrative law judge, the administrative law judge may issue an order imposing a civil penalty not to exceed \$10,000.00 for such violation and an additional civil penalty not to exceed \$10,000.00 for each day during which such violation continues. All penalties and interest recovered as provided in this Code section, together with the cost thereof, shall be paid into the state treasury to the credit of the general fund;

(3) The committee may file in the superior court in the county in which the person under order resides or in the county in which the violation occurred or, if the person is a corporation, in the county in which the corporation maintains its principal place of business a certified copy of the final order of the committee or administrative law judge, unappealed from, or of a final order of the administrative law judge affirmed upon appeal; whereupon the court shall render judgment in accordance therewith and notify the parties. Such judgment shall have the same effect, and all proceedings in relation thereof shall thereafter be the same, as though such judgment has been rendered in an action duly heard and determined by the court;

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(4) Whenever the committee, either before or after a hearing, determines that any person is or has been violating any of the provisions of this part or any orders issued under this part or any rules and regulations promulgated under this part, the committee may file a petition for injunction in the proper superior court of this state against such person for the purpose of enjoining such actions or, if appropriate, may make application for a writ of mandamus in the proper superior court of this state against such person for the purpose of compelling the proper performance of his official duty. It shall not be necessary for the committee to allege or prove that it has no adequate remedy at law; and

(5) The superior court, upon finding that any person is or has been violating any of the provisions of this part or any orders issued under this part or any rules and regulations promulgated under this part, may order the person to restore, as nearly as possible, all marshland to the condition existing prior to the alteration of the marshland.

(b) Owners of property with knowledge of unauthorized activities occurring thereon are responsible under this part.

**HISTORY:** Ga. L. 1972, p. 991, § 2; Code 1981, § 12-5-288; Ga. L. 1984, p. 404, § 6; Code 1981, § 12-5-291, as redesignated by Ga. L. 1992, p. 2294, § 1.

### RESEARCH REFERENCES

AM. JUR. 2D. --2 *Am. Jur. 2d, Administrative Law*, §§ 248, 368, 369.

C.J.S. --73 C.J.S., *Public Administrative Law and Procedure*, §§ 68, 69, 70, 180. 73A C.J.S., *Public Administrative Law and Procedure*, §§ 481, 483.

### § 12-5-292. Posting of permit

A copy of every permit issued to an applicant shall be prominently displayed within the area of proposed activity. If the committee deems it advisable, the applicant may be required to cause a sign to be erected bearing the permit number, date of issuance, name of applicant, and such other information as the committee may reasonably require. The committee may specify the type of sign to be erected and may designate, within reasonable dimensions, the size of the sign.

**HISTORY:** Ga. L. 1970, p. 939, § 8; Code 1981, § 12-5-289; Code 1981, § 12-5-292, as redesignated by Ga. L. 1992, p. 2294, § 1.

### § 12-5-293. Effect on permit of sale, lease, or other conveyance of land

If a permit holder sells, leases, rents, or otherwise conveys the land or any portion thereof for which the permit was issued, and if the permittee has notified the department within 30 days of such transfer or conveyance, such permit shall be continued in force in favor of the new owner, lessee, tenant, or other assignee so long as there is no change in the use of the land as set forth in the original application.



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**HISTORY:** Ga. L. 1970, p. 939, § 9; Code 1981, § 12-5-290; Code 1981, § 12-5-293, as redesignated by Ga. L. 1992, p. 2294, § 1.

### RESEARCH REFERENCES

AM. JUR. 2D. --51 *Am. Jur. 2d, Licenses and Permits*, § 97.

C.J.S. --53 C.J.S., *Licenses*, § 81.

### § 12-5-294. Existence of an emergency; order; right to hearing

In the event of an emergency, whether created by act of God or by actions of domestic or foreign enemies, or in circumstances where grave peril to human life or welfare exists, the committee shall issue an order reciting the existence of such an emergency and requiring or allowing that such action be taken as it deems necessary to meet the emergency. Notwithstanding any other provisions of this part to the contrary, such order shall be effective immediately. If an order requiring a person to take action is issued pursuant to this Code section, such person shall be entitled to a hearing within ten days of the date of issuance of the order.

**HISTORY:** Ga. L. 1970, p. 939, § 12; Code 1981, § 12-5-291; Code 1981, § 12-5-294, as redesignated by Ga. L. 1992, p. 2294, § 1.

### RESEARCH REFERENCES

AM. JUR. 2D. --73 *Am. Jur. 2d, Statutes*, § 262.

C.J.S. --82 C.J.S., *Statutes*, § 304.

