

1 HB416  
2 191354-1  
3 By Representative Todd  
4 RFD: Agriculture and Forestry  
5 First Read: 15-FEB-18

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8 SYNOPSIS: Under existing law, the Office of Water  
9 Resources is the state agency responsible for  
10 coordinating the water resources of the state.

11 This bill would create the Alabama  
12 Conservation and Security Act to empower the state  
13 to preserve water flows and availability and  
14 establish additional conservation powers in times  
15 of drought and water emergency.

16 This bill would facilitate coordination  
17 between water quality and water allocation  
18 management, requiring the state to protect the  
19 appropriate biological, chemical, and physical  
20 integrity of waters by rule.

21 This bill would require the Water Resources  
22 Commission to declare a water shortage or emergency  
23 under certain conditions.

24 This bill would establish a burden of proof  
25 for withdrawals of surface or underground water.

26 This bill would authorize the Office of  
27 Water Resources to: (1) restrict any term or

1 condition in a certificate of use for the duration  
2 of a water shortage or emergency; (2) provide  
3 conservation credits to water users that take  
4 certain conservation measures during shortages or  
5 emergencies; (3) restrict withdrawals for which no  
6 certificate is required during a shortage or  
7 emergency; and (4) allocate water to and among uses  
8 in order to alleviate a shortage or emergency.

9 This bill would also require the state to  
10 preserve environmental flows and levels in all  
11 water sources the allow the Office of Water  
12 Resources to establish by rule an environmental  
13 flow or level in any water source after  
14 consultation with the Alabama Water Resources  
15 Council.

16  
17 A BILL  
18 TO BE ENTITLED  
19 AN ACT  
20

21 Relating to water management; to create the Alabama  
22 Water Conservation and Security Act; to amend Sections  
23 9-10B-2, 9-10B-3, 9-10B-20, 9-10B-22, 9-10B-23, and 9-10B-24,  
24 Code of Alabama 1975; to add Sections 9-10B-31 and 9-10B-32,  
25 to the Code of Alabama 1975; to provide legislative findings;  
26 to empower state conservation agencies to preserve flows and  
27 water availability in all waters of the state; to require the

1 state to protect the appropriate biological, chemical, and  
2 physical integrity of waters through water planning and  
3 management; to require the Water Resources Commission to  
4 declare a water shortage or emergency under certain  
5 conditions; to authorize the Office of Water Resources to take  
6 certain conservation measures during a shortage or emergency;  
7 and to allow the Office of Water Resources to establish by  
8 rule an environmental flow or level in any water source after  
9 consultation with the Alabama Water Resources Council.

10 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

11 Section 1. This act shall be known and may be cited  
12 as the Alabama Water Conservation and Security Act.

13 Section 2. The Legislature finds and declares the  
14 following:

15 (1) In accordance with the Alabama Water Resources  
16 Act, all waters of the state, whether found on the surface of  
17 the ground or underneath the surface of the ground, are among  
18 the basic resources of the state held in trust for the public.

19 (2) All waters of the state are subject to the  
20 state's sovereign power to plan and manage the use of those  
21 waters, under law, in order to protect the public welfare,  
22 preserve public health and safety, promote economic growth,  
23 mitigate the harmful effects of drought, resolve conflicts  
24 among competing water users, achieve balance between  
25 consumptive and nonconsumptive water uses, encourage  
26 conservation, prevent degradation of natural environments, and  
27 enhance productivity of water-related activities.

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

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

6           (5) Comprehensive water management is necessary to  
7 ensure fair, efficient, sustainable, and productive use of the  
8 total water supply of this state, satisfying economic,  
9 environmental, and other social goals, whether public or  
10 private, to prevent water unavailability from becoming a  
11 limiting factor in the general improvement of social welfare.

12           (6) Recognizing the importance of proper water  
13 planning and management, it is critical that the state devise  
14 appropriate conservation and drought management strategies to  
15 serve public health, safety, and welfare.

16           (7) The state, in the exercise of its sovereign  
17 police power to protect the public interest in the waters of  
18 this state, undertakes to efficiently and equitably allocate  
19 available water in times of water shortage or emergency  
20 through comprehensive water planning.

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

1           Section 3. Sections 9-10B-2, 9-10B-3, 9-10B-20,  
2           9-10B-22, 9-10B-23, and 9-10B-24, Code of Alabama 1975, are  
3           amended to read as follows:

4           "§9-10B-2.

