

House Bill 237 (COMMITTEE SUBSTITUTE) (AM)

By: Representatives Hanner of the 133rd, McCall of the 78th, Royal of the 140th, Smith of the 87th and Powell of the 23rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 2-6-27 of the Official Code of Georgia Annotated, relating to
2 additional duties and powers of the State Soil and Water Conservation Commission, so as
3 to provide for certain powers and duties related to water resources; to amend Chapter 5 of
4 Title 12 of the Official Code of Georgia Annotated, relating to water resources, so as to
5 change certain provisions relating to permits for withdrawal, diversion, or impoundment of
6 surface waters and monitoring, recording, and reporting water withdrawn by certain
7 irrigation systems; to change certain provisions relating to definitions relative to
8 ground-water use generally; to change certain provisions relating to permits to withdraw,
9 obtain, or use ground water, water conservation plans, factors to be considered, notice of
10 official acts, administrative hearings, and judicial review; to change certain provisions
11 relating to emergency orders, hearings, and appeals; to change certain provisions relating to
12 permits for farm uses, notice of transfer or modification in use or capacity, nonuse,
13 suspension or modification, priority uses, and effect on existing common or statutory law;
14 to provide for preparation, review, and submission of a proposed comprehensive state-wide
15 water management plan; to provide rules and regulations; to amend Code Section 50-13-4
16 of the Official Code of Georgia Annotated, relating to procedural requirements for adoption,
17 amendment, or repeal of rules, emergency rules, limitations on actions to contest rules, and
18 legislative override, so as to provide an exception; to provide legislative findings and
19 declarations; to repeal conflicting laws; and for other purposes.

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

21 style="text-align:center">**PART I**
22 style="text-align:center">**SECTION 1-1.**

23 Code Section 2-6-27 of the Official Code of Georgia Annotated, relating to additional powers
24 and duties of the State Soil and Water Conservation Commission, is amended by inserting
25 a new paragraph to read as follows:

H. B. 237 (SUB)

1 (A) Any such withdrawal or combination of several withdrawals on one or more
 2 properties or fields in combination as a system which does not involve more than
 3 100,000 gallons per day on a monthly average;

4 (B) Any such diversion or combination of several diversions on one or more properties
 5 or fields in combination as a system which does not reduce the flow of the surface
 6 waters at the point where the watercourse, prior to diversion, leaves the person's or
 7 persons' property or properties on which the diversion occurred, by more than 100,000
 8 gallons per day on a monthly average;

9 (C) Any such diversion accomplished as part of construction for transportation
 10 purposes which does not reduce the flow of surface waters in the diverted watercourse
 11 by more than 150,000 gallons per day on a monthly average; ~~or~~

12 (D) Any such impoundment or combination of several impoundments on one or more
 13 properties or fields in combination as a system which does not reduce the flow of the
 14 surface waters immediately downstream of the impoundment by more than 100,000
 15 gallons per day on a monthly average; or

16 (E) Any recycled water for farm use.

17 (2) ~~No permit shall~~ A permit may be required for a reduction of flow of surface waters
 18 during the period of construction of an impoundment, including the initial filling of the
 19 impoundment, ~~or for farm ponds or farm impoundments constructed and managed for the~~
 20 ~~sole purpose of fish, wildlife, recreation, or other farm uses.~~ Prior to the initial
 21 construction and filling of an impoundment, a permit issued pursuant to this Code section
 22 shall be required for the use of such an impoundment for withdrawals greater than
 23 100,000 gallons per day.

24 (3) A permit application for the continued farm use from an impoundment or
 25 combination of several impoundments on one or more properties or fields in combination
 26 as a system of greater than 100,000 gallons per day must be submitted on or before July
 27 1, 2004, by any person who used such an impoundment on or before July 1, 2003, and
 28 desires to continue such use in the future. Such permit shall be issued by the director not
 29 later than July 1, 2005.

30 ~~(3)(4)(A)~~ Notwithstanding any other provision of this Code section to the contrary, a
 31 permit for the withdrawal or diversion of surface waters for farm uses shall be issued
 32 by the director to any person when the applicant submits an application which provides
 33 reasonable proof that the applicant's farm use of surface waters occurred prior to July
 34 1, 1988, and when any such application is submitted prior to July 1, 1991. If submitted
 35 prior to July 1, 1991, an application for a permit to be issued based upon farm uses of
 36 surface waters occurring prior to July 1, 1988, shall be granted for the withdrawal or
 37 diversion of surface waters at a rate of withdrawal or diversion equal to the greater of

