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CONSERVATION AND NATURAL RESOURCES

Water Resources: Enact and Revise Provisions of Law Relating to Water Supply and Water Conservation; State Legislative Findings; Amend Chapter 5 of Title 12 of the Official Code of Georgia Annotated, Relating to Water Resources, so as to Require the Georgia Department of Natural Resources, Including Its Environmental Protection Division, the Georgia Environmental Facilities Authority, the Georgia Department of Community Affairs, the Georgia Forestry Commission, the Georgia Department of Community Health, Including Its Division of Public Health, the Georgia Department of Agriculture, and the Georgia Soil and Water Conservation Commission to Examine Their Practices, Programs, Policies, Rules, and Regulations in Order to Develop Programs and Incentives for Voluntary Water Conservation and to Make Regular Reports of Measurable Progress to the Governor, Lieutenant Governor, Speaker of the House, and General Assembly; Require the Establishment of Best Management Practices by Public Water Systems; Change Provisions Relating to State and Local Watering Restrictions; Provide for the Classification and Continuation or Discontinuation of Certain Farm Use Water Withdrawal Permits; Provide for Measuring and Separate Charging of Water to Units in Certain New Construction; Amend Article 1 of Chapter 2 of Title 8 of the Official Code of Georgia Annotated, Relating to Buildings in General, so as to Require High-Efficiency Toilets, Shower Heads, and Faucets; Require High-Efficiency Cooling Towers; Create the Joint Committee on Water Supply; Provide for Related Matters; Provide for an Effective Date; Repeal Conflicting Laws; and for Other Purposes.

CODE SECTION:	O.C.G.A. §§ 12-5-4, -4.1 (new); 12-5-7, -31, -105, -180.1 (amended); 8-2-3, -23 (amended)
BILL NUMBER:	SB 370
ACT NUMBER:	542
GEORGIA LAWS:	2010 Ga. Laws 732

SUMMARY: The Act encourages state departments to examine their water conservation practices; standardizes leak reporting by public water utilities; requires sub-metering of multifamily, commercial, and industrial construction beginning July 1, 2012; requires high efficiency toilets, urinals, and fixtures in new construction beginning July 1, 2012; provides for the tracking of unused water withdrawal permits for agriculture purposes and establishes a process for those permits to revert back to the state; and restricts outdoor watering to between the hours of 4 p.m. and 10 p.m. so as to avoid evaporative loss and waste during the hottest hours of the day.

EFFECTIVE DATE: June 10, 2010

History

For twenty years, Georgia has been engaged in a water war with Florida and Alabama over Lake Lanier and the Apalachicola-Chattahoochee-Flint River Basin (ACF River Basin).[1] Although Lake Sidney Lanier is located in Northeast Georgia, the lake is owned by the federal government, rather than by the state.[2] However, as the population of Atlanta, the largest major city not built on a large body

1. For a detailed history of the conflict and resulting litigation, see generally Alyssa S. Lathrop, *A Tale of Three States: Equitable Apportionment of the Apalachicola-Chattahoochee-Flint River Basin*, 36 FLA. ST. U.L. REV. 865, 867–78 (2009). The ongoing litigation has spurred much media coverage and a plethora of legal articles. For a partial list of legal articles, see Robert Haskell Abrams, *Water Federalism and the Army Corps of Engineers' Role in Eastern States Water Allocation*, 31 U. ARK. LITTLE ROCK L. REV. 395, 408, n.62 (2009). For links to media articles, see WaterWebster, *Florida, Alabama, Georgia Water Sharing*, http://waterwebster.org/FloridaAlabamaGeorgia.htm.

2. Claire McClintic, A River Runs Through It: What States Along the Missouri River Can Learn About Water Allocation From the Conflict in the ACF River Basin, 16 MO. ENVTL. L. & POL'Y REV. 201, 202 (2009).

of water,[3] has exploded in recent years,[4] Georgia has looked to Lake Lanier as Atlanta's primary source of water. The Army Corps of Engineers, the managers of the lake, have allowed Georgia to enter into five-year renewable contracts, which permit the storage and withdrawal of local drinking water from Lake Lanier.[5] As Georgia's demands for water have surged, the state has increasingly sought reallocation of the lake's water to supply the growing state's thirst. In response, Florida and Alabama, who also rely on the water from Lake Lanier, have filed multiple suits over the last twenty years seeking to enjoin this reallocation.[6]

In 2006, the already strained water situation was worsened by "one of the worst droughts on record," which caused Lake Lanier to fall fifteen feet below the normal level.[7] The drought soon "prompted a three-state fight that has simmered for years to erupt into testy exchanges over which [state] has the right to the lake's dwindling water supply and which [state] is or is not doing its share to conserve it."[8] Whereas Alabama's concerns centered on the effects of reduced water supplies to its hydropower plants, which provide power for much of the state,[9] Florida sought to protect its ACF River Basin,[10] which brings in over $130 million in revenue per year from its shrimp

3. Press Release, Shirley Franklin, Mayor of Atlanta, Stakeholder Letter on Water Conservation (Nov. 11, 2007), *available at* http://www.atlantaga.gov/media/wcstakeholderletter_110707.aspx.

4. Georgia grew twenty-six percent between 1990 and 2000, and experts predict that the state's population will increase an additional thirty-four percent between 2000 and 2015. GEORGIA IN PERSPECTIVE 2009, GOVERNOR'S OFFICE OF BUDGET AND PLANNING 9 (2009), *available at* http://www.opb.state.ga.us/media/10681/georgia_in_perspective-2009.pdf.

5. McClintic, *supra* 2, at 202.

6. *Id*.

7. Peter Whoriskey, *3 States Compete for Water From Shrinking Lake Lanier*, WASH. POST, Oct. 27, 2007, at A01. For a more in-depth discussion of the drought, watering restrictions, and legislation passed in Georgia to protect the green industry and swimming pool industry during this period, see Alexis Fairweather & Andrew Jones, *Review of Selected 2008 Georgia Legislation*, 25 GA. ST. U. L. REV. 117 (2008).

8. Whoriskey, *supra* note 7.

9. *Id*. In the disputes, Alabama has argued that reallocation of water supplies to meet Georgia's growing need for water would cause higher hydropower costs, reduce dilution of water pollution, and negatively impact the state's ability to attract industry. Josh Clemons, *Interstate Water Disputes: A Road Map for States*, 12 SE. ENVTL. L.J. 115, 136 (2004).

10. Lathrop, *supra* note 1, at 868. The Chattahoochee and Flint Rivers join together to form the Apalachicola River, which deposits billions of gallons of nutrient-rich freshwater into the Apalachicola Bay on a daily basis. *Id.*

and oyster harvest.[11] With the Apalachicola Bay housing several federally-protected species, including the Clipola slabshell mussel, the purple bankclimber mussel, the fat treeridge mussel, and the Gulf Sturgeon,[12] Florida filed a motion for a preliminary injunction arguing that a proposed reallocation would result in the unlawful taking of the endangered species under the Endangered Species Act.[13] Although the court in that case found that the modifications in the mussels' habitats by the decreased flows were causing them to "[die] in the hundreds,"[14] it also held that the Army Corps of Engineers could not be held "responsible for the absence of rain" due to the severe drought.[15] Based on the court's holding denying the order,[16] Florida filed suit against the U.S. Fish and Wildlife Service.[17]

Four pending cases in the on-going water wars litigation, including the U.S. Fish and Wildlife Service case, were then consolidated into *In re Tri-State Water Rights Litigation* (*In re Tri-State*).[18] Georgia officials soon characterized the debate as "man versus mussel,"[19] and Georgia officials criticized Florida for using the Endangered Species Act as a tool to protect its lucrative oyster industry.[20] However, the presiding judge in the case, Judge Magnuson, held the "fundamental question" of the case was whether the Corps had used the lake for purposes outside Congress's original authorization.[21] Georgia argued that water supply was among the authorized purposes of the Buford Dam project and, furthermore, that water supply storage could be added under the supplemental authority of

11. *Id*. at 869 ("The Apalachicola Bay produces a shrimp harvest of six million pounds per year and supplies ninety percent of Florida's oysters and ten percent of all oysters consumed in the United States.").