5           "The Legislature of the State of Alabama hereby  
6           finds and declares that:

7           "(1) All waters of the state, whether found on the  
8           surface of the ground or underneath the surface of the ground,  
9           are among the basic resources of the State of Alabama, held in  
10          trust for the public.

11          (2) All waters of the state are subject to the  
12          state's sovereign power to plan and manage use, under law, in  
13          order to protect public welfare, preserve public health and  
14          safety, promote economic growth, mitigate the harmful effects  
15          of drought, resolve conflicts among competing water users,  
16          achieve balance between consumptive and nonconsumptive water  
17          uses, encourage conservation, prevent degradation of natural  
18          environments, and enhance productivity of water-related  
19          activities.

20          "~~(2)~~(3) The efficient use of waters of the state for  
21          human consumption is recognized as a priority use of the state  
22          and it is the intent of this chapter that no limitation upon  
23          the use of water for human consumption shall be imposed except  
24          in emergency situations after the Office of Water Resources  
25          has considered all feasible alternatives to such limitations.7

26          "~~(3)~~(4) The Recognizing that the use of such waters  
27          should be conserved and managed to enable the people of this

1 state to realize the full beneficial use thereof and to  
2 maintain such water resources for use in the future~~7~~, the  
3 state shall conserve the waters of the state through suitable  
4 policies and by encouraging private efforts to conserve water  
5 and avoid waste.

6 "~~(4)~~ (5) The general welfare of the people of this  
7 state is dependent upon the dedication of ~~the~~ available water  
8 resources of the State of Alabama to beneficial use to the  
9 fullest extent to which they are capable through the  
10 development and implementation of plans and programs to manage  
11 such quantitative water resources:~~7~~

12 "a. In order to promote efficiency, equity, order,  
13 conjunctive management, and stability in utilization of the  
14 water resources of this state over time, this chapter and all  
15 orders, certificate terms or conditions, and rules issued  
16 pursuant to this chapter are to be interpreted to achieve the  
17 policies embodied in the law and to conform to the physical  
18 laws that govern the natural occurrence, movement, and storage  
19 of water.

20 "b. Recognizing the importance of proper planning  
21 and management, it is critical that the state devise  
22 appropriate conservation and drought management strategies to  
23 serve public health, safety, and welfare.

24 "c. The state, in the exercise of its sovereign  
25 police power to protect the public interest in the waters of  
26 the state, undertakes to efficiently and equitably allocate

1 available water in times of water shortage or emergency  
2 through comprehensive water planning.

3 ~~"(5)~~ (6) It is the purpose of this chapter to  
4 establish the Office of Water Resources and the Water  
5 Resources Commission and to vest said office and commission  
6 with the power and responsibility to develop and carry out the  
7 Alabama Comprehensive Water Plan and drought management  
8 strategies, and to develop other plans and strategies as may  
9 be necessary for the management of the waters of the state as  
10 well as the other goals and policies of this chapter~~7~~.

11 ~~"(6)~~ (7) No ~~person's beneficial use of the~~  
12 ~~quantitative waters of the state~~ person possessing a  
13 certificate of use shall be restricted from use by the Office  
14 of Water Resources or the Water Resources Commission except  
15 where ~~such beneficial use is within an area of the state~~  
16 ~~designated as a capacity stress area pursuant to~~ restrictions  
17 are authorized under Section 9-10B-22 of this chapter. It is  
18 the intent of the Legislature that any action taken which  
19 limits, restricts or conditions any person's beneficial use of  
20 water resources of this state be implemented only after:

21 "a. the Water Resources Commission has determined  
22 that such action is necessary because the aggregate uses of  
23 the waters of the state in such area exceeds or will exceed  
24 the availability of such waters and is required to protect the  
25 availability of the waters of the state; and

26 "b. such person has been afforded due process of law  
27 including, but not limited to, a public hearing. ~~The~~

1 ~~implementation and enforcement of any action limiting,~~  
2 ~~restricting, or conditioning any person's beneficial use of~~  
3 ~~water resources shall be under the direction of the Alabama~~  
4 ~~Department of Environmental Management; and~~

