



# GEORGIA STATE SENATE

## SENATE RESEARCH OFFICE

204 Coverdell Legislative Office Building | 404.656.0015  
18 Capitol Square SW  
Atlanta, GA 30334

ELIZABETH HOLCOMB  
DIRECTOR

ALEX AZARIAN  
DEPUTY DIRECTOR

### THE FINAL REPORT OF THE JOINT LEGISLATIVE STUDY ON STREAM BUFFERS IN GEORGIA SENATE RESOLUTION 152

#### COMMITTEE MEMBERS

**Senator Frank Ginn – Co-Chair**  
District 47

**Representative Lynn Smith—Co-Chair**  
District 70

**Senator Ben Watson**  
District 1

**Representative Chuck Efstrotation**  
District 104

**Senator Steve Henson**  
District 41

**Representative Scott Holcomb**  
District 81

**Senator Jack Hill**  
District 4

**Representative Chad Nimmer**  
District 178

**Tom Crimes**  
President, Tomco Construction

**Representative Kevin Tanner**  
District 9

**Dr. Dale Greene**  
Dean, University of Georgia Warnell School  
of Forestry & Natural Resources

**Mike Worley**  
President, Georgia Wildlife Federation

**Harold Reheis**  
Joe Tanner & Associates

**Phil Munro, PE**  
Munro Engineering

**Brandon Smith**  
Hodges, Harbin, Newberry, and Tribble, Inc.

Prepared by the Senate Research Office  
2017

## COMMITTEE FOCUS, CREATION, AND DUTIES

The Joint Legislative Study Committee on Stream Buffers in Georgia was created by Senate Resolution 152 to examine the laws and regulations governing stream buffers in the state, and to make recommendations as deemed appropriate.

Senator Frank Ginn of the 47<sup>th</sup> co-chaired the committee along with Representative Lynn Smith of the 70<sup>th</sup>. The other members of the committee included Senator Ben Watson of the 1<sup>st</sup>, Senator Steve Henson of the 41<sup>st</sup>, Senator Jack Hill of the 4<sup>th</sup>, Representative Chuck Efstoration of the 104<sup>th</sup>, Representative Scott Holcomb of the 81<sup>st</sup>, Representative Chad Nimmer of the 178<sup>th</sup>, Representative Kevin Tanner of the 9<sup>th</sup>, Dr. Dale Greene, Dean of the University of Georgia School of Forestry, Harold Reheis of Joe Tanner and Associates, Phil Munro, PE of Munro Engineering, and Brandon Smith of Hodges, Harbin, Newberry, and Tribble, Incorporated.

The Committee held three meetings total. Each of these meetings was held publicly at the State Capitol. The first meeting was initially scheduled for September 13, 2017, but was postponed to October 12, 2017 due to Hurricane Irma. At this meeting, the Committee heard official testimony from Jac Capp of the Environmental Protective Division (EPD), Jon Welch, the Harvest Manager for Weyerhaeuser Company, Lynn Riley, Commissioner of the Department of Revenue, and Ben Rucszowicz of the Georgia Soil and Water Conservation Commission. The central subject of the presentations at this meetings was an introduction to what stream buffers are, the purpose that they serve, and Georgia's legal requirements for them. Before the close of the meeting, members of the public were permitted to speak on the issue before the committee.

The second meeting was held on November 9. At this meeting, the Committee heard official testimony from Scott Pippen, J.D.; M.E.P.D. of the University of Georgia's Carl Vinson Institute, Gerald Pouncey, J.D. of Morris, Manning, and Martin, L.L.P, Kathleen Bowen of the Association of Commissioners of County Governments, Joel Wiggins of the Georgia Municipal Association, and Chuck Anglin, the Putnam County Tax Assessor. The predominate topic of this meeting focused on the different implementations of stream buffers across the state, and the effects that they have on local property taxes. Members of the public also shared their comments with the committee.

The third meeting was held on December 13, 2017 at the Capitol. No testimony was given at this meeting, and committee members engaged in a round-table style discussion on the issue of stream buffers. Upon completing their discussion, the Committee adopted one recommendation based on their findings.

