

The House Committee on Agriculture and Consumer Affairs offers the following substitute to SB 213:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 9 of Chapter 5 of Title 12 of the Official Code of Georgia Annotated, the
2 "Flint River Drought Protection Act," so as to clarify legislative intent; to revise definitions;
3 to expand programs and provide for completion of new studies; to provide for additional
4 powers of the director; to provide for new irrigation efficiency requirements; to provide for
5 participation in augmented flow programs; to clarify compliance and enforcement provisions;
6 to provide for related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Article 9 of Chapter 5 of Title 12 of the Official Code of Georgia Annotated, the "Flint River
10 Drought Protection Act," is amended by revising subsection (b) of Code Section 12-5-541,
11 relating to legislative intent, as follows:

12 "(b) The General Assembly finds that the use of water resources for the state for
13 agricultural purposes is of vital importance to Georgia and southwest Georgia in particular;
14 the protection of flows in the Flint River flow and its tributaries is necessary for a healthy
15 riverine ecosystem and a healthy population of aquatic life; the use of water resources
16 during drought conditions may interfere with public and private rights; the economic
17 well-being of the State of Georgia is dependent on a strong and efficient agricultural
18 industry; the wise use of water, the protection of stream ~~flow~~ flows, and the economic
19 well-being of the state will be furthered by proper water allocation in periods of drought;
20 ~~and a program providing programs to augment stream flows or provide~~ incentives to ensure
21 that certain irrigated lands are temporarily not irrigated during severe droughts will
22 promote the wise use of water resources, the protection of stream flows, and the economic
23 well-being of the state."

24 **SECTION 2.**

25 Said article is further amended by revising Code Section 12-5-542, relating to definitions
26 relative to Flint River drought protection, as follows:

27 "12-5-542.

28 As used in this article, except where otherwise specifically provided, the term:

29 (1) 'Acceptable Flint River basin stream flow' flows' means the quantity of stream flows
30 at one or more specific locations on the Flint River or its tributaries which provides for
31 aquatic life protection and other needs as established by the director, based on municipal,
32 agricultural, industrial, and environmental needs. Such tributaries shall not include field
33 drainage systems, wet weather ditches, or any other water body:

34 (A) In which the channel is located above the ground-water table year round;

35 (B) For which runoff from precipitation is the primary source of water flow; and

36 (C) For which groundwater is not a source of water flow.

37 (2) 'Affected area' means that portion of the state lying within the Flint River basin and
38 areas where ground-water use from the Floridan aquifer can affect the stream flow flows
39 in the Flint River or its tributaries.

40 (2.1) 'Irrigation efficiency' means the percentage of the total amount of water withdrawn
41 from a source which is beneficially used to meet crop water requirements or for other
42 agronomic practices in accordance with applicable best management practices.

43 (3) 'Authority' means the Georgia Environmental Finance Authority created by Chapter
44 23 of Title 50.

45 (4) 'Board' means the Board of Natural Resources.

46 (5) 'Director' means the director of the Environmental Protection Division of the
47 Department of Natural Resources.

48 (6) 'Division' means the Environmental Protection Division of the Department of Natural
49 Resources.

50 (7) 'Drought conditions' means any condition which results in a stream flow that is lower
51 than the acceptable Flint River basin stream flow flows.

52 (8) 'Drought protection funds' means the funds held by the authority as provided in Code
53 Section 12-5-545 for the accomplishment of the purposes of this article.

54 (9) 'Flint River basin' means the area of land which drains into the Flint River or its
55 tributaries.

56 (10) 'Floridan aquifer' means those rocks and sediments described in United States
57 Geological Survey Open-File Report 95-321 (1996) that are capable of yielding ground
58 water to wells or discharging water into the Flint River or its tributaries.

59 (11) 'Irrigated land' means farm land which is irrigated by ground water or surface water
 60 pursuant to a water withdrawal permit issued by the director pursuant to Code Section
 61 12-5-31 or 12-5-96.

62 (12) 'Irrigation reduction auction' means the procedure established by subsection (b) of
 63 Code Section 12-5-546 pursuant to which permittees submit offers to cease irrigation of
 64 a specified number of acres in exchange for a certain sum of money.

