

1 HB577
2 184087-1
3 By Representative Todd
4 RFD: Agriculture and Forestry
5 First Read: 02-MAY-17

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8 SYNOPSIS: Under existing law, the Alabama Water
9 Resources Act, the Office of Water Resources is the
10 state agency responsible for coordinating the water
11 resources of this state including the
12 administration of programs for river basin
13 management, river assessment, water supply
14 assistance, water conservation, flood mapping, the
15 National Flood Insurance Program, and water
16 resources development.

17 This bill would create the Alabama Water
18 Conservation and Security Act.

19 This bill would amend the Alabama Water
20 Resources Act to facilitate the coordination of the
21 plans, laws, regulations, and decisions pertaining
22 to water allocation in the state with those
23 pertaining to water quality and to implement
24 measures to preserve the flows and levels in all
25 water sources as necessary to protect the
26 appropriate biological, chemical, and physical
27 integrity of water sources.

1 This bill would: (1) authorize the Office of
2 Water Resources to restrict any term or condition
3 in a certificate of use for the duration of a water
4 shortage or water emergency declared by the Water
5 Resources Commission; (2) require the Water
6 Resources Commission to declare a water shortage
7 under certain conditions; (3) authorize the Office
8 of Water Resources to provide conservation credits
9 to water users who take certain conservation
10 measures during periods of water shortages or
11 emergencies; and (4) would authorize the commission
12 to terminate a declaration of a water shortage or
13 emergency upon certain findings.

14 This bill would also require the state to
15 preserve environmental flows and levels in all
16 water sources, would allow the Office of Water
17 Resources, after consultation with the Alabama
18 Water Resources Council, to establish by rule
19 environmental flow or level in any water source,
20 and would establish a burden of proof for
21 withdrawals of surface or underground water.

22
23 A BILL
24 TO BE ENTITLED
25 AN ACT
26

1 Relating to water management; to create the Alabama
2 Water Conservation and Security Act; to provide legislative
3 findings and declarations; to amend Sections 9-10B-2, 9-10B-3,
4 9-10B-20, 9-10B-22, and 9-10B-24, Code of Alabama 1975,
5 relating to the Alabama Water Resources Act, to facilitate the
6 coordination of the plans, laws, regulations, and decisions
7 pertaining to water allocation in the state with those
8 pertaining to water quality; to implement measures to preserve
9 the flows and levels in all water sources as necessary to
10 protect the appropriate biological, chemical, and physical
11 integrity of water sources; to authorize the Office of Water
12 Resources to restrict any term or condition in a certificate
13 of use for the duration of a water shortage or water emergency
14 declared by the Water Resources Commission; to require the
15 commission to declare a water shortage under certain
16 conditions; to authorize the office to provide conservation
17 credits who take certain conservation measures during periods
18 of water shortages or emergencies; to authorize the commission
19 to terminate a declaration of a water shortage or emergency
20 upon certain findings; to require the state to preserve
21 environmental flows and levels in all water sources; to allow
22 the office, after consultation with the Alabama Water
23 Resources Council, to establish by rule environmental flow or
24 level in any water source; and to establish a burden of proof
25 for withdrawals of surface or underground water; and to repeal
26 Section 9-10B-23, Code of Alabama 1975, relating to the

1 Authority of Alabama Department of Environmental Management to
2 implement and enforce rules and regulations.

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 and subject to the state's sovereign power to plan for and
13 manage the use of those waters, under law, in order to protect
14 the public health, safety, and welfare by promoting economic
15 growth, mitigating the harmful effects of drought, resolving
16 conflicts among competing water users, achieving balance
17 between consumptive and nonconsumptive uses of water,
18 encouraging conservation, preventing degradation of natural
19 environments, and enhancing productivity of water-related
20 activities.

21 (2) The efficient use of waters of the state for
22 human consumption is recognized as a priority use of the
23 state.

24 (3) All citizens have a stewardship responsibility
25 to conserve and protect the water resources of this state.

26 (4) Comprehensive water management is necessary to
27 ensure that the waters of this state are utilized in a manner

1 that fosters fair, efficient, and productive use of the total
2 water supply of this state in a sustainable manner in the
3 satisfaction of economic, environmental, and other social
4 goals, whether public or private, with the availability and
5 utility of water being extended with a view of preventing
6 water from becoming a limiting factor in the general
7 improvement of social welfare.