12. Alabama v. U.S. Army Corps of Eng'rs, 441 F. Supp. 2d 1123, 1125 (11th Cir. 2005).

13. *Id.* at 1130.

14. *Id*. at 1132.

15. *Id*. at 1134.

16. *Id*. at 1138.

17. Lanthrop, *supra* note 1, at 872 (citing Florida v. U.S. Fish & Wildlife Serv., No. 4:06-cv-410 (N.D. Fla. 2006)).

18. *In re* Tri-State Water Rights Litigation, 639 F. Supp. 2d 1308, 1337 (M.D. Fla. 2009).

19. Whoriskey, *supra* note 7.

20. Governor Perdue reacted to Florida's use of the Endangered Species Act in this litigation by saying, "Utilizing the endangered species act [sic] as a weapon in this battle is somewhat disingenuous. We know what this is about, we know its [sic] about the bay and the quality of the bay and the oysters and that very powerful, very loud political constituency." Harris Blackwood, *Tri-state Water Wars Fought on Many Fronts*, GAINESVILLE TIMES (Dec. 8, 2008), *available at* http://www.gainesvilletimes.com/news/archive/11872/.

21. *In re* Tri-State Water Rights Litigation, 639 F. Supp. 2d at 1310.

the Water Supply Act of 1958.[22] After examining the legislative history of the U.S. Congress's authorization of the dam, Judge Magnuson found that the original role of the Buford project was to provide flow regulation for the Chattahoochee and that this purpose had been "changed considerably" as "both the Corps and the municipal entities in the Atlanta area began to envision the water supply benefit as a storage-and-withdrawal benefit."[23] The judge found Congress's original authorization only included navigational purposes, hydropower generation, and flood control.[24] Based on these findings, Judge Magnuson then "stunned" Georgia officials[25] by holding that Georgia did not have a right to continue using Lake Lanier to withdraw water.[26] Thus, the court held in order for Georgia to continue to use Lake Lanier for its water supply, the state must first gain congressional authorization for the changes in the project.[27] Understanding that such authorization would take time, Judge Magnuson gave Georgia three years to either gain the needed congressional approval or reach an agreement with its neighbors to the west and south.[28] Without such progress, Georgia faces the stark possibility of losing its access to Lake Lanier in 2012.[29] Should Judge Magnuson's ruling be implemented in 2012, 3.5 million metro-Atlanta residents[30] could lose up to 280 million gallons of water per day.[31]

One legal scholar blames Georgia's failure to "constrain sprawl, mandate water-conservation techniques in design and development, or manage growth based on sustainable and secure water supplies" for the state's water woes.[32] Throughout this water wars litigation, a common criticism of Georgia has been the state's failure to take appropriate conservation measures. Following the extreme droughts

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22. Blackwood, *supra* note 20.
23. *In re* Tri-State Water Rights Litigation, 639 F. Supp. 2d at 1321.
24. *Id*. at 1321.
25. Jeremy Redmon, *Perdue Endorses Water Conservation; Unfiled Bills Seeks Leak Detection, Incentives, Possible New Reservoirs*, ATLANTA J.-CONST., Feb. 4, 2010, at 1A.
26. *In re* Tri-State Water Rights Litigation, 639 F. Supp. 2d 1308, 1347 (M.D. Fla. 2009).
27. *Id.*
28. *Id*. at 1355.
29. *Id*.
30. Bill Rankin, *Court Allows Georgia to Appeal Water Ruling*, ATLANTA J.-CONST., Jan. 21, 2010, *available at* http://www.ajc.com/news/atlanta/court-allows-georgia-to-279964.html.
31. Valarie Edwards & Susanna Capelouto, *Billions at Stake in Water War*, GPB NEWS, Nov. 23, 2009, http://www.gpb.org/news/2009/11/23/billions-at-stake-in-water-war.
32. Craig Anthony Arnold, Water Privatization Trends in the United States: Human Rights, National Security, and Public Stewardship, 33 WM. & MARY ENVTL. L. & POL'Y REV. 785, 787 (2009).

in 2007, Alabama Governor Bob Riley "chided Georgia for its lack of conservation efforts" during the development of the drought, noting that "the state did not impose its ban on outdoor watering until the end of summer."[33] A *New York Times* article reported that a year into the drought, "fountains sprayed and football fields were watered, prisoners got two showers a day and Coca-Cola's bottling plants chugged along at full-strength."[34] Furthermore, critics claimed the watering ban was lifted too soon, evidencing Georgia's lack of commitment to long-term conservation.[35]

Many Georgians saw the situation differently. Georgia counties implemented strict watering restrictions in 2008,[36] and Georgia citizens made concerted efforts to conserve water.[37] Furthermore, a year after the watering bans were lifted, the fifty-five counties that had been hardest hit by the restrictions used less than 2% more during the month of June than they had the prior June when the watering bans were in place.[38]

In an effort to show Georgia's ongoing commitment to water conservation, Georgia lawmakers introduced SB 370, dubbed the "Water Stewardship Act," in the 2009–2010 legislative session. The Act is based on recommendations made by the Governor's Water Contingency Task Force, which was formed to examine possible solutions to Georgia's water needs following Judge Magnuson's ruling.[39] Various groups, including the Georgia Chamber of

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33. Whoriskey, *supra* note 7 ("'Atlanta can't spend all summer during a drought watering their lawns and flowers and then expect someone else to bail them out,' Riley said.").

34. Shaila Dewan & Brenda Goodman, *New to Being Dry, the South Struggles to Adapt*, N.Y. TIMES, Oct. 23, 2007, *available at* http://www.nytimes.com/2007/10/23/us/23drought.html.

35. *See e.g.*, Lathrop, *supra* note 1, at 892–893. The author concludes that although Georgia has "no incentives to conserve water for the benefit of other users," the state "must take immediate steps to conserve for its own benefit as well as for the benefit of the Forgotten Coast (ACF River Basin), its way of life, and even the mussels." *Id.* at 901.

36. Fairweather & Jones, *supra* note 7, at 119.

37. *Water Crisis: Lake Lanier*, ATLANTA J.-CONST., June 8, 2008, at 3C.

