

Senate Bill 213

By: Senators Tolleson of the 20th, Sims of the 12th, Burke of the 11th, Hill of the 4th,  
Chance of the 16th and others

**AS PASSED SENATE**

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.

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

36 (2.1) 'Application efficiency' means the percentage of the total amount of water  
 37 withdrawn from a source which ultimately reaches any plant's root zone.

38 (3) 'Authority' means the Georgia Environmental Finance Authority created by Chapter  
 39 23 of Title 50.

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

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

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

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

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

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

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

54 (11) 'Irrigated land' means farm land which is irrigated by ground water or surface water  
 55 pursuant to a water withdrawal permit issued by the director pursuant to Code Section  
 56 12-5-31 or 12-5-96.

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

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

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

64 **SECTION 3.**

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

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

69 "(9.1) Conduct and participate in studies related to management of the water resources  
70 in the Flint River basin."

71 **SECTION 4.**

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

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

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

91 "(e) The expenditure of funds under this article as an incentive to permittees not to irrigate  
92 lands is deemed by the legislature as a valid use of state moneys to promote valid land use  
93 policies that result in the protection of the riverine environment by ensuring that such lands  
94 not be irrigated for specified periods of time. No expenditure of funds under this article

95 shall be considered full or partial compensation for any losses, financial or otherwise,  
 96 experienced due to nonirrigation; a lease or repurchase of any irrigation permit issued by  
 97 the director, ~~nor shall it be considered;~~ or an acknowledgment by the State of Georgia of  
 98 a property right in any permit issued by the director."

99 **SECTION 5.**

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

101 "12-5-546.1.

102 On or before January 1, 2014, the division shall, as appropriate and in cooperation with  
 103 other state and federal agencies, universities, the Georgia Water Planning and Policy  
 104 Center, and other appropriate entities, undertake certain studies the results of which may  
 105 be used to establish new and revised rules and regulations pertaining to the management  
 106 of the water resources in the Flint River basin consistent with this article. Such studies  
 107 shall include, but not be limited to:

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

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

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

115 (4) Assessment of additional drought management actions and funding alternatives,  
 116 including quantification of agricultural withdrawal permits.

117 (5) Studies to develop actionable baseline information related to return flows to the Flint  
 118 River basin, interbasin transfer of water, reservoir releases, and municipal and industrial  
 119 water use in the Flint River basin.

120 (6) Assessment of additional drought management actions and funding alternatives,  
 121 relating to return flows to the Flint River basin, interbasin transfer of water, reservoir  
 122 releases, and municipal and industrial withdrawal permits.

123 12-5-546.2.

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

127 (1) Support implementation of the agricultural water efficiency measures in water  
 128 conservation or management plans prepared in accordance with Code Sections 12-5-31,  
 129 12-5-96, and 12-5-522;

- 130 (2) Support implementation of pilot projects demonstrating the efficacy of emerging  
131 innovative irrigation technologies where appropriate and affordable;
- 132 (3) Identify ways the State Soil and Water Conservation Commission's program for  
133 measuring agricultural uses of water as authorized under Code Section 12-5-105 can  
134 further enhance efforts to improve agricultural water use efficiency; and
- 135 (4) Encourage a scheduled program for the voluntary retirement of unused surface-water  
136 and ground-water farm use permits in accordance with Code Sections 12-5-31 and  
137 12-5-105.
- 138 (b) The director may modify all active surface-water and ground-water withdrawal permits  
139 for farm use in the affected area to require all irrigation systems applying water withdrawn  
140 pursuant to such permits to achieve application efficiencies of 80 percent or greater by the  
141 year 2020. The schedule for achieving the application efficiencies provided in this  
142 subsection shall be as follows:
- 143 (1) Irrigation systems applying water withdrawn pursuant to all active permits issued  
144 after 2005 shall achieve a minimum application efficiency of 80 percent by January 1,  
145 2016;
- 146 (2) Irrigation systems applying water withdrawn pursuant to all active permits issued  
147 from 1991 through 2005 shall achieve a minimum application efficiency of 80 percent  
148 by January 1, 2018; and
- 149 (3) Irrigation systems applying water withdrawn pursuant to all active permits issued  
150 before 1991 shall achieve a minimum application efficiency of 80 percent by January 1,  
151 2020.
- 152 (c) Notwithstanding subsection (b) of this Code section, the director may modify specified  
153 active surface-water and ground-water withdrawal permits for farm use in the affected area  
154 to require all mobile irrigation systems and solid-set irrigation sprinklers operating under  
155 such permits to achieve application efficiencies of 60 percent or greater by the year 2020.  
156 The schedule for achieving such efficiencies shall be as follows:
- 157 (1) Irrigation systems applying water withdrawn pursuant to all active permits issued  
158 after 2005 shall achieve a minimum application efficiency of 60 percent by January 1,  
159 2016;
- 160 (2) Irrigation systems applying water withdrawn pursuant to all active permits issued  
161 from 1991 through 2005 shall achieve a minimum application efficiency of 60 percent  
162 by January 1, 2018; and
- 163 (3) Irrigation systems applying water withdrawn pursuant to all active permits issued  
164 before 1991 shall achieve a minimum application efficiency of 60 percent by January 1,  
165 2020.

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

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

174 (f) The division may, in accordance with rules adopted by the board, provide for  
175 requirements pertaining to methods an applicant may utilize to demonstrate that the  
176 required application efficiency has been achieved.

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

181 12-5-546.3.

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

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

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

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

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

- 201 (1) The best available modeling and monitoring data for relevant locations and stream  
 202 reaches;  
 203 (2) The appropriate duration of protection of augmented flows;  
 204 (3) The distance downstream for which protection of augmented flows is appropriate;  
 205 (4) The degree to which protection of augmented flows will assist in mitigating the  
 206 effects of droughts and ensure sustainable, long-term access to water resources for  
 207 existing and future water users; and  
 208 (5) Any other data or information the director deems relevant."

209 **SECTION 6.**

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

212 "12-5-549.

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

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

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

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

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

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

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

246

#### **SECTION 7.**

247 No well or borehole shall be drilled or used for the purpose of injecting surface water into  
248 any aquifer in the State of Georgia. All laws and parts of laws in conflict with this Act are  
249 repealed.