8 (5) Recognizing the importance of proper planning
9 and management of the waters of this state to the health,
10 safety, and welfare of the people, it is critical that the
11 state devise appropriate conservation and drought management
12 strategies to serve the public interest in the waters of this
13 state.

14 (6) The state, in the exercise of its sovereign
15 police power to protect the public interest in the waters of
16 this state, undertakes to provide, through comprehensive water
17 management, an orderly strategy to allocate available water
18 efficiently and equitably in times of water shortage or water
19 emergency.

20 (7) The state shall preserve the flows and levels
21 in all water sources as necessary to protect the appropriate
22 biological, chemical, and physical integrity of water sources
23 by reserving these waters from use and by authorizing
24 additional protections of the waters of this state.

25 Section 3. Sections 9-10B-2, 9-10B-3, 9-10B-20,
26 9-10B-22, and 9-10B-24, Code of Alabama 1975, are amended to
27 read as follows:

1 "§9-10B-2.

2 "The Legislature of the State of Alabama hereby
3 finds and declares that:

4 "(1) All waters of the state, whether found on the
5 surface of the ground or underneath the surface of the ground,
6 are among the basic resources of the State of Alabama held in
7 trust for the public and subject to the state's sovereign
8 power to plan, regulate, and control the withdrawal and use of
9 those waters, under law, in order to protect the public
10 health, safety, and welfare by promoting economic growth,
11 mitigating the harmful effects of drought, resolving conflicts
12 among competing water users, achieving balance between
13 consumptive and nonconsumptive uses of water, encouraging
14 conservation, preventing excessive degradation of natural
15 environments, and enhancing productivity of water-related
16 activities;

17 "(2) The efficient use of waters of the state for
18 human consumption is recognized as a priority use of the state
19 and it is the intent of this chapter that no limitation upon
20 the use of water for human consumption shall be imposed except
21 in emergency situations after the Office of Water Resources
22 has considered all feasible alternatives to such limitations;

23 "(3) The use of such waters should be conserved and
24 managed to enable the people of this state to realize the full
25 beneficial use thereof and to maintain such water resources
26 for use in the future~~;~~;

1 "a. The state shall conserve the waters of the state
2 through suitable policies and by encouraging private efforts
3 to conserve water and avoid waste.

4 "b. The state shall preserve environmental flows and
5 levels in all water sources as necessary to protect the
6 appropriate biological, chemical, and physical integrity of
7 water sources by reserving from use such waters as are
8 necessary to meet these flows and levels; by maintaining, to
9 the greatest extent possible, the natural hydrology of the
10 watersheds and basins of the state; and by authorizing
11 additional protections of the waters of the state to restore
12 and protect the biological, chemical, and physical integrity
13 of the State of Alabama's water resources.

14 (4) The general welfare of the people of this state
15 is dependent upon the dedication of ~~the~~ available water
16 resources of the State of Alabama to beneficial use to the
17 fullest extent to which they are capable through the
18 development and implementation of plans and programs to manage
19 such quantitative water resources;

20 "a. In order to promote efficiency, equity, order,
21 conjunctive management, and stability in utilization of the
22 water resources of this state over time, this chapter and all
23 orders, certificate terms or conditions, rules or regulations
24 issued pursuant to this chapter, are to be interpreted to
25 achieve the policies embodied in the law and to conform to the
26 physical laws that govern the natural occurrence, movement,
27 and storage of water.

1 "b. Recognizing the importance of proper planning
2 and management of the waters of the state to the health,
3 safety, and welfare of the people, it is critical that the
4 state develop a comprehensive water plan and devise
5 appropriate conservation and drought management strategies to
6 serve the public interest in the waters of the state through
7 establishing and maintaining sustainable development of the
8 waters of the state.

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 provide, through this chapter, an
12 orderly strategy to allocate available water efficiently and
13 equitably in times of water shortage or water emergency;

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

22 (6) No ~~person's beneficial use of the quantitative~~
23 ~~waters of the state~~ person possessing a Certificate of
24 Beneficial Use shall be restricted from such use by the
25 Office of Water Resources or the Water Resources Commission
26 except where such ~~beneficial use is within an area of the~~
27 ~~state designated as a capacity stress area pursuant to~~

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

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

11 "b. such person has been afforded due process of law
12 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) Notwithstanding any provision of this chapter
18 to the contrary, the provisions of this chapter shall not
19 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 "(8) It is critical that the state coordinate the
8 plans, laws, regulations, and decisions pertaining to water
9 allocation with those pertaining to water quality.

