



*House of Representatives
Study Committee on Fishing Access
to Freshwater Resources*

Final Report

Chairman James Burchett
Representative, 176th District

The Honorable Victor Anderson
Representative, 10th District

The Honorable Stan Gunter
Representative, 8th District

The Honorable Mack Jackson
Representative, 128th District

The Honorable David Jenkins
Representative, 136th District

The Honorable David Knight
Representative, 134th District

The Honorable Rob Leverett
Representative, 123rd District

The Honorable Trey Rhodes
Representative, 124th District

The Honorable Lynn Smith
Representative, 70th District

The Honorable Vance Smith
Representative, 138th District

The Honorable Will Wade
Representative, 9th District

The Honorable Al Williams
Representative, 168th District

2023

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INTRODUCTION

The House Study Committee on Fishing Access to Freshwater Resources was created by the passage of House Resolution 519 during the 2023 Session of the Georgia General Assembly.

HR 519 recognizes the tradition of fishing in the state and the work of the Georgia Department of Natural Resources (DNR) in maintaining and promoting fishing, including the management of more than 4,000 miles of trout streams; 12,000 miles of warm water streams; 500,000 acres of impoundments for public benefit; 11 public fishing areas; 10 fish hatcheries; 168 public boat ramps; and millions of fish annually stocked in freshwater resources. HR 519, however, also states there is confusion among the public, DNR, law enforcement, and elected officials over where the public may lawfully fish due to a lack of clarity in the law. The study committee was established to examine the benefit of the extent of the public's right to fish as well as any conflicts in law between the public's right to fish and private property rights.

The committee consisted of 12 members of the House of Representatives. On June 5, 2023, Speaker Jon Burns appointed the following members: Representative James Burchett, chair; Representative David Jenkins; Representative Al Williams; Representative Lynn Smith; Representative Stan Gunter; Representative Trey Rhodes; Representative Victor Anderson; Representative Rob Leverett; Representative Vance Smith; Representative David Knight; Representative Mack Jackson; and Representative Will Wade.

MEETINGS

The House Study Committee on Fishing Access to Freshwater Resources held four meetings that were open to testimony from stakeholder group representatives and members of the public:¹

October 4th, 2023 (Flint River) at Towerhouse Farm Brewery, Gay, Georgia

Link to Recording of Meeting: https://www.youtube.com/watch?v=yGvM_Y544vU

The following individuals provided testimony at the meeting: Ruth Nash (Mayor of Gay); Brandon Rogers (Pike County Manager); Scott Robinson (Georgia Department of Natural Resources); Mike Worley (Georgia Wildlife Federation); Gordon Rogers (Flint Riverkeeper); April Lipscomb (Southern Environmental Law Center); Lee Nash; Ben Brewton (Yellow Jacket Shoals); Quint Rogers; Mark Woodall; Welton Bettis; Allen Ragsdale; Shawn and Joshua Lumsden; Fletcher Sams (Altamaha Riverkeeper); Walker Chandler; and Representative Beth Camp (135th District).

¹ The committee thanks the three host representatives (Representative David Jenkins in Gay; Representative Victor Anderson in Clarkesville; and Representative Johnny Chastain in Blue Ridge), as well as Georgia Southern University Director of Government Affairs Brian Harris in Statesboro, GA, for their work in organizing the meetings and the venues for their hospitality in hosting the meetings.

The committee also received and reviewed written testimony from other stakeholder groups and members of the public. That testimony was distributed to all members of the committee.

October 12th, 2023 (Soque River) at Habersham EMC, Clarkesville, Georgia

Links to Recording of Meeting: <https://www.youtube.com/watch?v=V8WQZ13-nY> and <https://www.youtube.com/watch?v=PA3Cy42ncrE>

The following individuals provided testimony at the meeting: Scott Robinson (DNR); Mike Worley (Georgia Wildlife Federation); April Lipscomb (Southern Environmental Law Center); Brad Coppage (Soque River Watershed); Mark Alley; Marty Simmons; Stanley London; Paula Hanington; Emily Owenby; Roman Figurilli; Rob Bennison; Jimmy Harris; Noland Glenn; Mark Lovell; Mike Van Winkle; Dink NeSmith; Rutherford Seydel; Frank Dorman; Shelby Guzzetta; and Joe Rose.