5           "~~(7)~~ (8) Notwithstanding any provision of this  
6 chapter to the contrary, the provisions of this chapter shall  
7 not apply to:

8           "a. Impoundments or other similar containments  
9 confined and retained completely upon the property of a person  
10 which store water where the initial diversion, withdrawal, or  
11 consumption of such water is acknowledged in a certificate of  
12 use;

13           "b. Waste water treatment ponds and waste water  
14 treatment impoundments subject to regulation under the Clean  
15 Water Act, 33 U.S.C. Sections 1251 et seq., and ponds and  
16 impoundments subject to regulation under the Mine Safety and  
17 Health Act, 30 U.S.C. Sections 801 et seq., or the Surface  
18 Mining Control Act, 30 U.S.C. Sections 1201 et seq.; and

19           "c. Surface impoundments constituting solid waste  
20 management units under the Resource Conservation and Recovery  
21 Act, 42 U.S.C. Sections 6901 et seq.

22           "(9) It is critical that the state coordinate the  
23 plans, laws, rules, and decisions pertaining to water  
24 allocation with those pertaining to water quality.

25           "(10) The state's diverse hydrogeographic, economic,  
26 and institutional conditions require the state to continue to

1 support the activities of local governments that address local  
2 and regional water conditions and problems.

3 "(11) The state should take all reasonable measures  
4 to protect the reasonable needs of water basins of origin  
5 through the regulation of interbasin transfers.

6 "§9-10B-3.

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

10 "(1) ALABAMA COMPREHENSIVE WATER PLAN. A plan  
11 developed by the Office of Water Resources, or any watershed  
12 management authority pursuant to this chapter, for the  
13 intermediate and long-term protection, conservation, and  
14 management of all the waters of the state and designed to  
15 promote and secure the sustainable development and reasonable  
16 use of the waters of the state taking into account economic,  
17 environmental, and other social values.

18 "~~(1)~~(2) AREA OF THE STATE. Any municipality or  
19 county, including portions thereof, or other geographical area  
20 of the state as may be designated by the commission pursuant  
21 to this chapter.

22 "~~(2)~~(3) BENEFICIAL USE. The ~~diversion, withdrawal,~~  
23 ~~or consumption~~ use of the waters of the state whether in place  
24 or through withdrawal, diversion, or consumption in such  
25 quantity and manner as is necessary for economic and efficient  
26 utilization without waste of water, without unreasonable  
27 injury to other certificate of use holders or the environment,

1 and consistent with the public interests of this state and  
2 sustainable development.

3 "(4) BIOLOGICAL, CHEMICAL, AND PHYSICAL INTEGRITY.

4 The maintenance of water in the source, in the volume, and at  
5 the times necessary to support the following:

6 "a. The preservation of riverine systems, wetlands,  
7 and native wildlife, including fish, flora, and fauna.

8 "b. The water quality standards prescribed by  
9 federal or state laws, rules, or regulations relating to  
10 effluent discharges and other expected impacts.

11 "c. Instream uses of water as required by federal or  
12 state laws, rules, or regulations.

13 "d. Adequate recreational opportunities to the  
14 people of the state.

15 "e. The preservation of cultural or historic  
16 resources as determined by or as required by federal or state  
17 laws, rules, or regulations.

18 "f. The prevention of serious hydrological  
19 alteration of the body of water.

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 entitled to hold and  
5 exercise a water use involving ~~acknowledging~~ the diversion,  
6 withdrawal, or consumption of the waters of the state at a  
7 specific time and place for a specific reasonable use as  
8 described in the written authorization.

9           "~~(5)~~(7) COMMISSION. The Alabama Water Resources  
10 Commission or its successor.

11           "(8) CONSERVATION MEASURE. A measure adopted by a  
12 certificate of use holder, or several certificate holders  
13 acting in concert pursuant to an approved conservation  
14 agreement under Section 9-10B-22, to reduce the withdrawals or  
15 consumptive uses, or both, associated with the exercise of a  
16 water use, including, but not limited to the following:

17           "a. Improvements in water transmission and water use  
18 efficiency.

19           "b. Reduction in water use.

20           "c. Enhancement of return flows.

21           "d. Reuse of return flows.

22           "(9) CONSUMPTIVE USE. A withdrawal that is not  
23 returned to its water near or at its source of origin,  
24 resulting in substantial diminution in quality or quantity or  
25 causing low flow conditions, including, but not limited to,  
26 evaporation or incorporation into a product or crop.

