

1 HB674
2 135198-1
3 By Representative Fincher
4 RFD: Agriculture and Forestry
5 First Read: 10-APR-12

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

16 This bill would create the Alabama Water
17 Sustainability and Security Act to vest in the
18 Office of Water Resources, the Water Resources
19 Council, and the Water Resources Commission the
20 power and responsibility to develop and, subject to
21 adoption by the Legislature, carry out a
22 comprehensive water management plan and drought
23 management strategies, to make recommendations for
24 adoption of legislation as necessary for the
25 implementation and execution of the comprehensive
26 water plan, and to develop other plans and

1 strategies as may be necessary for the management
2 of the waters of the state.

3 This bill would require that the
4 comprehensive water plan monitor and manage water
5 withdrawals, protect minimum flows, manage
6 interbasin transfers, include conservation and
7 efficiency programs, and contain a regional
8 decision-making structure.

9 This bill would modify the current
10 Certificate of Use system to make the right to use
11 water a matter of legal record, entitled to legal
12 protection.

13 This bill also would authorize the Office of
14 Water Resources to establish and convene planning
15 advisory committees as necessary to assist in the
16 formulation of the comprehensive water management
17 plan.

18
19 A BILL

20 TO BE ENTITLED

21 AN ACT

22
23 Relating to water management, to define terms, to
24 require the Office of Water Resources, the Water Resources
25 Council, and the Water Resources Commission to develop a
26 comprehensive water management plan for recommendation to the
27 Legislature, to establish minimum flows or levels under the

1 comprehensive water management plan; to authorize the Office
2 of Water Resources to establish and convene planning advisory
3 committees to assist in the formulation of the plan; and to
4 amend Sections 9-10B-5 and 9-10B-16, Code of Alabama 1975, to
5 expand the powers and duties of the Office of Water Management
6 and the Water Resources Commission related to the development
7 and implementation of a comprehensive water management plan.

8 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

9 Section 1. This act shall be known and may be cited
10 as the Alabama Water Sustainability and Security Act.

11 Section 2. The Legislature finds and declares the
12 following:

13 (1) In accordance with the Alabama Water Resources
14 Act, all waters of the state, whether found on the surface of
15 the ground or underneath the surface of the ground, are among
16 the basic resources of the State of Alabama held in trust for
17 the public and subject to the state's sovereign power to plan
18 for and manage the use of those waters, under law, in order to
19 protect the public health, safety, and welfare by promoting
20 economic growth, mitigating the harmful effects of drought,
21 resolving conflicts among competing water users, achieving
22 balance between consumptive and nonconsumptive uses of water,
23 encouraging conservation, preventing degradation of natural
24 environments, and enhancing productivity of water-related
25 activities.

1 (2) The efficient use of waters of the state for
2 human consumption is recognized as a priority use of the
3 state.

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

6 (4) A comprehensive water management plan is
7 necessary to ensure that the waters of this state are managed
8 in a manner that fosters fair, efficient, and productive use
9 of the total water supply of this state in a sustainable
10 manner in the satisfaction of economic, environmental, and
11 other social goals, whether public or private, with the
12 availability and utility of water being extended with a view
13 of preventing water from becoming a limiting factor in the
14 general improvement of social welfare.

15 (5) Recognizing the importance of proper planning
16 and management of the waters of this state to the health,
17 safety, and welfare of the people, the state shall develop a
18 comprehensive water plan and devise appropriate conservation
19 and drought management strategies to serve the public interest
20 in the waters of this state.

21 (6) The state, in the exercise of its sovereign
22 police power to protect the public interest in the waters of
23 this state, undertakes to provide, through the Comprehensive
24 Water Plan, an orderly strategy to allocate available water
25 efficiently and equitably in times of water shortage or water
26 emergency.

1 (7) The state shall preserve minimum flows and
2 levels in all water sources as necessary to protect the
3 appropriate biological, chemical, and physical integrity of
4 water sources by reserving these waters from allocation and by
5 authorizing additional protections of the waters of this
6 state.

7 (8) When the waters available from a particular
8 water source are insufficient to satisfy all lawful demands
9 upon that water source, the state shall allocate water by
10 Certificate of Use or otherwise up to the safe yield or other
11 applicable limit of allocation of the resource according to
12 the following preferences:

13 a. Direct human consumption or sanitation insofar as
14 necessary for human survival and health.