65 (13) 'Permittee' means a person holding a valid permit issued before December 1, 2000,
 66 pursuant to Code Section 12-5-31 or 12-5-96.

67 (14) 'Stream flow' means the quantity of water passing a given location of the Flint River
 68 or its tributaries over a given time period expressed in cubic feet per second."

69 **SECTION 3.**

70 Said article is further amended in Code Section 12-5-544, relating to powers of the director
 71 of the Environmental Protection Division, by revising paragraph (2) and adding a new
 72 paragraph to read as follows:

73 "(2) Establish acceptable Flint River basin stream flows at one or more locations;"

74 "(9.1) Conduct and participate in studies related to management of the water resources
 75 in the Flint River basin;"

76 **SECTION 4.**

77 Said article is further amended in Code Section 12-5-546, relating to drought predictions and
 78 irrigation reduction auction, by revising subsections (a), (b), and (e) as follows:

79 "(a) On or before March 1 of each year, the division ~~will~~ may issue a prediction as to
 80 whether severe drought conditions are expected during the year. If the division predicts
 81 a severe drought during any particular year, it shall issue such prediction before March 1
 82 of that year.

83 (b) If severe drought conditions are predicted or otherwise declared in accordance with
 84 subsection (a) of this Code section, the division ~~will~~ may determine the total number of
 85 acres of irrigated land, serviced by irrigation systems located within one or more of the
 86 affected areas, that must not be irrigated that year in order to maintain the acceptable Flint
 87 River basin stream ~~flow~~ flows. Upon such determination, the division ~~shall~~ may conduct
 88 an irrigation reduction auction whereby a permittee of an irrigation system located within
 89 the affected areas is given an opportunity to enter into an agreement with the division,
 90 agreeing that in exchange for a certain sum of money per acre of irrigated land serviced by
 91 the irrigation system, the permittee will not irrigate those particular acres for the remainder
 92 of that calendar year. The authority shall pay the sum so agreed upon when so directed by
 93 the director from the unexpended balance of the drought protection funds. In conducting

94 the irrigation reduction auction, the division may establish a maximum dollar amount per
 95 acre to be expended from the drought protection funds for such purposes."
 96 "(e) The expenditure of funds under this article as an incentive to permittees not to irrigate
 97 lands is deemed by the legislature as a valid use of state moneys to promote valid land use
 98 policies that result in the protection of the riverine environment by ensuring that such lands
 99 not be irrigated for specified periods of time. No expenditure of funds under this article
 100 shall be considered full or partial compensation for any losses, financial or otherwise,
 101 experienced due to nonirrigation; a lease or repurchase of any irrigation permit issued by
 102 the director, ~~nor shall it be considered;~~ or an acknowledgment by the State of Georgia of
 103 a property right in any permit issued by the director."

104 SECTION 5.

105 Said article is further amended by adding new Code sections to read as follows:

106 "12-5-546.1.

107 On or before January 1, 2014, the division shall, as appropriate and in cooperation with
 108 other state and federal agencies, universities, the Georgia Water Planning and Policy
 109 Center, the Lower Flint-Ochlockonee Regional Water Council, and other appropriate
 110 entities, undertake certain studies the results of which may be used to establish new and
 111 revised rules and regulations pertaining to the management of the water resources in the
 112 Flint River basin consistent with this article. Such studies shall include, but not be limited
 113 to:

114 (1) Hydrologic studies to better characterize the response of surface- and ground-water
 115 resources to water use, changes in the watershed, and drought management actions;

116 (2) Studies to develop flow targets or thresholds for the Flint River and selected
 117 tributaries which include mechanisms for input from local users to incorporate social and
 118 other values; and

119 (3) Studies to enhance baseline information related to irrigated acreage, agricultural
 120 water use, and potential for adoption of technology to improve irrigation efficiency.

121 12-5-546.2.

