

# Districts

# 101

# Overview of the Soil and Water Conservation Districts Law

O.C.G.A. §§ 2-6-20 through 2-6-52

- The Soil and Water Conservation Districts Law enumerates the powers and duties of the GSWCC, SWCDs, and district supervisors.
- Generally, the Districts Law gives GSWCC broad powers and duties including oversight responsibility for the districts.
- The statute gives districts and supervisors narrower powers and requires that districts obtain written approval from GSWCC before exercising their powers.

# Georgia Soil and Water Conservation Commission

## O.C.G.A. § 2-6-23

- The General Assembly established the State Soil and Water Conservation Commission, which is administratively attached to the Department of Agriculture
- The Governor appoints one at-large member from each of the five soil and water conservation district regions to serve on the commission.
- The Commission serves as a policy-making body and directs funding and programming for the State.

# Georgia Soil and Water Conservation Commission

- The agency's mission is to provide conservation education, financial assistance to land users, and enhance soil and water resources through local soil and water conservation districts. *See O.C.G.A. § 2-6-23*
- The Commission has the responsibility to
  - Provide for the conservation of the soil, water, and all other related natural resources in Georgia;
  - Provide the mechanisms for maintaining the organization of the Soil and Water Conservation Districts of Georgia;
  - Coordinate the programs of the several districts and to formulate programs which will strengthen the work of conserving our soil, water, and related resources
  - Furnish an exchange of advice and experience between the various districts that will promote and advance the conservation of vital resources.

# Georgia Soil and Water Conservation Commission

- The Commission provides resources and programs to
  - Urban Water Resource Program
    - Certification Program
      - Course design and development with Stakeholder Advisory Board
      - Administration of certification program
      - Offer training opportunities around the State
    - Technical Programs
      - Publication of Design and Field Manuals
      - Development and implementation of Plan Review Checklists
      - Provides technical assistance to individual Districts, other agencies, and various other stakeholders

# Georgia Soil and Water Conservation Commission

- In addition to the powers and duties granted by statute, the Commission has the following powers
- and responsibilities with regard to watersheds
  - Holding public hearings in proposed watersheds to determine the extent of public interest, degree of anticipated cooperation, and any other data and information needed by the Commission in making decisions regarding feasibility of watershed applications.
  - Receiving watershed applications.
  - Requesting the Natural Resources Conservation Service set up a field examination of the project area and submit a report to the Commission.
  - Reviewing the report of the field report and approving/disapproving
  - If approved, the Chairman will sign one copy of the watershed application for the Commission and transmit it to the NRCS for action
  - The Commission will notify watershed sponsors that the application has been approved
  - Selecting watershed for preliminary investigations surveys to determine if the projects are economy feasible.
  - Notifying sponsors of this action.
  - The Commission reviews watershed work plans developed by the NRCS and approve and assign a priority or disapprove them. When approved, the NRCS authorizes watershed operations to get under way.
- *See § O.C.G.A. 2-6-27*

# GSWCC Duties and Powers

- O.C.G.A. § 2-6-27 & Ga. Comp. R. & Regs. 600-2-.01
- GSWCC's key duties and powers include:
  - Offering assistance to the districts in carrying out their powers and programs
  - Facilitating an interchange of advice and cooperation between districts
  - Coordinating and concurring with the programs of the districts
  - Formulating rules and regulations
  - Implementing an education and training program
  - Entering into contracts and agreements with the districts and others in order to carry out the purposes of the Districts Law

# GSWCC Provides Oversight of the Districts

- O.C.G.A. § 2-6-33
- The Districts Law provides an express limitation on the supervisors' exercise of their powers when it states, "before the supervisors shall have the authority to exercise any of the powers conferred in this Code section, they shall formulate and submit to the commission for its approval a program or programs of projects and operations, ... and shall not undertake any of such work until after such program or programs shall have been approved in writing by the commission...."
- As a practical matter this is accomplished when the Districts submit their Annual Plan of Work to the GSWCC for approval and the GSWCC approves the plan.

# Soil and Water Conservation Districts

- Role of District Supervisors – *See O.C.G.A. § 2-6-33*
  - Develop a comprehensive plan for conservation of soil and water resources in assigned District.
  - Assist with soil and water resource action plans that include the Best Management Practices
  - Work with land owners and developers as well as local, state, and federal governments to implement soil and water conservation measures and practices.
  - Develop and maintain relationships with other agencies and organizations such as the Natural Resources Conservation Service, Research Conservation and Development Councils, Georgia Association of Conservation Districts, etc.