1           "~~(7)~~(10) CRITICAL USE STUDY. An analysis of the  
2 available supply of water resources within ~~an area of the~~  
3 ~~state~~ a watershed and an assessment of the existing and  
4 reasonably foreseeable future demand for such resources to  
5 determine if a water shortage exists, or is likely to exist,  
6 in such area of the state should be designated as a capacity  
7 stress area watershed.

8           "~~(8)~~(11) DECLARATION OF BENEFICIAL USE. A writing  
9 signed and certified by, or on behalf of, a person to receive  
10 a certificate of use and shall include the following: the name  
11 of the person to receive a certificate; the source or sources  
12 of the waters of the state subject to such person's beneficial  
13 use; the estimated quantity, in gallons, of the waters of the  
14 state used on an annual average daily basis by such person and  
15 the estimated capacity in gallons, of waters of the state  
16 potentially diverted, withdrawn or consumed on any given day  
17 by such person; and a statement of facts establishing that the  
18 use of such waters constitutes a beneficial use.

19           "~~(9)~~(12) DEPARTMENT. The Department of Economic and  
20 Community Affairs or its successor.

21           "~~(10)~~(13) DIRECTOR. The Director of the Department  
22 of Economic and Community Affairs.

23           "~~(11)~~(14) DIVISION CHIEF. The Chief of the Office of  
24 Water Resources or its successor.

25           "(15) DROUGHT MANAGEMENT STRATEGIES. Plans devised  
26 by the Office of Water Resources pursuant to this chapter for  
27 the allocation of water during periods of drought and

1 otherwise to cope with water shortages or water emergencies  
2 and, insofar as is reasonably possible, to restore the waters  
3 of the state to their condition prior to the drought.

4 "(16) ENVIRONMENTAL FLOW. The amount of flow needed,  
5 as determined by the Office of Water Resources after  
6 consultation with the Water Resources Council, to uphold the  
7 natural biological, physical, and chemical integrity of a  
8 waterway established using scientifically valid methodologies  
9 considering hydrology, geomorphology, biology, connectivity,  
10 and water quality. In determining environmental flow rates,  
11 the Office of Water Resources shall give consideration to  
12 consumptive and nonconsumptive water uses, such as  
13 agricultural, industrial, municipal, and domestic uses; energy  
14 production; assimilative waste capacity; recreation;  
15 navigation; fish and wildlife resources and other ecologic  
16 values; estuarine resources; aquifer recharge; and aesthetics.

17 "~~(12)~~(17) GROUND WATER. Water in a saturated zone or  
18 stratum beneath the surface of land or water, whether or not  
19 flowing through known and definite channels, and regardless of  
20 whether it is the result of natural or artificial recharge.

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

24 "~~(13)~~ (19) OFFICE OF WATER RESOURCES. The Alabama  
25 Office of Water Resources or its successor, which shall serve  
26 as the central unit of the state's government for protecting,

1 maintaining, improving, allocating, and planning regarding the  
2 waters of the state pursuant to this chapter.

3 "~~(14)~~ (20) PERSON. Any and all persons, natural or  
4 artificial, including any individual, firm, association,  
5 organization, partnership, business, trust, corporation,  
6 company, any federal agency, authority, or corporation created  
7 by the United States of America, and the state and all  
8 political subdivisions, regions, districts, municipalities,  
9 and public agencies thereof.

10 "~~(15)~~ (21) PUBLIC WATER SYSTEM. A system for the  
11 provision to the public of piped water for human consumption  
12 or other uses, if such system has at least 15 service  
13 connections or regularly serves an average of at least 25  
14 individuals at least 60 days out of the year. A public water  
15 system includes:

16 "a. any collection, treatment, storage, and  
17 distribution facilities under the control of the operator of  
18 such system and used primarily in connection with such system;  
19 and

20 "b. any collection or pretreatment storage  
21 facilities not under such control which are used primarily in  
22 connection with such system.

23 "~~(16)~~ (22) STATE. The State of Alabama.

24 "~~(17)~~ (23) SURFACE WATER. Water upon the surface of  
25 the earth, whether contained in bounds created naturally or  
26 artificially or diffused. Water from natural springs shall be

1 considered "surface water" when it exits from the spring onto  
2 the surface of the earth.

