

1 HB476  
2 197904-1  
3 By Representatives Rafferty, McCampbell, Lawrence and England  
4 RFD: State Government  
5 First Read: 18-APR-19

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8 SYNOPSIS: Under existing law, the Office of Water  
9 Resources is the state agency responsible for  
10 coordinating the water resources of the state.

11 This bill would empower the state to  
12 preserve water flows and availability and establish  
13 additional conservation powers in times of drought  
14 and water emergency.

15 This bill would facilitate coordination  
16 between water quality and water allocation  
17 management, requiring the state to protect the  
18 appropriate biological, chemical, and physical  
19 integrity of waters by rule.

20 This bill would require the Water Resources  
21 Commission to declare a water shortage or emergency  
22 under certain conditions.

23 This bill would establish a burden of proof  
24 for withdrawals of surface or underground water.

25 This bill would authorize the Office of  
26 Water Resources to: (1) restrict any term or  
27 condition in a certificate of use for the duration

1 of a water shortage or emergency; (2) provide  
2 conservation credits to water users that take  
3 certain conservation measures during shortages or  
4 emergencies; (3) restrict withdrawals for which no  
5 certificate is required during a shortage or  
6 emergency; and (4) allocate water to and among uses  
7 in order to alleviate a shortage or emergency.

8 This bill would also require the state to  
9 preserve environmental flows and levels in all  
10 water sources the allow the Office of Water  
11 Resources to establish by rule an environmental  
12 flow or level in any water source after  
13 consultation with the Alabama Water Resources  
14 Council.

15  
16 A BILL  
17 TO BE ENTITLED  
18 AN ACT  
19

20 Relating to water management; to create the Alabama  
21 Water Conservation and Security Act; to amend Sections  
22 9-10B-2, 9-10B-3, 9-10B-20, 9-10B-22, 9-10B-23, and 9-10B-24,  
23 Code of Alabama 1975; to add Sections 9-10B-31 and 9-10B-32,  
24 to the Code of Alabama 1975; to provide legislative findings;  
25 to empower state conservation agencies to preserve flows and  
26 water availability in all waters of the state; to require the  
27 state to protect the appropriate biological, chemical, and

1 physical integrity of waters through water planning and  
2 management.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. This act shall be known and may be cited  
5 as the Alabama Water Conservation and Security Act.

6 Section 2. The Legislature finds and declares the  
7 following:

8 (1) In accordance with the Alabama Water Resources  
9 Act, all waters of the state, whether found on the surface of  
10 the ground or underneath the surface of the ground, are among  
11 the basic resources of the state held in trust for the public.

12 (2) All waters of the state are subject to the  
13 state's sovereign power to plan and manage the use of those  
14 waters, under law, in order to protect the public welfare,  
15 promote economic growth, mitigate the harmful effects of  
16 drought, resolve conflicts among competing water users,  
17 achieve balance between consumptive and nonconsumptive water  
18 uses, and enhance productivity of water-related activities.

19 (3) The efficient use of waters of the state for  
20 human consumption is recognized as a priority use of the  
21 state.

22 (4) All citizens have a stewardship responsibility  
23 to conserve and protect the water resources of this state.

24 (5) Comprehensive water management is necessary to  
25 ensure fair, efficient, sustainable, and productive use of the  
26 total water supply of this state, satisfying economic,  
27 environmental, and other social goals, whether public or

1 private, to prevent water unavailability from becoming a  
2 limiting factor in the general improvement of social welfare.

3 (6) The state, in the exercise of its sovereign  
4 police power to protect the public interest in the waters of  
5 this state, undertakes to efficiently and equitably allocate  
6 available water in times of water shortage or emergency  
7 through comprehensive water planning.

8 (7) The state shall preserve the flows and levels in  
9 all waters of the state as necessary to protect the  
10 appropriate biological, chemical, and physical integrity of  
11 waters by reserving these waters from use and by authorizing  
12 additional protections of the waters of this state.

13 Section 3. Sections 9-10B-2, 9-10B-3, 9-10B-20,  
14 9-10B-22, 9-10B-23, and 9-10B-24, Code of Alabama 1975, are  
15 amended to read as follows:

16 "§9-10B-2.

17 "The Legislature of the State of Alabama ~~hereby~~  
18 finds and declares that:

19 "(1) All waters of the state, whether found on the  
20 surface of the ground or underneath the surface of the ground,  
21 are among the basic resources of the State of Alabama, held in  
22 trust for the public.

23 "(2) All waters of the state are subject to the  
24 state's sovereign power to plan and manage use, under law, in  
25 order to protect public welfare, preserve public health and  
26 safety, promote economic growth, mitigate the harmful effects  
27 of drought, resolve conflicts among competing water users,

1 achieve balance between consumptive and nonconsumptive water  
2 uses, encourage conservation, prevent degradation of natural  
3 environments, and enhance productivity of water-related  
4 activities.