October 18th, 2023 (Toccoa River) at Old Toccoa Farm, Mineral Bluff, Georgia

Link to Recording of Meeting: <https://www.youtube.com/watch?v=fRbds-Jl-tU>

The following individuals provided testimony at the meeting: Rhonda Thomas (Mayor of Blue Ridge); Jamie Hensley (Fannin County Commission Chairman); Christie Gribble (Fannin County Chamber of Commerce); Scott Robinson (DNR); Mike Worley (Georgia Wildlife Federation); April Lipscomb (Southern Environmental Law Center); Judson Hill (former Georgia State Senator); Robb Billue; Jay Hamilton; Rodney Tumlin (Trout Unlimited); Jeff Roach; Terry Bramlett; Bill Oyster; Steve Seitz; Eric Wilhelm; Charles Glenn; Justin Turner; and Senate Majority Leader Steve Gooch.

October 25th, 2023 (Ogeechee River) at Georgia Southern University, Statesboro, Georgia

Link to Recording of Meeting: https://www.youtube.com/watch?v=yO3sivb3_2k

The following individuals provided testimony at the meeting: Scott Robinson (Georgia Department of Natural Resources); Jake Tench (Georgia Agribusiness Council); Adam Belflower (Georgia Farm Bureau); Damon Mullis (Ogeechee Riverkeeper); Mike Worley (Georgia Wildlife Federation); Neil Fleckenstein; Dale Sandlin (Georgia Cattlemen's Association); April Lipscomb (Southern Environmental Law Center); Ben Boyd; Jake Matthews (Georgia Forestry Association); Dominic LaRiccia (Georgia Department of Agriculture); Reggie Dickey (Georgia Hunting and Fishing Federation); Robert Shockley; and Mike Smith.

An additional committee meeting was held on November 30, 2023, at the State Capitol to discuss and adopt the study committee report.

COMMITTEE FINDINGS

Georgia's Fishing Landscape

Fishing is important to the history, economy, and culture of Georgia. As stated by the Georgia Department of Natural Resources during its testimony, Georgia has more than 1.1 million licensed anglers, more than 14,800 jobs connected to fishing, and at least \$1.5 billion in fishing retail sales. Those retail sales have led to more than \$85 million over the past 10 years returning to the state from federal excise taxes on fishing equipment.

Fishing as a tradition is enshrined in Article I, Section I, Paragraph XXVIII of the Georgia Constitution, which states that “[t]he tradition of fishing and hunting and the taking of fish and wildlife shall be preserved for the people and shall be managed by law and regulation for the public good.” In addition, with respect to wildlife, O.C.G.A. §27-1-3 entrusts the ownership of, and jurisdiction over, all wildlife to the State of Georgia, with those wildlife resources to be “managed in accordance with sound principles of wildlife management, using all appropriate tools, including hunting, fishing, and the taking of wildlife.”

The committee discussed and heard about the diversity of rivers, streams, and tributaries in Georgia. According to the Georgia River Network, Georgia has 70,150 miles of rivers and streams, from smaller, cold-water streams in the North Georgia mountains to blackwater rivers in South Georgia like the Altamaha and Ogeechee. Those rivers and streams have different geographic features, water flows, and accompanying fish species.

Further, in some cases intensive local conservation efforts are integral to maintain these ecosystems. For example, testimony from North Georgia landowners discussed the requirements for healthy trout populations – namely clean, cold water and buffer zones free from other species. Regardless of the type of fish, all wildlife is affected by litter and trash coming into streams, and the committee heard from fishermen and landowners aggravated about litter from passersby harming their local rivers and streams.

Georgia watercourses flow through different communities, who have established histories and local traditions. Generations of families have fished, hunted, and lived along these rivers and streams. The committee, through its meetings, heard from both fishermen and landowners about the need to consider each river or stream uniquely, with one member comparing the uniqueness of rivers to that of fingerprints, and they recommended taking into account the ecological and physical characteristics of each body of water.

Navigability and Rights of Landowners

Determining Navigability

Navigability is a key factor when determining the public’s right to access particular waters and the rights of adjoining landowners. O.C.G.A. §44-8-5(a) defines a non-tidal “navigable stream” as one “capable of transporting boats loaded with freight in the regular course of trade either for the whole or a part of the year,” noting “[t]he mere rafting of timber or the transporting of wood in small boats shall not make a stream navigable.”² This definition dates back to 1863.

To determine navigability, and thus the public’s right to access particular streams, the Georgia Department of Natural Resources has relied on a variety of sources and factors: state and federal

² Compare with the federal definition of “navigable waters” as set forth in relevant part in 33 C.F.R. §329.4: “those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible for use to transport interstate or foreign commerce.

law; court cases; Georgia Attorney General opinions; research and historical documents on traditional use; presence of state-owned boat ramps; and stream characteristics such as stream width and flow rate (measured in cubic feet per second or “cfs”).³ While the U.S. Army Corps of Engineers maintains a “Major Navigable Rivers” list based on its application of federal law for waterways within its jurisdiction, the Georgia Department of Natural Resources does not maintain a similar list of Georgia waters based on its application of state law.