### § 12-5-295. Applicability of part

This part shall not apply to the following:

- (1) Activities of the Department of Transportation incident to constructing, repairing, and maintaining a public road system in Georgia;
- (2) Activities of the Department of Transportation and political subdivisions in maintaining existing drainage systems and ditches as long as such activities do not impact additional marshlands;
- (3) Agencies of the United States charged by law with the responsibility of keeping the rivers and harbors of this state open for navigation, and agencies of this state charged by existing law with the responsibility of keeping the rivers and harbors of this state open for navigation including areas for utilization for spoilage designated by such agencies;
- (4) Activities of public utility companies regulated by the Public Service Commission, electric membership corporations, public authorities operating electric systems, or municipal electric

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systems incident to constructing, erecting, repairing, and maintaining utility lines for the transmission of gas, electricity, or telephone messages;

(5) Activities of companies regulated by the Public Service Commission incident to constructing, erecting, repairing, and maintaining railroad lines and bridges;

(6) Activities of political subdivisions incident to constructing, repairing, and maintaining pipelines that have been approved by the department or appropriate authority for the transport of drinking water and sewage;

(7) The building of a private dock exclusively for the noncommercial use of the owner or his or her invitees and constructed on pilings, the walkways of which are above the marsh grass not obstructing tidal flow, by:

(A) The owner of a lot on which a detached single-family residence is located on high land adjoining such dock; or

(B) The owner of a lot having at least 50 front feet of land abutting the marshlands which contains high land suitable for the construction of a detached single-family residence and where the construction of such a residence is not prohibited.

The lot owner shall and is authorized to maintain the structure in good condition and repair the same as necessary, and the use of repair or replacement materials comparable in quality to the original authorized materials shall be sufficient for such purposes;

(7.1) The building of a single private dock by the owners of up to four adjoining lots, each of which is riparian and would qualify for an exemption as provided in paragraph (7) of this Code section, for the exclusive noncommercial use of such owners or their invitees and constructed as a single walkway on pilings above the marsh grass not obstructing tidal flow and in a size to be determined by the department taking into consideration the number of adjoining lots utilizing the dock; provided, however, that the exemption provided by this paragraph shall apply only if each of the owners of such adjoining lots has entered into a binding covenant that runs with the land, in favor of the state, which covenant prohibits the building of any future private dock on his or her lot unless the dock exempted pursuant to this paragraph is removed or converted to a single-family private dock which would qualify for an exemption as provided in paragraph (7) of this Code section. The granting of the exemption provided by this paragraph shall be the state's consideration for the covenant of each such lot owner. The lot owners shall and are authorized to maintain the structure in good condition and repair the same as necessary, and the use of repair or replacement materials comparable in quality to the original authorized materials shall be sufficient for such purposes; or

(8) The reclamation of manmade boat slips as a part of any publicly funded construction project and ancillary development projects including, without limitation, hotels, restaurants, retail facilities, and recreational facilities, whether public or private, within any industrial areas continued in existence pursuant to Article XI, Section I, Paragraph IV, subparagraph (d) of the Constitution

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which are wholly contained on an island.

**HISTORY:** Ga. L. 1970, p. 939, § 11; Code 1981, § 12-5-292; Ga. L. 1989, p. 574, § 4; Code 1981, § 12-5-295, as redesignated by Ga. L. 1992, p. 2294, § 1; Ga. L. 1995, p. 462, § 2; Ga. L. 2003, p. 316, § 1; Ga. L. 2008, p. 117, § 1/HB 68; Ga. L. 2009, p. 778, § 2/HB 170.

**NOTES:**

THE 2008 AMENDMENT, effective July 1, 2008, in paragraph (7), substituted a period for "or" at the end of subparagraph (7)(B) and added the last undesignated paragraph; and added paragraph (7.1).

**JUDICIAL DECISIONS**

**CORPS OF ENGINEERS MAY NOT FOLLOW PLANNING DOCUMENTS NOT ADOPTED BY COUNTY.** --The National Environmental Policy Act of 1969, *42 U.S.C. § 4321* et seq., contemplates a relationship of cooperation between local and federal authorities with the central aspect of such relationship being the respect for the sovereignty of local authorities. Thus, the United States Army Corps of Engineers, a federal agency, was never intended by that Act to have the power or responsibility of a planning and zoning review board, and could not follow planning documents which the local county had not adopted, nor engage in independent analysis of inconsistencies which those specifically charged with zoning enforcement did not find. *Isle of Hope Historical Ass'n v. United States Army Corps of Eng'rs*, 646 F.2d 215 (5th Cir. 1981).

**RESEARCH REFERENCES**

AM. JUR. 2D. --64 *Am. Jur. 2d, Public Utilities*, §§ 1, 2. 78 *Am. Jur. 2d, Waters*, §§ 136, 138.

C.J.S. --15 C.J.S., Commerce, § 19. 73 C.J.S., Public Utilities, § 1.

**§ 12-5-296. Criminal violation**

Any person violating any of the provisions of this part shall be guilty of a misdemeanor.

**HISTORY:** Ga. L. 1970, p. 939, § 10; Code 1981, § 12-5-293; Code 1981, § 12-5-296, as redesignated by Ga. L. 1992, p. 2294, § 1.

**RESEARCH REFERENCES**

AM. JUR. 2D. --21 *Am. Jur. 2d, Criminal Law*, § 20.

C.J.S. --22 C.J.S., Criminal Law, § 24.

**§ 12-5-297. Liability for damages**

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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 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.

**HISTORY:** Code 1981, § 12-5-297, enacted by Ga. L. 1992, p. 2294, § 1.