38. Susanna Capelouto, *Georgians are Not 'Water Hogs,'* GPB NEWS, July 29, 2009, http://www.gpb.org/news/2009/07/29/georgians-are-not-water-hogs. Environmental protection chief Carol Couch said that these figures showed that Georgia was not wasting water and that the data has "the coincidental benefit of dismissing some of the perceptions that are out there and promoted by our neighboring states that we're water hogs over here." *Id.*

39. Redmon, *supra* note 25. *See* WATER CONTINGENCY PLANNING TASK FORCE FINDINGS AND RECOMMENDATIONS (Dec. 21, 2009), http://www.georgia.gov/vgn/images/portal/cit_1210/59/57/154449884Water%20Contingency%20Planning%20Task%20Force%20Final%20Report.pdf [hereinafter Task Force Findings and Recommendations].

Commerce, the North Atlanta Chamber of Commerce, the Governor's Agribusiness Council, the Georgia Association of Water Professionals, the Georgia Apartment Association, and many others, came together to draft a conservation bill that would make an impact, while also taking into consideration the interests of business and industry.[40] According to Governor Perdue, the Act "codif[ies] Georgia's culture of conservation."[41]

Bill Tracking of SB 370

Consideration and Passage by the Senate

Senators Ross Tolleson (R-20th), John Bulloch (R-11th), Bill Cowsert (R-46th), George Hooks (D-14th), Dan Weber (R-40th), and Bill Heath (R-31st), respectively, sponsored SB 370.[42] The Senate read the bill for the first time on February 5, 2010.[43] Senate President Pro Tempore Tommie Williams (R-19th) assigned the bill to the Committee on Natural Resources and Environment.[44]

Section 2 of the bill, as introduced, required in Code section 12-5-4 that the agencies referred to in the bill "identify and provide for rules, regulations, incentives, or opportunities to . . . [e]ncourage the installation of residential and commercial drought tolerant landscapes and landscaping practices."[45] The Senate Committee on Natural Resources and Environment amended SB 370, with regard to section 2 of the bill concerning Code section 12-5-4, by removing previous language regarding requirements for outdoor watering restrictions and adding language requiring the agencies to "[e]xamine the effect that water conservation has on water rates and consider policies to mitigate the financial impact that rate increases or reductions in water

40. Interview with Will Wingate, Vice President of Advocacy and Land Acquisition Georgia Conservancy (May 3, 2010) [hereinafter "Wingate Interview"].

41. Redmon, *supra* note 25. According to Governor Perdue, "These are the right things to do, whether the judge's ruling is sustained or not . . . . Conservation will need to be a part of our future because it's the right thing to do. We cannot treat water as having no value." *Id.*

42. *See* SB 370, as introduced, 2010 Ga. Gen. Assem.

43. State of Georgia Final Composite Status Sheet, SB 370, Apr. 29, 2010.

44. *Id.*

45. SB 370, as introduced, § 2, p. 2, ln. 46, 57–58, 2010 Ga. Gen. Assem.

use have on water utilities and waters users."[46] Additionally, the word "tenant" was changed to "unit" throughout the bill.[47] With regard to section 3 of the bill, as introduced, the Committee created an additional requirement that water audits conducted by public water systems be submitted to the Division of Natural Resources and posted on the division's website.[48]

Section 4 of the bill, as introduced, amended Code section 12-5-31 by adding subsection (p), which required certain agencies to establish a program encouraging voluntary monitoring of surface-water withdrawals by permittees before July 1, 2010.[49] The Senate Committee on Natural Resources and Environment amended subsection (p) by removing the language as introduced and replacing it with a much longer and more detailed subsection that outlined the establishment of three categories of farm use surface water withdrawal permits: active, inactive, and unused.[50] These categories were not included in the bill as introduced because at that time, discussions with the agricultural community regarding the specific language to use were still ongoing.[51] According to Senator Tolleson, these categories were added in order for the state to better inventory permits and understand the amount of water that the state is actually using.[52] Before this change, there was only one type of permit, and even unused permits were still figured into the water consumption calculation because there was nothing identifying the permit as being unused or inactive.[53]

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46. *Compare* SB 370 (SCS), § 2, p. 3, ln. 73–75, 2010 Ga. Gen. Assem., *with* SB 370, as introduced, § 2, p. 3, ln. 72–73, 2010 Ga. Gen. Assem.

47. *Compare* SB 370 (SCS), p. 1, ln. 14, 2010 Ga. Gen. Assem., *and* SB 370 (SCS), § 2, p. 3, ln. 63, 2010 Ga. Gen. Assem., *with* SB 370, as introduced, p. 1, ln. 14, 2010 Ga. Gen. Assem., *and* SB 370, as introduced, § 2, p. 2, ln. 62, 2010 Ga. Gen. Assem. *Compare* SB 370 (SCS), § 6, p. 7, ln. 216, 224, 236, 238, 240, 2010 Ga. Gen. Assem., *and* SB 370 (SCS), § 6, p.83, ln. 242–43, 2010 Ga. Gen. Assem., *with* SB 370, as introduced, § 5, p. 5, ln. 157, 159, 163, 167, 2010 Ga. Gen. Assem. *and* SB 370, as introduced, § 5, p. 6, ln. 169–170, 2010 Ga. Gen. Assem.

48. SB 370 (SCS), § 3, p. 5, ln. 135–37, 2010 Ga. Gen. Assem.

49. SB 370, as introduced, § 4, p. 5, ln. 134–39, 2010 Ga. Gen. Assem.

50. *Compare* SB 370 (SCS), § 4, p. 5, ln. 139–68, 2010 Ga. Gen. Assem. *with* SB 370, as introduced, § 4, p. 5, ln. 134–39, 2010 Ga. Gen. Assem. This amended version of the bill also includes definitions of each type of permit and instructions for reclassifications of permits. *See* SB 370 (SCS), § 4, p. 5, ln. 145–55, 2010 Ga. Gen. Assem.

51. *See* Interview with Sen. Ross Tolleson (R-20th) (May 3, 2010) [hereinafter Tolleson Interview].

52. *Id.*

53. *Id.* The language used for the new types of permits was developed by the technical team, water team, and policy team of the Farm Bureau. Video Recording of Senate Proceedings, Mar. 10, 2010 at 1

The Committee also amended the bill as introduced by adding a new section 5, which addresses Code section 12-5-105 relating to ground water permits, and establishes three categories of permits: active, inactive, and unused.[54] Similar to the three categories for surface water permits, the ground water permit categories were created to assist in cataloging permits and are a "major step" in understanding how much water is actually being used by the state.[55]

The Committee also amended the previous section 5 of the bill as introduced, now section 6, relating to Code section 12-5-180.1. The Committee added a new subsection (e)(4), allowing the issuance of temporary waivers for building owners or operators who are temporarily unable to comply with the Code due to circumstances beyond their control.[56] This subsection was added to provide owners or operators with temporary relief from compliance should some sort of catastrophe occur that would prevent them from complying with the Code section.[57] Additionally, a new subsection (d) was added requiring all new multiunit retail, multiunit light industrial buildings, and retail components of mixed use developments to be constructed in a way that allows for measurement of water use by each separate unit.[58] According to Senator Tolleson, this subsection was added to ensure accountability for water use.[59] Sub-metering makes individuals responsible for their own water use and will hopefully make them more cognizant of the amount of water they use, ultimately leading to more conservation of water.[60] In order to further promote water efficiency, the Committee amended what was

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hr., 23 min., 40 sec. (remarks by Senator Ross Tolleson (R-20th)), http://mediam1.gpb.org/ga/leg/2010/ga-leg-senate_031010_.wmv [hereinafter Senate Floor Video].