15 b. Uses necessary to the survival or health of
16 livestock and to preserve crops or physical plant and
17 equipment from physical damage or loss insofar as it is
18 reasonable to continue these activities in relation to
19 particular water sources.

20 c. Other uses in such manner as to maximize
21 employment and economic benefits within the overall goal of
22 sustainable development as set forth in the Comprehensive
23 Water Plan.

24 (9) The Comprehensive Water Plan shall conserve the
25 waters of this state through suitable policies and by
26 encouraging private efforts to conserve water and avoid waste.

1 Within each preference category in subdivision (8), uses are
2 to be preferred that maximize the reasonable use of water.

3 (10) In order to provide legal security for water
4 uses within the constraints provided in the Comprehensive
5 Water Plan, the system of Certificates of Use shall make the
6 right to use water a matter of legal record entitled to legal
7 protection.

8 (11) Through the Comprehensive Water Plan, the state
9 shall provide procedural protection and fairness to parties to
10 disputes over rights to use water through public proceedings
11 on the allocation or modification of rights to use water,
12 making available and encouraging formal and informal
13 procedures for dispute resolution, and encouraging alternative
14 dispute resolution mechanisms.

15 (12) It is the purpose of this act to vest in the
16 Office of Water Resources, the Water Resources Council, and
17 the Water Resources Commission the power and responsibility to
18 develop and, subject to adoption by the Legislature, carry out
19 the Comprehensive Water Plan and drought management
20 strategies, to make recommendations for adoption of
21 legislation as necessary for the implementation and execution
22 of the Comprehensive Water Plan, and to develop other plans
23 and strategies as may be necessary for the management of the
24 waters of the state as well as the other goals and policies of
25 this act.

26 (13) In order to promote efficiency, equity, order,
27 conjunctive management, and stability in the utilization of

1 the water resources of this state over time, the Comprehensive
2 Water Plan and all orders, Certificate of Use terms or
3 conditions, or regulations issued pursuant to the
4 Comprehensive Water Plan, are to be interpreted to achieve the
5 policies embodied in this act and to conform to the physical
6 laws that govern the natural occurrence, movement, and storage
7 of water.

8 (14) The Comprehensive Water Plan shall coordinate
9 the plans, laws, regulations, and decisions pertaining to
10 water allocation with those pertaining to water quality.

11 (15) The diverse hydrogeographic, economic, and
12 institutional conditions existing within this state require
13 the Comprehensive Water Plan to continue to support the
14 activities of general and special purpose local units of
15 government that address local and regional water resource
16 conditions and problems. Regional planning of water resources
17 shall at all times conform to the natural watersheds of the
18 state.

19 (16) Stakeholder involvement and participation being
20 essential to the sustainable management of the waters of this
21 state, the Office of Water Resources shall seek out, consider
22 and, when consistent with the principles put forward in this
23 act, use the recommendations of stakeholders throughout the
24 state in developing the Comprehensive Water Plan and shall
25 develop a system for stakeholder participation in the
26 development of the Comprehensive Water Plan and future water
27 planning process.

1 (17) In order to protect the reasonable needs of
2 water basins of origin, the Comprehensive Water Plan shall
3 regulate the interbasin transfer of water throughout the
4 state.

5 Section 3. Unless otherwise provided for in this
6 section, when used in this act, the Comprehensive Water Plan,
7 or in any order, Certificate of Use term or condition, or
8 regulation made pursuant to the Comprehensive Water Plan, the
9 definitions in § 2R-1-05 of the Regulated Riparian Model Water
10 Code (2004) shall apply. For the purposes of this act, the
11 following words shall have the following meanings, unless a
12 different meaning is plainly required by the context:

13 (1) AREA OF THE STATE. Any municipality or county,
14 including portions thereof, or other geographical area of the
15 state as may be designated by the commission pursuant to this
16 act.

17 (2) BENEFICIAL USE. The use of the waters of the
18 state whether in place or through withdrawal, diversion, or
19 consumption in such quantity and manner as is necessary for
20 economic and efficient utilization without waste of water,
21 without unreasonable injury to other water users or the
22 environment, and consistent with the public interests of this
23 state and sustainable development.

24 (3) CERTIFICATE OF USE. A written authorization
25 issued by the Office of Water Resources, upon receipt of a
26 declaration of beneficial use, in accordance with this act, to
27 a person entitling that person to hold and exercise a right of

1 use involving the diversion, withdrawal, or consumption of a
2 specific quantity of the waters of the state at a specific
3 time, place, and duration for a specific reasonable use as
4 described in the written authorization.