1 the operating capacity in place for withdrawal or diversion on July 1, 1988, or, when
 2 measured in gallons per day on a monthly average for a calendar year, the greatest
 3 withdrawal or diversion capacity during the five-year period immediately preceding
 4 July 1, 1988. If submitted after July 1, 1991, or, regardless of when submitted, if it is
 5 based upon a withdrawal or diversion of surface waters for farm uses occurring or
 6 proposed to occur on or after July 1, 1988, an application shall be subject to evaluation
 7 and classification pursuant to subsections (e), (f), and (g) of this Code section, but a
 8 permit based upon such evaluation and classification ~~shall~~ may be issued to ensure the
 9 applicant's right to a reasonable use of such surface waters. Any permit issued pursuant
 10 to this ~~paragraph~~ subparagraph shall be conditioned upon the requirement that the
 11 permittee shall provide, on forms prescribed by the director, information relating to a
 12 general description of the lands and number of acres subject to irrigation and the
 13 permit; a description of the general type of irrigation system used; the source of
 14 withdrawal water such as river, stream, or impoundment; and pump information,
 15 including rated capacity, pump location, and power information. Permits issued under
 16 this ~~paragraph~~ subparagraph shall have no term and may be transferred or assigned to
 17 subsequent owners of the lands which are the subject of such permit; provided,
 18 however, that the division shall receive written notice of any such transfer or
 19 assignment. Any modification in the use or capacity conditions contained in the permit
 20 or in the lands which are the subject of such permit shall require the permittee to submit
 21 an application for review and approval by the director consistent with this Code section.
 22 (B) On or after July 1, 2003, the director may deny an application for a withdrawal
 23 permit for farm use or an increase in withdrawal from an existing permit for farm use
 24 based on the availability of water in the watershed or aquifer or if the applicant fails to
 25 demonstrate a need for the water. A maximum annual volume of water that the
 26 permittee may use shall be specified as a permit limit for any farm use permit issued
 27 after July 1, 2003. If use has not commenced within two years after an initial such
 28 permit has been issued, then the permit may be revoked in whole or in part. Periodic
 29 idling of use under a farm use permit due to silvicultural or agricultural rotations or
 30 implementation of Article 9 of this chapter, the 'Flint River Drought Protection Act,'
 31 shall not be cause for permit revocation.

32 (C) Nothing in this paragraph shall be construed as a repeal or modification of Code
 33 Section 12-5-46.

34 ~~(b) For purposes of this Code section, the term:~~

35 ~~(1) 'Director' means the director of the Environmental Protection Division of the~~
 36 ~~Department of Natural Resources, or his designee.~~

37 ~~(2) 'Diversion' means a turning aside or altering of the natural course of surface waters.~~

1 ~~(3) 'Farm uses' means irrigation of any land used for general farming, forage,~~
 2 ~~aquaculture, pasture, turf production, orchards, or tree and ornamental nurseries;~~
 3 ~~provisions of water supply for farm animals, poultry farming, or any other activity~~
 4 ~~conducted in the course of a farming operation. Farm uses shall also include the~~
 5 ~~processing of perishable agricultural products and the irrigation of recreational turf,~~
 6 ~~except in the Chattahoochee River watershed upstream from Peachtree Creek, where~~
 7 ~~irrigation of recreational turf shall not be considered a farm use.~~

8 ~~(4) 'Impoundment' means the storing or retaining of surface water by whatever method~~
 9 ~~or means.~~

10 ~~(5) 'Surface water(s) of the state' or 'surface water(s)' means any and all rivers, streams,~~
 11 ~~creeks, branches, lakes, reservoirs, ponds, drainage systems, springs producing in excess~~
 12 ~~of 100,000 gallons per day, and all other bodies of surface water, natural or artificial,~~
 13 ~~lying within or forming a part of the boundaries of the state which are not entirely~~
 14 ~~confined and retained completely upon the property of a single individual, partnership,~~
 15 ~~or corporation.~~

16 ~~(6) 'Withdrawal' means the taking away of surface water from its natural course.~~

17 (c) To obtain a permit pursuant to this Code section, the applicant must establish that the
 18 proposed withdrawal, diversion, or impoundment of surface waters is consistent with this
 19 article.

20 (d) All permit applications filed with the director under this Code section shall contain the
 21 name and address of the applicant or, in the case of a corporation, the address of its
 22 principal business office in this state; the date of filing; the source of the water supply; the
 23 quantity of water applied for; the use to be made of the water and any limitation thereon;
 24 the place of use; the location of the withdrawal, diversion, or impoundment; for those
 25 permits which indicate an increase in water usage, ~~except for permits solely for agricultural~~
 26 ~~use,~~ a water conservation plan approved by the director and prepared based on guidelines
 27 issued by the director; and such other information as the director may deem necessary;
 28 provided, however, that any required information already provided the director by the
 29 applicant in the context of prior dealings with the division, which information is still
 30 correct, may be incorporated into the application by adequate reference to same. For any
 31 permit solely for farm use, a water conservation plan prepared by the State Soil and Water
 32 Conservation Commission or by the federal Natural Resources Conservation Service shall
 33 be deemed in compliance with the plan requirement of this subsection. The director shall
 34 collect and disseminate such technical information as the director deems appropriate to
 35 assist applicants in the preparation of water conservation plans.

