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## CONSERVATION AND NATURAL RESOURCES Comprehensive State-Wide Water Management Planning Act: Enact the "Comprehensive State-Wide Water Management Planning Act"; Change Certain Provisions Relating to River Basin Management Plans; Require the Development of a State-Wide Water Management Plan; Provide for a Water Council and for its Composition and Duties; Provide Procedures for Plan Development, Adoption, and Revision; Provide for Related Matters; Amend Code Section 50-13-4 of the Official Code of Georgia Annotated, Relating to Procedural Requirements for Adoption,

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## CONSERVATION AND NATURAL RESOURCES

***Comprehensive State-Wide Water Management Planning Act: Enact the “Comprehensive State-Wide Water Management Planning Act”; Change Certain Provisions Relating to River Basin Management Plans; Require the Development of a State-Wide Water Management Plan; Provide for a Water Council and for its Composition and Duties; Provide Procedures for Plan Development, Adoption, and Revision; Provide for Related Matters; Amend Code Section 50-13-4 of the Official Code of Georgia Annotated, Relating to Procedural Requirements for Adoption, Amendment, or Repeal of Rules, Emergency Rules, Limitations on Actions to Contest Rules, and Legislative Override; Repeal Conflicting Laws; Amend Code Section 2-6-27 of the Official Code of Georgia Annotated, Relating to Additional Duties and Powers of the State Soil and Water Commission; and for Other Purposes***

CODE SECTIONS:	O.C.G.A. §§ 2-6-27, 12-5-520 to -525, 50-13-4 (amended)
BILL NUMBER:	HB 237
ACT NUMBER:	571
GEORGIA LAWS:	2004 Ga. Laws 711
SUMMARY:	The Act replaces the Georgia rule relating to the development of water management plans for a series of rivers in Georgia by establishing a system to develop a comprehensive state-wide water management plan. The Act creates a water council that will work in cooperation with the Georgia Environmental Protection Division to establish a plan to propose to the General Assembly no later than the 2008 legislative session. The General Assembly can then approve the plan, reject the plan or create a plan of its own. If the General Assembly has not adopted a plan by the end of the 2008

legislative session, the last plan proposed by the Water Council will become effective.

EFFECTIVE DATE:

May 13, 2004

### *History*

The State of Georgia has experienced phenomenal growth over the past decade.<sup>1</sup> One result of that growth has been an equally large need for water.<sup>2</sup> Alabama and Florida have met attempts to satisfy Georgia's water needs with stiff opposition.<sup>3</sup> Attempts to negotiate a compact among the states ended in August of 2003 without a settlement, and Georgia now faces the possibility of having a court make its water resource decisions.<sup>4</sup>

In addition to a plan that will settle disputes with neighboring states, Georgia also needs a plan that would allow the State to protect the environment.<sup>5</sup> One key to a successful outcome both for the environmental challenges and for existing or future litigation may be the implementation of a comprehensive, state-wide water management plan.<sup>6</sup> As litigation moves forward, it is important that the courts know Georgia is serious about managing its water issues.<sup>7</sup>

Currently, the State of Georgia does not have a comprehensive water management plan for dealing with both water quantity and water quality issues.<sup>8</sup> Previous statutorily required plans focused on water quality and were only advisory in nature.<sup>9</sup> Former legislation

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1. See Marlon Manuel, *Jobs Fueling South's Hot Growth, but Residents Are Paying in Sprawl*, ATLANTA J. CONST., Mar. 29, 2001, at 1A, available at 2001 WL 3666697.

2. See Mike Williams, *Florida Fishermen Fear Being Left High and Dry: Apalachicola Needs the Chattahoochee, Seafood Workers Say*, ATLANTA J. CONST., Aug. 9, 1991, at A3, available at 1991 WL 7808570.

3. See Charles Seabrook, *Water Costs Likely to Rise, Legal Tangle: The U.S. Supreme Court Probably Will Be the Next Battlefield for the Tri-State Dispute*, ATLANTA J. CONST., Sept. 8, 2003, at 1F, available at 2003 WL 61734096.

4. See *id.*

5. Telephone Interview with Bob Kerr, Member of the Georgia Negotiation Team for the Georgia/Alabama/Florida Water Dispute (Apr. 23, 2004) [hereinafter Kerr Interview].

6. See *id.*

7. See Telephone Interview with Rep. Bob Hanner, House District No. 133 (Apr. 23, 2004) [hereinafter Hanner Interview].

8. See Telephone Interview with Carol Couch, Director, Environmental Protection Division (May 4, 2004) [hereinafter Couch Interview].