5 (4) COMMISSION. The Alabama Water Resources
6 Commission or its successor.

7 (5) COMPREHENSIVE WATER PLAN or PLAN. A plan
8 developed by the Office of Water Resources for the
9 intermediate and long-term protection, conservation, and
10 management of all the water of this state and designed to
11 promote and secure the sustainable development and reasonable
12 use of the waters of this state taking into account economic,
13 environmental, and other social values.

14 (9) GROUND WATER. Water in a saturated zone or
15 stratum beneath the surface of land or water, whether or not
16 flowing through known and definite channels, and regardless of
17 whether it is the result of natural or artificial recharge.

18 (10) MINIMUM FLOW. The minimum amount of flow needed
19 to uphold the natural biological, physical, and chemical
20 integrity of a waterway established using generally accepted
21 scientific methodologies considering biological and
22 hydrological factors. In selecting a generally accepted
23 scientific methodology, the Office of Water Resources shall
24 consult with and shall consider recommendations from the Water
25 Resources Council. In determining and establishing the minimum
26 streamflow rates, the agency shall give consideration to
27 consumptive and nonconsumptive water uses, including, but not

1 limited to, agricultural, industrial, municipal and domestic
2 uses, assimilative waste capacity, recreation, navigation,
3 fish and wildlife resources and other ecologic values,
4 estuarine resources, aquifer recharge and aesthetics.

5 (11) OFFICE OF WATER RESOURCES. The Alabama Office
6 of Water Resources, or its successor, which shall serve as the
7 central unit of the state's government for protecting,
8 maintaining, improving, allocating, and planning regarding the
9 waters of this state pursuant to this act.

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

17 (13) STATE. The State of Alabama.

18 (14) STATE AGENCY or AGENCY. The Office of Water
19 Resources.

20 (15) SURFACE WATER. Water upon the surface of the
21 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 (16) WATER EMERGENCY. A severe shortage of water
26 relative to lawful demand such that restrictions taken under a
27 declaration of water shortage are insufficient to protect

1 public health, safety, and welfare in all or any watershed of
2 the state.

3 (17) WATER RESOURCES COUNCIL. The Alabama Water
4 Resources Council as described in Section 9-10B-24, Code of
5 Alabama 1975, or its successor.

6 (18) RIGHT TO USE. An authorization from the state
7 to withdraw a certain portion of the waters of the state in
8 compliance with this act, whether subject to a Certificate of
9 Use or otherwise.

10 (19) WATERS or WATERS OF THE STATE. A quantity of
11 any spring, brook, creek, stream, river, pond, swamp, lake,
12 reservoir, impoundment, sound, tidal estuary, bay, waterway,
13 aquifer, or any other body or accumulation of water, surface
14 water, or ground water, public or private, natural or
15 artificial, that satisfies any of the following:

16 a. Is contained within the borders of this state.

17 b. Flows through or to this state or any portion
18 thereof.

19 c. Borders upon this state or any portion thereof,
20 including those portions of the Gulf of Mexico over which this
21 state has jurisdiction.

22 (20) WATER SHORTAGE. A condition, in all or any
23 part of the state, where, because of droughts or otherwise,
24 the available water falls so far below normally occurring
25 quantities that substantial conflict among water users or
26 injury to water resources are expected to occur.

1 Section 4. (a) The Office of Water Resources, with
2 the advice of the Water Resources Council, shall develop and
3 present to the Legislature for adoption a Comprehensive Water
4 Plan within two years of the effective date of this act and
5 shall review and revise the plan from time to time thereafter.

6 (b) The plan shall include the collection of data
7 and the development of strategies for achieving sustainable
8 management of the waters of the state. The plan shall include,
9 but need not be limited to, the following:

10 (1) Identification of existing uses of waters of the
11 state.

12 (2) Estimates of future trends in uses of the waters
13 of the state, including the current and future capabilities of
14 public water supply systems to provide an adequate quantity
15 and quality of water to their service areas and the
16 developmental choices necessary to attain the optimum
17 reasonable use of water.

18 (3) Identification of boundaries of the watersheds
19 of the major water sources within the state.

20 (4) An estimate of the safe yield for each major
21 water source and, where applicable, both of the following:

22 a. The minimum flows and levels necessary, during
23 normal and drought conditions, to preserve the protected
24 biological, chemical, and physical integrity of the water
25 source.