36 (e) Subject to subsection (g) of this Code section, the Board of Natural Resources shall by
 37 rule or regulation establish a reasonable system of classification for application in

1 situations involving competing uses, existing or proposed, for a supply of available surface
2 waters. Such classifications shall be based upon but not necessarily limited to the following
3 factors:

4 (1) The number of persons using the particular water source and the object, extent, and
5 necessity of their respective withdrawals, diversions, or impoundments;

6 (2) The nature and size of the water source;

7 (3) The physical and chemical nature of any impairment of the water source adversely
8 affecting its availability or fitness for other water uses;

9 (4) The probable severity and duration of such impairment under foreseeable conditions;

10 (5) The injury to public health, safety, or welfare which would result if such impairment
11 were not prevented or abated;

12 (6) The kinds of businesses or activities to which the various uses are related and the
13 economic consequences;

14 (7) The importance and necessity of the uses, including farm uses, claimed by permit
15 applicants and the extent of any injury or detriment caused or expected to be caused to
16 other water uses;

17 (8) Diversion from or reduction of flows in other watercourses;

18 (9) The prior investments of any person in lands, and plans for the usage of water in
19 connection with such lands which plans have been submitted to the director within a
20 reasonable time after July 1, 1977, or, if for farm uses, after July 1, 1988; provided,
21 however, that the granting of such permit shall not have unreasonably adverse effects
22 upon other water uses in the area, including potential as well as present use; and

23 (10) The varying circumstances of each case.

24 (f) In the event two or more competing applicants or users qualify equally under
25 subsection (e) of this Code section, the director is authorized to grant permits to applicants
26 or modify the existing permits of users for use of specified quantities of surface waters on
27 a prorated or other reasonable basis in those situations where such action is feasible;
28 provided, however, the director shall give preference to an existing use over an initial
29 application.

30 (g) The division shall take into consideration the extent to which any withdrawals,
31 diversions, or impoundments are reasonably necessary, in the judgment of the director, to
32 meet the applicant's needs and shall grant a permit which shall meet those reasonable
33 needs; provided, however, that the granting of such permit shall not have unreasonably
34 adverse effects upon other water uses in the area, including but not limited to public use,
35 farm use, and potential as well as present use; and provided, further, that the director shall
36 grant a permit to any permit applicant who on July 1, 1977, has outstanding indebtedness
37 in the form of revenue certificates or general obligation bonds which are being amortized

1 through the sale of surface water, the permitted quantity of which shall be at least in an
2 amount consistent with that quantity for which the revenue certificates or general
3 obligation bonds were issued.

4 (h) Except for applications filed pursuant to ~~paragraph (3) of subsection (a)~~ subparagraph
5 (b)(4)(A) of this Code section, permits may be granted for any period of time not less than
6 ten years, unless the applicant requests a shorter period of time, nor more than 50 years.
7 The director may base the duration of such permits on any reasonable system of
8 classification based upon but not necessarily limited to such factors as source of supply and
9 type of use. In evaluating any application for a permit for the use of water for a period of
10 25 years or more, the director shall evaluate the condition of the water supply to assure that
11 the supply is adequate to meet the multiple needs of the citizens of the state as can
12 reasonably be projected for the term of the permit and ensure that the issuance of such
13 permit is based upon a water development and conservation plan for the applicant or for
14 the region. Such water development and conservation plan for the applicant or for the
15 region shall promote the conservation and reuse of water within the state, guard against a
16 shortage of water within the state, promote the efficient use of the water resource, and be
17 consistent with the public welfare of the state. The board shall promulgate regulations for
18 implementation of this subsection, including provisions for review of such permits
19 periodically or upon a substantial reduction in average annual volume of the water resource
20 which adversely affects water supplies to determine that the permittee continues in
21 compliance with the conditions of the permit and that the plan continues to meet the overall
22 supply requirements for the term of the permit. In the event the director determines that a
23 regional plan is required in connection with any application for a permit for the use of
24 water for a period of 25 years or more, the division or a person or entity designated by the
25 division may develop such a plan. Such regional plan shall include water development,
26 conservation, and sustainable use and shall be based upon detailed scientific analysis of the
27 water source, the projected future condition of the resource, current demand, and estimated
28 future demands on the resource.

29 (i) A permittee may seek modification of any of the terms of an issued permit. The director
30 may approve the proposed modification if the permittee establishes that a change in
31 conditions has resulted in a need by the permittee of more water than is allowed under the
32 existing permit, or that the proposed modification would result in a more efficient
33 utilization of water than is possible under the existing permit, or that a proposed change in
34 conditions would result in a need by the permittee of more water than is allowed under the
35 existing permit. Any such modification shall be consistent with the health and safety of the
36 citizens of this state and with this article. In any administrative review proceeding resulting

1 from an action of the director under this subsection, the burden of proof in establishing that
2 the requisite criteria have been met shall be upon the person seeking such modification.