10 "(9) The diverse hydrogeographic, economic, and
11 institutional conditions existing within the state require the
12 state to continue to support the activities of general and
13 special purpose local units of government that address local
14 and regional water resource conditions and problems.

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

18 "§9-10B-3.

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

22 "(1) ALABAMA COMPREHENSIVE WATER PLAN. A plan
23 developed by the Office of Water Resources, or any Watershed
24 Management Authority pursuant to this chapter, for the
25 intermediate and long-term protection, conservation, and
26 management of all the water of the state and is designed to
27 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 "(3) BIOLOGICAL INTEGRITY. A water source means the
8 maintenance of water in the source in the volume and at the
9 times necessary to support and maintain riverine systems,
10 wetlands, and native wildlife, including fish, flora, and
11 fauna.

12 "~~(2)~~(4) BENEFICIAL USE. The ~~diversion, withdrawal,~~
13 ~~or consumption~~ use of the waters of the state whether in place
14 or through withdrawal, diversion, or consumption in such
15 quantity and manner as is necessary for economic and efficient
16 utilization without waste of water, without unreasonable
17 injury to other certificate of use holders or the environment,
18 and consistent with the public interests of this state and
19 sustainable development.

20 "~~(3)~~(5) CAPACITY STRESS AREA. An area of the state
21 designated by the commission pursuant to this chapter where
22 the commission determines that the use of the waters of the
23 state, whether ground water, surface water, or both, requires
24 additional coordination, management, and regulation for the
25 protection of the interests and rights of the people of the
26 state.

1 "~~(4)~~(6) CERTIFICATE OF USE. A ~~certificate which~~
2 ~~shall be~~ written authorization issued by the Office of Water
3 Resources, upon receipt of a declaration of beneficial use, in
4 accordance with this chapter, to a person entitling that
5 person to hold and exercise a water use involving
6 ~~acknowledging~~ the diversion, withdrawal, or consumption of the
7 waters of the state at a specific time and place for a
8 specific reasonable use as described in the written
9 authorization.

10 "(7) CHEMICAL INTEGRITY. The maintenance of water in
11 the source in the volume and at the times necessary to enable
12 a water source to achieve the water quality standards
13 prescribed for the water source by federal or state laws or
14 regulations in light of authorized effluent discharges and
15 other expected impacts on the water source.

16 "~~(5)~~(8) COMMISSION. The Alabama Water Resources
17 Commission or its successor.

18 "(9) CONSERVATION MEASURES. Any measures adopted by
19 a certificate of use holder, or several certificate holders
20 acting in concert pursuant to an approved conservation
21 agreement under Section 9-10B-22, to reduce the withdrawals or
22 consumptive uses, or both, associated with the exercise of a
23 water use, including, but not limited to the following:

24 "a. Improvements in water transmission and water use
25 efficiency.

26 "b. Reduction in water use.

27 "c. Enhancement of return flows.

1 "d. Reuse of return flows.

2 "(10) CONSUMPTIVE USE. Use of water that is not a
3 "nonconsumptive use" as defined in this section, including,
4 without being limited to, evaporation or the incorporation of
5 the water into a product or crop.

6 "(11) COST. Direct and indirect expenditures,
7 commitments, and net induced adverse effects, whether
8 compensated or not, incurred or occurring in connection with
9 the establishment, acquisition, construction, maintenance, or
10 operation of any facility or activity for which a permit is
11 required by this chapter.

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

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

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

24 ~~"c. North Alabama Surface Water Region. That area of~~
25 ~~the state formed by the counties of Lauderdale, Limestone,~~
26 ~~Madison, Jackson, Colbert, Franklin, Lawrence, Morgan,~~
27 ~~Marshall, and DeKalb.~~

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

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

10 ~~"(7)(12) CRITICAL USE STUDY. An analysis of the~~
11 ~~available supply of water resources within an area of the~~
12 ~~state a watershed and an assessment of the existing and~~
13 ~~reasonably foreseeable future demand for such resources to~~
14 ~~determine if a water shortage exists, or is likely to exist,~~
15 ~~in such area of the state should be designated as a capacity~~
16 ~~stress area watershed.~~

17 ~~"(8)(13) DECLARATION OF BENEFICIAL USE. A writing~~
18 ~~signed and certified by, or on behalf of, a person to receive~~
19 ~~a certificate of use and shall include the following: the name~~
20 ~~of the person to receive a certificate; the source or sources~~
21 ~~of the waters of the state subject to such person's beneficial~~
22 ~~use; the estimated quantity, in gallons, of the waters of the~~
23 ~~state used on an annual average daily basis by such person and~~
24 ~~the estimated capacity in gallons, of waters of the state~~
25 ~~potentially diverted, withdrawn or consumed on any given day~~
26 ~~by such person; and a statement of facts establishing that the~~
27 ~~use of such waters constitutes a beneficial use.~~

1 "~~(9)~~(14) DEPARTMENT. The Department of Economic and
2 Community Affairs or its successor.