54. *Id.*; SB 370 (SCS), § 5, p. 6, ln. 173–98, 2010 Ga. Gen. Assem.

55. Tolleson Interview, *supra* note 51.

56. SB 370 (SCS), § 6, p. 8, ln. 247–52, 2010 Ga. Gen. Assem.

57. Tolleson Interview, *supra* note 51. A new subsection (e)(5) was also added to the Code section which relieves owners and operators from liability for errors resulting from "unaffiliated third-party billing or meter reading companies." SB 370 (SCS), § 6, p. 8, ln. 253–55, 2010 Ga. Gen. Assem.

58. SB 370 (SCS), § 6, p. 7, ln. 222–33, 2010 Ga. Gen. Assem. The subsection provides for certain exceptions for buildings which are renovated or rebuilt after July 2, 2012 and allows multiunit office buildings and the office component of mixed use developments to seek reimbursement from office tenants for water and waste-water use. *Id.*

59. Tolleson Interview, *supra* note 51.

60. *Id.* Another provision was added to allow counties, municipals, or other water systems to charge a fee or levy "for the installation or use of publicly owned meters or other devises which measure or assist in the measurement of water use." SB 370 (SCS), § 6, p. 8, ln. 259–61, 2010 Ga. Gen. Assem.

previously section 6 of the bill as introduced, now section 7, by adding a new subsection to Code section 8-2-3 that requires all flushing urinals to meet WaterSense™ flushing specifications.[61]

The bill, as introduced, called for the creation of the Joint Committee on Water supply with four at-large members to be appointed by the Governor.[62] The Senate Committee on Natural Resources and Environment amended this section by eliminating at-large members appointed by the Governor and decreasing the number of committee appointees by the Senate and House of Representatives.[63] On February 18, 2010, the Committee favorably reported on the SB 370 committee substitute.[64] SB 370 was read for a second time on March 8, 2010, and read for a third time on March 9, 2010.[65]

Senator Tolleson offered a floor substitute bill on March 10, 2010.[66] This substitute bill amended the committee's substitute bill by adding a new section 4 that amends Code section 12-5-7(a)(1) by including permission to impose restrictions during "nondrought periods."[67] Thus, this language provided for more stringent restrictions than those applicable only during "state declared" periods of drought.[68] Additionally, this substitute bill created a new subsection (a)(4) to Code section 12-5-7, which allowed the Environmental Division to revoke, suspend, or modify water withdrawal or waste treatment permits that violate certain provisions of the Code section.[69] According to Senator Tolleson, this language

61. *See* SB 370 (SCS), § 7, p. 10, ln. 332, 2010 Ga. Gen. Assem. WaterSenseTM is a program sponsored by the United States Environmental Protection Division that aims to "protect the future of our nation's water supply by promoting water efficiency and enhancing the market for water-efficient products, programs, and practices." WATERSENSE, U.S. ENVIRONMENTAL PROTECTION AGENCY, http://www.epa.gov/watersense/about_us/ index.html (last visited May 14, 2010).

62. SB 370, as introduced, § 8, p. 10, ln. 332–33, 2010 Ga. Gen. Assem.

63. *Compare* SB 370 (SCS), § 9, p. 12–13, ln. 4180–22, 2010 Ga. Gen. Assem. *with* SB 370, as introduced, § 8, p. 10, ln. 332–37, 2010 Ga. Gen. Assem.

64. State of Georgia Final Composite Status Sheet, SB 370, Apr. 29, 2010.

65. *Id.*

66. *See* SB 370 (SFS), 2010 Ga. Gen. Assem. Sen. John Bulloch (R-11th) also spoke in favor of the bill that day. *See* Senate Floor Video, *supra* note 53, at 1 hr., 35 min., 40 sec. (remarks by Sen. John Bulloch (R-11th)).

67. SB 370 (SFS), § 4, p. 5, ln. 142–46, 2010 Ga. Gen. Assem.

68. *Id.*

69. *Id.* § 4, p. 6, ln. 175–80.

was added as the "helping force" to ensure that these new requirements are followed.[70]

Senator Tolleson's substitute bill further amended Code section 12-5-7 by adding subsection (a)(1.1), which limits daily outdoor irrigation "for purposes of planting, growing, managing, or maintaining ground cover, trees, shrubs, or other plants" to the hours of 4 p.m. to 10 a.m.[71] This language was added because it is the most efficient time of day for maximum water usage to reduce the amount of water that will be needed for watering purposes.[72] Additionally, there are thirteen exceptions to this limitation.[73] The substitute bill also added a provision granting permittees who feel "aggrieved or adversely affected by any order or action of the director of the Environmental Protection Division pursuant to this Code" the right to a hearing.[74] The Senate passed the bill by substitute with a vote of 52 to 0.[75]

Consideration and Passage by the House of Representatives

On March 11, 2010, the House of Representatives first read SB 370, and Speaker of the House David Ralston (R-7th) assigned the bill to the House Committee on Rules.[76] In committee, Representative Lynn Smith (R-70th) spoke in favor of the bill, saying that Senate Bill 370 is "word for word" the same as House Bill 1094, which was passed out of the House the previous week.[77] There was debate about sending the bill to the Rules Committee without it first going to the House Committee on Natural Resources and Environment.[78] Representative Dubose Porter (D-143rd) in particular

70. Tolleson Interview, *supra* note 51.
71. SB 370 (SFS), § 4, p. 6, ln. 181–83, 2010 Ga. Gen. Assem.
72. Tolleson Interview, *supra* note 51.
73. SB 370 (SFS), § 4, p. 6, ln. 184–204, 2010 Ga. Gen. Assem. For a full list of exceptions, see *infra* note 112.
74. SB 370 (SFS), § 4, p. 7, ln. 221–30, 2010 Ga. Gen. Assem.
75. Georgia Senate Vote Record, SB 370 (Mar. 10, 2010).
76. State of Georgia Final Composite Status Sheet, SB 370, Apr. 29, 2010.
77. Video Recording of House Rules Committee Meeting (Mar. 16, 2010) at 55 sec. (remarks by Rep. Lynn Smith (R-70th)), http://mediam1.gpb.org/ga/leg/2010/Rm341_HseRulCom_031610.wmv [hereinafter House Committee Video]. The Senate floor substitute by Sen. Tolleson took the exact same language as House Bill 1094. *Id.*
78. *See* House Committee Video, *supra* note 77, at 2 min., 3 sec. to 3 min., 36 sec.

was concerned with members of the Natural Resources Committee not having the opportunity to discuss issues relating to the bill.[79] Chairman of the Rules Committee, Bill Hembree (R-67th), argued that it was unnecessary to send the bill to the Committee on Natural Resources and Environment because it was the exact same bill the Committee had already passed.[80] Representative Porter unsuccessfully moved to have the bill sent to the Natural Resources committee, and the Rules Committee reported favorably on the bill on March 16, 2010.[81]

Senate Bill 370 was read for a third time in the House on March 18, 2010.[82] Representative Smith spoke in favor of passage of the bill.[83] Representative Porter again raised concerns about the bill going directly to the Rules Committee without going through the House Committee on Natural Resources and Environment.[84] Representative Matt Ramsey (R-72nd), in response, stated that the bill was the result of "nine meetings with multiple amendments added by the minority party through that entire very inclusive process."[85] Representative James Mills (R-25th) argued that House Bill 1094 was the exact same bill as the one before them.[86] The bill was then passed with no amendments or substitutions with 154 votes in favor and 8 votes opposing the bill.[87] On May 3, 2010, the bill, as passed by both the Senate and the House of Representatives, was sent to Governor Sonny Perdue.[88] Governor Perdue signed the bill into law on June 1, 2010.[89]

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79. *Id.* at 2 min., 3 sec. (remarks by Rep. Dubose Porter (D-143rd)).