122 (a) The Department of Agriculture and the State Soil and Water Conservation Commission
 123 shall coordinate with the division in examining current practices, programs, policies, rules,
 124 and regulations to identify opportunities to enhance programming and incentives that will:

125 (1) Support implementation of the agricultural water efficiency measures in water
 126 conservation or management plans prepared in accordance with Code Sections 12-5-31,
 127 12-5-96, and 12-5-522;

- 128 (2) Support implementation of pilot projects demonstrating the efficacy of emerging
129 innovative irrigation technologies where appropriate and affordable;
- 130 (3) Identify ways the State Soil and Water Conservation Commission's program for
131 measuring agricultural uses of water as authorized under Code Section 12-5-105 can
132 further enhance efforts to improve agricultural water use efficiency; and
- 133 (4) Encourage a scheduled program for the voluntary retirement of unused surface-water
134 and ground-water farm use permits in accordance with Code Sections 12-5-31 and
135 12-5-105.
- 136 (b) The director may modify all active surface-water and ground-water withdrawal permits
137 for farm use in the affected area to require all irrigation systems applying water withdrawn
138 pursuant to such permits to achieve irrigation efficiencies of 80 percent or greater by the
139 year 2020. The schedule for achieving the irrigation efficiencies provided in this
140 subsection shall be as follows:
- 141 (1) Irrigation systems applying water withdrawn pursuant to all active permits issued
142 after 2005 shall achieve a minimum irrigation efficiency of 80 percent by January 1,
143 2016;
- 144 (2) Irrigation systems applying water withdrawn pursuant to all active permits issued
145 from 1991 through 2005 shall achieve a minimum irrigation efficiency of 80 percent by
146 January 1, 2018; and
- 147 (3) Irrigation systems applying water withdrawn pursuant to all active permits issued
148 before 1991 shall achieve a minimum irrigation efficiency of 80 percent by January 1,
149 2020.
- 150 (c) Notwithstanding subsection (b) of this Code section, the director may modify specified
151 active surface-water and ground-water withdrawal permits for farm use in the affected area
152 to require all mobile irrigation systems and solid-set irrigation sprinklers operating under
153 such permits to achieve irrigation efficiencies of 60 percent or greater by the year 2020.
154 The schedule for achieving such efficiencies shall be as follows:
- 155 (1) Irrigation systems applying water withdrawn pursuant to all active permits issued
156 after 2005 shall achieve a minimum irrigation efficiency of 60 percent by January 1,
157 2016;
- 158 (2) Irrigation systems applying water withdrawn pursuant to all active permits issued
159 from 1991 through 2005 shall achieve a minimum irrigation efficiency of 60 percent by
160 January 1, 2018; and
- 161 (3) Irrigation systems applying water withdrawn pursuant to all active permits issued
162 before 1991 shall achieve a minimum irrigation efficiency of 60 percent by January 1,
163 2020.

164 (d) Notwithstanding the irrigation efficiency rates required in subsection (c) of this Code
165 section or any other provision of this Code section to the contrary, the minimum irrigation
166 efficiency rate for mobile irrigation systems and solid-set irrigation sprinklers applying
167 water withdrawn pursuant to new permits shall be 60 percent.

168 (e) When issuing any permit application for a new surface-water or ground-water
169 withdrawal for farm use in the affected area, the division shall require that the irrigation
170 system applying water withdrawn pursuant to any such permit has an irrigation efficiency
171 of at least 80 percent.

172 (f) The division shall, in cooperation with other state and federal agencies, universities, the
173 Georgia Water Planning and Policy Center, the Lower Flint-Ochlockonee Regional Water
174 Council, and other appropriate entities, provide to the board for consideration for adoption
175 in its rules requirements pertaining to methods an applicant may utilize to demonstrate that
176 the required irrigation efficiency has been achieved. Requirements shall consider current
177 technologies, best management practices, and the effects of soil type and topography,
178 among other factors deemed necessary.

179 (g) The division shall coordinate with any federal or state agencies offering incentive
180 programs that support the purposes of this article, to identify opportunities to refine and
181 target relevant programs as practicable and to assist permittees with achieving irrigation
182 efficiency requirements.

183 12-5-546.3.

184 (a) As used in this Code section, 'permittee' means any person holding a valid permit
185 issued pursuant to Code Section 12-5-31.