3 "(15) DOMESTIC USE. A direct use of water for
4 ordinary household purposes, including immediate human
5 consumption, including sanitation and washing, the watering of
6 animals held for personal use of consumption, and home
7 gardens.

8 "~~(10)~~(16) DIRECTOR. The Director of the Department
9 of Economic and Community Affairs.

10 "~~(11)~~(17) DIVISION CHIEF. The Chief of the Office of
11 Water Resources or its successor.

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

18 "~~(12)~~(19) GROUND WATER. Water in a saturated zone or
19 stratum beneath the surface of land or water, whether or not
20 flowing through known and definite channels, and regardless of
21 whether it is the result of natural or artificial recharge.

22 "(20) INTERBASIN TRANSFER. Any transfer of water,
23 for any purpose and regardless of the quantity involved, from
24 one river basin to another.

25 "(21) ENVIRONMENTAL FLOW. The amount of flow needed,
26 as determined by the Office of Water Resources after
27 consultation with the Water Resources Council, to uphold the

1 natural biological, physical, and chemical integrity of a
2 waterway established using scientifically valid methodologies
3 considering hydrology (magnitude, frequency, duration, timing,
4 rate of change), geomorphology, biology, connectivity, and
5 water quality. In selecting a scientifically valid
6 methodology, the Office of Water Resources shall consult with
7 and shall consider recommendations from the Water Resources
8 Council, other experts, and the general public. In determining
9 and establishing the environmental flow rates, the Office of
10 Water Resources shall give consideration to consumptive and
11 nonconsumptive water uses, including, but not limited to,
12 agricultural, industrial, municipal and domestic uses; energy
13 production; assimilative waste capacity; recreation;
14 navigation; fish and wildlife resources and other ecologic
15 values; estuarine resources; aquifer recharge; and aesthetics.

16 "(22) MODIFICATION OF A WATER USE. Any change in the
17 terms and conditions of a certificate of use, whether
18 voluntary or involuntary on the part of the permit holder,
19 including, without being limited to either of the following:

20 "a. Exchanges of certificates of use.

21 "b. Changes in any of the following:

22 "1. The holder of the certificate of use.

23 "2. The nature, place, quantity, or time of use.

24 "3. The point or means of diversion.

25 "4. The place of manner of storage of application.

26 "5. The point of return flow.

27 "6. Any combination of such changes.

1 "(23) MUNICIPAL USES. Uses of water by a publicly or
2 privately owned public water supply system for the life,
3 safety, health, and comfort of the inhabitants of customers
4 thereof and nonindustrial businesses serving those needs.

5 "(24) NONCONSUMPTIVE USE. A use of water withdrawn
6 from the waters of the state in such a manner that it is
7 returned to its waters of origin at or near its point of
8 origin without substantial diminution in quality or quantity
9 and without resulting in or exacerbating a lowflow condition.

10 "~~(13)~~ (25) 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)~~ (26) 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 "(27) PHYSICAL INTEGRITY. The volume of water
23 necessary to do the following:

24 "a. Support instream uses of the water source as
25 required by federal or state law or regulation.

26 "b. Preserve natural functions of the riverine
27 ecosystem.

1 "c. Preserve cultural or historic resources as
2 determined by or as required by federal or state law or
3 regulation.

4 "d. Provide adequate recreational opportunities to
5 the people of the state.

6 "e. Prevent serious hydrologic alteration of the
7 water source.

8 "(28) PLAN FOR CONSERVATION. A detailed plan
9 describing and quantifying the amount and use of water to be
10 developed by conservation measures in the exercise of a water
11 use.

12 "(29) THE PUBLIC INTEREST. Any interest in the
13 waters of the state or in water usage within the state shared
14 by the people of the state as a whole and capable of
15 protection or regulation by law, as informed by the policies
16 and mandates of this chapter.

