

# WATER-RELATED LEGISLATION OF THE 1999-2000 TERM OF THE GEORGIA GENERAL ASSEMBLY

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**Abstract.** A number of important water-related bills were considered by the General Assembly during the 1999-2000 legislative term. Major bills included ones relating to the creation of the Governor's community green space program, addressing concerns with buffers along trout streams, and establishing drought mitigation measures for the Flint River Basin. Although not directly related to water, potentially the most significant environmentally-related bill during the term created the Georgia Regional Transportation Authority to address transportation and air quality problems relating to urban sprawl. The drought that started in Georgia in May 1998, the federal court order to address total maximum daily loads, and the attempts to resolve interstate water issues have focused attention on water concerns. Governor Barnes plans to concentrate more of his efforts on water issues during the 2001 legislative session.

## INTRODUCTION

During the 1999-2000 term of the Georgia General Assembly several water-related bills and resolutions were considered. In the 1999 session, legislation creating the Georgia Regional Transportation Authority could, potentially, have significant impact on water through addressing urban sprawl. In the 2000 session, water-related legislation was among the most publicized, especially bills dealing with green space protection and trout stream buffers. Recognition that the Environmental Protection Division (EPD) was woefully understaffed to carry out the responsibilities assigned to it, positions and funding were provided for 50 new people, over half of whom will work in water-related programs.

## GROWTH MANAGEMENT

Georgia is one of the fastest growing states in the country. Census data show that Georgia grew in population by 26.4 percent during the decade of the

1990s, from 6,478,216 in 1990 to 8,186,453 in 2000, or an increase of 1,708,235 people during the 10 year period. This rapid population growth has fueled Georgia's economy but resulted in environmental concerns relating to air and water quality and water availability.

### Georgia Regional Transportation Authority

Loss of federal highway funds due to the lack of a plan to effectively reduce ground-level ozone to meet air quality standards caused Governor Barnes to push SB 57 through the 1999 session of the General Assembly. This bill creates the Georgia Regional Transportation Authority (GRTA) for the purpose of managing land transportation and air quality within certain counties in the state. Initially GRTA's focus is on 13 metro-Atlanta counties but, in the future, it could include other counties that fall out of compliance with federal air quality standards. GRTA has wide-ranging authority to oversee activities of other agencies and to direct growth through its role as the Governor's Development Council. The role of GRTA is evolving and the actions that it might take relating to water remain to be seen.

### Community Green Space Program

A package of legislation was passed in the 1998 session of the General Assembly to create the Land, Water and Wildlife Heritage Trust Fund to purchase and protect natural, historic and recreational areas.<sup>1</sup> The legislation required a constitutional amendment be adopted by the voters of the state in the 1998 general election to create a dedicated source of funding. The measure failed and the fund was never created. Consequently, the need to purchase and protect land for public purposes was not addressed.

In August 1999, Governor Barnes floated the idea at the National Governors Association meeting that rapidly growing counties should set aside 20 percent of their land as green space. To turn this vision into reality, he

appointed his community green space commission in October 1999. The commission went through an intensive process to develop recommendations and released its report to the governor in December 1999.<sup>2</sup> SB 399, enacted during the 2000 session of the General Assembly, creates the Governor's Community Green Space Program. Qualifying counties must develop a green space plan and, once completed, they are eligible to receive grants from the Green Space Trust Fund for the acquisition of land or interest in land. Qualifying counties are those that have populations of 60,000 or more or an average growth rate of 800 persons per year. Of the 159 counties in Georgia, 40 qualified for grants in 2000. The trust fund received a FY 2001 appropriation of \$30 million.

## WATER RESOURCES

### **Privatization of Water Systems**

HB 1404 was enacted during the 1999 legislative session authorizing county and municipal corporations to enter into leases and contracts with private entities for the operation and maintenance of their wastewater treatment system, stormwater system, water supply system, or sewer system. The leases or contracts may include provisions for the design, construction, repair, reconditioning, replacement, maintenance, and operation of the system. This bill also provides for acceptance of competitive sealed bids for such leases and contracts.

