

HOUSE SUBSTITUTE TO SENATE BILL 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; to provide for additional powers of the director; to provide for new
4 irrigation efficiency requirements; to provide for participation in augmented flow programs;
5 to clarify compliance and enforcement provisions; to provide for related matters; to repeal
6 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, and the protection of stream flows for habitat
23 critical for aquatic life, and the economic well-being of the state."

SECTION 2.

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

"12-5-542.

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

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

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

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

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

(2) 'Affected ~~area~~ areas' means ~~that portion~~ those specific portions of the state lying within the Flint River basin ~~and areas~~ where ground-water use from the Floridan aquifer can affect ~~the flow in the Flint River or its tributaries~~ stream flow or where drainage into Spring Creek, Ichawaynochaway Creek, Kinchafoonee Creek, and Muckalee Creek occurs.

(2.1) 'Augmentation' means the addition of ground water from one or more aquifers underlying the affected areas into a surface water channel within the affected areas for the purpose of maintaining instream flows.

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

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

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

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

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

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

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

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

61 (11) 'Irrigated land' means farm land which is irrigated by ground water or surface water
 62 pursuant to a water withdrawal permit issued by the director pursuant to Code Section
 63 12-5-31 or 12-5-96.

64 (11.1) 'Irrigation efficiency' means the percentage of the total amount of water
 65 withdrawn from a source which is beneficially used to meet crop water requirements or
 66 for other agronomic practices in accordance with applicable best management practices.

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

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

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

74 SECTION 3.

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

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

79 "(9.1) Conduct and participate in studies related to management of the water resources
 80 in the Flint River basin;"

81 SECTION 4.

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

84 "(a) On or before March 1 of each year, the division ~~will~~ may issue a prediction as to
 85 whether severe drought conditions are expected during the year. If the division predicts
 86 a severe drought during any particular year, it shall issue such prediction before March 1
 87 of that year. Prediction of severe drought may be based on consideration of historical,
 88 mathematical, or meteorological information, including, but not limited to, stream flows,
 89 ground-water levels, and precipitation forecasts. Such prediction may also be based on
 90 scientific analyses, including, but not limited to, the Palmer Drought Severity Index
 91 administered by the National Oceanographic and Atmospheric Administration.

92 (b) If severe drought conditions are predicted or otherwise declared in accordance with
 93 subsection (a) of this Code section, the division ~~will~~ may determine the total number of
 94 acres of irrigated land, serviced by irrigation systems located within one or more of the
 95 affected areas, that must not be irrigated that year in order to maintain the acceptable Flint

96 River ~~basin~~ stream ~~flow~~ flows. Upon such determination, the division ~~shall~~ may conduct
 97 an irrigation reduction auction whereby a permittee of an irrigation system located within
 98 the affected areas is given an opportunity to enter into an agreement with the division,
 99 agreeing that in exchange for a certain sum of money per acre of irrigated land serviced by
 100 the irrigation system, the permittee will not irrigate those particular acres for the remainder
 101 of that calendar year. The authority shall pay the sum so agreed upon when so directed by
 102 the director from the unexpended balance of the drought protection funds. In conducting
 103 the irrigation reduction auction, the division may establish a maximum dollar amount per
 104 acre to be expended from the drought protection funds for such purposes."

105 "(e) The expenditure of funds under this article as an incentive to permittees not to irrigate
 106 lands is deemed by the legislature as a valid use of state moneys to promote valid land use
 107 policies that result in the protection of the riverine environment by ensuring that such lands
 108 not be irrigated for specified periods of time. No expenditure of funds under this article
 109 shall be considered full or partial compensation for any losses, financial or otherwise,
 110 experienced due to nonirrigation; a lease or repurchase of any irrigation permit issued by
 111 the director, ~~nor shall it be considered;~~ or an acknowledgment by the State of Georgia of
 112 a property right in any permit issued by the director."

113 SECTION 5.

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

115 "12-5-546.1.

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

119 (1) Support implementation of the agricultural water efficiency measures in water
 120 conservation or management plans prepared in accordance with Code Sections 12-5-31,
 121 12-5-96, and 12-5-522;

122 (2) Support implementation of pilot projects demonstrating the efficacy of emerging
 123 innovative irrigation technologies where appropriate and affordable;

124 (3) Identify ways the State Soil and Water Conservation Commission's program for
 125 measuring agricultural uses of water as authorized under Code Section 12-5-105 can
 126 further enhance efforts to improve agricultural water use efficiency; and

127 (4) Encourage a scheduled program for the voluntary retirement of unused surface-water
 128 and ground-water farm use permits in accordance with Code Sections 12-5-31 and
 129 12-5-105.