17 ~~"(15)~~ (30) PUBLIC WATER SYSTEM. A system for the
18 provision to the public of piped water for human consumption
19 or other uses, if such system has at least 15 service
20 connections or regularly serves an average of at least 25
21 individuals at least 60 days out of the year. A public water
22 system includes:

23 "a. any collection, treatment, storage, and
24 distribution facilities under the control of the operator of
25 such system and used primarily in connection with such system;
26 and

1 "b. any collection or pretreatment storage
2 facilities not under such control which are used primarily in
3 connection with such system.

4 "(31) SAFE YIELD. The amount of water available for
5 withdrawal without impairing the long-term social utility of
6 the water source, including the maintenance of the protected
7 biological, chemical, and physical integrity of the source and
8 which is determined by comparing the natural and artificial
9 replenishment of the water source to existing or planned
10 consumptive and nonconsumptive uses.

11 "~~(16)~~ (32) STATE. The State of Alabama.

12 "(33) STATE AGENCY or AGENCY. The Office of Water
13 Resources.

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

20 "~~(17)~~ (35) SURFACE WATER. Water upon the surface of
21 the earth, whether contained in bounds created naturally or
22 artificially or diffused. Water from natural springs shall be
23 considered "surface water" when it exits from the spring onto
24 the surface of the earth.

25 "(36) SURFACE WATER REGIONS. Those certain areas of
26 the state designated by this chapter and to be referred to
27 individually as:

1 "a. Central Alabama Surface Water Region. That area
2 of the state formed by the counties of Etowah, Cherokee, St.
3 Clair, Calhoun, Cleburne, Shelby, Talladega, Clay, Randolph,
4 Bibb, Coosa, Tallapoosa, Chilton, Perry, Autauga, Elmore,
5 Macon, Montgomery, Dallas, Lowndes, Wilcox, and Monroe.

6 "b. Coastal Alabama Surface Water Region. That area
7 of the state formed by the counties of Mobile and Baldwin, and
8 all bays, tidal estuaries, and portions of the Gulf of Mexico
9 over which this state has jurisdiction.

10 "c. North Alabama Surface Water Region. That area of
11 the state formed by the counties of Lauderdale, Limestone,
12 Madison, Jackson, Colbert, Franklin, Lawrence, Morgan,
13 Marshall, and DeKalb.

14 "d. Southeast Alabama Surface Water Region. That
15 area of the state formed by the counties of Russell, Bullock,
16 Pike, Barbour, Lee, Chambers, Butler, Crenshaw, Coffee, Dale,
17 Henry, Conecuh, Covington, Geneva, Houston, and Escambia.

18 "e. West Alabama Surface Water Region. That area of
19 the state formed by the counties of Marion, Winston, Cullman,
20 Blount, Lamar, Fayette, Walker, Jefferson, Pickens,
21 Tuscaloosa, Greene, Hale, Sumter, Marengo, Choctaw, Clarke,
22 and Washington.

23 "(37) UNDERGROUND WATER. Groundwater.

24 "(38) UNREASONABLE INJURY. An adverse material
25 change in the quantity, quality, or timing of water available
26 for any lawful use caused by any action taken by another
27 person if either of the following are satisfied:

1 "a. The social utility of the injured use is greater
2 than the social utility of the action causing the injury.

3 "b. The cost of avoiding or mitigating the injury is
4 materially less than the costs imposed by the injury.

5 "(39) WASTE OF WATER. Causing, suffering, or
6 permitting the consumption or use of the waters of the state
7 for a purpose or in a manner that is not reasonable.

8 "(40) WATER EMERGENCY. A severe shortage of water
9 relative to lawful demand such that restrictions taken under a
10 declaration of water shortage are insufficient to protect
11 public health, safety, and welfare in all or any watershed of
12 the state, only as declared by the Water Resources Commission.

13 ~~"(18)~~ (41) WATER RESOURCES COUNCIL. The Alabama Water
14 Resources Council or its successor.

15 "(42) RIGHT TO USE WATER. A right to withdraw a
16 certain portion of the waters of the state in compliance with
17 the provisions of this chapter, whether subject to a
18 certificate of use or otherwise.

19 ~~(19)~~ (43) WATERS or WATERS OF THE STATE. A quantity
20 of any spring, brook, creek, stream, river, pond, swamp, lake,
21 reservoir, impoundment, sound, tidal estuary, bay, waterway,
22 aquifer, or any other body or accumulation of water, surface
23 water, or ground water, public or private, natural or
24 artificial, that

25 "a. is contained within the borders of this state;

26 "b. flows through or to this state or any portion
27 thereof; or

1 "c. borders upon this state or any portion thereof,
2 including those portions of the Gulf of Mexico over which this
3 state has jurisdiction.