3 "(24) SURFACE WATER REGIONS. Those certain areas of  
4 the state designated by this chapter and to be referred to  
5 individually as:

6 "a. Central Alabama Surface Water Region. That area  
7 of the state formed by the Counties of Etowah, Cherokee, St.  
8 Clair, Calhoun, Cleburne, Shelby, Talladega, Clay, Randolph,  
9 Bibb, Coosa, Tallapoosa, Chilton, Perry, Autauga, Elmore,  
10 Macon, Montgomery, Dallas, Lowndes, Wilcox, and Monroe.

11 "b. Coastal Alabama Surface Water Region. That area  
12 of the state formed by the Counties of Mobile and Baldwin, and  
13 all bays, tidal estuaries, and portions of the Gulf of Mexico  
14 over which this state has jurisdiction.

15 "c. North Alabama Surface Water Region. That area of  
16 the state formed by the Counties of Lauderdale, Limestone,  
17 Madison, Jackson, Colbert, Franklin, Lawrence, Morgan,  
18 Marshall, and DeKalb.

19 "d. Southeast Alabama Surface Water Region. That  
20 area of the state formed by the Counties of Russell, Bullock,  
21 Pike, Barbour, Lee, Chambers, Butler, Crenshaw, Coffee, Dale,  
22 Henry, Conecuh, Covington, Geneva, Houston, and Escambia.

23 "e. West Alabama Surface Water Region. That area of  
24 the state formed by the Counties of Marion, Winston, Cullman,  
25 Blount, Lamar, Fayette, Walker, Jefferson, Pickens,  
26 Tuscaloosa, Greene, Hale, Sumter, Marengo, Choctaw, Clarke,  
27 and Washington.

1           "(25) SUSTAINABLE DEVELOPMENT. The integrated  
2 management of resources taking into consideration the needs of  
3 future generations as well as the current generation, assuring  
4 equitable access to resources, optimizing the use of  
5 nonrenewable resources, and averting the exhaustion of  
6 renewable resources.

7           "~~(18)~~ (26) WATER RESOURCES COUNCIL. The Alabama Water  
8 Resources Council or its successor.

9           "~~(19)~~ (27) WATERS or WATERS OF THE STATE. A quantity,  
10 regardless of the size or duration, of any spring, brook,  
11 creek, stream, river, pond, swamp, lake, reservoir,  
12 impoundment, sound, tidal estuary, bay, waterway, aquifer, or  
13 any other body or accumulation of water, surface water, ~~or~~  
14 ground water, or water found within the atmosphere, public or  
15 private, natural or artificial, that:

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

17           "b. flows through or to this state or any portion  
18 thereof; or

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           "(28) WATERSHED. An area of land from which all  
23 waters drain, on the surface or beneath the ground to a common  
24 point; provided, however, that in any administrative or  
25 judicial proceeding pursuant to this chapter, the watershed  
26 shall be measured at the lowest point relevant to the issue to  
27 be determined.

1           "(29) WITHDRAWAL. The removal or exercise of  
2           physical control of surface or underground water from its  
3           natural course or location by any means, regardless of whether  
4           the water is returned to its waters or origin, consumed, or  
5           discharged elsewhere.

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 "(g) The Office of Water Resources shall issue  
21 certificates of use or approve transfers of the waters of the  
22 state in such a manner as to protect and preserve the quality  
23 of those waters.

24 "(h) The Office of Water Resources may not issue a  
25 certificate of use for any use that appears likely to result  
26 in a violation of the water quality standards designated by

1 the state without consulting with the Alabama Department of  
2 Environmental Management.

3 "(i) The Office of Water Resources may not issue a  
4 certificate of use for any use that appears likely to violate  
5 any rule, regulation, or legal order that protects, conserves,  
6 or increases the wildlife of the state without consulting with  
7 the Alabama Department of Conservation and Natural Resources.

8 "(j) The Office of Water Resources may adopt rules  
9 as reasonably necessary to perform the functions authorized  
10 pursuant to this section; provided, however, that no rule  
11 shall conflict or be inconsistent with the rules adopted by  
12 the commission in designating a capacity stress area.

13 "§9-10B-22.

14 "(a) Declaration of a water shortage.