186 (b) The state or any department, agency, or institution of the state may fund or invest in
187 projects to augment stream flows in a portion or portions of the Flint River basin. All
188 permittees with active surface-water withdrawal permits in the affected area downstream
189 of a project specifically authorized to augment stream flows which the state has funded
190 shall, in accordance with the board's rules and upon notification from the director, let the
191 flow provided by the augmentation project pass their point of withdrawal.

192 (c) Such notification shall, at a minimum, inform the permittees that the upstream project
193 is delivering augmented flows and the water provided by the project is not available for
194 withdrawal.

195 (d) The director's notification shall contain notice of opportunity for a hearing and shall
196 be served by certified mail, return receipt requested, to the most recent address provided
197 by the permittee. Any permittee to whom such notification is directed shall comply
198 therewith immediately, but shall be afforded a hearing within five business days of the
199 director's receipt of a petition filed by such permittee. Based upon findings adduced at

200 such hearing, the notification shall be modified, reversed, or continued by the director as
 201 he or she deems appropriate.

202 (e) In preparing such notification, the director may consider:

203 (1) The best available modeling and monitoring data for relevant locations and stream
 204 reaches;

205 (2) The appropriate duration of protection of augmented flows;

206 (3) The distance downstream for which protection of augmented flows is appropriate;

207 (4) The degree to which protection of augmented flows will assist in mitigating the
 208 effects of droughts, provide ecological or other environmental benefits, and ensure

209 sustainable, long-term access to water resources for existing and future water users; and

210 (5) Any other data or information the director deems relevant."

211 **SECTION 6.**

212 Said article is further amended by revising Code Section 12-5-549, relating to compliance
 213 and violations, as follows:

214 "12-5-549.

215 (a) Except as may otherwise be provided in ~~Code Section 12-5-547~~ this article, whenever
 216 the director has reason to believe that a violation of any provision of this article or any rule
 217 or regulation adopted pursuant to this article has occurred, he or she shall attempt to obtain
 218 compliance therewith by conference, conciliation, or persuasion, if the making of such an
 219 attempt is appropriate under the circumstances. If he or she fails to obtain compliance in
 220 this manner, the director may order the violator to take whatever corrective action the
 221 director deems necessary in order to obtain such compliance within a period of time to be
 222 prescribed in such order.

223 (b) Except as may otherwise be provided in ~~Code Section 12-5-547~~ this article, any order
 224 issued by the director under this article shall become final unless the person or persons
 225 named therein file with the director a written request for a hearing within 30 days after such
 226 order or permit is served on such person or persons.

227 (c) Except as may otherwise be provided in ~~Code Section 12-5-547~~ this article, hearings
 228 on contested matters and judicial review of final orders and other enforcement actions
 229 under this article shall be provided and conducted in accordance with subsection (c) of
 230 Code Section 12-2-2.

231 (d) The director may file in the superior court of the county wherein the person under order
 232 resides, or if the person is a corporation, in the county wherein the corporation maintains
 233 its principal place of business, or in the county wherein the violation occurred or in which
 234 jurisdiction is appropriate, a certified copy of a final order of the director unappealed from
 235 or a final order of the director affirmed upon appeal, whereupon the court shall render

236 judgment in accordance therewith and notify the parties. Such judgment shall have the
237 same effect, and all proceedings in relation thereto shall thereafter be the same, as though
238 the judgment had been rendered in an action duly heard and determined by such court.

239 (e) For purposes of this Code section, a violation of an agreement entered into in
240 accordance with Code Section 12-5-546 or an order issued by the director in accordance
241 with Code Section 12-5-547 shall be prima facie established upon a showing that:

242 (1) During the effective period of the agreement or order, the irrigation system was
243 observed in person or via remote sensing or otherwise established by representatives of
244 the division or others to have been operating and disbursing water; or

245 (2) During the effective period of the agreement or order, a seal, lock, or other device
246 placed by the division on the system to prevent operation of the system has been broken
247 or otherwise tampered with."

248

SECTION 7.

249 All laws and parts of laws in conflict with this Act are repealed.