Determining navigability informs the rights of adjoining landowners of that river or stream. In 1863, Georgia codified its definition of navigability. For navigable streams, according to O.C.G.A. §44-8-5, adjacent landowner rights to that navigable stream extend to the low-water mark in the bed of the stream. The state, therefore, owns the submerged land unless the adjacent landowner’s title can be traced to 1863 or before. With non-navigable streams, on the other hand, the adjacent landowner owns to the center of the stream. If the landowner owns both sides of the stream, therefore, the landowner owns the entire bed of the stream and can exclude others. These rights with respect to non-navigable streams also include exclusive fishing rights.

The committee heard testimony from fishermen and landowners seeking clarity on whether local streams are navigable or non-navigable to avoid disputes while fishing and to be able to confidently ascertain their property rights. However, members of the public differed on whether that desire for clarity requires a change in the definition of navigability in Georgia law. Some members of the public testified to a belief that while old, the current definition is adequate to discern navigability. Other members of the public, particularly those living on or near smaller streams, urged against a change in the definition to avoid the risk of broadening the definition where smaller streams previously thought non-navigable are deemed navigable. Many members of the public referenced the physical characteristics of local waters that render them non-navigable, as well as noting their local streams would be unlikely to meet a flow rate test threshold. Members of the public who live near rivers like the Flint River or Toccoa River testified to varying navigability in particular sections of river due to natural or man-made obstructions.

Navigability, the Flint River, and Senate Bill 115

A key issue in the current discussion in Georgia related to navigability and private property rights stems from recent litigation concerning the Flint River. More than 344 miles long, the Flint River is one of Georgia’s largest and is home to both historic commercial river traffic and current outdoor recreation opportunities. A number of landowners along the river, including some who testified before the committee, have deeds that state they own to the center of the Flint River and noted the taxes they pay on that river property. One example pertains to a stretch of the Flint River known as Yellow Jacket Shoals, home to prized shoal bass populations, whose adjoining landowners barred anglers from fishing on that section of the river without permission. The Georgia Department of Natural Resources, though, considered that part of the river to be navigable and did not issue citations for fishing. This discrepancy has boiled over into riverside

³ DNR built and currently maintains 259 boat ramps and access areas across the state, and they hold that streams with state-owned boat ramps are open for public use.

confrontations between landowners, boaters, and fishermen.⁴ One landowner, Four Chimneys LLLP, sued and the two parties (Four Chimneys and the State of Georgia) later entered into an agreement where DNR, while not determining navigability, nevertheless concluded: “the landowner holds title to a portion of the riverbed by virtue of valid [s]tate grants issued prior to 1863 to the adjoining upland property, and therefore under Georgia law the landowner and its successors in title hold the exclusive right to fishing on that property to the center of the river.”⁵ As part of the settlement, the landowner did not contest or oppose the public’s ability to float through the section of the river in question. Additional litigation similar to the Four Chimneys case has been filed following this settlement order.⁶

Days after the Four Chimneys court order was announced, the Georgia General Assembly passed Senate Bill 115 relating to public fishing access, stating:

“The General Assembly finds that the state procured ownership of all navigable stream beds within its jurisdiction upon statehood and, as sovereign, is trustee of its peoples’ rights to use and enjoy all navigable streams capable of use for fishing, hunting, passage, navigation, commerce, and transportation, pursuant to the common law public trust doctrine. The state continues to hold title to all such stream beds, except where title in a private party originates from a valid Crown or state grant before 1863. The General Assembly further finds that the public retained the aforementioned rights under such doctrine even where private title to beds originates from a valid grant.”⁷

Testimony was heard at meetings discussing the language of Senate Bill 115 and thoughts on the bill’s impact. Proponents of Senate Bill 115 stated the bill would stave off both a litany of potential litigation facing the state as well as a resulting patchwork of accessibility to anglers and paddlers along navigable rivers, while still preventing trespass along private property. Opponents of Senate Bill 115, in addition to stating legislative procedural concerns, testified to their opinions about it nevertheless being an infringement on private property rights and a potential governmental taking. In the Governor’s signing statement of Senate Bill 115, Governor Kemp noted the legislation “does not affect non-navigable rivers or streams or change the definition of navigability” nor does it “impact the use of water by adjacent landowners in navigable rivers.”⁸ Additionally, the governor noted the establishment of this committee as an appropriate venue for suggesting amendments to the language in this legislation.

⁴ <https://gon.com/news/state-weighs-in-on-flint-river-access-controversy>.

⁵ State of Georgia and Four Chimneys, LLLP Joint Press Release (April 3, 2023): <https://gadnr.org/state-georgia-and-four-chimneys-lllp-joint-press-release>.