3 (j) A permittee may seek renewal of a permit issued pursuant to this Code section from the
4 director at any time within six months prior to the date of expiration of the permit. Except
5 as otherwise specified in this Code section, all permit renewal applications shall be treated
6 in the same manner as the initial permit application.

7 (k) The director may revoke, suspend, or modify a permit issued pursuant to this Code
8 section as follows:

9 (1) For any material false statement in an application for a permit to initiate, modify, or
10 continue a use of surface waters, or for any material false statement in any report or
11 statement of fact required of the permittee pursuant to this Code section or pursuant to
12 the conditions contained in a permit granted under this Code section, the director may
13 revoke the user's permit, in whole or in part, permanently or temporarily;

14 (2) For any willful violation of the conditions of a permit granted pursuant to this Code
15 section, the director may revoke the user's permit, in whole or in part, permanently or
16 temporarily;

17 (3) For violation of any provision of this Code section, the director may revoke the
18 permit, in whole or in part, for a period not to exceed one year;

19 (4) For nonuse of the water supply (for a significant portion thereof) allowed by the
20 permit for a period of two consecutive years or more, the director may revoke the permit
21 permanently, in whole or in part, unless the permittee can reasonably demonstrate that
22 ~~his~~ such nonuse was due to extreme hardship caused by factors beyond his or her control,
23 except that this paragraph shall not apply to farm use permits issued pursuant to
24 ~~paragraph (3) of subsection (a)~~ subparagraph (b)(4)(A) of this Code section after initial
25 use has commenced;

26 (5) The director may revoke a permit permanently, in whole or in part, with the written
27 consent of the permittee;

28 (6) The director may suspend or modify a permit, except farm use permits issued or
29 modified prior to July 1, 2003, if he or she should determine through inspection,
30 investigation, or otherwise that the quantity of water allowed under the permit is greater
31 than that needed by the permittee for the particular use upon which the application for
32 permit was based or would prevent other applicants from reasonable use of surface
33 waters, including farm uses;

34 (7) The director may suspend or modify a farm use permit if he or she should determine
35 through inspection, investigation, or otherwise that the quantity of water allowed under
36 the permit would prevent other applicants from reasonable use of surface waters for farm
37 use; ~~and~~

1 (8) Consistent with the considerations set forth in subsection (g) of this Code section, the
 2 director may revoke, suspend, or modify a permit for any other good cause consistent
 3 with the health and safety of the citizens of this state and with this article; and

4 (9) In the event of modification, suspension, or revocation of a permit, the director shall
 5 serve written notice of such action on the permit holder and shall set forth in such notice
 6 the reason for such action.

7 (1)(1) When there is a constraint on the issuance of new permits for use in any area of the
 8 state, an otherwise qualified new user in such area has made application, and any existing
 9 user or users in such area provide their written consent to revocation of their permits, in
 10 whole or in part, in sufficient amounts, the director may issue a new permit to the applicant.
 11 The new permittee must show in such application that there will be no reduction in the
 12 water available to users downstream. The director may impose permit requirements or
 13 other conditions on use as may be needed to prevent unreasonably adverse effects on third
 14 parties and the public interest. A new permit issued under this subsection shall be forfeited
 15 if use for the stated purpose has not commenced within two years after issuance.

16 (2) Participation under this subsection in the form of providing consent to revocation of
 17 all or part of a permit shall not prevent a person from using water in an amount that does
 18 not require application to the division, nor shall such consent to revocation prevent a person
 19 from applying for a new permit if the constraint on the issuance of new permits in the area
 20 is lifted.

21 ~~(f) Emergency period of water shortage:~~

22 (m)(1) Whenever it clearly appears to the director from specific facts shown by affidavits
 23 of residents of the affected area of this state that an emergency period of water shortage
 24 exists within such area, so as to place in jeopardy the health or safety of the citizens of
 25 such area or to threaten serious harm to the water resources of the area, he or she may by
 26 emergency order impose such restrictions on one or more permits previously issued
 27 pursuant to this Code section as may be necessary to protect adequately such citizens or
 28 water resources; provided, however, such order shall not be issued until an effort has been
 29 made to give written notice of the proposed action by certified mail or statutory overnight
 30 delivery to the permittee or permittees to be affected. Such written notice shall allow such
 31 permittee or permittees five days from the date of mailing of the notice to appear before
 32 the director in opposition to the proposed action. The director may impose such
 33 restrictions based upon any reasonable system of classification established by the Board
 34 of Natural Resources through rule or regulation. Such system of classification shall be
 35 based upon but not necessarily limited to those factors set forth in subsection (e) of this
 36 Code section;