9. *Id.*

did not require the Environmental Protection Division to follow any recommendations.<sup>10</sup>

Representative Bob Hanner introduced HB 237 in 2003 in part to deal with water planning issues.<sup>11</sup> As introduced, the bill also contained provisions involving transfers between water basins and farmers' ability to sell state withdrawal permits.<sup>12</sup> These provisions proved extremely controversial, causing the plan to stall in the 2003 session.<sup>13</sup> To assure that Georgia implemented a water management plan in 2004, Representative Hanner, sponsor of the original legislation, stripped the bill of the controversial elements.<sup>14</sup> The plan, as introduced in 2004, presented only a recommendation for state-wide water planning.<sup>15</sup>

### *Bill Tracking of HB 237*

#### *Consideration by the House and Senate in 2003*

Representatives Bob Hanner, Tom McCall, Richard Royal, Lynn Smith, and Alan Powell of the 133rd, 78th, 140th, 87th, and 23rd districts, respectively, introduced HB 237.<sup>16</sup> The House Clerk first read the bill in the House on January 31, 2003 and read it a second time on February 3, 2003.<sup>17</sup> The bill then went to the House Natural Resources and Environment Committee, which favorably reported on the bill with a committee substitute on February 13, 2003.<sup>18</sup> On February 27, 2003, the bill passed the House by a vote of 141 to 27 with 8 members not voting and 4 members excused.<sup>19</sup> The Senate Clerk read the bill in the Senate, and Lieutenant Governor Mark Taylor referred it to the Senate Natural Resources and Environment

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10. *See id.*

11. *See* HB 237, as introduced, 2003 Ga. Gen. Assem.

12. *See id.*; *see also* Stacy Shelton, *Water Plan Unlikely to Make Waves: Purdue, Legislators Craft Low-Key Bill That Puts Issue in Lap of State Agency*, ATLANTA J. CONST., Jan. 12, 2004, at E1, available at 2004 WL 55879660.

13. *See* Shelton, *supra* note 12.

14. *See* Hanner Interview, *supra* note 7.

15. HB 237 (CCS1), 2004 Ga. Gen. Assem.; *see also* Hanner Interview, *supra* note 7.

16. *See* HB 237, as introduced, 2003 Ga. Gen. Assem.

17. *See* State of Georgia Final Composite Status Sheet, HB 237, Jan. 31, 2003 (May 19, 2004); State of Georgia Final Composite Status Sheet, HB 237, Feb. 3, 2003 (May 19, 2004).

18. *See* State of Georgia Final Composite Status Sheet, HB 237, Feb. 13, 2003 (May 19, 2004).

19. *See* Georgia House of Representatives Voting Record, HB 237 (Feb. 27, 2003).

Committee on February 28, 2003.<sup>20</sup> The Senate Committee favorably reported on the bill and offered a Committee substitute on April 10, 2003.<sup>21</sup> The Senate read HB 237 a second time on April 11, 2003 and a third time on April 17, 2003.<sup>22</sup> On April 17, 2003, the Committee substitute passed the Senate by a vote of 51 to 4 with 1 member excused.<sup>23</sup> The Senate substitute failed in the House on April 22, 2003 by a vote of 62 to 95 with 19 members not voting and 4 members excused, resulting in the appointment of a Conference Committee.<sup>24</sup> The Conference report failed to pass the House on April 25, 2003 by a vote of 61 to 98 with 18 members not voting and 3 members excused.<sup>25</sup>

### *Consideration by the House and the Senate in 2004*

During the summer and fall of 2003, the Conference Committee removed the controversial elements of HB 237 that had prevented its passage in 2003.<sup>26</sup> These controversial elements included interbasin transfers and the ability to sell water permits.<sup>27</sup> The bill became a pure planning bill to allow for the creation of a comprehensive statewide water management plan.<sup>28</sup> Under the Conference Committee proposal, a water council would present a plan to the Georgia Board of Natural Resources.<sup>29</sup> The Board would have the option of approving or rejecting the plan.<sup>30</sup> The Senate adopted the Conference

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20. State of Georgia Final Composite Status Sheet, HB 237, Feb. 28, 2003 (May 19, 2004).

21. State of Georgia Final Composite Status Sheet, HB 237, Apr. 10, 2003 (May 19, 2004).

22. State of Georgia Final Composite Status Sheet, HB 237, Apr. 11, 2003 (May 19, 2004); State of Georgia Final Composite Status Sheet, HB 237, Apr. 17, 2003 (May 19, 2004).

23. Georgia Senate Voting Record, HB 237 (Apr. 17, 2003).

24. Georgia House of Representatives Voting Record, HB 237 (Apr. 22, 2003); State of Georgia Final Composite Status Sheet, HB 237, Apr. 22, 2003 (May 19, 2004).

25. Georgia House of Representatives Voting Record, HB 237 (Apr. 25, 2003); State of Georgia Final Composite Status Sheet, HB 237, Apr. 25, 2003 (May 19, 2004).

26. See Audio Recording of Senate Proceedings, Feb. 5, 2004 (remarks by Sen. Casey Cagle), at <http://www.state.ga.us/services/leg/audio/2004archive> [hereinafter Senate Audio]; see also HB 237 (CCS1), 2004 Ga. Gen. Assem.