80. *Id.* at 2 min., 26 sec. (remarks by Rep. Bill Hembree (R-67th)).

81. *Id.* at 3 min., 36 sec. (remarks by Rep. Dubose Porter (D-143rd)); State of Georgia Final Composite Status Sheet, SB 370, Apr. 29, 2010.

82. State of Georgia Final Composite Status Sheet, SB 370, Apr. 29, 2010.

83. Video of House Proceedings, Mar. 18, 2010 at 1 hr., 48 min., 31 sec. (remarks by Representative Lynn Smith (R-70th)), http://mediam1.gpb.org/ga/leg/2010/Rm341_HseRulCom_031610.wmv [hereinafter House Floor Video].

84. *Id.* at 1 hr., 50 min., 21 sec. (remarks by Rep. DuBose Porter (D-143rd)).

85. *Id.* at 1 hr., 53 min., 13 sec. (remarks by Rep. Matt Ramsey (R-72nd)).

86. House Floor Video, *supra* note 83, at 1 hr., 53 min., 35 sec., (remarks by Rep. James Mills (R-25th)).

87. Georgia House of Representatives Vote Record, SB 370 (Mar. 18, 2010).

88. State of Georgia Final Composite Status Sheet, SB 370, Apr. 29, 2010.

89. *Id.*

The Act

The Act amends Chapter 5 of Title 12 to require the development of programs and incentives for voluntary water conservation, including the establishment of best management practices by public water systems.[90] The Act further amends this chapter by changing provisions relating to state and local watering restrictions,[91] and provides for the classification of certain farm use water withdrawal permits[92] and the measuring and separate charging of water to units in certain new construction.[93] The Act also amends Article 1 of Chapter 2 of Title 8 to require high-efficiency toilets, shower heads, faucets, and cooling towers.[94] Lastly, the Act creates the Joint Committee on Water Supply.[95]

Section 1 of the Act discusses the recognition by the General Assembly of the need to "create a culture of water conservation in the State of Georgia" and plan for "water supply enhancement" in the event of future extreme drought conditions or other water related emergencies.[96] In this section, the General Assembly directs the Georgia Department of Natural Resources to work with specific state agencies to develop programs for water supply and conservation.[97]

Section 2 of the Act inserts a new Code section 12-5-4, in lieu of reserved Code section 12-5-4, and discusses the development of programs and incentives for voluntary water conservation and the enhancement of the state's water supply.[98] Subsection (a) discusses what agencies are intended to be included by use of the word "agency" in this Code section.[99] Subsection (b) requires state agencies to examine their current practices and policies and to

90. O.C.G.A. §§ 12-5-4, -4.1 (Supp. 2010).
91. *Id.* § 12-5-7.
92. *Id.* §§ 12-5-31, -105.
93. *Id.* § 12-5-180.1.
94. *Id.* §§ 8-2-3, -23.
95. SB 370, as passed, § 10, p. 15–16, ln. 511–30, 2010 Ga. Gen. Assem.
96. *Id.*
97. *Id.* The state agencies the referred to here are the Environmental Protection Division, the Georgia Environmental Facilities Authority, the Georgia Department of Community Affairs, the Georgia Forestry Commission, the Georgia Department of Community Health, including its Division of Public Health, the Georgia Department of Agriculture, and the Georgia Soil and Water Conservation Commission. *Id.*
98. O.C.G.A. § 12-5-4 (Supp. 2010).
99. *Id.* § 12-5-4(a).

provide regulations, rules, opportunities, or incentives for specific water conservation efforts on or before August 1, 2010.[100] Likewise, subsection (c) requires the agencies to provide regulations, rules, opportunities, or incentives to enhance water supply by August 1, 2010.[101] Lastly, subsection (d) governs the administrative procedures and reporting requirements.[102]

Section 3 of the Act creates Code section 12-5-4.1, establishing the best management practices by public water systems.[103] Subsection (a) defines terms,[104] and subsection (b) requires the Board of Natural Resources to "adopt rules for the minimum standards and best practices for monitoring and improving the efficiency and effectiveness of water use by public water systems to improve water conservation" by January 1, 2010.[105] The best practices program must establish an infrastructure leakage index and categories of public water systems, include phased-in approaches for required standardized audits by public water systems, and employ water loss detection programs.[106]

Section 4 of the Act amends Code section 12-5-7 regarding local variances from state restrictions on outdoor watering.[107] This section adds more stringent restrictions on outdoor use during "nondrought periods or state declared" drought periods than current applicable state imposed restrictions.[108] Additionally, Section 4 creates subsection (a)(4) to Code section 12-5-7, which grants power to the director of the Environmental Protection Division to revoke, suspend,

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100. *Id.* § 12-5-4(b). These water conservation efforts include encouraging residential and commercial use of water-efficient fixtures and landscaping irrigation systems, the use of rain water and gray water in lieu of potable water where appropriate, installing sub-meters on multifamily complexes and multiunit commercial and industrial complexes, public water systems for improving water loss abatement programs, and the water conservation guidelines. *Id.* The agencies are also required to examine the effect water conservation has on water rates and develop policies to mitigate the financial impact. *Id.*

101. *Id.* § 12-5-4(c). The agencies are also directed to identify opportunities for funding and research water management measures that may enhance water supply. *Id.*

102. O.C.G.A. § 12-5-4(d) (Supp. 2010). Each agency must also submit an interim report to the Governor, Lieutenant Governor, and Speaker of the House on or before July 1, 2010, with a final report submitted to the General Assembly on or before August 1, 2010. *Id.* More detailed reports must be submitted to the General Assembly on or before January 1 annually.

103. *Id.* § 12-5-4.1.

104. *Id.* § 12-5-4.1(a).

105. *Id.* § 12-5-4.1(b).

106. *Id.*

107. O.C.G.A. § 12-5-7 (Supp. 2010).

108. *Id.* § 12-5-7(a)(1).

or modify water withdrawal or waste treatment permits that violate certain provisions of the Code section.[109] Section 4 also creates subsection (a.1) of Code section 12-5-7.[110] Subsection (a.1)(1) allows for the daily outdoor irrigation for planting, managing, growing, and maintaining of plants between the hours of 4 p.m. and 10 a.m. only,[111] and subsection (a.1)(2) lists exceptions to subsection (a.1)(1).[112] Finally, Code section 12-5-7(d) grants a permittee who is aggrieved or adversely affected by action taken by the Environmental Protection Division under this Code section the right to have a hearing pursuant to Code section 12-2-2.[113]

Sections 5 and 6 of the Act establish three categories for farm use surface water and ground water withdrawal permits: active, inactive, and unused.[114] The agriculture industry strongly supported these sections, and significant work went into coming up with language that addressed concerns and ensured that only actual active water withdrawal permits are recognized for calculation purposes.[115] Code section 12-5-31 relates to permits for withdrawal, diversion, or impoundment of surface waters, and Section 5 of the Act amends this section by creating a new subsection (p).[116] This new subsection defines each category and provides for notification requirements for

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109. *Id.* § 12-5-7(a)(4).