# Soil and Water Conservation Districts

- District Supervisor Role Cont.- *See O.C.G.A § 2-6-33*
  - Explain benefits of conservation practices to landowners, especially the impact on operating budgets and production results.
  - Make machinery, equipment, fertilizer, seeds, and other materials available to help landowners conserve soil and water resources.
  - Conduct surveys, investigations, and research on soil and water parasites.
    - Supervisors are also in charge of disseminating information and data on conservation measures.
  - Conduct demonstrations for soil and water conservation methods.
  - Construct, improve, or maintain structures necessary for flood water control and storage.
  - Facilitate and generate financial assistance to land owners, as well as local, state, and federal agencies for soil and water conservation efforts.

# Soil and Water Conservation Districts

- O.C.G.A. § 2-6-29 provides for District Supervisors, O.C.G.A. § 2-6-30 provides for District Supervisors Election Procedures.
- In each district, there are both elected and appointed individuals serving as supervisors.
- Elected district supervisors hold a four-year term of office.
- As elected State officials, supervisors are subject to the constitutional provision that their office is vacated when they qualify for another state, county, or municipal office.
- Appointed district supervisors hold a two-year term office, however, these supervisors do not step down until their successor has been appointed.

# District Supervisors' Powers

- (1) **To conduct surveys, investigations, and research** relating to the character of soil erosion and the preventive and control measures needed; to publish the results of such surveys, investigations, or research; and to disseminate information concerning such preventive and control measures, provided that in order to avoid duplication of research activities, no district shall initiate any research program except in cooperation with the government of this state or any of its agencies or with the government of the United States or any of its agencies;
- (2) **To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies**, with the cooperation of the agency administering and having jurisdiction thereof, **and on any other lands within the district, upon obtaining the consent of the owner and occupiers of such lands** or the necessary rights or interests in such lands, in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved and soil erosion in the form of soil blowing and soil washing may be prevented and controlled;
- (3) **To carry out preventive and control measures within the district**, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in the use of land, on lands owned or controlled by this state or any of its agencies, with the cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district, upon obtaining the consent of the owner and the occupiers of such lands or the necessary rights or interests in such lands;

# District Supervisors' Powers

- (4)To cooperate and enter into agreements with and, within the limits of appropriations duly made available to the district by law, to furnish financial or other aid to any agency, governmental or otherwise, or any owner or occupier of lands within the district, in the carrying on of erosion control or prevention operations within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this article;**
- (5)To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or any rights or interests therein; to maintain, administer, and improve any properties acquired; to receive income from such properties and to expend such income in carrying out the purposes and provisions of this article; and to sell, lease, or otherwise dispose of any of its property or interests therein, in furtherance of the purposes and provisions of this article, provided that title to all property acquired shall be taken in the name of the State of Georgia;**
- (6)To make available to landowners and occupiers of land within the district, on such terms as it prescribes, agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment as will assist such landowners and occupiers of land to carry on operations upon their lands for the conservation of soil resources and for the prevention or control of soil erosion;**

# District Supervisors' Powers

- (7)To **construct, improve, and maintain such structures as may be necessary** or convenient for the performance of any of the operations authorized in this article;
- (8)To **develop comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion within the district**, which plans shall specify, in such detail as may be possible, the acts, procedures, performances, and avoidances which are necessary or desirable for the effectuation of such plans, including engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices, and changes in the use of land; and to publish such plans and information and bring them to the attention of owners and occupiers of lands within the district;
- (9)To take over, by purchase, lease, or otherwise, and to administer any soil conservation, erosion control, or erosion prevention project located within its boundaries which was first undertaken by the United States or any of its agencies or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies or of this state or any of its agencies, any soil conservation, erosion control, or erosion prevention project within its boundaries; to act as agent for the United States or any of its agencies or for this state or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil conservation, erosion control, or erosion prevention project within its boundaries; to accept donations, gifts, and contributions in money, services, materials, or otherwise from the United States or any of its agencies, from this state or (cont.)

# District Supervisors' Powers

- (9)(cont.) or from others and to use or expend such money, services, materials, or other contributions in carrying on its operations, including promotion of conservation and conservation education;
- (10)To have a seal, which shall be judicially noticed; to have perpetual succession unless terminated as provided in this article; to make and execute contracts and other instruments necessary or convenient to the exercise of its powers; and to make, amend, and repeal rules and regulations not inconsistent with this article, in order to carry into effect its purposes and powers.