5 ~~"(2)~~(3) The efficient use of waters of the state for  
6 human consumption is recognized as a priority use of the state  
7 and it is the intent of this chapter that no limitation upon  
8 the use of water for human consumption shall be imposed except  
9 in emergency situations after the Office of Water Resources  
10 has considered all feasible alternatives to such limitations.~~7~~

11 ~~"(3)~~(4) ~~The~~ Recognizing that the use of such waters  
12 should be conserved and managed to enable the people of this  
13 state to realize the full beneficial use thereof and to  
14 maintain such water resources for use in the future~~7~~, the  
15 state shall conserve the waters of the state through suitable  
16 policies and by encouraging private efforts to conserve water  
17 and avoid waste.

18 ~~"(4)~~(5) The general welfare of the people of this  
19 state is dependent upon the dedication of ~~the~~ available water  
20 resources of the State of Alabama to beneficial use to the  
21 fullest extent to which they are capable through the  
22 development and implementation of plans and programs to manage  
23 such quantitative water resources:~~7~~

24 "a. In order to promote efficiency, equity, order,  
25 conjunctive management, and stability in utilization of the  
26 water resources of this state over time, this chapter and all  
27 orders, certificate terms or conditions, and rules issued or

1 adopted pursuant to this chapter are to be interpreted to  
2 achieve the policies embodied in the law and to conform to the  
3 physical laws that govern the natural occurrence, movement,  
4 and storage of water.

5 "b. Recognizing the importance of proper planning  
6 and management, it is critical that the state devise  
7 appropriate conservation and drought management strategies to  
8 serve public health, safety, and welfare.

9 "c. The state, in the exercise of its sovereign  
10 police power to protect the public interest in the waters of  
11 the state, undertakes to efficiently and equitably allocate  
12 available water in times of water shortage or emergency  
13 through comprehensive water planning.

14 "~~(5)~~ (6) It is the purpose of this chapter to  
15 establish the Office of Water Resources and the Water  
16 Resources Commission and to vest ~~said~~ the office and  
17 commission with the power and responsibility to develop and  
18 carry out the Alabama Comprehensive Water Plan and drought  
19 management strategies, and to develop other plans and  
20 strategies as may be necessary for the management of the  
21 waters of the state as well as the other goals and policies of  
22 this chapter~~7~~.

23 "~~(6)~~ (7) No ~~person's beneficial use of the~~  
24 ~~quantitative waters of the state~~ person possessing a  
25 certificate of use shall be restricted from use by the Office  
26 of Water Resources or the Water Resources Commission except  
27 where ~~such beneficial use is within an area of the state~~

1 ~~designated as a capacity stress area pursuant to~~ restrictions  
2 are authorized under Section 9-10B-22 ~~this chapter~~. It is the  
3 intent of the Legislature that any action taken which limits,  
4 restricts, or conditions any person's beneficial use of water  
5 resources of this state be implemented only after:

6 "a. ~~the~~ The Water Resources Commission has  
7 determined that such action is necessary because the aggregate  
8 uses of the waters of the state in such area exceeds or will  
9 exceed the availability of such waters and is required to  
10 protect the availability of the waters of the state; and

11 "b. ~~such~~ Such person has been afforded due process  
12 of law including, but not limited to, a public hearing. ~~The~~  
13 ~~implementation and enforcement of any action limiting,~~  
14 ~~restricting, or conditioning any person's beneficial use of~~  
15 ~~water resources shall be under the direction of the Alabama~~  
16 ~~Department of Environmental Management; and~~

17 "~~(7)~~ (8) Notwithstanding any provision of this  
18 chapter to the contrary, ~~the provisions of~~ this chapter shall  
19 not apply to:

20 "a. Impoundments or other similar containments  
21 confined and retained completely upon the property of a person  
22 which store water where the initial diversion, withdrawal, or  
23 consumption of such water is acknowledged in a certificate of  
24 use;

25 "b. Waste water treatment ponds and waste water  
26 treatment impoundments subject to regulation under the Clean  
27 Water Act, 33 U.S.C. Sections 1251 et seq., and ponds and



1 impoundments subject to regulation under the Mine Safety and  
2 Health Act, 30 U.S.C. Sections 801 et seq., or the Surface  
3 Mining Control Act, 30 U.S.C. Sections 1201 et seq.; and

4 "c. Surface impoundments constituting solid waste  
5 management units under the Resource Conservation and Recovery  
6 Act, 42 U.S.C. Sections 6901 et seq.

7 "(9) It is critical that the state coordinate the  
8 plans, laws, rules, and decisions pertaining to water  
9 allocation with those pertaining to water quality.

10 "(10) The state's diverse hydrogeographic, economic,  
11 and institutional conditions require the state to continue to  
12 support the activities of local governments that address local  
13 and regional water conditions and problems.

14 "(11) The state should take all reasonable measures  
15 to protect the reasonable needs of water basins of origin  
16 through the regulation of interbasin transfers.

17 "§9-10B-3.

18 "For the purposes of this chapter, the following  
19 words and phrases, unless a different meaning is plainly  
20 required by the context, shall have the following meanings:

21 "(1) ALABAMA COMPREHENSIVE WATER PLAN. A plan  
22 developed by the Office of Water Resources, or any watershed  
23 management authority pursuant to this chapter, for the  
24 intermediate and long-term protection, conservation, and  
25 management of all the waters of the state and designed to  
26 promote and secure the sustainable development and reasonable

1 use of the waters of the state taking into account economic,  
2 environmental, and other social values.