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

10 "(45) WATERSHED MANAGEMENT AREA. A form of an
11 administration under the waters of the state with a
12 hydrogeographically defined region of the state are managed by
13 a Watershed Management Authority responsible for the waters
14 within that region in accordance with Section 9-10A-3.

15 "(46) WATER SHORTAGE. A condition, in all or any
16 part of the state, where, because of droughts or otherwise,
17 the available water falls so far below normally occurring
18 quantities that substantial conflict among water users or
19 injury to water resources is expected to occur, only as
20 declared by the Office of Water Resources.

21 "(47) WATER SOURCE. Any lake, pond, river, stream,
22 creek, run, spring, other water flowing or lying on or under
23 the surface, or contained within an aquifer, or found within
24 the atmosphere regardless of the quantity of water or its
25 duration.

26 "(48) WITHDRAWAL or TO WITHDRAW. The removal of
27 surface or underground water from its natural course or

1 location, or the exercise of physical control over surface or
2 underground water in its natural course or location, by any
3 means whatsoever, regardless of whether the water is returned
4 to its waters of origin, consumed, or discharged elsewhere, or
5 the activity of making a withdrawal.

6 "§9-10B-20.

7 "(a) A declaration of beneficial use shall be
8 submitted within 90 days of the promulgation of rules and
9 regulations governing such declarations by each public water
10 system that regularly serves, individually or in combination
11 with other such systems, more than 10,000 households and by
12 each person who diverts, withdraws, or consumes more than
13 100,000 gallons of water on any day from the waters of the
14 state.

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

20 "(c) No declaration of beneficial use shall be
21 required to be submitted by any person, other than public
22 water systems, who diverts, withdraws, or consumes less than
23 100,000 gallons of water each day from the waters of the state
24 unless the commission determines by regulation that the
25 submission of declaration of beneficial use by such person is
26 necessary to accomplish the purposes of this chapter. In

1 addition, no declaration of beneficial use shall be required
2 and no certificate of use shall be issued for:

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

6 "(2) Impoundments covering not more than 100 acres
7 in surface area:

8 "a. Confined and retained completely upon the
9 property of a person; and

10 "b. Used solely for recreational purposes, including
11 sport fishing.

12 "(d) Notwithstanding any other provision of this
13 chapter to the contrary, each person who ~~has the capacity~~
14 proposes to use 100,000 gallons or more of water on any day in
15 total for purposes of irrigation shall submit a declaration of
16 beneficial use to the Office of Water Resources on or before
17 January 1, 1995. Persons who use waters for purposes of
18 irrigation, but who do not have the capacity to use 100,000
19 gallons or more of water on any day in total for purposes of
20 irrigation, are not required to submit a declaration of
21 beneficial use unless the commission determines by regulation
22 that such action is necessary to accomplish the purposes of
23 this chapter.

24 "(e) The Office of Water Resources shall issue a
25 certificate of use to any person required to submit a
26 declaration of beneficial use upon the submission of a
27 declaration of beneficial use. The declaration of beneficial

1 use shall contain all information required to be submitted
2 under regulations promulgated by the commission and shall
3 establish that the proposed diversion, withdrawal, or
4 consumption of such water shall not interfere with any
5 presently known existing legal use of such water and is
6 consistent with the objectives of this chapter. Each
7 certificate of use shall contain the following statement: "THE
8 ISSUANCE OF THIS CERTIFICATE OF USE SHALL NOT CONFER OR MODIFY
9 ANY PERMANENT INTERESTS OR RIGHTS IN THE HOLDER THEREOF TO THE
10 CONTINUED USE OF THE WATERS OF THE STATE OF ALABAMA."

11 "(f) It shall be a condition of each certificate of
12 use issued by the Office of Water Resources that reports be
13 submitted annually to the Office of Water Resources,
14 indicating the amount of water, in gallons, diverted,
15 withdrawn, or consumed on a monthly basis by such person and
16 such other information required under regulations promulgated
17 by the commission. Such reports shall be signed and certified
18 that to the best of the person's knowledge and belief, the
19 information contained therein is true, accurate, and complete.

20 "§9-10B-22.

21 "(a) Authority to restrict certificate of use.

22 "(1) The Office of Water Resources may restrict any
23 term or condition of any certificate of use issued under this
24 chapter for the duration of a water shortage or a water
25 emergency declared by the Water Resources Commission.

