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W. Linkous

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## CONSERVATION AND NATURAL RESOURCES

### *Georgia Water Supply Act: Authorize Department of Natural Resources to Build and Manage Reservoirs*

CODE SECTIONS: O.C.G.A. §§ 12-5-470 to -482 (new)  
BILL NUMBER: SB 86  
ACT NUMBER: 633  
SUMMARY: The Act amends the Georgia Code provisions relating to water resources by authorizing the Department of Natural Resources (DNR) to acquire or construct water supply reservoirs. The Act also authorizes the DNR to operate and maintain any project that embraces a water source or that distributes or sells water and other related facilities. The Act also provides for the protection of wetlands. Finally, the Act authorizes the DNR to contract and to execute leases and to do all things deemed necessary and convenient for the operation of projects authorized by the Act.

EFFECTIVE DATE: July 1, 1989

#### *History*

During the 1970s and 1980s the southeastern portion of the United States experienced drought conditions. The entire State of Georgia, especially communities in the northern half of the State, suffered from a lack of available water.<sup>1</sup> The most obvious solution to the problem was to build a series of regional reservoirs that could supply local communities with water.<sup>2</sup> Local governments relied upon funds from Georgia's water budget to finance the construction of reservoirs, but often they did not take full advantage of existing programs to build reservoirs because of their own severe financial constraints.<sup>3</sup>

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1. Telephone interview with Mr. John Sibley, Staff Director, Governor's Growth Strategies Commission (Mar. 31, 1989) [hereinafter Sibley Interview].

2. *Id.*

3. FINAL REPORT, GOVERNOR'S GROWTH STRATEGIES COMMISSION, at 8 (Nov. 2, 1988) (available in Georgia State University College of Law Library) [hereinafter FINAL REPORT]. The Governor's Growth Strategies Commission is a group appointed by the Governor to study plans for future growth of Georgia's economy and quality of life. *Id.* at 3.

After unusually dry conditions during the latter half of the 1980s the water situation in Georgia had reached a crisis stage.<sup>4</sup> This situation caught the attention of the Governor's Growth Strategies Commission because of the impact that water availability has upon Georgia's economy.<sup>5</sup> The Commission was in favor of managing water more efficiently so that Georgia would have greater capacity for growth in the future.<sup>6</sup> The Commission was concerned with the lack of action by local governments in building reservoirs, and recommended that the State take charge of the water crisis in Georgia.<sup>7</sup> SB 86 was a direct response to the concerns and recommendations of the Commission.<sup>8</sup> The bill imparts to the Department of Natural Resources (DNR) the power necessary to get Georgia's water supply problems under control.

### SB 86

The Act empowers the DNR to do whatever is deemed necessary to acquire or construct water supply reservoirs.<sup>9</sup> Section 12-5-471 defines, for purposes of the Act, such terms as "county," "environmental services," "lease," "lessee," "local government," "obligation," "project," and "water facilities."<sup>10</sup> These terms are defined broadly, giving the DNR expansive authority to build or acquire water facilities.<sup>11</sup>

A "project" includes "acquisition of real property for water reservoirs; the construction and reconstruction or improvement of water reservoirs; the acquisition of real property surrounding water reservoirs;" and "the acquisition of real property for mitigation of any alteration of environmental resources by the construction of a water reservoir."<sup>12</sup> "Water facilities" are defined as "any projects, structures, and other real or personal property acquired, rehabilitated, constructed, or planned for the purposes of supplying, distributing, and treating water and diverting, channeling, or controlling water flow and head . . . ."<sup>13</sup>

Section 12-5-472 authorizes the DNR to acquire and maintain a "project" for the public welfare.<sup>14</sup> The section authorizes the DNR to acquire land but proscribes competition between the DNR and local governments.<sup>15</sup>

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4. Sibley Interview, *supra* note 1.
  5. FINAL REPORT, *supra* note 2, at 6, 8.
  6. *Id.*
  7. Sibley Interview, *supra* note 1.
  8. *Id.*
  9. O.C.G.A. § 12-5-472(a) (Supp. 1989).
  10. O.C.G.A. § 12-5-471 (Supp. 1989).
  11. *Id.*
  12. O.C.G.A. § 12-5-471(10) (Supp. 1989).
  13. O.C.G.A. § 12-5-471(11) (Supp. 1989).
  14. O.C.G.A. § 12-5-472(a) (Supp. 1989).
  15. *Id.*