3 "(1)(2) AREA OF THE STATE. Any municipality or  
4 county, including portions thereof, or other geographical area  
5 of the state as may be designated by the commission pursuant  
6 to this chapter.

7 "(2)(3) BENEFICIAL USE. The ~~diversion, withdrawal,~~  
8 ~~or consumption~~ use of the waters of the state whether in place  
9 or through withdrawal, diversion, or consumption in ~~such the~~  
10 quantity and manner as is necessary for economic and efficient  
11 utilization without waste of water, without unreasonable  
12 injury to other certificate of use holders or the environment,  
13 and consistent with the public interests of this state and  
14 sustainable development.

15 "(4) BIOLOGICAL, CHEMICAL, AND PHYSICAL INTEGRITY.  
16 The maintenance of water in the source, in the volume, and at  
17 the times necessary to support all of the following:

18 "a. The preservation of riverine systems, wetlands,  
19 and native wildlife, including fish, flora, and fauna.

20 "b. The water quality standards prescribed by  
21 federal or state laws, rules, or regulations relating to  
22 effluent discharges and other expected impacts.

23 "c. Instream uses of water as required by federal or  
24 state laws, rules, or regulations.

25 "d. Adequate recreational opportunities to the  
26 people of the state.

1           "e. The preservation of cultural or historic  
2 resources as determined by or as required by federal or state  
3 laws, rules, or regulations.

4           "f. The prevention of serious hydrological  
5 alteration of the body of water.

6           "~~(3)~~ (5) CAPACITY STRESS AREA. An area of the state  
7 designated by the commission pursuant to this chapter where  
8 the commission determines that the use of the waters of the  
9 state, whether ground water, surface water, or both, requires  
10 additional coordination, management, and regulation for the  
11 protection of the interests and rights of the people of the  
12 state.

13           "~~(4)~~ (6) CERTIFICATE OF USE. A ~~certificate which~~  
14 ~~shall be~~ written authorization issued by the Office of Water  
15 Resources, upon receipt of a declaration of beneficial use, in  
16 accordance with this chapter, to a person entitled to hold and  
17 exercise a water use involving ~~acknowledging~~ the diversion,  
18 withdrawal, or consumption of the waters of the state at a  
19 specific time and place for a specific reasonable use as  
20 described in the written authorization.

21           "~~(5)~~ (7) COMMISSION. The Alabama Water Resources  
22 Commission or its successor.

23           "(8) CONSERVATION MEASURE. A measure adopted by a  
24 certificate of use holder, or several certificate holders  
25 acting in concert pursuant to an approved conservation  
26 agreement under Section 9-10B-22, to reduce the withdrawals or

1 consumptive uses, or both, associated with the exercise of a  
2 water use, including, but not limited to the following:

3 "a. Improvements in water transmission and water use  
4 efficiency.

5 "b. Reduction in water use.

6 "c. Enhancement of return flows.

7 "d. Reuse of return flows.

8 "(9) CONSUMPTIVE USE. A withdrawal that is not  
9 returned to its water near or at its source of origin,  
10 resulting in substantial diminution in quality or quantity or  
11 causing low flow conditions, including, but not limited to,  
12 evaporation or incorporation into a product or crop.

13 "(7)(10) CRITICAL USE STUDY. An analysis of the  
14 available supply of water resources within ~~an area of the~~  
15 ~~state~~ a watershed and an assessment of the existing and  
16 reasonably foreseeable future demand for such resources to  
17 determine if a water shortage exists, or is likely to exist,  
18 ~~in such area of the state should be designated as a capacity~~  
19 ~~stress area~~ watershed.

20 "(8)(11) DECLARATION OF BENEFICIAL USE. A writing  
21 signed and certified by, or on behalf of, a person to receive  
22 a certificate of use and shall include the following: the name  
23 of the person to receive a certificate; the source or sources  
24 of the waters of the state subject to such person's beneficial  
25 use; the estimated quantity, in gallons, of the waters of the  
26 state used on an annual average daily basis by such person and  
27 the estimated capacity in gallons, of waters of the state

1 potentially diverted, withdrawn, or consumed on any given day  
2 by such person; and a statement of facts establishing that the  
3 use of such waters constitutes a beneficial use.

4 "~~(9)~~(12) DEPARTMENT. The Department of Economic and  
5 Community Affairs or its successor.

6 "~~(10)~~(13) DIRECTOR. The Director of the Department  
7 of Economic and Community Affairs.

8 "~~(11)~~(14) DIVISION CHIEF. The Chief of the Office of  
9 Water Resources or its successor.

10 "(15) DROUGHT MANAGEMENT STRATEGIES. Plans devised  
11 by the Office of Water Resources pursuant to this chapter for  
12 the allocation of water during periods of drought and  
13 otherwise to cope with water shortages or water emergencies  
14 and, insofar as is reasonably possible, to restore the waters  
15 of the state to their condition prior to the drought.