26 b. The prime recharge area or areas for underground
27 water.

1 (5) A specification of the classes of uses and their
2 priorities, based on their relationship to the public interest
3 as determined according to the policies, standards, and
4 grounds established in this act.

5 (6) A set of drought management strategies in
6 anticipation of reasonably foreseeable water shortages and
7 emergencies. The drought management strategies for each major
8 water source within the state shall include, but not be
9 limited to, the following:

10 a. A description of systems for allocating the
11 waters of the state during a water shortage or emergency.

12 b. Criteria for identifying the onset and severity
13 of a water shortage or water emergency.

14 c. A specification of the classes of uses and their
15 priorities, based on their relationship to the public interest
16 as determined according to the policies, standards, and
17 grounds established in this act.

18 d. Measures for auditing water use and detecting
19 leaks.

20 e. A registry of conservation measures for public
21 and private buildings and facilities, including, under
22 appropriate conditions, a moratorium on new construction.

23 f. Mechanisms for registering private agreements to
24 curtail use in times of water shortage or water emergency.

25 g. Possible bans or restrictions on certain water
26 uses.

27 h. Other necessary contingency plans.

1 (7) An evaluation of the reasonableness of various
2 classes of use.

3 (8) A set of recommended goals for the use,
4 management, and protection of the waters of the state and
5 related land resources, with evaluations of alternative
6 recommendations according to economic, environmental,
7 hydrologic, jurisdictional, legal, social, and other relevant
8 factors.

9 (c) The Office of Water Resources shall provide
10 reasonable opportunities for all interested persons to comment
11 on the plan while it is being formulated, including, where
12 appropriate, public hearings on the proposed plan at various
13 locations around the state.

14 Section 5. (a) As part of the Comprehensive Water
15 Plan, the Office of Water Resources, after consultation with
16 the Alabama Water Resources Council, shall establish by rule
17 the minimum flow or level in any water source that is not
18 subject to allocation under this act except as provided in
19 this section.

20 (b) Every person exercising a right to use water
21 pursuant to this act is required to protect the prescribed
22 minimum flow or levels when exercising that right.

23 (c) The Office of Water Resources, after
24 consultation with the Alabama Water Resources Council, shall
25 establish a minimum flow or level as the larger of the amounts
26 necessary for the biological, chemical, and physical integrity

1 of the water source, taking into account normal seasonal
2 variations in flow and need.

3 (d) (1) In any proceeding arising from the
4 Comprehensive Water Plan, the person proposing to withdraw
5 water from a water source shall have the burden of showing by
6 a preponderance of the evidence that the proposed withdrawal
7 will not impair the protected minimum flows or levels as
8 determined under this section.

9 (2) Nothing in this act authorizes any person to
10 withdraw water from a source that would impair its established
11 protected minimum flow or level without first securing
12 authorization to do so from the Office of Water Resources or a
13 court reviewing a decision by the Office of Water Resources.

14 (e) (1) Threats to impair the minimum flows or levels
15 established by the Comprehensive Water Plan justify the Office
16 of Water Resources to declare a water shortage or a water
17 emergency as appropriate.

18 (2) During periods of water emergency, the
19 allocations under the Comprehensive Water Plan may allocate
20 waters normally within protected minimum flows or levels when
21 necessary to prevent serious injuries to water uses
22 established before the beginning of the water emergency, but
23 only insofar as such allocation does not permanently impair
24 the biological, chemical, or physical integrity of the water
25 source.

26 (3) To facilitate planning for water emergencies,
27 the Alabama Water Resources Council shall develop and

1 recommend to the Office of Water Resources minimum flows or
2 levels that shall not be subject to allocation except to
3 prevent grave threats to human life or health under
4 circumstances in which water is not available from other
5 sources for coping with these needs.

6 (f) The Office of Water Resources may contract with
7 any person holding a Certificate of Use to provide additional
8 protected flows or levels of water in any water source.

9 Section 6. The Office of Water Resources shall
10 establish and convene planning advisory committees as may be
11 necessary to assist in the formulation of its plans, programs,
12 and strategies. A planning advisory committee may include
13 representatives from agencies or branches of the United
14 States, agencies or branches of interstate or international
15 organizations with responsibility for waters of the state,
16 other agencies or branches of the state, other states sharing
17 the watershed under study, the political subdivisions of the
18 state, and all persons or groups interested in or directly
19 affected by any proposed or existing plan or strategies.