### **Watershed Management**

Under the Clean Water Act, the Safe Drinking Water Act, and the corresponding state laws, much of the emphasis for protecting water quality has been placed on using technology to clean up point source discharges and to treat water withdrawals to meet drinking water standards. Increasingly, however, as point sources are reduced, the emphasis is shifting to controlling nonpoint sources and protecting water supply watersheds, requiring land use measures and best management practices to be used to protect water quality. Georgia is currently grappling with a number of nonpoint-related challenges (i.e., meeting requirements for total maximum daily loads or TMDLs, stormwater management, and erosion and sedimentation control). The framework for addressing these nonpoint-related concerns, increasingly, is the river basin or watershed. Across the country, watershed management councils have been created to serve as watershed planning bodies and forums to bring stakeholders together to address the point and nonpoint pollution problems of a watershed. Although a number

of watershed management councils have been created in Georgia on an *ad hoc* basis, legislation creating two such councils was passed by the General Assembly. During the 1999 session, HB 508 was enacted creating the Lake Allatoona Preservation Authority and, during the 2000 session, HB 1562 created the Lake Sidney Lanier Watershed Governance Council. The legislation establishing these two watershed councils differ in a number of ways and neither serves as a good generic model for creating such councils. An organic piece of legislation allowing for the creation of such councils and identifying their structure and function could prove beneficial for Georgia.

### **Aquifer Storage and Recovery**

Considerable controversy has focused on the use of aquifer storage and recovery (ASR) as a water management approach. ASR involves withdrawing surface water during high flow periods, treating it, and storing it in an aquifer for use during dry periods. Although ASR has been used in other parts of the United States and elsewhere, it has not been permitted in Georgia. An application to withdraw water from the Ogeechee River during high flow periods and to treat it and inject it into the Upper Floridan Aquifer became controversial during the 1999 session. After considerable debate, HR 443 was passed by the House to urge the Environmental Protection Division (EPD) to exercise caution in the issuance of permits to private companies for ASR.

### **Trout Stream Buffers**

Following controversy dealing with trout stream buffer requirements during the 1998 session of the General Assembly, a legislative advisory committee was created to develop recommendations for addressing the concerns land owners had with the buffer requirements while still providing protection for trout streams. The advisory committee was composed of five residents of the mountain region and the heads of five environmental organizations. I was asked to facilitate/chair the committee. The advisory committee met numerous times between the fall of 1998 and the summer of 1999. Their efforts resulted in identifying the specific issues relating to buffer requirements and some alternatives for addressing the issues. In the fall of 1999, Governor Barnes, concerned that the trout stream buffer controversy might affect the green space legislation, stepped in to help resolve the controversy. He appointed the two people who had emerged as the spokesmen for the residents and environmental groups and two other

individuals to attempt to negotiate the final buffer agreement. DNR Commissioner Lonice Barrett and I worked with the negotiators through several meeting to reach an agreement. The agreement was converted into legislation (HB 1426) and introduced in the 2000 session of the General Assembly. Although more safeguards were incorporated in the provisions, controversy focused on reducing the buffer requirements from 100 feet to 50 feet and piping of small streams. The piping provisions were amended during the process to resolve some of the concerns. A technical advisory committee was appointed after the session to propose objective criteria to be used by EPD when issuing variances to the buffer requirements. These criteria have been adopted as rules by the Board of Natural Resources.

Although the trout stream buffer legislation was a compromise that addressed many concerns, there are unknowns about the impact that these changes will have on the streams. Consequently, the River Basin Science and Policy Center and the Vinson Institute of Government at The University of Georgia have been funded to undertake a three year study to track the impacts of the amendments. At the conclusion of the study, a report will be prepared for the Governor and General Assembly on how well the law is working.

### **Animal Feeding Operations**

Expansion of animal feeding operations (AFOs), particularly swine operations, has been controversial across the United States, as well as in Georgia.<sup>3</sup> To address concerns with these operations, legislation was enacted in 1998 by the General Assembly.<sup>4</sup> Subsequently, the Board of Natural Resources adopted rules to implement requirements for swine operations. The Board took a more stringent position than first proposed by EPD which resulted in considerable concern within the agricultural community. In response, legislation was passed by the General Assembly in 2000, amending the Georgia Environmental Policy Act to create the Environmental Protection Division Agricultural Advisory Committee to advise EPD as to the effects that proposed changes in environmental rules and regulations might have on family farms and agriculture in this state. The bill requires EPD to submit all changes in Georgia's water quality rules and regulations to the committee and provide no less than 90 days for the committee to review and comment prior to the rule adoption. Issues relating to the impact that this bill would have on state primacy to administer the federal Clean Water Act led Governor Barnes to veto the bill. Concern over concentrated animal feeding operations is still evident as is interest

over the rules governing such operations. Consequently, additional legislation relating to AFOs may appear during the 2001-2002 legislative term.