⁶ <https://capitol-beat.org/2023/09/georgia-lawmakers-to-tackle-fishing-rights-issue/>.

⁷ Ga. L. 2023, p. 303, § 1/SB 115 (now incorporated as O.C.G.A. §44-8-5(c)).

⁸ <https://gov.georgia.gov/document/2023-vetoed-legislation/sb-115-signing-statement/download>

Public Trust Doctrine

An analysis of water rights and water law will surely lead to discussion about the public trust doctrine and its application to Georgia's waters. The committee received legal testimony from the Southern Environmental Law Center at its meetings to better inform the committee about this doctrine.

With roots in Roman civil law from the days of Justinian and, for American law purposes, its modern foundation in English common law pertaining to tidal waters, the public trust doctrine asserts that public trust waters (navigable waters), lands (the land beneath those waters up to the high-water mark), and living resources (wildlife) in a state are held by the state in trust.⁹ English common law was adopted in colonial America and by the 13 original states; each state, however, "had and continues to have, the authority to define the boundaries of the lands held in public trust as well as the authority to recognize private rights in its trust lands..."¹⁰

The common law foundation of the public trust doctrine and the provisions of the "equal-footing doctrine" have led to varying interpretations in each state¹¹ and the federal government.¹² The committee heard testimony about U.S. Supreme Court case law establishing the public trust doctrine through its 1842 ruling in *Martin v. Waddell* and its 1892 ruling in *Illinois Central Railroad Company v. Illinois*; these cases held that public trust doctrine resources are entrusted to the government to maintain for the public benefit.¹³ However, "[u]nder accepted principles of federalism, the [s]tates retain residual power to determine the scope of the public trust over waters within their borders, while federal law determines riverbed title under the equal-footing doctrine."¹⁴

The public trust doctrine attracted much discussion at the committee's meetings, focusing on both the ability of the state to manage resources along navigable waters under the doctrine's elements but also the evolutionary and sometimes uncertain side effects of expanded application of the doctrine that require a cautious approach to this issue. Senate Bill 115 stated that "the state procured ownership of all navigable stream beds within its jurisdiction upon statehood." Members of the agricultural industry representing cattlemen, foresters, and farmers voiced concerns that expansion of the public trust doctrine could invite litigation against private property owners.

⁹ <https://shoreline.noaa.gov/docs/8d5885.pdf>.

¹⁰ Slade, D., Kehoe, R. and Stahl, J., *Putting the Public Trust Doctrine to Work*, 13.

¹¹ "State and DOT Level Administration of Land Ownership Issues Across Navigable Waterways"
<https://rosap.nrl.bts.gov/view/dot/58472>.

¹² <https://nsglc.olemiss.edu/projects/waterresources/files/overview-of-the-public-trust-doctrine.pdf>.

¹³ <https://nationalaglawcenter.org/the-public-domain-basics-of-the-public-trust-doctrine/> (citing *Martin v. Waddell's Lessee*, 41 U.S. 367 (1842) and *Illinois Central Railroad Co. v. Illinois*, 146 U.S. 387 (1892)).

¹⁴ *PPL Montana, LLC v. Montana*, 565 U.S. 576 (2012).

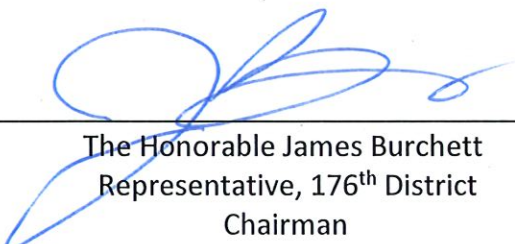
COMMITTEE RECOMMENDATIONS

Upon the conclusion of its meetings, the House Study Committee on Fishing Access to Freshwater Resources makes the following recommendations:

1. Determine and delineate the navigability of each of Georgia's rivers and streams based on the statutory definition;
2. Preserve the definition of navigability set forth in O.C.G.A. §44-8-5(a);
3. Maintain the underlying purpose of SB 115 while removing references to the public trust doctrine in statute in recognition of the doctrine's standing as a common law provision;
4. Clarify statutory language relating to trespass and stiffen the penalty under the Hunting and Fishing Code to enforce existing law;
5. Ensure the protection of the right of passage for navigable streams as found in O.C.G.A. §52-1-31;
6. Recognize the importance of Georgia's trout industry, including its unique ecological needs and economic benefits, and seek to preserve the state's trout waters; and
7. Support additional investment in public fishing properties.

Speaker Burns, these are the findings and recommendations of your Study Committee on Fishing Access to Freshwater Resources.

Respectfully Submitted,



The Honorable James Burchett
Representative, 176th District
Chairman