1 (2) The director shall specify in such order any change in the conditions of the permit,
 2 any suspension of the permit, or any other restriction on withdrawal, diversion, or
 3 impoundment of surface waters for the duration of the emergency water shortage and
 4 shall serve same on the person by hand delivery or certified mail or statutory overnight
 5 delivery. Except as to farm uses, any such change, suspension, or other restriction shall
 6 be effective immediately upon receipt of such order by the permittee, his or her agent for
 7 service of process, or any agent or employee of the permittee who receives the
 8 notification at the permittee's principal place of business in the state. Any permittee,
 9 other than a farm use permittee, to whom such order is directed shall comply therewith
 10 immediately. Upon application to a hearing officer appointed by the Board of Natural
 11 Resources of this state, a permittee, including a farm use permittee, shall be afforded a
 12 hearing within 20 days of receipt of such notice by the hearing examiner in accordance
 13 with subsection (c) of Code Section 12-2-2. Farm use permittees may continue to make
 14 use of water to their permitted capacity during the appeal process, but failure to timely
 15 request a hearing in accordance with subsection (c) of Code Section 12-2-2 shall waive
 16 such right;

17 (3) During emergency periods of water shortage, the director shall give first priority to
 18 providing water for human consumption and second priority to farm use;

19 (4) The importance and necessity of water for industrial purposes are in no way modified
 20 or diminished by this Code section; and

21 (5) Upon expiration of the emergency period of water shortage, as determined by the
 22 director, the director shall immediately notify each affected permittee, in writing, of such
 23 expiration, and the permittees shall thereafter be authorized to operate under the permit
 24 as issued prior to the emergency period of water shortage.

25 ~~(m) Except for farm use permits issued pursuant to paragraph (3) of subsection (a) of~~

26 (n) For all permits, including without limitation farm use permits, issued under this Code
 27 section, whenever required to carry out the objectives of this Code section, including but
 28 not limited to determining whether or not any person is in violation of any provision of this
 29 Code section or any rule or regulation promulgated pursuant hereto to this Code section;
 30 encouraging or ensuring compliance with any provision of this Code section or any rule or
 31 regulation promulgated pursuant hereto to this Code section; determining whether or not
 32 any person is in violation of any permit condition; or establishing a data bank on the usage
 33 of surface waters in a particular area or areas of this state, the director may by order,
 34 permit, or otherwise, in writing, require any person holding a permit under this Code
 35 section, or any other person who the director reasonably believes is withdrawing, diverting,
 36 or impounding surface waters in violation of the permitting requirements of this Code
 37 section, to:

- 1 (1) Establish and maintain records;
- 2 (2) Make reports;
- 3 (3) Install, use, and maintain monitoring equipment or methods; and
- 4 (4) Provide such other information as the director may reasonably require.

5 Notwithstanding the foregoing provisions of this subsection, any demand for such
6 information by the director, which information has already been provided to the director
7 by such person in the context of prior dealings with the division, and which is still correct,
8 may be satisfied by adequate reference to same.

9 (o)(1) The State Soil and Water Conservation Commission shall have the duty of
10 implementing a program of measuring farm uses of water in order to obtain clear and
11 accurate information on the patterns and amounts of such use, which information is
12 essential to proper management of water resources by the state and useful to farmers for
13 improving the efficiency and effectiveness of their use of water, meeting the requirements
14 of subsection (n) of this Code section, and improving water conservation. Accordingly,
15 the State Soil and Water Conservation Commission shall on behalf of the state purchase,
16 install, operate, and maintain water-measuring devices for farm uses that are required by
17 this Code section to have permits. As used in this paragraph, the term 'operate' shall
18 include reading the water-measuring device, compiling data, and reporting findings.

19 (2) For purposes of this subsection, the State Soil and Water Conservation Commission:

20 (A) May conduct its duties with commission staff and may contract with other persons
21 to conduct any of its duties;

22 (B) May receive and use state appropriations, gifts, grants, or other sources of funding
23 to carry out its duties;

24 (C) In consultation with the director, shall develop a priority system for installation of
25 water-measuring devices for farm uses that have permits as of July 1, 2003. The
26 commission shall, provided that adequate funding is received, install and commence
27 operation and maintenance of water-measuring devices for all such farm uses by July
28 1, 2009;

29 (D) May charge any permittee the commission's reasonable costs for purchase and
30 installation of a water-measuring device for any farm use permit issued by the director
31 after July 1, 2003; however, for permit applications submitted to the division prior to
32 December 31, 2002, and for permits issued pursuant to paragraph (3) of subsection (b)
33 of this Code section, no charge shall be made for such costs; and

34 (E) Shall issue an annual progress report on the status of water-measuring device
35 installation.

1 (3) Any person who desires to commence a farm use for which a permit is issued after
 2 July 1, 2003, shall not commence such use prior to the installation of a water-measuring
 3 device by the commission.

4 (4) Subject to the provisions of subparagraph (C) of paragraph (2) of this subsection,
 5 after July 1, 2009, no one shall use water for a farm use required to have a permit under
 6 this Code section without having a water-measuring device in operation that has been
 7 installed by the commission.