The DNR may acquire, hold, and dispose of real and personal property.<sup>16</sup> The DNR is allowed to contract,<sup>17</sup> to accept grants from governing bodies,<sup>18</sup> to make and execute leases,<sup>19</sup> to collect fees and charges,<sup>20</sup> to provide assistance services to state and local governments,<sup>21</sup> to contract with or lease facilities to local governments or the State,<sup>22</sup> to use the proceeds of any tax levied by a local government to pay for projects,<sup>23</sup> and “to do all things necessary or convenient to carry out the powers conferred by” the Act.<sup>24</sup>

Section 12-5-474 authorizes the DNR to set reasonable fees, rentals, prices, and charges for users and vendors for “use of a project” and to retain or spend all generated funds for a fiscal year.<sup>25</sup> It also permits the DNR to establish all terms and conditions for all of its leases and contracts relating to a project.<sup>26</sup> The Board of Natural Resources prescribes rules and regulations governing the operation and use of any project upon consideration of local government input.<sup>27</sup>

The DNR is authorized to contract with local governments concerning their responsibilities.<sup>28</sup> The local government must reimburse the DNR for costs, liabilities, and expenses associated with providing goods and services.<sup>29</sup> The powers conferred upon the DNR by these provisions merely supplement those granted by the constitution and laws of the State and the article shall be construed liberally to effect its purposes.<sup>30</sup>

The DNR now has wide contractual powers to make agreements with other public entities, and public entities are given the authority to contract with the DNR.<sup>31</sup> The DNR is also authorized to stipulate the terms and conditions of user agreements between the DNR and local governments.<sup>32</sup> These user agreements are not subject to any law requiring that contracts may be awarded only after receipt of competitive bids.<sup>33</sup> This allows the DNR to contract with local governments on

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16. O.C.G.A. § 12-5-473(1) (Supp. 1989).
  17. O.C.G.A. § 12-5-473(2) (Supp. 1989).
  18. O.C.G.A. § 12-5-473(3) (Supp. 1989).
  19. O.C.G.A. § 12-5-473(4) (Supp. 1989).
  20. O.C.G.A. § 12-5-473(5) (Supp. 1989).
  21. O.C.G.A. § 12-5-473(6) (Supp. 1989).
  22. O.C.G.A. § 12-5-473(7)–(8) (Supp. 1989).
  23. O.C.G.A. § 12-5-473(9) (Supp. 1989).
  24. O.C.G.A. § 12-5-473(11) (Supp. 1989).
  25. O.C.G.A. § 12-5-474(a) (Supp. 1989).
  26. O.C.G.A. § 12-5-474(c) (Supp. 1989).
  27. O.C.G.A. § 12-5-475 (Supp. 1989).
  28. O.C.G.A. § 12-5-476(a) (Supp. 1989).
  29. O.C.G.A. § 12-5-476(b) (Supp. 1989).
  30. O.C.G.A. §§ 12-5-477 to -478 (Supp. 1989).
  31. O.C.G.A. § 12-5-479(a) (Supp. 1989).
  32. O.C.G.A. § 12-5-479(f) (Supp. 1989).
  33. O.C.G.A. § 12-5-479(g) (Supp. 1989).

whatever terms the DNR deems necessary or desirable for carrying out the project.

The Act authorizes the DNR "to utilize the financial advisory and construction related services" of Georgia's Financing and Investment Commission.<sup>34</sup> The Act was passed for the public benefit; it states that the DNR will be performing an essential governmental function in carrying out the purposes of the Act.<sup>35</sup> The Act authorizes the State to withhold all State-administered funds from a local government that fails to remit funds due to the DNR or to others, which involve the credit or guarantee of the State, unless the withholding of funds would violate a State contract or federal or State law.<sup>36</sup>

SB 86 underwent several changes as it wound its way through the Legislature. A floor amendment was offered in the Senate which limits the power of the DNR to make and to execute contracts and other instruments.<sup>37</sup>

When SB 86 reached the House there was concern that it did not spell out the relationship between the DNR and local governments.<sup>38</sup> Environmental groups were concerned that the building of reservoirs under the terms of the bill would destroy wildlife habitats in watersheds of the State and discourage water conservation.<sup>39</sup> The House Committee on Natural Resources therefore proposed a substitute to SB 86<sup>40</sup> which contained several significant changes. First, the committee substitute to section 12-5-472 added provisions requiring wetlands and watershed protection under the standards of the Board of Natural Resources.<sup>41</sup> Second, the committee substitute added a provision requiring the DNR to make payments to local governments in lieu of ad valorem taxes.<sup>42</sup>