### **Drought Mitigation**

The drought that has plagued much of the Southeast since May 1998 has caused a wide-variety of problems, particularly relating to agricultural production and dwindling water supplies for certain communities and rural residents dependent on wells. Of particular concern was the impact that irrigation water withdrawals might have on the Flint River system in southwest Georgia. This karst region, where there is significant interplay between surface and ground water, is a major agricultural area of the state and is heavily dependent upon irrigation. Concern related, not only to the potential impact of large irrigation withdrawals on the streams in Georgia, but also on how Georgia could meet low flow requirements that might be adopted through the ACF/ACT negotiations with Florida and Alabama. To address these concerns, the Flint River Drought Protection Act (HB 1362) was enacted during the 2000 session of the General Assembly. This legislation calls for the creation of a fund to be used to pay some farmers within the basin not to irrigate during a drought period. Although the bill applied to both surface and ground water, the rules adopted by the Board of Natural Resources limit the payment to farmers using surface water sources only because of uncertainty over the relationship that reduced ground water withdrawals might or might not have on stream flows.

## **SOLID AND HAZARDOUS WASTE MANAGEMENT**

Relatively little action relating to solid and hazardous waste management was evident during the 1999-2000 legislative term. The most significant legislation was HB 578 which extended the \$1.00 per tire fee on new tires to continue through June 2005, to complete cleanup of nuisance scrap tire piles and to provide grants to local governments to assist them in establishing programs that will contribute to the cleanup and proper management of scrap tires in the future.

SB 468 allows for vertical expansion of solid waste landfills when the owner of the facility has a remedial modification plan involving the removal of waste to a conforming facility.

## CONCLUSIONS

Increasing water demands fueled by the rapidly expanding population and water shortages caused by the extended drought have emphasized the need to place greater emphasis on effectively managing Georgia's water resources. Several significant water-related bills were enacted during the 1999-2000 term of the Georgia General Assembly, including: creation of the Georgia Regional Transportation Authority (SB 57), establishment of the Governor's Community Green Space Program (SB 399), amendments to the Erosion and Sedimentation Control Act relating to trout stream buffers (HB 1426), and the Flint River Drought Protection Act (HB 1362). Providing 50 additional staff positions to EPD should result in more effective implementation of water and other environmental laws. Although these are significant water-related measures, it is anticipated that the next term of the Georgia General Assembly will focus even more on water resources concerns.

Governor Barnes has stated that he will address water issues during the 2001 session of the General Assembly. Legislation will address, at least in part, recommendations of the metro Atlanta Chamber of Commerce Clean Water Initiative to create a 16 county metro Atlanta water planning district.<sup>5</sup> In addition, a resolution creating a joint study committee to recommend how the state should move forward to develop a comprehensive state water management plan will be introduced.<sup>6</sup> The study committee will report back to the General Assembly in the 2002 session on any legislation needed to develop the plan. In addition, Georgia's 236 legislators have experienced a variety of water-related problems in their districts due to the drought, population growth, and other reasons. It is likely that a considerable amount of legislation will be introduced during the 2001-2002 legislative term to address these water issues.

## REFERENCES

1. James E. Kundell. "Water-Related Legislation of the 1997-1998 Term of the Georgia General Assembly," *1999 Georgia Water Resources Conference Proceedings*, The University of Georgia Institute of Ecology, Athens, GA.
2. *Report of the Community Green Space Advisory Committee*, 1999. The University of Georgia Vinson Institute of Government in Cooperation with the Office of Georgia Governor Roy Barnes, Athens, GA.

3. James E. Kundell. *Animal Feeding Operations: The Role of Counties*, 1999. Conference of Southern County Associations and the National Association of Counties, Washington, D.C.

4. James E. Kundell. "Water-Related Legislation of the 1997-1998 Term of the Georgia General Assembly," *1999 Georgia Water Resources Conference Proceedings*, The University of Georgia Institute of Ecology, Athens, GA.

5. *Final Report of the Clean Water Initiative*, 2000. Metro Atlanta Chamber of Commerce and the Regional Business Coalition, Atlanta, GA.

6. James E. Kundell, Terry A. DeMeo and Margaret Myxzewski. *Developing a Comprehensive State Water Management Plan: A Framework for Managing Georgia's Water Resources*, Research Atlanta, Atlanta, GA.