16 "(16) ENVIRONMENTAL FLOW. The amount of flow needed,  
17 as determined by the Office of Water Resources after  
18 consultation with the Water Resources Council, to uphold the  
19 natural biological, physical, and chemical integrity of a  
20 waterway established using scientifically valid methodologies  
21 considering hydrology, geomorphology, biology, connectivity,  
22 and water quality. In determining environmental flow rates,  
23 the Office of Water Resources shall give consideration to  
24 consumptive and nonconsumptive water uses, such as  
25 agricultural, industrial, municipal, and domestic uses; energy  
26 production; assimilative waste capacity; recreation;

1 navigation; fish and wildlife resources and other ecologic  
2 values; estuarine resources; aquifer recharge; and aesthetics.

3 "~~(12)~~ (17) GROUND WATER. Water in a saturated zone or  
4 stratum beneath the surface of land or water, whether or not  
5 flowing through known and definite channels, and regardless of  
6 whether it is the result of natural or artificial recharge.

7 "(18) INTERBASIN TRANSFER. Any transfer of water,  
8 for any purpose and regardless of the quantity involved, from  
9 one river basin to another.

10 "~~(13)~~ (19) OFFICE OF WATER RESOURCES. The Alabama  
11 Office of Water Resources or its successor, which shall serve  
12 as the central unit of the state's government for protecting,  
13 maintaining, improving, allocating, and planning regarding the  
14 waters of the state pursuant to this chapter.

15 "~~(14)~~ (20) PERSON. Any and all persons, natural or  
16 artificial, including any individual, firm, association,  
17 organization, partnership, business, trust, corporation,  
18 company, any federal agency, authority, or corporation created  
19 by the United States of America, and the state and all  
20 political subdivisions, regions, districts, municipalities,  
21 and public agencies thereof.

22 "~~(15)~~ (21) PUBLIC WATER SYSTEM. A system for the  
23 provision to the public of piped water for human consumption  
24 or other uses, if such system has at least 15 service  
25 connections or regularly serves an average of at least 25  
26 individuals at least 60 days out of the year. A public water  
27 system includes:

1            "a. any collection, treatment, storage, and  
2 distribution facilities under the control of the operator of  
3 such system and used primarily in connection with such system;  
4 and

5            "b. any collection or pretreatment storage  
6 facilities not under such control which are used primarily in  
7 connection with such system.

8            "~~(16)~~ (22) STATE. The State of Alabama.

9            "~~(17)~~ (23) SURFACE WATER. Water upon the surface of  
10 the earth, whether contained in bounds created naturally or  
11 artificially or diffused. Water from natural springs shall be  
12 considered "surface water" when it exits from the spring onto  
13 the surface of the earth.

14            "~~(6)~~ (24) SURFACE WATER REGIONS. Those certain areas  
15 of the state designated by this chapter and to be referred to  
16 individually as:

17            "a. Central Alabama Surface Water Region. That area  
18 of the state formed by the Counties of Etowah, Cherokee, St.  
19 Clair, Calhoun, Cleburne, Shelby, Talladega, Clay, Randolph,  
20 Bibb, Coosa, Tallapoosa, Chilton, Perry, Autauga, Elmore,  
21 Macon, Montgomery, Dallas, Lowndes, Wilcox, and Monroe.

22            "b. Coastal Alabama Surface Water Region. That area  
23 of the state formed by the Counties of Mobile and Baldwin, and  
24 all bays, tidal estuaries, and portions of the Gulf of Mexico  
25 over which this state has jurisdiction.

26            "c. North Alabama Surface Water Region. That area of  
27 the state formed by the Counties of Lauderdale, Limestone,

1 Madison, Jackson, Colbert, Franklin, Lawrence, Morgan,  
2 Marshall, and DeKalb.

3 "d. Southeast Alabama Surface Water Region. That  
4 area of the state formed by the Counties of Russell, Bullock,  
5 Pike, Barbour, Lee, Chambers, Butler, Crenshaw, Coffee, Dale,  
6 Henry, Conecuh, Covington, Geneva, Houston, and Escambia.

7 "e. West Alabama Surface Water Region. That area of  
8 the state formed by the Counties of Marion, Winston, Cullman,  
9 Blount, Lamar, Fayette, Walker, Jefferson, Pickens,  
10 Tuscaloosa, Greene, Hale, Sumter, Marengo, Choctaw, Clarke,  
11 and Washington.

12 "(25) SUSTAINABLE DEVELOPMENT. The integrated  
13 management of resources taking into consideration the needs of  
14 future generations as well as the current generation, assuring  
15 equitable access to resources, optimizing the use of  
16 nonrenewable resources, and averting the exhaustion of  
17 renewable resources.

18 "~~(18)~~ (26) WATER RESOURCES COUNCIL. The Alabama Water  
19 Resources Council or its successor.

20 "~~(19)~~ (27) WATERS or WATERS OF THE STATE. A quantity,  
21 regardless of the size or duration, of any spring, brook,  
22 creek, stream, river, pond, swamp, lake, reservoir,  
23 impoundment, sound, tidal estuary, bay, waterway, aquifer, or  
24 any other body or accumulation of water, surface water, ~~or~~  
25 ground water, or water found within the atmosphere, public or  
26 private, natural or artificial, that:



1           " ~~a. is~~ Is contained within the borders of this  
2 state;

3           " ~~b. flows~~ Flows through or to this state or any  
4 portion thereof; or

5           " ~~c. borders~~ Borders upon this state or any portion  
6 thereof, including those portions of the Gulf of Mexico over  
7 which this state has jurisdiction.