130 (b) The director may modify all active surface-water and ground-water withdrawal permits
 131 for farm use in the affected areas to require all irrigation systems applying water withdrawn

132 pursuant to such permits to achieve irrigation efficiencies of 80 percent or greater by the
133 year 2020. The schedule for achieving the irrigation efficiencies provided in this
134 subsection shall be as follows:

135 (1) Irrigation systems applying water withdrawn pursuant to all active permits issued
136 after 2005 shall achieve a minimum irrigation efficiency of 80 percent by January 1,
137 2016;

138 (2) Irrigation systems applying water withdrawn pursuant to all active permits issued
139 from 1991 through 2005 shall achieve a minimum irrigation efficiency of 80 percent by
140 January 1, 2018; and

141 (3) Irrigation systems applying water withdrawn pursuant to all active permits issued
142 before 1991 shall achieve a minimum irrigation efficiency of 80 percent by January 1,
143 2020.

144 (c) Notwithstanding subsection (b) of this Code section, the director may modify specified
145 active surface-water and ground-water withdrawal permits for farm use in the affected
146 areas to require all mobile irrigation systems and solid-set irrigation sprinklers operating
147 under such permits to achieve irrigation efficiencies of 60 percent or greater by the year
148 2020. The schedule for achieving such efficiencies shall be as follows:

149 (1) Irrigation systems applying water withdrawn pursuant to all active permits issued
150 after 2005 shall achieve a minimum irrigation efficiency of 60 percent by January 1,
151 2016;

152 (2) Irrigation systems applying water withdrawn pursuant to all active permits issued
153 from 1991 through 2005 shall achieve a minimum irrigation efficiency of 60 percent by
154 January 1, 2018; and

155 (3) Irrigation systems applying water withdrawn pursuant to all active permits issued
156 before 1991 shall achieve a minimum irrigation efficiency of 60 percent by January 1,
157 2020.

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

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

166 (f) The division shall, in cooperation with other state and federal agencies, universities, the
167 Georgia Water Planning and Policy Center, the Lower Flint-Ochlockonee Regional Water
168 Council, and other appropriate entities, provide to the board for consideration for adoption

169 in its rules requirements pertaining to methods an applicant may utilize to demonstrate that
170 the required irrigation efficiency has been achieved. Requirements shall consider current
171 technologies, best management practices, and the effects of soil type and topography,
172 among other factors deemed necessary.

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

177 12-5-546.2.

178 (a) As used in this Code section, 'permittee' means any person holding a valid permit
179 issued pursuant to Code Section 12-5-31 which provides for the withdrawal of surface
180 water from within the affected areas.

181 (b) The director shall notify specified permittees downstream of any state funded
182 augmentation project, which shall be operated for the sole purpose of maintaining the
183 minimum stream flows sufficient to protect habitat critical for vulnerable aquatic life
184 within the affected areas. The director may notify specified downstream permittees that,
185 during specified periods of the project's operation for the sole purpose of maintaining such
186 minimum stream flows, the permittee shall let the flow provided by the augmentation
187 project pass his or her point of withdrawal. When specifying those permittees subject to
188 such notification, the director shall also establish, in accordance with the factors that may
189 be considered under paragraph (e) of this Code section, those permittees that shall not be
190 subject to the requirements of this Code section.

191 (c) Such notification shall be provided in accordance with rules promulgated by the board
192 of natural resources, shall be based on the best available science, and shall, at a minimum,
193 inform the permittees that the upstream project is delivering augmented flows for the sole
194 purpose of maintaining the minimum stream flows sufficient to protect habitat critical for
195 vulnerable aquatic life within the affected areas.

196 (d) The director's notification shall contain notice of opportunity for a hearing and shall
197 be served by certified mail, return receipt requested, to the most recent address provided
198 by the permittee. Any permittee to whom such notification is directed shall comply
199 therewith immediately, but shall be afforded a hearing within five business days of the
200 director's receipt of a petition filed by such permittee. Such hearing shall be before an
201 administrative law judge of the Office of State Administrative Hearings and shall be
202 conducted in accordance with subsection (c) of Code Section 12-2-2. Based upon findings
203 adduced at such hearing, the notification shall be modified, reversed, or continued by the
204 director.

- 205 (e) In preparing such notification, the director may consider:
 206 (1) The best available modeling and monitoring data for relevant locations and stream
 207 reaches;
 208 (2) The appropriate duration of protection of augmented flows;
 209 (3) The distance downstream for which protection of augmented flows is appropriate;
 210 (4) The degree to which protection of augmented flows will assist in mitigating the
 211 effects of droughts, provide ecological or other environmental benefits, and ensure
 212 sustainable, long-term access to water resources for existing and future water users; and
 213 (5) Any other data or information the director deems relevant.
 214 (f) Nothing in this Code section shall provide authority for the interbasin transfer of any
 215 water."

216 **SECTION 6.**

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

219 "12-5-549.

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

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

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

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

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

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

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

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

253

SECTION 7.

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