8 (5) Employees or agents of the commission are authorized to enter upon private property
 9 at reasonable times to conduct the duties of the commission under this subsection.

10 (n)(p)(1) As used in this subsection, the term:

11 (A) 'Basin' means the Altamaha, Chattahoochee, Coosa, Flint, Ochlocknee, Ocmulgee,
 12 Oconee, Ogeechee, St. Mary's, Satilla, Savannah, Suwannee, Tallapoosa, or Tennessee
 13 River basin.

14 (B) 'Basin of origin' means the basin from which the withdrawal, diversion, or pumping
 15 of surface waters occurs.

16 (C) 'Critical needs' means temporary, short-term needs for water such as those due to
 17 equipment failure, source contamination, or severe drought affecting public health and
 18 safety.

19 (D) 'Interbasin transfer' means the withdrawal, diversion, or pumping of surface waters
 20 from a point within any basin of origin and the discharge of all or any part of that water
 21 into a different receiving basin by means of pipes, conduits, ditches, or canals;
 22 provided, however, interbasin transfer shall not include the following:

23 (i) Surface water transferred from one place to another in connection with mining,
 24 conveying, processing, beneficiation, sale, or shipment of any mineral, as such term
 25 is defined in paragraph (5) of Code Section 12-4-72, through whatever mode of
 26 transportation including but not limited to pipes, pipelines, conduits, ditches, or
 27 canals; and

28 (ii) Surface water contained in any intermediate or product shipped or transported for
 29 further processing or for sale.

30 (E) 'Intrabasin transfer' means the withdrawal, diversion, or pumping of surface waters
 31 from a point within a basin and discharge of all or any part of that water at a different
 32 location in the basin by means of pipes, ditches, conduits, or canals; provided, however,
 33 intrabasin transfer shall not include the following:

34 (i) Surface water transferred from one place to another in connection with mining,
 35 conveying, processing, beneficiation, sale, or shipment of any mineral, as such term
 36 is defined in paragraph (5) of Code Section 12-4-72, through whatever mode of

1 transportation including but not limited to pipes, pipelines, conduits, ditches, or
 2 canals; and

3 (ii) Surface water contained in any intermediate or product shipped or transported for
 4 further processing or for sale.

5 (F) 'Receiving basin' means the basin into which the discharge of all or any part of
 6 transferred water occurs.

7 (2) It is the policy of this state to protect reasonable needs of both the basin of origin and
 8 the receiving basin through the regulation of interbasin transfers. It is also the policy of
 9 this state to protect the basin of origin through regulation of intrabasin transfers.
 10 Accordingly, in the consideration of applications for permits which if granted on or
 11 after July 1, 2003, would authorize the withdrawal and transfer of surface waters across
 12 natural basins an interbasin or an intrabasin transfer, the director shall be bound by the
 13 following requirements:

14 (A) The director shall give due consideration to competing existing uses and
 15 applications for permits which would not involve interbasin transfers of surface waters
 16 and, subject to subsection (e) of this Code section, shall endeavor to allocate a
 17 reasonable supply of surface waters to such users and applicants;

18 (B) Any interbasin or intrabasin transfer that crosses more than two adjacent counties
 19 is prohibited, except for interbasin or intrabasin transfers that are part of a plan
 20 approved by the division pursuant to Article 10 of Chapter 5 of this title, the
 21 'Metropolitan North Georgia Water Planning District Act,' or except to satisfy critical
 22 needs;

23 (C) Any person who receives in one county an interbasin or intrabasin transfer of
 24 water which originated in a second county is prohibited from transferring any or all of
 25 such water by means of pipes, conduits, ditches, or canals into a third county, except
 26 for interbasin or intrabasin transfers that are part of a plan approved by the division
 27 pursuant to Article 10 of Chapter 5 of this title, the 'Metropolitan North Georgia Water
 28 Planning District Act,' or except to satisfy critical needs;

29 (D) Any person proposing to receive an interbasin transfer must be implementing a
 30 water conservation plan approved by the director prior to the receipt of any requested
 31 interbasin transfer;

32 (E) The director shall ensure that any interbasin transfer approved shall comply with
 33 the requirements of the Board of Natural Resources for instream flow protection in the
 34 basin of origin; and

35 (F) The director shall provide a press release regarding the proposed issuance of any
 36 permits authorizing such interbasin transfer of surface waters to newspapers of general
 37 circulation in all areas of the state which would be affected by such issuance. The press

1 release shall be provided at least ~~seven~~ 30 days before the issuance of ~~these~~ any such
 2 permits. If the director ~~should determine~~ determines that sufficient public interest
 3 warrants a public hearing on the issuance of ~~these~~ any such permits, he or she shall
 4 cause such a hearing to be held somewhere in the area affected prior to the issuance of
 5 ~~these~~ any such permits.