8           "(28) WATERSHED. An area of land from which all  
9 waters drain, on the surface or beneath the ground to a common  
10 point; provided, however, that in any administrative or  
11 judicial proceeding pursuant to this chapter, the watershed  
12 shall be measured at the lowest point relevant to the issue to  
13 be determined.

14           "(29) WITHDRAWAL. The removal or exercise of  
15 physical control of surface or underground water from its  
16 natural course or location by any means, regardless of whether  
17 the water is returned to its waters or origin, consumed, or  
18 discharged elsewhere.

19           "§9-10B-20.

20           "(a) A declaration of beneficial use shall be  
21 submitted within 90 days of the promulgation of rules ~~and~~  
22 ~~regulations~~ governing such declarations by each public water  
23 system that regularly serves, individually or in combination  
24 with other such systems, more than 10,000 households and by  
25 each person who diverts, withdraws, or consumes more than  
26 100,000 gallons of water on any day from the waters of the  
27 state.

1           "(b) A declaration of beneficial use shall be  
2 submitted within 180 days of the promulgation of rules ~~and~~  
3 ~~regulations~~ governing such declarations by each public water  
4 system that regularly serves, individually or in combination  
5 with other such systems, less than 10,000 households.

6           "(c) No declaration of beneficial use shall be  
7 required to be submitted by any person, other than public  
8 water systems, who diverts, withdraws, or consumes less than  
9 100,000 gallons of water each day from the waters of the state  
10 unless the commission determines by regulation that the  
11 submission of declaration of beneficial use by such person is  
12 necessary to accomplish the purposes of this chapter. In  
13 addition, no declaration of beneficial use shall be required  
14 and no certificate of use shall be issued for:

15           "(1) In-stream uses of water, including, but not  
16 limited to, recreation, navigation, water oxygenation system,  
17 and hydropower generation; or

18           "(2) Impoundments covering not more than 100 acres  
19 in surface area:

20           "a. Confined and retained completely upon the  
21 property of a person; and

22           "b. Used solely for recreational purposes, including  
23 sport fishing.

24           "(d) Notwithstanding any other provision of this  
25 chapter to the contrary, each person who ~~has the capacity~~  
26 proposes to use 100,000 gallons or more of water on any day in  
27 total for purposes of irrigation shall submit a declaration of

1 beneficial use to the Office of Water Resources on or before  
2 January 1, 1995. Persons who use waters for purposes of  
3 irrigation, but who do not have the capacity to use 100,000  
4 gallons or more of water on any day in total for purposes of  
5 irrigation, are not required to submit a declaration of  
6 beneficial use unless the commission determines by regulation  
7 that such action is necessary to accomplish the purposes of  
8 this chapter.

9           "(e) The Office of Water Resources shall issue a  
10 certificate of use to any person required to submit a  
11 declaration of beneficial use upon the submission of a  
12 declaration of beneficial use. The declaration of beneficial  
13 use shall contain all information required to be submitted  
14 under regulations promulgated by the commission and shall  
15 establish that the proposed diversion, withdrawal, or  
16 consumption of such water shall not interfere with any  
17 presently known existing legal use of such water and is  
18 consistent with the objectives of this chapter. Each  
19 certificate of use shall contain the following statement: "THE  
20 ISSUANCE OF THIS CERTIFICATE OF USE SHALL NOT CONFER OR MODIFY  
21 ANY PERMANENT INTERESTS OR RIGHTS IN THE HOLDER THEREOF TO THE  
22 CONTINUED USE OF THE WATERS OF THE STATE OF ALABAMA."

23           "(f) It shall be a condition of each certificate of  
24 use issued by the Office of Water Resources that reports be  
25 submitted annually to the Office of Water Resources,  
26 indicating the amount of water, in gallons, diverted,  
27 withdrawn, or consumed on a monthly basis by such person and

1 such other information required under regulations promulgated  
2 by the commission. Such reports shall be signed and certified  
3 that to the best of the person's knowledge and belief, the  
4 information contained therein is true, accurate, and complete.

5 "(g) The Office of Water Resources shall issue  
6 certificates of use or approve transfers of the waters of the  
7 state in such a manner as to protect and preserve the quality  
8 of those waters.

9 "(h) The Office of Water Resources shall not issue a  
10 certificate of use for any use that appears likely to result  
11 in a violation of the water quality standards designated by  
12 the state without consulting with the Alabama Department of  
13 Environmental Management.

14 "(i) The Office of Water Resources shall not issue a  
15 certificate of use for any use that appears likely to violate  
16 any rule, regulation, or legal order that protects, conserves,  
17 or increases the wildlife of the state without consulting with  
18 the Alabama Department of Conservation and Natural Resources.