15 "(1) The commission shall declare a water shortage  
16 whenever it finds that in all or any part of the state,  
17 because of droughts or otherwise, the available water falls so  
18 far below normally occurring quantities that substantial  
19 conflict among water users or injury to water resources is  
20 expected to occur.

21 "(2) Before restricting the exercise of any right  
22 conferred by a certificate of use issued under this chapter  
23 because of a water shortage, the Office of Water Resources  
24 shall serve notice of the proposed action and provide an  
25 opportunity for a contested hearing to any person affected by  
26 the proposed restriction.

1           "(3) In any hearing or litigation relating to this  
2 subsection, the burden of proof shall be on the party  
3 requesting the hearing or initiating the litigation.

4           "(b) Declaration of a water emergency.

5           "(1) The commission shall declare a water emergency  
6 whenever it finds there exists a severe shortage of water  
7 relative to lawful demand such that restrictions taken under a  
8 declaration of water shortage are insufficient to protect  
9 public health, safety, and welfare in all or any watershed of  
10 the state.

11           "(2) In addition to its powers under a declaration  
12 of water shortage, the Office of Water Resources, upon a  
13 declaration of a water emergency by the commission and without  
14 prior hearing, may order a person who holds a certificate of  
15 use under this chapter immediately to cease or otherwise  
16 change the withdrawal or use of water as necessary to  
17 alleviate the emergency.

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

22           "(4) Any restriction under this section shall not  
23 take effect against any person affected by the restriction  
24 until the Office of Water Resources serves the emergency order  
25 on that person.

26           "(5) Any person affected by a restriction under this  
27 section may obtain a hearing to challenge the restriction, to

1 begin not more than 10 days after the Office of Water  
2 Resources receives the request for a hearing, and to be  
3 concluded as soon as reasonably possible after the hearing  
4 begins.

5 "(6) In any hearing or litigation relating to this  
6 subsection, the burden of proof shall be on the party  
7 requesting the hearing or initiating the litigation.

8 "(7) An emergency order shall remain in effect  
9 pending the result of any hearing or litigation relating to  
10 this section.

11 "(c) The commission, in declaring a water shortage  
12 or a water emergency, shall determine and clearly delineate  
13 the area of the state and the water sources included within  
14 the shortage or emergency.

15 "(d) Authority to restrict a certificate of use.

16 "(1) The Office of Water Resources may restrict any  
17 term or condition of a certificate of use issued under this  
18 chapter for the duration of a water shortage or water  
19 emergency declared by the commission.

20 "(2) The Office of Water Resources shall impose  
21 restrictions according to previously developed drought  
22 management strategies unless the commission determines that  
23 the relevant drought management strategies are inappropriate  
24 to the actual situation.

25 "(e) Conservation credits.

26 "(1) If practical, the Office of Water Resources, in  
27 ordering restrictions on the withdrawal or use of water during

1 a water shortage or water emergency, may not order a person to  
2 do more if that person has successfully implemented  
3 conservation measures, pursuant to the plan of conservation  
4 made a term or condition of the certificate of use under which  
5 the person exercises a water use, until other certificate of  
6 use holders have achieved comparable restrictions in the  
7 exercise of their water uses.

8 "(2) When a person holding a certificate of use  
9 voluntarily undertakes conservation measures during a period  
10 of water shortage or water emergency beyond those required by  
11 this chapter, including the terms and conditions of the  
12 person's certificate of use, that result in significant  
13 quantifiable reductions in the water that person had been  
14 using before the beginning of the water shortage or water  
15 emergency, that person is entitled to a credit for such  
16 reductions in any scheme of restrictions imposed by the Office  
17 of Water Resources as a response to the water shortage or  
18 water emergency.

19 "(3) When a written agreement between persons  
20 holding certificates of use under this chapter to undertake  
21 joint conservation measures in the event of an anticipated  
22 water shortfall is filed with the Office of Water Resources  
23 before the declaration of a water shortage or water emergency  
24 and the agreement does not unreasonably impair the rights of  
25 other persons who have a right to use the water, or the public  
26 interest, or sustainable development, the agency shall do both  
27 of the following:

1           "a. Register the agreement and include it in any  
2 relevant drought management strategies if the agreement is  
3 consistent with the policies of this chapter.