# Georgia Department of Law

- The Georgia Attorney General's Office provides legal advice to the GSWCC and the Soil and Water Conservation Districts pursuant to:
  - the Georgia Constitution, Article V, Section III, Paragraph IV which provides the Attorney General is the “legal advisor of the executive department;”
  - O.C.G.A. § 45-15-3 which provides, “it is the duty of the Attorney General: ... (4) to act as the legal adviser of the executive branch;” and
  - O.C.G.A. § 45-15-34 which provides, “the Department of Law is vested with the complete and exclusive authority and jurisdiction in all matters of law relating to the executive branch of the government and every department, office, institution, committee, board, and agency thereof. Every department, office, institution, commission, committee, board, and other agency of the state government is prohibited from employing counsel in any manner whatsoever unless otherwise specifically authorized by law.”
  - O.C.G.A. § 2-6-25, provides that the GSWCC, “may call upon the Attorney General of this state for such legal services as it may require.”

# Georgia Open Meetings Act

O.C.G.A § 50-14-1 *et seq.*

# Georgia Open Meetings Act

- The purpose of the Georgia Open Meetings Act is to give government decisions transparency and create trust with the public.

# What is a “Meeting”

- A meeting under the statute is a gathering of a quorum of the governing board of an agency (or the subcommittee of that board) at which any official business, policy, or public matter is discussed, formulated, presented, or voted on. *See O.C.G.A. § 50-14-1(a)(3)(A).*

# What is *Not* a Meeting?

- “Gatherings involving an agency and one or more neutral third parties in mediation of a dispute between the agency and any other party” are not considered meetings. *See O.C.G.A. § 50-14-3(a)(5).*
- Inspecting facilities or property where no other official action is discussed or taken.
- Attending statewide or regional meetings or training on matters related to the purpose of the agency and where no official action is taken. Ex. This seminar is not a meeting.
- Meetings, where no official action is taken, with state or federal legislative or executive officials at state or federal offices.

# What is *Not* a Meeting?

- Traveling together where no official business, policy, or public matter is formulated, presented, discussed or voted on.
- Attending social, civic, ceremonial or religious events where no official business, policy, or public matter is formulated, presented, discussed or voted on.

# Open Access to Meetings

- A meeting must be open to the public, and members of the public may make visual and sounds recordings of the open portions of any meeting.
- Any agency may designate an area where equipment for visual and sound recordings can be placed, so that the equipment does not obstruct the view of meeting attendees and use of the equipment is not disruptive to the meeting.
- Motions and votes taken during the meeting should be clear and specific enough that the public knows what is being discussed or voted on.
- *Note:* the Governor's COVID-19 Public Health Emergency Order has been lifted and meetings must again be held in person. However, Board members who are unable to attend in person, may take part electronically.

# Transparency in Meetings and Records

- O.C.G.A. § 50-18-70 “(a) The General Assembly finds and declares that the strong public policy of this state is in favor of open government; that open government is essential to a free, open, and democratic society; and that public access to public records should be encouraged to foster confidence in the government and so that the public can evaluate the expenditure of public funds and efficient and proper functioning of its institutions.”

# Public Comments

- The Open Meetings Act does not require boards to allow public comments during a meeting.
- If a board does allow public comments, it is generally most efficient to have all comments made at the same time, either at the beginning or end of the meeting. It is also advisable to place a time limit on public comments, otherwise meetings may become solely public comment periods.
- Boards should avoid allowing public comment while the board is discussing a motion.
- Board members should also avoid having back-and-forth discussions with the people making public comments. Public comments can become disorderly and unmanageable if this occurs.

# Notices for Regular Meetings

- An agency must establish a regular meeting schedule (such as “the 2nd Tuesday of every month at 5:00 pm) with a regular meeting place. *See* O.C.G.A. § 50-14-1(d)(1).
- Information about the regular meeting schedule must be:
  - Available to the public;
  - “Maintained in a conspicuous place available to the public at the regular place of the meeting;” and
  - Maintained on the agency’s website.

