

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; 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, 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 ground water 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. Prediction of severe drought may be based on consideration of historical,
 83 mathematical, or meteorological information, including, but not limited to, stream flows,
 84 ground-water levels, and precipitation forecasts. Such prediction may also be based on
 85 scientific analyses, including, but not limited to, the Palmer Drought Severity Index
 86 administered by the National Oceanographic and Atmospheric Administration.

87 (b) If severe drought conditions are predicted or otherwise declared in accordance with
 88 subsection (a) of this Code section, the division ~~will~~ may determine the total number of
 89 acres of irrigated land, serviced by irrigation systems located within one or more of the
 90 affected areas, that must not be irrigated that year in order to maintain the acceptable Flint
 91 River basin stream ~~flow~~ flows. Upon such determination, the division ~~shall~~ may conduct
 92 an irrigation reduction auction whereby a permittee of an irrigation system located within
 93 the affected areas is given an opportunity to enter into an agreement with the division,

94 agreeing that in exchange for a certain sum of money per acre of irrigated land serviced by
 95 the irrigation system, the permittee will not irrigate those particular acres for the remainder
 96 of that calendar year. The authority shall pay the sum so agreed upon when so directed by
 97 the director from the unexpended balance of the drought protection funds. In conducting
 98 the irrigation reduction auction, the division may establish a maximum dollar amount per
 99 acre to be expended from the drought protection funds for such purposes."

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

108 SECTION 5.

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

110 "12-5-546.1.

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

114 (1) Support implementation of the agricultural water efficiency measures in water
 115 conservation or management plans prepared in accordance with Code Sections 12-5-31,
 116 12-5-96, and 12-5-522;

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

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

122 (4) Encourage a scheduled program for the voluntary retirement of unused surface-water
 123 and ground-water farm use permits in accordance with Code Sections 12-5-31 and
 124 12-5-105.

125 (b) The director may modify all active surface-water and ground-water withdrawal permits
 126 for farm use in the affected area to require all irrigation systems applying water withdrawn
 127 pursuant to such permits to achieve irrigation efficiencies of 80 percent or greater by the
 128 year 2020. The schedule for achieving the irrigation efficiencies provided in this
 129 subsection shall be as follows:

130 (1) Irrigation systems applying water withdrawn pursuant to all active permits issued
131 after 2005 shall achieve a minimum irrigation efficiency of 80 percent by January 1,
132 2016;

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

136 (3) Irrigation systems applying water withdrawn pursuant to all active permits issued
137 before 1991 shall achieve a minimum irrigation efficiency of 80 percent by January 1,
138 2020.

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

144 (1) Irrigation systems applying water withdrawn pursuant to all active permits issued
145 after 2005 shall achieve a minimum irrigation efficiency of 60 percent by January 1,
146 2016;

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

150 (3) Irrigation systems applying water withdrawn pursuant to all active permits issued
151 before 1991 shall achieve a minimum irrigation efficiency of 60 percent by January 1,
152 2020.

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

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

161 (f) The division shall, in cooperation with other state and federal agencies, universities, the
162 Georgia Water Planning and Policy Center, the Lower Flint-Ochlockonee Regional Water
163 Council, and other appropriate entities, provide to the board for consideration for adoption
164 in its rules requirements pertaining to methods an applicant may utilize to demonstrate that
165 the required irrigation efficiency has been achieved. Requirements shall consider current

166 technologies, best management practices, and the effects of soil type and topography,
167 among other factors deemed necessary.

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

172 12-5-546.2.

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

175 (b) The director is authorized to notify specified permittees with surface-water withdrawal
176 permits downstream of a state funded project specifically authorized to augment stream
177 flows that, during specified periods of the project's operation and for the purpose of
178 maintaining instream flows, the permittee shall let the flow provided by the augmentation
179 project pass their point of withdrawal. When specifying those permittees subject to such
180 notification, the director shall also establish, in accordance with the factors that may be
181 considered under paragraph (e) of this Code section, those withdrawal permittees that shall
182 not be subject to the requirements of this Code section.

183 (c) Such notification shall be provided in accordance with rules promulgated by the board
184 of natural resources, shall be based on the best available science, and shall, at a minimum,
185 inform the permittees that the upstream project is delivering augmented flows.

186 (d) The director's notification shall contain notice of opportunity for a hearing and shall
187 be served by certified mail, return receipt requested, to the most recent address provided
188 by the permittee. Any permittee to whom such notification is directed shall comply
189 therewith immediately, but shall be afforded a hearing within five business days of the
190 director's receipt of a petition filed by such permittee. Such hearing shall be before an
191 administrative law judge of the Office of State Administrative Hearings and shall be
192 conducted in accordance with subsection (c) of Code Section 12-2-2. Based upon findings
193 adduced at such hearing, the notification shall be modified, reversed, or continued by the
194 director as he or she deems appropriate.

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

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

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

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

200 (4) The degree to which protection of augmented flows will assist in mitigating the
 201 effects of droughts, provide ecological or other environmental benefits, and ensure
 202 sustainable, long-term access to water resources for existing and future water users; and
 203 (5) Any other data or information the director deems relevant."

204 **SECTION 6.**

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

207 "12-5-549.

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

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

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

224 (d) The director may file in the superior court of the county wherein the person under order
 225 resides, or if the person is a corporation, in the county wherein the corporation maintains
 226 its principal place of business, or in the county wherein the violation occurred or in which
 227 jurisdiction is appropriate, a certified copy of a final order of the director unappealed from
 228 or a final order of the director affirmed upon appeal, whereupon the court shall render
 229 judgment in accordance therewith and notify the parties. Such judgment shall have the
 230 same effect, and all proceedings in relation thereto shall thereafter be the same, as though
 231 the judgment had been rendered in an action duly heard and determined by such court.

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

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

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

241 **SECTION 7.**

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