19 "(j) The Office of Water Resources may adopt rules  
20 as reasonably necessary to perform the functions authorized  
21 pursuant to this section; provided, however, that no rule  
22 shall conflict or be inconsistent with the rules adopted by  
23 the commission in designating a capacity stress area.

24 "§9-10B-22.

25 "(a) Declaration of a water shortage.

26 "(1) The commission shall declare a water shortage  
27 whenever it finds that in all or any part of the state,

1 because of droughts or otherwise, the available water falls so  
2 far below normally occurring quantities that substantial  
3 conflict among water users or injury to water resources is  
4 expected to occur.

5 "(2) Before restricting the exercise of any right  
6 conferred by a certificate of use issued under this chapter  
7 because of a water shortage, the Office of Water Resources  
8 shall serve notice of the proposed action and provide an  
9 opportunity for a contested hearing to any person affected by  
10 the proposed restriction.

11 "(3) In any hearing or litigation relating to this  
12 subsection, the burden of proof shall be on the party  
13 requesting the hearing or initiating the litigation.

14 "(b) Declaration of a water emergency.

15 "(1) The commission shall declare a water emergency  
16 whenever it finds there exists a severe shortage of water  
17 relative to lawful demand such that restrictions taken under a  
18 declaration of water shortage are insufficient to protect  
19 public health, safety, and welfare in all or any watershed of  
20 the state.

21 "(2) In addition to its powers under a declaration  
22 of water shortage, the Office of Water Resources, upon a  
23 declaration of a water emergency by the commission and without  
24 prior hearing, may order a person who holds a certificate of  
25 use under this chapter immediately to cease or otherwise  
26 change the withdrawal or use of water as necessary to  
27 alleviate the emergency.

1           "(3) An emergency order issued under this section  
2 shall specify the precise date and time on which the  
3 restriction or change to the withdrawal or use of water is  
4 necessary to alleviate the emergency.

5           "(4) Any restriction under this section shall not  
6 take effect against any person affected by the restriction  
7 until the Office of Water Resources serves the emergency order  
8 on that person.

9           "(5) Any person affected by a restriction under this  
10 section may obtain a hearing to challenge the restriction, to  
11 begin not more than 10 days after the Office of Water  
12 Resources receives the request for a hearing, and to be  
13 concluded as soon as reasonably possible after the hearing  
14 begins.

15           "(6) In any hearing or litigation relating to this  
16 subsection, the burden of proof shall be on the party  
17 requesting the hearing or initiating the litigation.

18           "(7) An emergency order shall remain in effect  
19 pending the result of any hearing or litigation relating to  
20 this section.

21           "(c) The commission, in declaring a water shortage  
22 or a water emergency, shall determine and clearly delineate  
23 the area of the state and the water sources included within  
24 the shortage or emergency.

25           "(d) Authority to restrict a certificate of use.

26           "(1) The Office of Water Resources may restrict any  
27 term or condition of a certificate of use issued under this

1 chapter for the duration of a water shortage or water  
2 emergency declared by the commission.

3 "(2) The Office of Water Resources shall impose  
4 restrictions according to previously developed drought  
5 management strategies unless the commission determines that  
6 the relevant drought management strategies are inappropriate  
7 to the actual situation.

8 "(e) Conservation credits.

9 "(1) If practical, the Office of Water Resources, in  
10 ordering restrictions on the withdrawal or use of water during  
11 a water shortage or water emergency, may not order a person to  
12 do more if that person has successfully implemented  
13 conservation measures, pursuant to the plan of conservation  
14 made a term or condition of the certificate of use under which  
15 the person exercises a water use, until other certificate of  
16 use holders have achieved comparable restrictions in the  
17 exercise of their water uses.

18 "(2) When a person holding a certificate of use  
19 voluntarily undertakes conservation measures during a period  
20 of water shortage or water emergency beyond those required by  
21 this chapter, including the terms and conditions of the  
22 person's certificate of use, that result in significant  
23 quantifiable reductions in the water that person had been  
24 using before the beginning of the water shortage or water  
25 emergency, that person is entitled to a credit for such  
26 reductions in any scheme of restrictions imposed by the Office

1 of Water Resources as a response to the water shortage or  
2 water emergency.

3 "(3) When a written agreement between persons  
4 holding certificates of use under this chapter to undertake  
5 joint conservation measures in the event of an anticipated  
6 water shortfall is filed with the Office of Water Resources  
7 before the declaration of a water shortage or water emergency  
8 and the agreement does not unreasonably impair the rights of  
9 other persons who have a right to use the water, or the public  
10 interest, or sustainable development, the agency shall do both  
11 of the following:

12 "a. Register the agreement and include it in any  
13 relevant drought management strategies if the agreement is  
14 consistent with the policies of this chapter.

15 "b. Credit any water actually conserved under the  
16 agreement to the obligations of the parties to the agreement  
17 to restrict their water withdrawals or consumptive uses during  
18 any water shortage or water emergency.