27. See Senate Audio, *supra* note 26 (remarks by Sen. Casey Cagle).

28. HB 237 (CCS1), 2004 Ga. Gen. Assem.; see Senate Audio, *supra* note 26 (remarks by Sen. Casey Cagle).

29. HB 237 (CCS1), 2004 Ga. Gen. Assem.; see Senate Audio, *supra* note 26 (remarks by Sen. Casey Cagle).

30. See HB 237 (CCS1), 2004 Ga. Gen. Assem.; Senate Audio, *supra* note 26 (remarks by Sen. Casey Cagle).

Committee report on February 5, 2004 by a vote of 53 to 1 with 1 member not voting and 1 member excused.<sup>31</sup>

The House voted on the Conference Committee report on February 12, 2004.<sup>32</sup> Members of the House were concerned that the bill as proposed by the Conference Committee did not allow for any legislative oversight.<sup>33</sup> As a result, the Conference Committee report failed in the House by a vote of 167 to 0 with 9 members not voting and 4 excused.<sup>34</sup>

The Conference Committee presented another report to the House on March 31, 2004.<sup>35</sup> This version allowed plan oversight by the General Assembly.<sup>36</sup> Under this proposal, the water council would present a plan to the Georgia General Assembly no later than the first day of the 2008 legislative session.<sup>37</sup> The General Assembly would have the option of ratifying the plan, rejecting the plan and sending it back to the water council for revision, or creating a plan of its own.<sup>38</sup> If the General Assembly rejects the plan, the water council can present another plan up until the twentieth day of the session.<sup>39</sup> If the General Assembly does not approve a plan or adopt a plan of its own by the end of the session, it will ratify the last plan submitted by the water council.<sup>40</sup> The Conference Committee proposal passed the House by a vote of 169 to 3 with 6 members not voting and 2 excused.<sup>41</sup> The Conference Committee report then passed the Senate on that same day by a vote of 53 to 3.<sup>42</sup>

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31. See Georgia Senate Voting Record, HB 237 (Feb. 5, 2004).

32. See State of Georgia Final Composite Status Sheet, HB 237, Feb. 12, 2004 (May 19, 2004).

33. See Audio Recording of House Proceedings, Feb. 12, 2004 (remarks by Rep. Bob Hanner), at [http://www.georgia.gov/00/channel\\_title/0,2094,4802\\_6107103,00.html](http://www.georgia.gov/00/channel_title/0,2094,4802_6107103,00.html) [hereinafter House Audio].

34. Georgia House of Representatives Voting Record, HB 237 (Feb. 12, 2004).

35. See State of Georgia Final Composite Status Sheet, HB 237, Mar. 31, 2004 (May 19, 2004).

36. See HB 237 (CCS2), 2004 Ga. Gen. Assem.

37. *Id.*

38. *Id.*

39. *Id.*

40. *Id.*

41. Georgia House of Representatives Voting Record, HB 237 (Mar. 31, 2004).

42. Georgia Senate Voting Record, HB 237 (Mar. 31, 2004).

### *Analysis*

Georgia is currently a party in two separate federal court cases over water allocation between neighboring states.<sup>43</sup> In addition, Florida has threatened to ask the United States Supreme Court for an equitable apportionment of the relevant waters.<sup>44</sup> The way Georgia uses its water resources could play an important role in any future litigation.<sup>45</sup> Having a water management plan in place could help demonstrate that Georgia is making reasonable use of its water.<sup>46</sup>

It is far too early to know whether the water planning effort put in place by the General Assembly in 2004 will result in a court victory for Georgia.<sup>47</sup> Water management is not the only factor that courts examine.<sup>48</sup> The courts will also examine several other factors, including relevant state water laws, a comparison of benefits and harms, the water conservation efforts within the State, the substitute sources of water supply, and existing economics within the State.<sup>49</sup>

The fact that Florida already has a water management plan in place should not have a negative impact on Georgia.<sup>50</sup> Georgia can likely show that Florida did not have a plan in place when Florida had the same population level as Georgia has now.<sup>51</sup> Georgia must be able to show that it has not harmed Florida through its past water management decisions and that Georgia's water management efforts have been appropriate and reasonable.<sup>52</sup>

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43. See Seabrook, *supra* note 3.

44. See *id.*

45. See Douglas L. Grant, Interstate Allocation of Rivers Before the United States Supreme Court: The ACF System, Address at Critical Issues in Georgia Water Law and Policy, Seminar at Georgia State University (Jan. 7, 2004) (outline on file with Georgia State University Law Review) [hereinafter Critical Issues].

46. See Kerr Interview, *supra* note 5.

47. See *id.*

48. See Critical Issues, *supra* note 45.

49. *Id.*

50. See Kerr Interview, *supra* note 5.

51. *Id.*

52. See *id.*



Although the process of developing a state plan is now in motion, the General Assembly may chose not to wait until the completion of the water management plan to offer additional legislation.<sup>53</sup> The General Assembly may feel the need to promulgate water-related legislation as a way to give guidance to those developing the plan.<sup>54</sup> The General Assembly will also have a direct impact on the plan when it decides how much funding to provide the project.<sup>55</sup>

*John Allen*

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53. See Hanner Interview, *supra* note 7.

54. See *id.*

55. See Stacy Shelton, *Legislature 2004: Water Compromise Gives Legislature Role in Policy*, ATLANTA J. CONST., Apr. 1, 2004, at C8, available at 2004 WL 73419621.