26 "(2) The Office of Water Resources is to impose
27 restrictions according to previously developed drought

1 management strategies unless the Water Resources Commission
2 determines that the relevant drought management strategies are
3 inappropriate to the actual situation.

4 "(3) In implementing restrictions under this
5 section, the Office of Water Resources shall comply with the
6 preferences provided in Section XX.

7 "(b) Declaration of a Water Shortage.

8 "(1) The Water Resources Commission shall declare a
9 water shortage whenever it finds the conditions defined in
10 Section 9-10B-3(46) exist.

11 "(2) Before restricting the exercise of any right
12 conferred by a certificate of use issued under this chapter
13 because of a water shortage, the Office of Water Resources
14 shall serve notice of the proposed action and provide an
15 opportunity for a contested hearing to any person affected by
16 the proposed restriction.

17 "(3) In any hearing or litigation relating to this
18 section, the burden of proof shall be on the party requesting
19 the hearing or initiating the litigation.

20 "(c) Declaration of a water emergency.

21 "(1) The Water Resources Commission shall declare a
22 water emergency whenever it finds the conditions defined in
23 Section 9-10-B3(40) exist.

24 "(2) In addition to its powers under a declaration
25 of water shortage, the Office of Water Resources may, upon a
26 declaration of a water emergency by the Water Resources
27 Commission and without prior hearing, order a person who holds

1 a certificate of use under this chapter immediately to cease
2 or otherwise change the withdrawal or use of water as
3 necessary to alleviate the emergency.

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

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

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

18 "(6) In any hearing or litigation relating to this
19 section, the burden of proof shall be on the party requesting
20 the hearing.

21 "(7) An emergency order remains in effect pending
22 the result of any hearing or litigation relating to this
23 section.

24 "(d) The Water Resources Commission, in declaring a
25 water shortage or a water emergency, shall determine and
26 clearly delineate the area of the state and the water sources
27 included within the shortage or emergency.

1 "(e) Restriction of withdrawals for which no
2 allocation or certificate of use is required.

3 "(1) During a water shortage or water emergency, the
4 Office of Water Resources is empowered to restrict withdrawals
5 for which no certificate of use is required, or to allocate
6 water to and among such uses, in order to alleviate the water
7 shortage or water emergency.

8 "(2) In exercising its power under this section, the
9 Office of Water Resources shall proceed on the same bases and
10 according to the same procedures as apply to restrictions on
11 uses for which a certificate of use is required.

12 "(f) Conservation Credits.

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

22 "(2) When a person holding a certificate of use
23 voluntarily undertakes conservation measures during a period
24 of water shortage or water emergency beyond those required by
25 this chapter, including the terms and conditions of the
26 person's certificate of use, that result in significant
27 quantifiable reductions in the water that person had been

1 using before the beginning of the water shortage or water
2 emergency, that person is entitled to a credit for such
3 reductions in any scheme of restrictions imposed by the Office
4 of Water Resources as a response to the water shortage or
5 water emergency.

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

15 "a. Register the agreement and include it in any
16 relevant drought management strategies if the agreement is
17 consistent with the policies of this chapter.

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

22 "(4) When a written agreement between persons
23 holding certificates of use under this chapter for those
24 persons to undertake joint conservation measures is filed with
25 the Office of Water Resources during the declaration of a
26 water shortage or water emergency and the agreement does not
27 unreasonably impair the rights of other persons who hold

1 certificates of use, or the public interest, or sustainable
2 development, the agency shall do both of the following:

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

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

11 "(5) Conservation credits and registered agreements
12 on joint conservation measures shall be included in the
13 Statewide Data System.

14 "(g) The Water Resources Commission shall amend or
15 terminate a declaration of water shortage or of water
16 emergency upon a finding that conditions justifying the
17 declaration have changed or no longer exist as to part or all
18 of the area included in the prior declaration.

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

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

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

1 conditions, limitations, or restrictions upon each certificate
2 of use; and the effect of such conditions, limitations, or
3 restrictions upon the status of such area as a capacity stress
4 area.

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

11 "§9-10B-24.

12 "(a) There is hereby established the Alabama Water
13 Resources Council. The Water Resources Council shall act in an
14 advisory capacity to the Office of Water Resources and shall
15 be comprised of one representative appointed by each of the
16 following entities: The Alabama Department of Conservation and
17 Natural Resources, the Alabama Department of Environmental
18 Management, the Alabama Department of Public Health, the Soil
19 and Water Conservation Committee, the Alabama State Port
20 Authority, the Geological Survey of Alabama, and the Water
21 Resource Research Institute. From time to time, the division
22 chief may request any other state agency to appoint a
23 representative to the Water Resources Council. The Water
24 Resources Council shall advise the Office of Water Resources
25 on all matters concerning the waters of the state.