19 "(4) When a written agreement between persons  
20 holding certificates of use under this chapter to undertake  
21 joint conservation measures is filed with the Office of Water  
22 Resources during the declaration of a water shortage or water  
23 emergency and the agreement does not unreasonably impair the  
24 rights of other persons who hold certificates of use, or the  
25 public interest, or sustainable development, the agency shall  
26 do both of the following:



1           "a. Register the agreement and authorize the parties  
2 to the agreement to implement those measures in lieu of  
3 restrictions imposed or to be imposed by the Office of Water  
4 Resources.

5           "b. Credit any water actually conserved under the  
6 agreement to the obligations of the parties to the agreement  
7 to restrict their water withdrawals or consumptive uses during  
8 any water shortage or water emergency.

9           "(5) Conservation credits and registered agreements  
10 on joint conservation measures shall be included in the  
11 statewide data system.

12           "(f) The commission shall amend or terminate a  
13 declaration of water shortage or water emergency upon a  
14 finding that conditions justifying the declaration have  
15 changed or no longer exist as to part or all of the area  
16 included in the prior declaration.

17           "(a)(g) Upon the designation of any area of the  
18 state as a capacity stress area where the commission  
19 specifically finds the implementation of a use restriction  
20 alternative is necessary because the aggregate existing or  
21 reasonably foreseeable uses of the waters of the state in such  
22 an area exceed or will exceed the availability of such waters  
23 and is required to protect the ~~availability of public~~  
24 interests in the waters of the state within such area, the  
25 commission shall immediately initiate ~~rule-making~~ rulemaking  
26 procedures to consider appropriate conditions or limitations  
27 applicable to all certificates of use within such area;

1 provided, however, that the commission shall not adopt or  
2 promulgate any rule or regulation with respect to any capacity  
3 stress area without the concurrence of 13 of the members of  
4 the commission. Any such conditions or limitations shall be  
5 confined to matters necessary for the protection of the  
6 ~~beneficial use of~~ public interests in the waters of the state.  
7 In addition to any other requirement of law, the notice of  
8 rule-making shall be sent by certified mail, return receipt  
9 requested, to each person within such area holding a  
10 certificate of use. The notice of ~~rule-making~~ rulemaking shall  
11 include a description of the actions proposed by the  
12 commission, including the duration thereof, in the capacity  
13 stress area.

14 "~~(b)~~ (h) Any rules ~~or regulations~~ proposed under this  
15 section shall consider fully all relevant matters prior to the  
16 adoption of any conditions, limitations, or restrictions upon  
17 any certificate of use within a capacity stress area. Such  
18 matters shall include, but ~~shall~~ not be limited to: the uses  
19 of water under each certificate of use within such area; the  
20 environmental flows or levels of the waters within such area;  
21 the uses of water and environmental flows or levels of other  
22 areas likely to be impacted by the proposed rules; the  
23 quantity of any water returned by each holder of a certificate  
24 of use to the capacity stress area; the reasonably foreseeable  
25 impacts to the economic or other interests of the state as a  
26 result of the imposition of any conditions, limitations, or  
27 restrictions upon each certificate of use; and the effect of

1 such conditions, limitations, or restrictions upon the status  
2 of such area as a capacity stress area.

3 ~~"(c)(i)~~ Every 12 months, or sooner if necessary or  
4 requested by the division chief, the commission shall confirm  
5 the conditions applicable to a water shortage, a water  
6 emergency, or a capacity stress area to determine what, if  
7 any, modifications to the designation of the capacity stress  
8 area are appropriate.

9 "§9-10B-23.

10 "(a) ~~In the event the commission adopts or~~  
11 ~~promulgates any rules or regulations~~ The enforcement and  
12 implementation of any rules limiting or reducing the quantity  
13 of water available to a person holding a certificate of use,  
14 ~~the implementation and enforcement of such rules and~~  
15 ~~regulations~~ shall be under the direction of the Alabama  
16 Department of Environmental Management, and, for rules adopted  
17 pursuant to Section 9-10B-20, the Office of Water Resources.

18 "(b) The Alabama Department of Environmental  
19 Management and the Alabama Environmental Management Commission  
20 are hereby expressly authorized to perform the following  
21 duties and functions with respect to the implementation and  
22 enforcement of the rules ~~and regulations~~ adopted by the  
23 commission:

24 "(1) To receive copies of all reports or other  
25 documents submitted to the Office of Water Resources by  
26 holders of certificates of use within a capacity stress area;

1           "(2) Acting through the Alabama Department of  
2 Environmental Management, to issue an order assessing a civil  
3 penalty against any person in violation of any condition,  
4 limitation, or restriction of a certificate of use promulgated  
5 by the commission pursuant to Section 9-10B-20 or Section  
6 9-10B-22; provided, however, that all such orders shall be  
7 consistent with, and subject to the limitations set forth in,  
8 subdivision (19) of Section 9-10B-5;

9           "(3) To recommend to the Office of Water Resources  
10 or the commission actions to be taken within a capacity stress  
11 area or modifications, amendments, or repeals of any rules ~~or~~  
12 ~~regulations~~ adopted by the commission regarding a capacity  
13 stress area;

14           "(4) Acting through the Alabama Environmental  
15 Management Commission, to hear administrative appeals of any  
16 order issued by the Alabama Department of Environmental  
17 Management pursuant to this section; and

18           "(5) Acting through the Alabama Environmental  
19 Management Commission, to adopt such rules ~~and regulations~~ as  
20 reasonably necessary to perform the functions authorized  
21 pursuant to this section; provided, however, that no such  
22 rules ~~or regulations~~ shall conflict or be inconsistent with  
23 the rules ~~or regulations~~ adopted by the commission in  
24 designating a capacity stress area.