110. *Id.* § 12-5-7 (a.1).

111. *Id.* § 12-5-7 (a.1)(1).

112. O.C.G.A. § 12-5-7 (a.1)(2) (Supp. 2010). These exceptions are: commercial agricultural operations as defined in Code section 1-3-3; capture and reuse of cooling system condensate or storm water in compliance with applicable local ordinances and state guidelines; reuse of gray water in compliance with Code section 31-3-5.2 and applicable local board of health regulations adopted pursuant thereto; use of reclaimed waste water by a designated user from a system permitted by the Environmental Protection Division of the department to provide reclaimed waste water; irrigation of personal food gardens; irrigation of new and replanted plant, seed, or turf in landscapes, golf courses, or sports turf fields during installation and for a period of 30 days immediately following the date of installation; drip irrigation or irrigation using soaker hoses; hand watering with a hose with automatic cutoff or handheld container; use of water withdrawn from private water wells or surface water by an owner or operator of property if such well or surface water is on said property; irrigation of horticultural crops held for sale, resale, or installation; irrigation of athletic fields, golf courses, or public turf grass recreational areas; installation, maintenance, or calibration of irrigation systems; and hydroseeding. *Id.*

113. *Id.* § 12-5-7(d). Filing for a hearing under this Code section will stay the order of the director of the Environmental Protections Division for a maximum of five days at which point it will be automatically lifted but will not affect the petitioner's right to a hearing. *Id.*

114. *See id.* §§ 12-5-31(p), 105(d).

115. Senate Floor Video, *supra* note 53, at 1 hr., 35 min., 40 sec. (remarks by Sen. John Bulloch (R-11th)).

116. *See* O.C.G.A. § 12-5-31(p) (Supp. 2010).

reclassification of permits.[117] Section 6 of the Act relates to ground water use permits under Code section 12-5-105 and creates a new subsection (d) that defines the three types of permits and provides for notification for reclassification of permits.[118]

Section 7 of the Act amends Code section 12-5-180.1 regarding allocation of water and waste-water usage among tenants.[119] This section requires in subsections (c) and (d) that all new multiunit residential, multiunit retail, and light industrial buildings permitted on or after July 1, 2012 be constructed so that water use of each unit can be measured individually.[120] Subsection (e) governs reimbursement for water and waste-water usage of public water systems and owners or operators of buildings subject to subsections (c) and (d) of this Code section.[121] Lastly, subsection (f) prohibits public water systems from charging any fee or levy for the installation or use of privately owned meters or devices measuring water use, but they may charge a fee or levy for the installation or use of publicly owned meters.[122]

Section 8 of the Act amends Code section 8-2-3 relating to building requirements for toilets, shower heads, and faucets.[123] Under the Act, the department must amend applicable minimum state codes on or before July 1, 2012, so as to require the installation of high-efficiency plumbing fixtures in all newly constructed buildings permitted on or after July 1, 2012.[124] The new subsection (b) changes certain definitions under the Code section,[125] and the new subsection (c) governs the standards relating to high-efficiency plumbing

117. *Id.*
118. *Id.* § 12-5-105(d).
119. *See id.* § 12-5-180.1.
120. *Id.* § 12-5-180.1(c), (d). This subsection does not apply to buildings constructed or permitted before July 1, 2012, that are renovated or, after a casualty or condemnation, renovated or rebuilt after July 1, 2010. *Id.* It also does not apply to newly-constructed multiunit office buildings and office components of mixed use developments. *Id.*
121. *See* O.C.G.A. § 12-5-180.1(e) (Supp. 2010).
122. *Id.*
123. *Id.* § 8-2-3.
124. *Id.* § 8-2-3(a).
125. *Id.* § 8-2-3(b). The definitions of "Water closet" and "WaterSenseTM" come from the International Association of Plumbing and Mechanical Officials' (IAPMO) guide for sustainable building practices, the Green Plumbing and Mechanical Code Supplement (GPMCS). Press Release, IAPMO (Mar. 30, 2010), http://www.iapmo.org/Press%20Releases/2010-03-30%20IAPMO%20GPMCS%20Georgia%20Chicago.pdf. Georgia and Chicago are the first cities to incorporate these Green provisions into legislation. *Id.*

fixtures.[126] Subsection (d) directs the department to petition the Department of Energy for a waiver in the event that the standards in this Code section are federally preempted.[127] Subsection (e) was also amended to require the department to amend applicable minimum state codes so that counties and municipalities may create ordinances for exemptions to subsection (c) of the Code section.[128] The new subsection (i) is amended by prohibiting the sale of certain toilets that exceed set water use limits.[129] Lastly, all dates in this Code section are changed to July 1, 2012.[130]

Section 9 of the Act amends Code section 8-2-23 by creating a new subsection (c). It requires the department to amend applicable state minimum codes on or before July 1, 2012 to include a requirement that all new construction permitted on or after July 1, 2012 be installed with high-efficiency cooling towers.[131] Section 10 of the Act creates the Joint Committee on Water Supply to study and analyze the status of the state's reservoir system, the need for additional water supply, and the ways to finance water supply enhancement measures.[132] This section sets forth the member composition of the committee, when and where committee meetings will be held, the allowance for committee members, and the funding for the committee.[133] The committee must report its findings and recommendations no later than December 31, 2010 (the date the committee will be abolished).[134]

126. O.C.G.A. § 8-2-3(c) (Supp. 2010).
127. *Id.* § 8-2-3(d).
128. *Id.* § 8-2-3(e).
129. *Id.* § 8-2-3(i).
130. *Id.* § 8-2-3.
131. *Id.* § 8-2-23(c). This subsection defines the term "cooling tower" and discusses the standards relating to high-efficiency cooling towers. *See id.*
132. SB 370, as passed, § 10, p. 15–16, ln. 511–30, 2010 Ga. Gen. Assem.
133. *Id.*
134. *Id.*

Analysis

Uniqueness of the Legislation

The General Assembly has received much praise for the Act, which is the largest scale conservation bill ever passed in Georgia.[135] According to Pierre Howard, former Lieutenant Governor of Georgia and current president of the Georgia Conservancy,[136] "The Water Stewardship Act is the most significant, sweeping water conservation in Georgia's history. . . . This is a major success for all Georgians because it will save hundreds of millions of gallons of water every day."[137]

Not only does the Act accomplish the important task of protecting a natural resource, but it is also vital to protecting Georgia's economic development.[138] Georgia's population has expanded significantly in recent years and the state will need adequate water supplies to sustain that growth.[139] A lack of water would undoubtedly have a negative effect on growth, industry, and business. Being in the Sunbelt, Georgia has a large green industry, as well as a significant swimming pool industry.[140] During the extreme drought of 2007, these industries were severely affected.[141] The Green Industry, which includes horticulture, landscaping, and urban agriculture, was hit hard that year by the drought and subsequent water restrictions, as sales dropped by $3 billion and 35,000 people lost their jobs.[142] The $150 million swimming pool industry also "felt a crippling blow" that summer.[143] The Metro Atlanta Chamber of Commerce described the effects of the 2007 drought and watering ban as "the biggest and most

135. Tolleson Interview, *supra* note 51. *See also* Wingate Interview, *supra* note 40.

136. The Georgia Conservancy's mission is to "develop solutions to protect Georgia's environment and promote the stewardship of the state's vital natural resources." Georgia Conservancy, https://www.georgiaconservancy.org/index.php?page=mission-history.