# Notices for Special Meetings

- A special meeting is a meeting other than the regularly scheduled meeting.
- “Written or oral notice shall be given at least 24 hours in advance of the meeting to the legal organ in which notices of sheriff’s sales are published in the county.”
- Notice should also be given to any local broadcast or print media outlet in the county that had previously requested notice.
  - In counties where the legal organ publishes less than 4 times a week, then a written notice should be posted 24 hours in advance at the meeting location and should be given to any media outlet that requested such notice.

# Agenda Requirements

- The Open Meetings Act requires that a board prepare an agenda in advance of each meeting.
- The agenda should list “all the matters that are expected to come before the agency.”
  - This includes all matters that the board expects to discuss, not just the ones they plan to vote on.
- Matters outside the agenda can be discussed if they were not anticipated and necessary to address. O.C.G.A. § 50-14-1(e)(1).

# Why Use A Detailed Agenda?

- As a practical matter, a detailed agenda allows the board to conduct their meeting in an orderly manner by following the order of the topics on the agenda.
- If an agency has an executive secretary or director, that person may introduce the topics on the agenda and guide the board through the voting process.
  - If no secretary/director, the chairperson generally takes on that task.
- The board has the ultimate authority to decide what topics go on its agenda.

# Allowable Topics in Executive Sessions

- There are a limited number of topics that can be discussed in executive session
- A discussion of records that are exempt from public inspection under the Open Records Act, and there is no other “reasonable means” by which the agency can discuss those records.
- Consulting with an attorney about actual or potential litigation, settlement, claims, administrative proceedings, or other judicial actions brought by or against the agency, or in which the agency is directly involved.
- Authorizing the settlements of lawsuits and similar matters.

# Executive Sessions Continued

- Authorizing negotiations to purchase, dispose of, or lease real property; authorizing an appraisal of real property; entering into a contract to purchase, lease, entering into an option to purchase, lease, etc.
- Discussing or deliberating on the appointment, employment, compensation, hiring, disciplinary action or dismissal, or periodic evaluation or rating of a public officer or employee.
  - However, an agency should not receive evidence or hear arguments on legal matters, in executive session.
  - Any final votes should be taken in public
- Interviewing applicants for the executive head of an agency
  - The final votes should be taken in public.
- **Only a vote taken in public is legally binding**

# Procedures for Executive Sessions

- The meeting minutes should state the general reasons for the executive session
- During the meeting, one member should move to go into executive session, another should second the motion, and then the board should vote. The board should also vote to adjourn the executive session.
- Only people who are necessary for the discussion of the executive session topic should be present for the discussion. This may include the individual who takes the minutes.

# Executive Session Affidavits

- An “executive session affidavit” must be signed and notarized after the meeting. That affidavit requires the board members to state under oath “that the subject matter of the meeting or the closed portion thereof was devoted to matters within the exceptions provided by law,” and the affidavit should identify the specific relevant exceptions.
- This affidavit must be attached to the meeting minutes and be made available to the public.

# Meeting Minutes

- Minutes must include the following information, so your parliamentary procedures must make sure that these things are clear:
  - Names of members present.
  - A description of each motion made.
  - Names of the persons who made the motion and seconded the motion.
  - The result of the vote.
  - Names of who voted for or against (names do not have to be listed if the vote was unanimous).

# Availability of the Minutes

- The minutes of the meeting should be “promptly recorded.” The minutes should be “open to public inspection once approved as official by the agency or its committee, but in no case later than immediately following its next regular meeting.”

# Minutes of Executive Sessions

- “Minutes of executive sessions shall also be recorded but shall not be open to the public. Such minutes shall specify each issue discussed in executive session. . .”
- The minutes shall be kept and preserved in case they are necessary in the future.
- If attorney-client privileged matters are discussed, only the general topic needs to be recorded, not the details of the discussion.

# Georgia Open Records Act

O.C.G.A. § 50-18-70 *et seq.*

# Open Records Act

- Similar to the Georgia Open Meetings Act, the Georgia Open Records Act was enacted to promote government transparency and foster trust with the public.

# Open Records

- All public records are open for personal inspection and copying, except those which by order of a court of the state or by law are specifically exempted from disclosure.
- Agencies must produce all records responsive to a request within three business days, unless the records cannot be located within 3 business days, then the agency must provide the requestor with a timeline for when the records will be available.
  - But in all circumstances, a response to the Open Records Request must be sent to the requestor within **three business days**.