25           "§9-10B-24.

26           "(a) There is hereby established the Alabama Water  
27 Resources Council. The Water Resources Council shall act in an

1 advisory capacity to the Office of Water Resources and shall  
2 be comprised of one representative appointed by each of the  
3 following entities: The Alabama Department of Conservation and  
4 Natural Resources, the Alabama Department of Environmental  
5 Management, the Alabama Department of Public Health, the Soil  
6 and Water Conservation Committee, the Alabama State Port  
7 Authority, the Geological Survey of Alabama, and the Water  
8 Resource Research Institute. From time to time, the division  
9 chief may request any other state agency to appoint a  
10 representative to the Water Resources Council. The Water  
11 Resources Council shall advise the Office of Water Resources  
12 on all matters concerning the waters of the state.

13 "(b) The Office of Water Resources may establish and  
14 convene planning advisory committees as may be necessary to  
15 assist in the formulation of its plans, programs, and  
16 strategies. The planning advisory committees may include  
17 representatives from agencies or branches of the United  
18 States, agencies or branches of interstate or international  
19 organizations with responsibility for waters of the state,  
20 other agencies or branches of the state, other states sharing  
21 the watershed under study, the political subdivisions of the  
22 state, and all persons or groups interested in or directly  
23 affected by any proposed or existing plan or strategy."

24 Section 4. Sections 9-10B-31 and 9-10B-32 are added  
25 to the Code of Alabama 1975, to read as follows:

26 §9-10B-31.

1           (a) (1) The state shall preserve environmental flows  
2 and levels in all water sources as necessary to protect the  
3 appropriate biological, chemical, and physical integrity of  
4 waters by reserving such waters from allocation necessary to  
5 meet these flows and levels; by maintaining the natural  
6 hydrology of the watersheds and basins of the state to the  
7 greatest extent possible; and by authorizing additional  
8 protections of the waters of the state to restore and protect  
9 the biological, chemical, and physical integrity of the  
10 state's water resources.

11           (2) The Office of Water Resources, after  
12 consultation with the Alabama Water Resources Council, shall  
13 establish, by rule, the environmental flow or level in any  
14 body of water that is not subject to use under this chapter,  
15 except as provided in this section.

16           (3) The Office of Water Resources shall not issue a  
17 certificate of use for any use that appears likely to impair  
18 the protected environmental flows or levels as determined  
19 under this section.

20           (b) Every person exercising a water use pursuant to  
21 this chapter shall protect the prescribed environmental flow  
22 or levels when exercising such right.

23           (c) Standards for protected environmental flows or  
24 levels.

25           (1) The Office of Water Resources, after  
26 consultation with the Alabama Water Resources Council, shall  
27 establish an environmental flow or level as the amounts

1 necessary for the biological, chemical, and physical integrity  
2 of the body of water, taking into account normal seasonal  
3 variations in flow and need.

4 (2) Effects of water shortages, water emergencies,  
5 or designation of capacity stress areas.

6 a. The commission shall declare a water shortage or  
7 water emergency or designate a capacity stress area when the  
8 environmental flows or levels established by this section are  
9 threatened or impaired.

10 b. During periods of water emergency, the Office of  
11 Water Resources may allocate waters normally within protected  
12 environmental flows or levels when necessary to prevent  
13 serious injuries to water uses established before the  
14 beginning of the water emergency and to prevent grave threats  
15 to human life or health under circumstances in which water is  
16 not available from other sources, but only to the extent such  
17 allocation does not permanently impair the biological,  
18 chemical, or physical integrity of the water source.

19 c. To facilitate planning for water emergencies, the  
20 Alabama Water Resources Council shall develop and recommend to  
21 the Office of Water Resources the environmental flows or  
22 levels that should not be subject to use, except to prevent  
23 grave threats to human life or health under circumstances in  
24 which water is not available from other sources for coping  
25 with these needs.

26 (3) Burden of proof.

1           a. In any proceeding under this chapter, the person  
2 proposing to withdraw water from a water source shall have the  
3 burden of showing by a preponderance of the evidence that the  
4 proposed withdrawal will not impair the protected  
5 environmental flows or levels as determined under this  
6 section.

7           b. Nothing in this chapter authorizes any person to  
8 withdraw water from a source that would impair its established  
9 protected environmental flow or level without first securing  
10 authorization to do so from the Office of Water Resources or a  
11 court reviewing a decision by the Office of Water Resources.

12           §9-10B-32.

13           This chapter does not alter or abridge any right of  
14 action existing in law or equity, whether civil or criminal,  
15 nor does it prevent any person from exercising rights to  
16 suppress nuisances or otherwise to abate pollution.

17           Section 5. This act shall become effective on the  
18 first day of the third month following its passage and  
19 approval by the Governor, or its otherwise becoming law.