137. Georgia Conservancy, *Georgia Legislature Passes Nation's Premier Water Conservation Package*, https://www.georgiaconservancy.org/index.php?page=water-stewardship-act (last visited July 1, 2010).

138. Wingate Interview, *supra* note 40.

139. *Id*.

140. Fairweather & Jones, *supra* note 7, at 119.

141. *Id.*

142. *Id.*

143. *Id.*

imminent economic threat to our region."[144] This Act takes an important first step in making sure that Georgia avoids an economic crisis of this scale, or perhaps even larger, in the future.

In addition to being the most important piece of water conservation legislation in Georgia's history, the Act is also the most far-reaching piece of water conservation legislation in the country.[145] "Georgia now leads most states in the nation when it comes to 21st century water supply solutions," said Jenny Hoffner, water supply program director of American Rivers, a national water advocacy group.[146]

Several other states have enacted water conservation legislation, but none are as extensive in scope as Georgia's Water Stewardship Act. For example, in 2003, Texas passed multiple water conservation bills[147] that imposed new conservation prerequisites on the condemnation of groundwater resources;[148] restricted homeowner's associations' from discouraging outdoor conservation;[149] introduced new requirements for water conservation plans for applicants seeking state funding for water supply projects;[150] implemented new requirements for public utilities to perform water loss audits;[151] and, created a Water Conservation Implementation Task Force to evaluate Texas' water conservation measures and make recommendations to the legislature.[152] Additionally, in 2003, the Washington state legislature passed the Municipal Water Supply-Efficiency Requirements Act, which created a department to adopt new water efficiency rules for the Department of Health and Office of Drinking

144. *Id*. (citing Charles Davidson, *Will the Southeast's Water Woes Become Water Wars*?, 9 ECONSOUTH 28 (2007), http://www.frbatlanta.org/invoke.cfm?objectid=21A0C794-5056-9F12-12AADD74A26AB96A&method=display.body).

145. Tolleson Interview, *supra* 63 ("[W]e've done more than any general assembly has ever done on water."); *see also,* Wingate Interview, *supra* note 40 ("This is the strongest water conservation bill passed in any legislature in the country.").

146. Georgia Conservancy, *Georgia Legislature Passes Nation's Premier Water Conservation Package*, https://www.georgiaconservancy.org/index.php?page=water-stewardship-act.

147. Texas Water Matters, http://www.texaswatermatters.org/conservation_laws.htm (listing Texas' various water conservation bills).

148. TEX. PROP. CODE § 21.0121 (2010).

149. *Id.* § 202.007.

150. TEX. WATER CODE § 15.106 (2010).

151. *Id.* § 16.0121.

152. Texas SB 1094 (2003). The Task Force was abolished after the report was issued. More information regarding this initiative is available at http://www.twdb.state.tx.us/assistance/conservation/taskforce.asp.

Water by 2005.[153] The resulting rules included new requirements for metering, guidelines for leak detection, conservation pricing, and guides for water conservation using gray water and water reclamation and reuse.[154] Furthermore, like Georgia, several states have adopted initiatives to address water use by the agricultural industry.[155] However, no other state has enacted a state-wide watering ban, and although states commonly encourage residents to install energy efficient bathroom fixtures, Georgia is the first state to mandate energy efficient fixtures in new construction.[156]

The Act's Impact on Negotiations with Florida and Alabama

"This legislation promotes water conservation in Georgia and shows our neighbors that we are serious about being good stewards of our natural resources," Governor Sonny Perdue said, regarding the Water Stewardship Act.[157] As Governor Perdue's statement reflects, the not-so-subtle intent of the General Assembly in passing the Act was to influence the ongoing negotiations with Florida and Alabama, Congress, and the court hearing Georgia's appeal[158] of the recent district court's decision in *In re Tri-State*.

First, many legislators hope that the Act will help the Governors of the three states negotiate an agreement by showing that Georgia is doing its part to conserve.[159] In October 2009, Georgia legislators met with congressmen from Alabama and Florida and agreed for their respective

153. REV. CODE WASH. § 70.119A.180 (2010).

154. Municipal Research and Services Center of Washington, http://www.mrsc.org/Subjects/Environment/water/wc-measures.aspx; *see generally* WASH. STATE DEP'T. OF HEALTH, WASHINGTON WATER EFFICIENCY GUIDEBOOK (2009), *available at* http://www.doh.wa.gov/ehp/dw/Publications/331-375.pdf.

155. *See* Lawrence J. MacDonnell & Teresa A. Rice, *Moving Agricultural Water to Cities: The Search for Smarter Approaches*, 14 HASTINGS W.-N.W. J. ENV. L. & POL'Y 105, 107 (2008).

156. California, for example, encourages "[l]ow-flow toilets, urinals, sinks, and shower fixtures; high-efficiency clothes washers, and low water consumption kitchen appliances improve water use efficiency" in its Green California Best Practices Manual. California Department of General Services, http://www.green.ca.gov/EPP/building/SaveH2O.htm (last visited Oct. 17, 2010). However, California does not have an "across-the-board rule requiring water conservation." Dave Owen, *Law, Environmental Dynamism, Realiability: The Rise and Fall of Calfed*, 37 ENVTL. L. 1145, 1188 (2007).

157. Ashley Speagle, *Georgia Lawmakers OK Perdue's Water Plan*, CHATTANOOGA TIMES FREE PRESS, Mar. 11, 2010, at N1.

158. Rankin, *supra* note 30.

159. Interview with Representative Tom McCall (R-30th) (Apr. 28, 2010) [hereinafter "McCall Interview"].

Governors to begin negotiations for a settlement.[160] The Governors have been engaged in closed-door negotiations, and many believe that they are close to reaching an agreement.[161] A settlement would benefit Georgia in many ways. For one, once an agreement is made with Florida and Alabama, Congress would likely provide Georgia with the needed reauthorization to use Lake Lanier for drinking water.[162] Thus, an agreement would prevent Judge Magnuson's ruling from going into effect and Georgia losing access to Lake Lanier for the 280 million gallons of water it needs per day.[163] An additional benefit would be saving the state millions of dollars more in legal fees in the midst of a severe state budget deficit. Just since 1996, Georgia has spent nearly $6.7 million on outside legal counsel for the litigation, and the Atlanta Regional Commission has spent $5 million.[164] These numbers do not account for expenses of litigation before 1996, the recent appeal in the case, or costs of inside counsel.