20 Section 7. Sections 9-10B-5 and 9-10B-16, Code of
21 Alabama 1975, are amended to read as follows:

22 "§9-10B-5.

23 "The general functions and duties of the Office of
24 Water Resources shall ~~be as follows~~ include all of the
25 following:

26 "(1) To develop long-term strategic plans for the
27 use of the waters of the state by conducting and participating

1 in water resource studies and by administering the laws
2 established by this chapter and regulations promulgated
3 hereunder;

4 "(2) Acting through the commission, to adopt and
5 promulgate rules, regulations, and standards for the purposes
6 of this chapter, and to develop policy for the state regarding
7 the waters of the state~~7~~.

8 "(3) To implement quantitative water resource
9 programs and projects for the coordination, conservation,
10 development, management, use, and understanding of the waters
11 of the state~~7~~.

12 "(4) To serve as a repository for data regarding the
13 waters of the state~~7~~.

14 "(5) To, at its discretion, study, analyze, and
15 evaluate in coordination with, or with the assistance of,
16 other agencies of the state, the federal government, any other
17 state, or any person the uses of the waters of the state,
18 including, without limitation, the diversion, withdrawal, or
19 consumption of such waters, and to prepare comprehensive
20 plans, programs, and policies to encourage or require, where
21 expressly authorized by this chapter, the efficient use of the
22 waters of the state~~7~~.

23 "(6) To participate on behalf of the state in
24 discussions between or among the state, any federal officer,
25 department, or agency, any other state, or any person
26 concerning the waters of the state; floods, droughts, and

1 other hydrologic events involving the waters of the state; and
2 water conservation programs7.

3 "(7) To enter into agreements or contracts, where
4 appropriate, with other agencies of this state, the federal
5 government, local governments, or any person in order to
6 accomplish the purposes of this chapter7.

7 "(8) To issue, modify, suspend, or revoke orders,
8 citations, or notices of violation regarding the diversion,
9 withdrawal, or consumption of the waters of the state7.

10 "(9) To hold hearings relating to any of the
11 provisions of this chapter or the administration thereof7.

12 "(10) To apply for, accept, and disburse advances,
13 loans, grants, contributions, and any other form of assistance
14 from the federal government, the state or other public body,
15 or from any sources, public or private, for the purposes of
16 this chapter, and enter into and carry out contracts or
17 agreements in connection therewith, and include in any
18 contract for financial assistance with the federal government
19 such conditions imposed pursuant to federal laws as it may
20 deem reasonable and appropriate and which are not inconsistent
21 with the purposes of this chapter7.

22 "(11) To employ such professional, technical,
23 clerical, and other staff, including attorneys and special
24 counsel, and such consultants as are necessary to accomplish
25 the objectives of this chapter7.

26 "(12) To monitor, coordinate, and manage the waters
27 of the state as provided in this chapter. The Office of Water

1 Resources shall make every effort to accept copies of reports
2 submitted pursuant to rules or regulations of the federal
3 government or another agency of the state7.

4 "(13) To sponsor, encourage, and facilitate plans,
5 projects, policies, and programs for the conservation,
6 coordination, protection, development, and management of the
7 waters of the state7.

8 "(14) To, at its discretion, undertake or
9 participate in studies, surveys, analyses, or investigations
10 of water resources to include, but not limited to, the
11 following: single, multi-purpose, comprehensive, local,
12 county, regional, state, multi-state, national, federal,
13 interstate, intrastate, ground, subsurface, recharge area,
14 surface, watershed, drainage area, sub-basin, basin, stream,
15 corridor, river, reservoir, impoundment, navigation, potable
16 water, water supply, conservation, flood, drought, recreation,
17 hydropower, water availability, water demand, and other water
18 resource studies; provided, however, that the Office of Water
19 Resources' failure to undertake or participate in any such
20 studies, surveys, analyses, or investigations shall not affect
21 the validity thereof.

22 "(15) To conduct a program of education and public
23 enlightenment with respect to the waters of the state7.

24 "(16) To make an annual report to the Governor and
25 the presiding officers of the House and Senate through the
26 department concerning the activities and accomplishments of
27 the Office of Water Resources for the preceding fiscal year7.