## **BACKGROUND AND COMMITTEE FINDINGS**

### **Purpose of Stream Buffers**

Stream buffers are un-developed, vegetated zones along stream banks in which land-disturbing activities are forbidden by either state law or local ordinance. These buffers provide important protections for water quality by preventing pollution from excavation or chemical use. Additionally, stream buffers prevent erosion, provide a natural habitat for wildlife, cool stream water by providing shade, and help to control flooding.

### **Georgia Law Requiring Stream Buffers**

The Erosion and Sedimentation Control Act of 1975 (codified in O.C.G.A. § 12-7-1) created a state-wide requirement for stream buffers in Georgia. The Act mandates in O.C.G.A. § 12-7-6(b)(14) that state waters have a 25-foot buffer “as measured horizontally from the point where vegetation has been wrested by normal stream flow or wave action.” Further, trout streams are required to have a 50- foot buffer. While freshwater wetlands do not qualify for buffers under the Act, saltwater marshes do, and are subject to 25-foot buffers. The statutory requirement that “state waters” receive stream buffers includes all types of streams, not only “perennial” or constantly flowing streams. “Ephemeral” streams, which have no clearly defined channel and only flow during and immediately after rain events, and “intermittent” streams, which do follow clearly defined channels, but only flow during and immediately after rain events also receive stream buffers under current law.

### **Implementation of Stream Buffers**

While state law requires stream buffers, it is local authorities that are tasked with enforcing them. Local governments and watershed authorities may also implement stream buffers greater in width than those required by the state. The state buffers are considered to be a minimum standard. However, property owners and developers may apply to the Environmental Protective Division (EPD) for variances to allow them to develop land within a buffer zone under certain circumstances.

### **“Wrested Vegetation”**

Initially, the Erosion and Sedimentation Control Act imposed a buffer from the “stream bank.” However, due to confusion caused by the difficulty in determining what constitutes a bank, and where on the bank a buffer should be measured from, in 1994, the Georgia Legislature amended the Act and created the requirement that buffers be measured from “the point where vegetation has been wrested by normal stream flow or wave action.” This “wrested vegetation” standard essentially measures the buffer from the point that plants or grass growing alongside waters cease to grow at the water’s edge. Unfortunately, this standard has also created confusion and has led to litigation over where stream buffers are required and where they are not.

In 2015, in *Turner v. Georgia River Network* (often referred to as the “Tired Creek Case”), the Georgia Supreme Court handed down a ruling on the “wrested vegetation” issue. In this ruling, the Court

determined that because the statute requires stream buffers to be measured from the point of wretched vegetation, then streams and waters that have no wretched vegetation are not legally required to have stream buffers at all. Therefore, waters bordered by rip rap, bulkheads, sea walls, or retaining walls, waters flowing through concrete channels, vegetated waterways, and freshwater wetlands are not entitled to any buffer at all.

### **Private Property Rights and Stream Buffers**

When a government mandates that private property be used in a certain way, it constitutes a taking. The value of land that is subject to a buffer is affected by the buffer. Therefore, local governments that assess property values for the purpose of levying property taxes take buffers into account when determining fair market value. The state also offers forestry grants which may often be obtained by citizens who own property subject to buffers.

### **Georgia's Stream Buffers Compared to Other States**

Georgia has the most stringent stream buffer requirements in the South. The only other Southern states that require stream buffers are Tennessee, North Carolina, and Virginia. Virginia only requires buffers on perennial streams that flow into the Chesapeake Bay, while Tennessee and North Carolina have requirements which are similar to Georgia's, but less broad in application.

## RECOMMENDATIONS

- 1) The following issues are worthy of future study by the Legislature of the State of Georgia:
  - a. Un-buffered gaps between stream buffers created by the Georgia Supreme Court's clarification of the Erosion and Sediment Control Act in *Turner v. Georgia River Network*, which mandates stream buffers only along areas of streams that possess wooded vegetation;
  - b. The buffer requirement for intermittent and ephemeral streams and ways to improve the identification of such streams;
  - c. The width of stream buffers; and
  - d. The interplay between stream buffers and the private property rights of landowners.