# Open Records Fees

- An agency may impose a reasonable charge for the search, retrieval, redaction, and production or copying costs for the production of records.
- In addition to a charge for the search, retrieval, or redaction of records, an agency may charge a fee for the copying of records or data, not to exceed 10 cents per page.
- Whenever a person has requested to inspect or copy a public record and does not pay the fee, the agency must make the records available, but may pursue collection of the fees in any manner authorized by law.

# Open Records Exemptions

- O.C.G.A. § 50-18-72 provides a list of circumstances under which public disclosure of records is not required. Below are a few examples.
  - When specifically required to be kept confidential by federal statute or regulation;
  - Medical records and similar files which would be an invasion of privacy;
  - Records of law enforcement, prosecution, or regulatory agencies in any pending investigation;
  - Real estate appraisals, engineering or feasibility estimate, or other records made for or by the state or a local agency relative to the acquisition of property;
  - Records that reveal an individual's social security number, credit card information, bank account information, etc.

# Erosion and Sedimentation Act Permits O.C.G.A §12-7-7

- No land-disturbing activities shall be conducted in this state without the operator first securing a permit from a local issuing authority or providing notice of intent to the division as required by the Act. No permit shall be issued unless there is an erosion and sediment control plan approved by the appropriate district as is required by O.C.G.A §12-7-10.
- If a permit applicant has had two or more violations of previous permits or the Act within three years prior to the date of filing the application under consideration, the local issuing authority may deny the permit application.
- Permits shall be issued or denied as soon as practicable after the application therefor has been filed with the local issuing authority, but in any event not later than 45 days thereafter.
- The local issuing authority, upon denial of a permit, shall state its reasons for the denial, setting forth specifically wherein such application is found to be deficient.

# Best Management Practices

## O.C.G.A §12-7-6

The E & S Act provides the best management practices necessary to prevent and minimize erosion and resultant sedimentation, including:

- Stripping of vegetation, regrading, and other development activities shall be conducted in such a manner so as to minimize erosion;
- Keeping cut and fill operations to a minimum;
- Conforming development plans to topography and soil type, so as to create the lowest practicable erosion potential;
- Retaining, protecting, and supplementing natural vegetation, whenever feasible, during land disturbing activities;
- Minimizing the duration the disturbed area is exposed to erosive elements;

# Local Issuing Authorities

## O.C.G.A §12-7-8

- If a county or municipality has enacted ordinances which meet or exceed the standards, requirements, and provisions of the Act and the state general permit, and if a county or municipality documents that it employs or contracts with qualified personnel to implement enacted ordinances, the director shall certify such county or municipality as a local issuing authority.
- Local issuing authorities shall regulate both primary and secondary permittees as defined in the state general permit. A local issuing authority must review, revise, or amend its ordinances within 12 months of amendments to the Act.

# Enforcement Options

## O.C.G.A §12-7-12

- Notice of Violation
- Issuance of a Stop Work Order
- Suspension of a Land Disturbance Permit
- Denial of future Land Disturbance Permit Applications
- Imposition of Civil Penalties
- Forfeiture of bonding
  - The LIA may require the permit applicant to post a bond in the form of:
    - Government security
    - Cash
    - Irrevocable letter of credit
    - Combination of thereof.

# Oversight of Local Issuing Authority

## O.C.G.A §12-7-8

- The districts or the commission or both shall review semi-annually the actions of jurisdictions and entities which have been certified as local issuing authorities.
- The districts or commission or both may provide technical assistance to any jurisdiction or entity for the purpose of improving the effectiveness of the jurisdiction's or entity's erosion and sedimentation control program.
- The districts or the commission shall notify the division and request investigation by the division if any deficient or ineffective local program is found.

# Education and Training Requirements

## O.C.G.A §12-7-19

- A certification provided by achieving the requirements established by the commission expires three years after its issuance.
- A certified individual is required to attend and participate at least four hours of approved continuing education courses, as established by the commission, every three years.
- A certification may be extended or renewed by meeting requirements established by the commission.

# Education and Training Requirements

## O.C.G.A §12-7-19

- Persons involved in land development design, review, permitting, construction, monitoring, or inspection or any land-disturbing activity must meet the education and training certification requirements, depending on their involvement with the process, as developed by the commission and in consultation with the division and the Stakeholder Advisory Board.
- Any entity acting as either a primary, secondary, or tertiary permittee must have at least one person in charge of erosion and sedimentation activities on behalf of the entity who meets the education or training requirements on site when land-disturbing activities are conducted.

# Questions?

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