1 "(17) To enforce all provisions of this chapter and
2 to file legal actions in the name of the Office of Water
3 Resources and to prosecute, defend, or settle actions brought
4 by or against the Office of Water Resources or its agents. The
5 Attorney General shall represent the Office of Water Resources
6 in any and all legal actions brought by the Office of Water
7 Resources to enforce any provision of this chapter. Nothing
8 herein shall be construed or interpreted to impair the
9 authority of the Attorney General to enforce independently the
10 provisions of this chapter⁷.

11 "(18) In addition to any other remedies provided by
12 law, to recover in a civil action from any person violating
13 any provision of this chapter, or any rule or regulation
14 promulgated hereunder, other than such provisions or rules or
15 regulations subject to the enforcement of the Alabama
16 Department of Environmental Management, or from any person who
17 fails to submit a declaration of beneficial use or makes a
18 false statement in a declaration of beneficial use the actual
19 costs incurred by the Office of Water Resources to protect the
20 waters of the state from such violation. Such action shall be
21 filed in the circuit court of the county where the defendant
22 resides or does business, or in which the violation occurs or
23 will occur⁷.

24 "(19) After the expiration of one year from February
25 23, 1993, to issue an order assessing a civil penalty against
26 any person in violation of a. any provision of this chapter or
27 b. any rule or regulation promulgated hereunder, other than

1 such provisions or rules or regulations subject to the
2 enforcement of the Alabama Department of Environmental
3 Management, or any person who fails to submit a declaration of
4 beneficial use or makes a false statement in a declaration of
5 beneficial use; provided, however, that no such order shall be
6 issued to a person if a civil action to recover a penalty for
7 such violation has been commenced against such person. Any
8 order issued under this section shall set forth findings of
9 fact relied upon by the Office of Water Resources in
10 determining the alleged violation and the amount of the civil
11 penalty and may be served in the manner provided for service
12 of process in the Alabama Rules of Civil Procedure. Where the
13 Office of Water Resources has issued an order finding that a
14 violation has occurred and assessing a civil penalty, the
15 person subject thereto shall pay the penalty in full within 30
16 days of receipt of the order unless such person files a
17 request for a hearing in accordance with the rules and
18 regulations promulgated hereunder. No order shall be issued
19 under this subsection until the division chief or his
20 designated representative has offered to meet with such person
21 concerning the alleged violations and penalties. It is the
22 intent of the Legislature that the director or division chief
23 or their representatives shall attempt in good faith to reach
24 a solution of alleged violations before any legal action is
25 commenced. Civil penalties assessed by the Office of Water
26 Resources and not paid may be recovered in a civil action
27 brought by the Office of Water Resources in the circuit court

1 of the county in which such person resides or does business.
2 Any civil penalty assessed or recovered hereunder shall not
3 exceed \$1,000 for each violation. Each day such violation
4 continues shall constitute a separate violation for purposes
5 of this chapter. In no event shall a civil penalty assessed
6 hereunder exceed \$25,000 in any calendar year. In determining
7 the amount of any penalty, the Office of Water Resources shall
8 take into account the seriousness of the violation, the
9 standard of care manifested by such person, any economic
10 benefit accruing to such person as a result of the violation,
11 the nature, extent, and degree of success of such person's
12 efforts to minimize or mitigate the effects of such violation
13 on the waters of the state, such person's history of previous
14 violations, and the ability of such person to pay the
15 penalty;.

16 "(20) To request such assistance from any other
17 agency of this state as may be reasonable and necessary to
18 carry out the purposes of this chapter. All state agencies,
19 departments, institutions, and political subdivisions are
20 hereby empowered and authorized to make available to the
21 Office of Water Resources such reasonable assistance and
22 information as the office may request in carrying out the
23 intentions and purposes of this chapter;.

24 "(21) To recommend to the Legislature such
25 legislation as may be needed to coordinate, protect, conserve,
26 develop, and manage the waters of the state; and .

1 "(22) To perform any other duty or take any other
2 action necessary for the implementation and enforcement of
3 this chapter.

4 "(23) To be responsible for general supervision and
5 control over the development, conservation, and use of the
6 waters of the state and to possess all powers necessary to
7 accomplish the purposes for which the Office of Water
8 Resources was organized insofar as those powers are delegable
9 by the Legislature.

10 "(24) To develop, recommend to the Legislature, and,
11 upon approval by the Legislature, carry out the Comprehensive
12 Water Plan in accordance with the findings and policies of
13 this act and to develop and carry out drought management
14 strategies, and any other long-term strategic plans for the
15 use of the waters of the state necessary to accomplish the
16 purposes of this act.