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

8           "(4) When a written agreement between persons  
9 holding certificates of use under this chapter to undertake  
10 joint conservation measures is filed with the Office of Water  
11 Resources during the declaration of a water shortage or water  
12 emergency and the agreement does not unreasonably impair the  
13 rights of other persons who hold certificates of use, or the  
14 public interest, or sustainable development, the agency shall  
15 do both of the following:

16           "a. Register the agreement and authorize the parties  
17 to the agreement to implement those measures in lieu of  
18 restrictions imposed or to be imposed by the Office of Water  
19 Resources.

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

24           "(5) Conservation credits and registered agreements  
25 on joint conservation measures shall be included in the  
26 statewide data system.

1           "(f) The commission shall amend or terminate a  
2 declaration of water shortage or water emergency upon a  
3 finding that conditions justifying the declaration have  
4 changed or no longer exist as to part or all of the area  
5 included in the prior declaration.

6           "~~(a)~~ (g) Upon the designation of any area of the  
7 state as a capacity stress area where the commission  
8 specifically finds the implementation of a use restriction  
9 alternative is necessary because the aggregate existing or  
10 reasonably foreseeable uses of the waters of the state in such  
11 an area exceed or will exceed the availability of such waters  
12 and is required to protect the ~~availability of~~ public  
13 interests in the waters of the state within such area, the  
14 commission shall immediately initiate rule-making procedures  
15 to consider appropriate conditions or limitations applicable  
16 to all certificates of use within such area; provided,  
17 however, that the commission shall not adopt or promulgate any  
18 rule or regulation with respect to any capacity stress area  
19 without the concurrence of 13 of the members of the  
20 commission. Any such conditions or limitations shall be  
21 confined to matters necessary for the protection of the  
22 ~~beneficial use of~~ public interests in the waters of the state.  
23 In addition to any other requirement of law, the notice of  
24 rule-making shall be sent by certified mail, return receipt  
25 requested, to each person within such area holding a  
26 certificate of use. The notice of rule-making shall include a

1 description of the actions proposed by the commission,  
2 including the duration thereof, in the capacity stress area.

3 ~~"(b)(h)~~ Any rules ~~or regulations~~ proposed under this  
4 section shall consider fully all relevant matters prior to the  
5 adoption of any conditions, limitations, or restrictions upon  
6 any certificate of use within a capacity stress area. Such  
7 matters shall include, but ~~shall~~ not be limited to: the uses  
8 of water under each certificate of use within such area; the  
9 environmental flows or levels of the waters within such area;  
10 the uses of water and environmental flows or levels of other  
11 areas likely to be impacted by the proposed rules; the  
12 quantity of any water returned by each holder of a certificate  
13 of use to the capacity stress area; the reasonably foreseeable  
14 impacts to the economic or other interests of the state as a  
15 result of the imposition of any conditions, limitations, or  
16 restrictions upon each certificate of use; and the effect of  
17 such conditions, limitations, or restrictions upon the status  
18 of such area as a capacity stress area.

19 ~~"(c)(i)~~ Every 12 months, or sooner if necessary or  
20 requested by the division chief, the commission shall confirm  
21 the conditions applicable to a water shortage, a water  
22 emergency, or a capacity stress area to determine what, if  
23 any, modifications to the designation of the capacity stress  
24 area are appropriate.

25 "§9-10B-23.

26 "(a) ~~In the event the commission adopts or~~  
27 ~~promulgates any rules or regulations~~ The enforcement and

1 implementation of any rules limiting or reducing the quantity  
2 of water available to a person holding a certificate of use,  
3 ~~the implementation and enforcement of such rules and~~  
4 ~~regulations~~ shall be under the direction of the Alabama  
5 Department of Environmental Management, and, for rules adopted  
6 pursuant to Section 9-10B-20, the Office of Water Resources.