Although its primary goal is to reach a negotiated agreement, Georgia has also taken the next step in the litigation by appealing Judge Magnuson's decision.[165] Although Judge Magnuson declined to issue a final judgment in the case, Georgia nevertheless appealed to the Eleventh Circuit, which granted review in January 2010.[166]

Criticisms of the Act and Issues Unresolved by the Act

One criticism of the Act is that Georgia lawmakers should have made more efforts towards water conservation long before now.[167] Even legislators agree that this Act should have been passed years ago.[168] Nevertheless, critics agree that the Act is undoubtedly a step

160. Edgar Treiguts, *Governors Told: Get Moving on Water Talks*, GPB NEWS, Oct. 28, 2009, http://www.gpb.org/news/2009/10/28/governors-told-get-moving-on-water-talks.
161. Tolleson Interview, *supra* note 51.
162. *Id.*
163. Edwards & Capelouto, *supra* note 31.
164. Jeffry Scott, *State Billed Millions for Lake Lanier Litigation*, ATLANTA J.-CONST., July 29, 2009, *available at* http://www.ajc.com/news/state-billed-millions-for-102920.html.
165. Rankin, *supra* note 30.
166. *Id*.
167. Tom Crawford, *Fighting Water Wars*, FLAGPOLE, Mar. 23, 2010, *available at* http://flagpole.com/Weekly/CapitolImpact/FightingWaterWars-24Mar10.
168. *See* Tolleson Interview, *supra* note 51; Interview with Representative Doug McKillip (D-115th) (Apr. 26, 2010) [hereinafter "McKillip Interview"].

in the right direction for Georgia.[169] The major question remaining is: What needs to be done now? Conservation was the first part of the Water Contingency Planning Task Force's recommendations and was easily implemented because it was the most cost-effective, low impact, and timely solution.[170] Conservation alone will not solve Georgia's water problems,[171] and the state must implement other measures to address the gap in water supply.[172] The Task Force's additional recommendations included a large indirect potable reuse project and more cost effective reservoir expansions; however, the timeline for implementing these solutions would be 2015 and 2020, respectively.[173] Conservation was the only solution that the Task Force recommended for implementation by 2012.[174]

"Inter-basin transfers" is a hot topic, though not a solution recommended by the Task Force. The Act was specifically limited to water conservation and did not address the issue of possible inter-basin transfers to Atlanta from sources such as Lake Hartwell, Lake Burton, the Flint River Basin, or the Coosa River Basin.[175] Because the issue is so emotionally charged, language regarding inter-basin transfers was left out of the Act.[176] The reason for the emotion surrounding the issue is that some fear that water will be pumped from rivers and lakes throughout the state into Atlanta.[177] Representative Doug McKillip (D-115th) commented that he would

169. *E.g.*, Crawford, *supra* note 167; *A Positive Step in Georgia*, CHATTANOOGA TIMES FREE PRESS, Mar. 12, 2010, at B6.

170. TASK FORCE FINDINGS AND RECOMMENDATIONS, *supra* note 39, at 9.

171. Interview with Harold Reheis, Senior Vice President, Joe Tanner & Associates (May 3, 2010) [hereinafter "Reheis Interview"]. Mr. Reheis was the Director of the Environmental Protection Division of the Georgia Department of Natural Resources from 1991 to 2003 and served on the Georgia Water Contingency Planning Task Force.

172. *Id.*; *A Positive Step in Georgia*, CHATTANOOGA TIMES FREE PRESS, Mar. 12, 2010, at B6 ("Georgia's water woes are far too complex for one bill, useful as it might be, to cure . . . . Hard work remains to be done if Georgia, especially Atlanta, is to manage its insatiable and insupportable appetite for water. If that is to be done, the conservation bill must be buttressed by still broader revision of building codes, by creation of long-term growth plans, by significant improvement in infrastructure, by reservoir development and by conservation programs barely touched upon in the current legislation.").

173. TASK FORCE FINDINGS AND RECOMMENDATIONS, *supra* note 39, at 39.

174. *Id* .at 9.

175. Crawford, *supra* note 167. This author contends, "If Atlanta cannot regain full access to the water in Lake Lanier, its only real option is to pipe in water from river basins outside the region." *Id.*

176. Tolleson Interview, *supra* note 51.

177. *See* McCall Interview, *supra* note 158. Representative McCall, who lives in Savannah, explains, "[W]e've always been nervous that instead of Atlanta correcting their problems, as far as leaks and conversation and all, if they would just stick a straw in either Lake Hartwell or Lake Russell."

have liked to have seen language in the Act ordering a study of such transfers, which would assure that the environmental impacts of inter-basin transfers would be properly analyzed.[178] Senator Ross Tolleson (R-20th), who serves as chairman of the Senate's Natural Resources and Environment committee, says that this issue will definitely be studied over the summer and fall.[179]

The legality of even implementing inter-basin transfers is somewhat questionable. Code section 12-5-584 prohibits the Metropolitan North Georgia Water Planning District from "study[ing] or includ[ing] in any plan any inter-basin transfer of water from outside the district area." However, according to Representative Tom McCall (R-30th), the District could take water from "Lake Seminole as long as they released the water back into either the land of the Chattahoochee basin" or from "Lake Yellow, Lake Alcovy, or Lake St. Blair as long as they let it go back in to the Oconee basin or any of the basins that originate in the metro area."[180]

Representative McCall sponsored House Bill (HB) 1301, known as the "River Basin Protection Act." HB 1301 was introduced in the 2009–2010 session and seeks to protect donor basins by setting forth regulations for inter-basin transfers.[181] The bill was stalled in the House Second Readers in March of 2010 and never moved forward.[182] An amendment adding inter-basin transfer language to SB 442, known as the "Water System Interconnection, Redundancy, and Reliability Act," was defeated in the Senate.[183] This bill provides for a water supply plan in the event of an emergency.[184] The bill passed in the Senate and was favorably reported in the House but did not ultimately pass in the 2009–2010 session.[185] However, the Senate version of this Act, SB 380, which did not contain the inter-basin transfer language, did pass both Houses.[186] Even though inter-basin

178. McKillip Interview, *supra* note 167.
179. Tolleson Interview, *supra* note 51.
180. McCall Interview, *supra* note 158.
181. HB 1301, 2010 Ga. Gen. Assem.
182. State of Georgia Final Composite Status Sheet, HB 1301, Apr. 29, 2010.
183. SB 442, 2010 Ga. Gen. Assem.
184. *Id.*
185. State of Georgia Final Composite Status Sheet, SB 442, Apr. 29, 2010.
186. State of Georgia Final Composite Status Sheet, SB 380, Apr. 29, 2010.

transfer bills were not successful in the 2009–2010 session, they will likely be reintroduced in the future.

Consequences of the Act

The implementation of SB 370 will not be without costs, and these costs will be left to local governments.[187] This may be difficult in a time when local governments are facing severe budget crises. However, according to Will Wingate of the Georgia Conservancy, the Georgia Environmental Facilities Authority currently funds statewide water councils and should be able to provide funding for these initiatives.[188] Furthermore, part of the bill is for departments to examine pricing structures so as to not punish those that conserve.[189]

Conclusion

The Water Stewardship Act is not controversial in the sense that there is a likelihood it might face legal challenges. However, the circumstances surrounding the Act's passage are highly controversial. The Act grows from a twenty-year legal battle over the highly coveted water of Lake Lanier and Judge Magnuson's ruling that Georgia has no right to that water. Without an agreement with the neighboring states of Florida and Alabama, Georgia faces the stark possibility of leaving metro-Atlanta without the millions of gallons of drinking water needed to keep the city hydrated on a daily basis. Resolution of this issue is vital, as water is a necessity for continued growth and economic development in the state. Although it took a ruling from a federal court to spur the General Assembly to action, the result is a model conservation bill that will benefit Georgians for years to come. Conservation alone will not solve all of Georgia's water problems, but the Act is an important first step.

Kristen Bolden & Crystal Genteman

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187. Reheis Interview, *supra* note 170.
188. Wingate Interview, *supra* note 40.
189. *Id.*