The House substitute also deleted a section of the bill which specifically authorized the DNR to include in its contracts with lessees or vendors provisions which would hold the DNR harmless from liability for any injury sustained as a result of the use of a project.<sup>43</sup> The substitute added rules and regulations governing the selection of sites for projects.<sup>44</sup> These requirements protect local governments and further define the roles of the DNR and local governments in creating a project.

34. O.C.G.A. § 12-5-480 (Supp. 1989).

35. O.C.G.A. § 12-5-481 (Supp. 1989).

36. O.C.G.A. § 12-5-482 (Supp. 1989).

37. SB 86 (SFA), 1989 Ga. Gen. Assem.

38. Sibley Interview, *supra* note 1.

39. *Environmentalist Sees Threats From Reservoirs*, Atlanta Const., Jan. 11, 1989, at A14, col. 1.

40. SB 86 (HCSFA), 1989 Ga. Gen. Assem.

41. *Id.*

42. *Id.*

43. *Id.*

44. *Id.*

An additional provision of the House substitute creates Project Water Users Advisory Councils which consult with the DNR and give advice on operation and management of the project for which it was formed.<sup>45</sup> The substitute also created a Project Site Control Advisory Council to control the operation and management of projects.<sup>46</sup> These councils added to the series of checks upon the power of the DNR proposed in the substitute.<sup>47</sup> The House committee substitute also was amended.<sup>48</sup>

After receiving the bill, the Conference committee issued its own substitute.<sup>49</sup> A provision which would have required that environmental procedures of the Board of Natural Resources be in effect prior to acquisition of property for a project was not included in the Conference committee substitute version.<sup>50</sup> Provisions concerning payments by the DNR in lieu of local governmental ad valorem taxes were changed in two ways. First, a provision was added to allow payments to be increased or decreased according to the value of other similar property, provided that the DNR has appeal rights under section 48-5-311.<sup>51</sup> Second, a provision was added providing that these payments must be made from funds appropriated for this purpose as a cost of the project.<sup>52</sup> Deficiencies in payments are to accrue yearly until paid with interest, but without penalty.<sup>53</sup>

The Conference committee substitute, instead of giving complete authority to Project Site Control Advisory Councils to approve rules and regulations for the operation and use of a project, adopts a two-step process.<sup>54</sup> First, the initial rules are approved by the councils; and second, any changes in those rules are subject to the Georgia Administrative Procedure Act.<sup>55</sup>

Because of the DNR's broad power over the state's water supply, the Act creates an elaborate series of checks upon the power given to

45. *Id.*; see O.C.G.A. § 12-5-479(e) (Supp. 1989).

46. SB 86 (HSCFA), 1989 Ga. Gen. Assem.; see O.C.G.A. § 12-5-479(e) (Supp. 1989).

47. Sibley Interview, *supra* note 1.

48. SB 86 (HCA), 1989 Ga. Gen. Assem. The committee added the word "or" on line 14 of page five of the substitute by the Committee on Natural Resources. *Id.* This was a small change added to make the bill read properly. Sibley Interview, *supra* note 1. A floor amendment in the House struck the word "or" from line 15 of page seven. SB 86 (HFA), 1989 Ga. Gen. Assem. This change was also minor, bringing the language of the bill in line with State Bond Department law. Sibley Interview, *supra* note 1.

49. SB 86 (CCS), 1989 Ga. Gen. Assem.

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.* The Georgia Administrative Procedure Act is codified at O.C.G.A. §§ 50-13-1 to -22 (1986).

the DNR to manage water resources.<sup>56</sup> The Act also addresses environmental concerns and attempts to define the role of local governments in water supply management.

*W. Linkous*

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56. Sibley Interview, *supra* note 1. The Act attempts to balance control of the State's water supply between the DNR and local governments. The Project Site Control Advisory Council and the Project Water Users Advisory Councils are the balancing mechanisms. Other checks on the DNR's power include a requirement to comply with section 404 of the Federal Clean Water Act and the DNR's required review under the Administrative Procedure Act. *Id.*