26 "(b) The Office of Water Resources may establish and
27 convene planning advisory committees as may be necessary to

1 assist in the formulation of its plans, programs, and
2 strategies. The planning advisory committees may include
3 representatives from agencies or branches of the United
4 States, agencies or branches of interstate or international
5 organizations with responsibility for waters of the state,
6 other agencies or branches of the state, other states sharing
7 the watershed under study, the political subdivisions of the
8 state, and all persons or groups interested in or directly
9 affected by any proposed or existing plan or strategies."

10 Section 4. Sections 9-10B-31, 9-10B-32, and 9-10B-33
11 are added to the Code of Alabama 1975 to read as follows:

12 §9-10B-31.

13 (a) (1) The state shall preserve environmental flows
14 and levels in all water sources as necessary to protect the
15 appropriate biological, chemical, and physical integrity of
16 water sources by reserving from allocation such waters as are
17 necessary to meet these flows and levels; by maintaining, to
18 the greatest extent possible, the natural hydrology of the
19 watersheds and basins of the state; and by authorizing
20 additional protections of the waters of the state to restore
21 and protect the biological, chemical, and physical integrity
22 of Alabama's water resources.

23 (2) The Alabama Office of Water Resources, after
24 consultation with the Alabama Water Resources Council, shall
25 establish by regulation the environmental flow or level in any
26 water source that shall not be subject to use under this
27 chapter, except as provided in this section.

1 (b) Every person exercising a water use pursuant to
2 this chapter is required to protect the prescribed
3 environmental flow or levels when exercising such right.

4 (c) Standards for protected Environmental flows or
5 levels.

6 (1) The Alabama Office of Water Resources, after
7 consultation with the Alabama Water Resources Council, shall
8 establish a environmental flow or level as the larger of the
9 amounts necessary for the biological, chemical, and physical
10 integrity of the water source, taking into account normal
11 seasonal variations in flow and need.

12 (2) Burden of Proof.

13 a. In any proceeding under this chapter, the person
14 proposing to withdraw water from a water source shall have the
15 burden of showing by a preponderance of the evidence that the
16 proposed withdrawal will not impair the protected
17 environmental flows or levels as determined under this
18 section.

19 b. Nothing in this chapter shall authorize any
20 person to withdraw water from a source that would impair its
21 established protected environmental flow or level without
22 first securing authorization to do so from the Office of Water
23 Resources or a court reviewing a decision by the Office of
24 Water Resources.

25 (3) Effects of Water Shortages, Water Emergencies,
26 or Designation of Capacity Stress Areas.

1 a. Threats to impair the environmental flows or
2 levels established by this section justify the Office of Water
3 Resources to declare a water shortage or the Water Resources
4 Commission to declare a water emergency or designate a
5 capacity stress area as appropriate.

6 b. During periods of water emergency, the Office of
7 Water Resources may allocate waters normally within protected
8 environmental flows or levels when necessary to prevent
9 serious injuries to water uses established before the
10 beginning of the water emergency, but, except to prevent grave
11 threats to human life or health under circumstances in which
12 water is not available from other sources for coping with
13 these needs, only insofar as such allocation does not
14 permanently impair the biological, chemical, or physical
15 integrity of the water source.

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

23 §9-10B-32.

24 (a) The Office of Water Resources shall issue
25 certificates of use or approve transfers of the waters of the
26 state in such a manner as to protect and preserve the quality
27 of those waters.

1 (b) The Office of Water Resources may not issue a
2 certificate of use for any use that appears likely to result
3 in a violation of the water quality standards designated by
4 the state without consulting with the Alabama Department of
5 Environmental Management.

6 §9-10B-33.

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

11 Section 5. The provisions of this act are severable.
12 If any part of this act is declared invalid or
13 unconstitutional, that declaration shall not affect the part
14 which remains.

15 Section 6. Section 9-10B-23, Code of Alabama 1975,
16 relating to the Authority of Alabama Department of
17 Environmental Management to implement and enforce rules and
18 regulations, is repealed.

19 Section 7. This act shall become effective on the
20 first day of the third month following its passage and
21 approval by the Governor, or its otherwise becoming law.