7 "(b) The Alabama Department of Environmental  
8 Management and the Alabama Environmental Management Commission  
9 are hereby expressly authorized to perform the following  
10 duties and functions with respect to the implementation and  
11 enforcement of the rules ~~and regulations~~ adopted by the  
12 commission:

13 "(1) To receive copies of all reports or other  
14 documents submitted to the Office of Water Resources by  
15 holders of certificates of use within a capacity stress area;

16 "(2) Acting through the Alabama Department of  
17 Environmental Management, to issue an order assessing a civil  
18 penalty against any person in violation of any condition,  
19 limitation, or restriction of a certificate of use promulgated  
20 by the commission pursuant to Section 9-10B-20 or Section  
21 9-10B-22; provided, however, that all such orders shall be  
22 consistent with, and subject to the limitations set forth in,  
23 subdivision (19) of Section 9-10B-5;

24 "(3) To recommend to the Office of Water Resources  
25 or the commission actions to be taken within a capacity stress  
26 area or modifications, amendments, or repeals of any rules ~~or~~

1 ~~regulations~~ adopted by the commission regarding a capacity  
2 stress area;

3 "(4) Acting through the Alabama Environmental  
4 Management Commission, to hear administrative appeals of any  
5 order issued by the Alabama Department of Environmental  
6 Management pursuant to this section; and

7 "(5) Acting through the Alabama Environmental  
8 Management Commission, to adopt such rules ~~and regulations~~ as  
9 reasonably necessary to perform the functions authorized  
10 pursuant to this section; provided, however, that no such  
11 rules ~~or regulations~~ shall conflict or be inconsistent with  
12 the rules ~~or regulations~~ adopted by the commission in  
13 designating a capacity stress area.

14 "§9-10B-24.

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

1 Resources Council shall advise the Office of Water Resources  
2 on all matters concerning the waters of the state.

3 "(b) The Office of Water Resources may establish and  
4 convene planning advisory committees as may be necessary to  
5 assist in the formulation of its plans, programs, and  
6 strategies. The planning advisory committees may include  
7 representatives from agencies or branches of the United  
8 States, agencies or branches of interstate or international  
9 organizations with responsibility for waters of the state,  
10 other agencies or branches of the state, other states sharing  
11 the watershed under study, the political subdivisions of the  
12 state, and all persons or groups interested in or directly  
13 affected by any proposed or existing plan or strategy."

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

16 §9-10B-31.

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

1                   (2) The Office of Water Resources, after  
2                   consultation with the Alabama Water Resources Council, shall  
3                   establish, by rule, the environmental flow or level in any  
4                   body of water that is not subject to use under this chapter,  
5                   except as provided in this section.

6                   (b) Every person exercising a water use pursuant to  
7                   this chapter shall protect the prescribed environmental flow  
8                   or levels when exercising such right.

9                   (c) Standards for protected environmental flows or  
10                  levels.

11                  (1) The Office of Water Resources, after  
12                  consultation with the Alabama Water Resources Council, shall  
13                  establish an environmental flow or level as the amounts  
14                  necessary for the biological, chemical, and physical integrity  
15                  of the body of water, taking into account normal seasonal  
16                  variations in flow and need.

17                  (2) Effects of water shortages, water emergencies,  
18                  or designation of capacity stress areas.

19                  a. The commission shall declare a water shortage or  
20                  water emergency or designate a capacity stress area when the  
21                  environmental flows or levels established by this section are  
22                  threatened or impaired.

23                  b. During periods of water emergency, the Office of  
24                  Water Resources may allocate waters normally within protected  
25                  environmental flows or levels when necessary to prevent  
26                  serious injuries to water uses established before the  
27                  beginning of the water emergency and to prevent grave threats

1 to human life or health under circumstances in which water is  
2 not available from other sources, but only to the extent such  
3 allocation does not permanently impair the biological,  
4 chemical, or physical integrity of the water source.

5 c. To facilitate planning for water emergencies, the  
6 Alabama Water Resources Council shall develop and recommend to  
7 the Office of Water Resources the environmental flows or  
8 levels that should not be subject to use, except to prevent  
9 grave threats to human life or health under circumstances in  
10 which water is not available from other sources for coping  
11 with these needs.

12 (3) 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 authorizes any person to  
20 withdraw water from a source that would impair its established  
21 protected environmental flow or level without first securing  
22 authorization to do so from the Office of Water Resources or a  
23 court reviewing a decision by the Office of Water Resources.

24 §9-10B-32.

25 This chapter does not alter or abridge any right of  
26 action existing in law or equity, whether civil or criminal,

1       nor does it prevent any person from exercising rights to  
2       suppress nuisances or otherwise to abate pollution.

3                 Section 5. This act shall become effective on the  
4       first day of the third month following its passage and  
5       approval by the Governor, or its otherwise becoming law.