6 ~~(o)(q)(1)~~ (1) As used in this subsection, the term 'aggrieved or adversely affected' means the
 7 challenged action has caused or will cause a person injury in fact and the injury is to an
 8 interest within the zone of interests to be protected or regulated by statutes that the
 9 director is empowered to administer and enforce.

10 ~~(+)(2)~~ (2) Except as otherwise provided in subsection ~~(+)~~ (m) of this Code section for
 11 emergency orders, any person who is aggrieved or adversely affected by any order or
 12 action of the director pursuant to this Code section shall, upon petition within 30 days
 13 after the issuance of such order or the taking of such action, have a right to a hearing
 14 before an administrative law judge appointed by the Board of Natural Resources. The
 15 hearing before the administrative law judge shall be conducted in accordance with
 16 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' and the rules and
 17 regulations adopted by the board pursuant ~~thereto~~ to such chapter. Any administrative law
 18 judge so appointed by the board shall fully meet and qualify as to all applicable conflict
 19 of interest requirements provided for in Section 304(h)(2)(D) of the Federal Water
 20 Pollution Control Act of 1972, as amended, and the rules, regulations, and guidelines
 21 promulgated ~~thereunder~~ pursuant to such provision of federal law. The decision of the
 22 administrative law judge shall constitute the final decision of the board. Any party to the
 23 hearing, including the director, shall have the right of judicial review thereof in
 24 accordance with Chapter 13 of Title 50, including the right to seek judicial review in the
 25 superior court of the county of the applicant's or permittee's residence.

26 ~~(2)~~ (2) Persons are 'aggrieved or adversely affected' where the challenged action has caused
 27 ~~or will cause them injury in fact and where the injury is to an interest within the zone of~~
 28 ~~interests to be protected or regulated by the statutes that the director is empowered to~~
 29 ~~administer and enforce.~~

30 (3) In the event the director asserts in response to the petition before the administrative
 31 law judge that the petitioner is not aggrieved or adversely affected, the administrative law
 32 judge shall take evidence and hear arguments on this issue and thereafter make a ruling
 33 on this issue before continuing with the hearing. The burden of going forward with
 34 evidence on this issue shall rest with the petitioner."

35 PART III

36 SECTION 3-1.

1 Said chapter is further amended by striking Code Section 12-5-92, relating to definitions
2 relative to ground-water use generally, and inserting in lieu thereof the following:

3 "12-5-92.

4 As used in this part, the term:

5 (1) 'Aquifer' means a geologic formation, group of such formations, or a part of such a
6 formation that is water-bearing.

7 (2) 'Area of the state' means any municipality or county or portion thereof or other
8 substantial geographical area of the state as may be designated by the division.

9 (3) 'Consumptive use' means any use of water withdrawn from the ground other than a
10 'nonconsumptive use,' as defined in this part.

11 (4) 'Director' means the director, or his or her designee, of the Environmental Protection
12 Division of the Department of Natural Resources.

13 (5) 'Division' means the Environmental Protection Division of the Department of Natural
14 Resources.

15 ~~(5.1)~~(6) 'Farm uses' means irrigation of any land used for general farming, forage,
16 aquaculture, pasture, turf production, orchards, or tree and ~~ornamental~~ horticultural
17 nurseries; provisions of water supply for farm animals, poultry farming, or any other
18 activity conducted in the course of a farming operation. Farm uses shall also include the
19 processing of perishable agricultural products and the irrigation of recreational turf,
20 except in Chatham, Effingham, Bryan, and Glynn counties, where irrigation of
21 recreational turf shall not be considered a farm use.

22 ~~(6)~~(7) 'Ground water' means water of underground streams, channels, artesian basins,
23 reservoirs, lakes, and other water under the surface of the earth, whether public or private,
24 natural or artificial, which is contained within, flows through, or borders upon this state
25 or any portion thereof, including those portions of the Atlantic Ocean over which this
26 state has jurisdiction.

27 ~~(7)~~(8) 'Nonconsumptive use' means the use of water withdrawn from a ground-water
28 system or aquifer in such a manner that it is returned to the ground-water system or
29 aquifer from which it was withdrawn without substantial diminution in quantity or
30 substantial impairment in quality at or near the point from which it was withdrawn,
31 provided that in determining whether a use of ground water is nonconsumptive, the
32 division may take into consideration whether any material injury or detriment to other
33 water users of the area, by reason of reduction of water pressure in the aquifer or system,
34 has not been adequately compensated by the permit applicant who caused or substantially
35 contributed to such injury or detriment.

36 ~~(8)~~(9) 'Person' means any and all persons, including individuals, firms, partnerships,
37 associations, public or private institutions, municipalities or political subdivisions,

1 governmental agencies, or private or public corporations organized under the laws of this
2 state or any other state or country.