17 "(25) To seek out stakeholders with an interest in
18 the use, management, or sustainability of the waters of the
19 state and convene stakeholder meetings over the course of the
20 planning period in order to solicit extensive stakeholder
21 involvement in the development of the Comprehensive Water
22 Plan. Stakeholders shall include, without limitation, other
23 state agencies, agencies of neighboring states or the federal
24 government, nonprofit advocacy organizations, business
25 organizations, local governmental entities and associations of
26 local governmental entities, and regional development centers.

1 "(26) To recommend to the Legislature any
2 legislation necessary to implement the Comprehensive Water
3 Plan or to coordinate, protect, conserve, develop, and manage
4 the waters of the state, including recommendations for
5 legislation necessary for all of the following:

6 "a. Administration of the Comprehensive Water Plan.

7 "b. Managing groundwater and surface water as an
8 interconnected system.

9 "c. Protecting minimum flows or levels necessary to
10 protect the chemical, physical, and biological integrity of
11 the waters of the state, taking into account normal and
12 seasonal variations in flow and need.

13 "d. Enforcement of the Comprehensive Water Plan.

14 "e. Establishing or modifying a right to use the
15 waters of the state, including any necessary modifications to
16 the procedures for declaring beneficial use and obtaining a
17 Certificate of Use.

18 "f. Coordinating the Comprehensive Water Plan with
19 water quality regulations.

20 "g. Issuing and modifying Certificates of Use in
21 accordance with the principles of this act.

22 "h. Restricting water uses during water shortages
23 and water emergencies.

24 "i. Dispute resolution.

25 "j. Water conservation.

26 "(27) To keep on file full and proper records of its
27 work, including its proceedings, all field notes,

1 computations, written communications to or from the agency,
2 and facts made or collected, all of which shall be part of the
3 records of its office and property of the state and, as such,
4 open to the public during business hours with copies to be
5 provided at the cost of reproduction.

6 "(28) To administer all funds made available to it
7 for the effectuating of this act and to disperse those funds
8 for proper purposes.

9 "(29) To perform any other duty or take any other
10 action necessary for the implementation and enforcement of
11 this act.

12 "(30) The enumeration of any particular powers
13 granted shall not be construed to impair any general grant of
14 power contained in this act or to limit any grant of power to
15 the same class as those enumerated."

16 "§9-10B-16.

17 "The commission shall have all of the following
18 duties:

19 "(1) To advise the Governor and the presiding
20 officers of the Senate and House, as necessary or as
21 requested, on all matters related to the waters of the state
22 as provided in this chapter~~7~~.

23 "(2) To provide guidance to the director and the
24 division chief on all matters within the commission's scope of
25 authority~~7~~.

1 "(3) To advise in the formulation of policies,
2 plans, and programs of the Office of Water Resources in the
3 performance of its functions and duties~~7~~.

4 "(4) To establish, adopt, promulgate, modify,
5 repeal, and suspend any rules or regulations authorized
6 pursuant to this chapter which may be applicable to the state
7 as a whole or any of its geographical parts and to consider
8 the adoption of any rule or regulation recommended by the
9 division chief~~7~~.

10 "(5) To advise the Office of Water Resources to
11 implement policies, plans, and programs governing the waters
12 of the state~~7~~ and .

13 "(6) To hear and determine appeals of administrative
14 actions of the Office of Water Resources, including the
15 administration of certificates of use or the issuance,
16 modification, or repeal of any order, notice of violation or
17 citation issued pursuant to subdivisions (17), (18) or (19) of
18 Section 9-10B-5.

19 "(7) To provide guidance to the Office of Water
20 Resources on the development of the Comprehensive Water Plan,
21 drought management strategies, or any other plans for the use
22 of the waters of the state developed by the Office of Water
23 Resources in accordance with this act.

24 "(8) To advise the Governor and the presiding
25 officers of the Senate and House, as necessary or as
26 requested, on all matters related to the development of the
27 Comprehensive Water Plan, drought management strategies, or

1 any other plans for the use of the waters of the state
2 developed by the Office of Water Resources in accordance with
3 this act."

4 Section 8. The provisions of this act are severable.
5 If any part of this act is declared invalid or
6 unconstitutional, that declaration shall not affect the part
7 which remains.

8 Section 9. This act shall become effective on the
9 first day of the third month following its passage and
10 approval by the Governor, or its otherwise becoming law.