

1 SB255
2 182850-1
3 By Senators Orr, Dial and Allen
4 RFD: Agriculture, Conservation, and Forestry
5 First Read: 28-FEB-17

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8 SYNOPSIS: Under existing statutory law and case law, a
9 landowner whose land is not contiguous to a body of
10 water in this state does not have a right to use
11 water from the body of water for agricultural
12 irrigation.

13 This bill would apply to the Alabama River,
14 the Tennessee River, and the Tombigbee River, and
15 would authorize a landowner whose land is not
16 contiguous to a natural body of water to use water
17 for agricultural irrigation under certain
18 circumstances.

19
20 A BILL

21 TO BE ENTITLED

22 AN ACT

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24 To add Section 9-10B-22.1 to the Code of Alabama
25 1975, relating to water use from the Alabama River, Tennessee
26 River, and Tombigbee River; to authorize a non-riparian

1 landowner as defined under certain conditions to use water
2 from a natural body of water for agricultural irrigation.

3 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

4 Section 1. Section 9-10B-22.1 is added to the Code
5 of Alabama 1975, to read as follows:

6 §9-10B-22.1.

7 (a) This section shall apply only to portions of the
8 Alabama River, Tennessee River, and Tombigbee River where
9 average flows exceed 8,000 cubic feet per second.

10 (b) For purposes of this section, the following
11 words have the following meanings:

12 (1) NON-RIPARIAN LAND. Land that is not contiguous
13 to a river or stream or other body of water in this state.

14 (2) RIPARIAN LAND. Land that is contiguous to a
15 river or stream or other body of water in this state.

16 (3) SURFACE WATER. Water upon the surface of the
17 earth, whether contained in bounds created naturally or
18 artificially or diffused. Water from natural springs shall be
19 considered surface water when it exits from the spring onto
20 the surface of the earth.

21 (c) A non-riparian landowner may use surface water
22 from any portion of the Alabama River, Tennessee River, or
23 Tombigbee River to which this section applies on non-riparian
24 land of the landowner for agricultural irrigation.

25 (d) Except as provided herein, the use of surface
26 water by a non-riparian landowner pursuant to this section
27 shall be subject to this chapter.

1 (e) Any non-riparian landowner who uses water
2 pursuant to subsection (c) shall file a declaration of
3 beneficial use as required by this chapter. In addition, a
4 non-riparian surface water user shall monitor his or her water
5 use by means of a gage or meter. All non-riparian surface
6 water users shall report their water use to the Office of
7 Water Resources on an annual basis.

8 (f) (1) The Water Resources Commission may adopt
9 rules necessary to carry out the purposes and intent of this
10 section.

11 (2) The commission shall adopt any rules necessary
12 to specifically implement this section by January 1 after the
13 effective date of this section. The rules shall require a
14 non-riparian landowner to provide certification from a
15 riparian landowner that a right of access has been granted.

16 (g) The Office of State Climatology and the Office
17 of Water Resources shall develop objective criteria on when
18 non-riparian use may be restricted during drought to protect
19 stream flow attributes. The guidelines may be based on the
20 fraction of total volume of water withdrawals to volume water
21 flow computed by a hydrologic model or stream gauge data. The
22 guidelines shall be designed to protect downstream riparians
23 and provide information to new non-riparians on how often
24 water restrictions may be imposed for making investment
25 decisions. The guidelines shall be approved by the Water
26 Resources Commission. The actual restriction shall be only
27 upon the direction of the Governor with input from the Alabama

1 Drought Assessment Planning Team (ADAPT) based on the
2 guidelines adopted pursuant to this subsection.

3 (h) This section shall not apply to non-riparian
4 municipal water use.

5 (i) In order to protect integrity of total basin
6 flows, aggregate non-riparian use shall be restricted to five
7 percent of average basin flow at the end of the basin. If this
8 aggregate limit is exceeded then the Office of Water Resources
9 shall not issue new certificates of use to non-riparians until
10 a new analysis which supports additional use is enacted by the
11 Legislature. The Office of Water Resources shall annually
12 report to the Legislature and to the State Climatologist the
13 extent of non-riparian water use pursuant to this chapter,
14 include the number of non-riparian water users and the extent
15 of non-riparian water use including total aggregate
16 non-riparian use.

17 (j) This section shall not be construed to create
18 any implied easement across any riparian land for the benefit
19 of any non-riparian land.

20 (k) (1) The Office of Water Resources shall annually
21 report to the Legislature and the State Climatologist the
22 extent of non-riparian water use under this section.

23 (2) Using the objective hydrologic guidelines on
24 restrictions of non-riparian use during a drought, the State
25 Climatologist and the Office of Water Resources shall annually
26 report to the Legislature estimates of the likelihood that

1 restrictions on non-riparian use will be imposed during a
2 drought.

3 (l) Any future regulation, diminution, or
4 elimination by the state of any non-riparian landowner's right
5 to use surface water pursuant to this section shall consider
6 the investment made by non-riparians, but shall not constitute
7 a taking.

8 (m) This section shall not be construed to change or
9 modify existing common law or statutory law with respect to
10 the rights of existing or future riparian owners concerning
11 the use of waters of this state.

12 Section 2. This act shall become effective on the
13 first day of the third month following its passage and
14 approval by the Governor, or its otherwise becoming law.