3 ~~(9)~~(10) 'Well' means any excavation that is cored, bored, drilled, jetted, dug, or otherwise
4 constructed for the purpose of locating, testing, or withdrawing ground water, or for the
5 purpose of evaluating, testing, developing, draining, or recharging any ground-water
6 reservoirs or aquifer, or any excavation that may control, divert, or otherwise cause the
7 movement of water from or into any aquifer, provided that this shall not include a well
8 constructed by an individual on land which is owned or leased by him or her, appurtenant
9 to a single-family dwelling, and intended for domestic use, including household purposes,
10 farm livestock, or gardens."

11 SECTION 3-2.

12 Said chapter is further amended by striking Code Section 12-5-96, relating to permits to
13 withdraw, obtain, or use ground water; water conservation plans; factors to be considered;
14 notice of official acts; administrative hearings; and judicial review, and inserting in lieu
15 thereof the following:

16 "12-5-96.

17 (a)(1) No person shall withdraw, obtain, or utilize ground waters in excess of 100,000
18 gallons per day, whether through a single point of withdrawal or through a combination
19 of a system of wells such as multiple wells on a given farm, field, or other use or under
20 a common purpose, design, or plan, for any purpose unless such person shall first obtain
21 a permit therefor from the division.

22 (2) Any person applying for a permit or a permit modification under this part which
23 indicates an increase in water usage, ~~except for permits for solely agricultural usage,~~ shall
24 also submit with such application a water conservation plan approved by the director and
25 based on guidelines issued by the director. For any permit solely for farm use, a water
26 conservation plan prepared by the State Soil and Water Conservation Commission or by
27 the federal Natural Resources Conservation Service shall be deemed in compliance with
28 such plan requirement. The director shall collect and disseminate such technical
29 information as the director deems appropriate to assist in the preparation of water
30 conservation plans.

31 (b) When sufficient evidence is provided by the applicant that the water withdrawn or used
32 from the ground is not consumptively used, a permit therefor shall be issued by the division
33 without a hearing and without the conditions provided in subsection (c) of this Code
34 section. Applications for such permits shall set forth such facts as the division shall deem
35 necessary to enable it to establish and maintain adequate records of all water uses.

1 (c) In all cases in which sufficient evidence of a nonconsumptive use is not presented by
 2 the applicant, the division shall follow the permit decision procedures established by Board
 3 of Natural Resources regulation, which procedures may include public notice and
 4 comment and the opportunity for a public hearing on a draft permit. The division shall then
 5 notify the applicant of the division's proposed action concerning such permit and shall
 6 transmit with such notice a copy of any permit it proposes to issue to the applicant;. The
 7 division may then issue a permit to the applicant, which permit will become final unless
 8 a request for a hearing is made within 30 days from the date of service of such notice. The
 9 division shall have the power:

10 (1) To grant such permit with such conditions as the division deems necessary to
 11 implement the regulations adopted pursuant to Code Section 12-5-95;

12 (2) To grant any temporary permit for such period of time as the division shall specify
 13 where conditions make such temporary permit essential, even though the action allowed
 14 by such permit may not be consistent with the regulations of the Board of Natural
 15 Resources;

16 (3) To modify or revoke any permit upon not less than 60 days' written notice to any
 17 person affected; or

18 (4) To deny such permit if the application therefor or the effect of the water use proposed
 19 or described therein upon the water resources of the area is found to be contrary to public
 20 interest. Any water user wishing to contest the proposed action shall be entitled to a
 21 hearing upon request therefor.

22 (d) In adopting any regulations pursuant to Code Section 12-5-95 and in considering
 23 permit applications, revocations, or modifications under this Code section, the Board of
 24 Natural Resources or the division shall consider:

25 (1) The number of persons using an aquifer and the object, extent, and necessity of their
 26 respective withdrawals or uses;

27 (2) The nature and size of the aquifer;

28 (3) The physical and chemical nature of any impairment of the aquifer adversely
 29 affecting its availability or fitness for other water uses, including public use;

30 (4) The probable severity and duration of such impairment under foreseeable conditions;

31 (5) The injury to public health, safety, or welfare which would result if such impairment
 32 were not prevented or abated;

33 (6) The kinds of businesses or activities to which the various uses are related and the
 34 economic consequences;

35 (7) The importance and necessity of the uses, including farm uses, claimed by permit
 36 applicants under this Code section, or of the water uses of the area under Code Section

1 12-5-95, and the extent of any injury or detriment caused or expected to be caused to
 2 other water uses, including public use;

3 (8) Diversion from or reduction of flows in other watercourses or aquifers;

4 (9) A regional water development conservation and sustainable use plan, where
 5 applicable; and

6 (10) Any other relevant factors.

7 (e) The division or a party designated by the division may develop a regional water
 8 development and conservation plan for the state's major aquifers or any portion thereof.
 9 Such plan shall include water development, conservation, and sustainable use and shall be
 10 based on detailed scientific analysis of the aquifer, the projected future condition of the
 11 aquifer, and current demand and estimated future demands on the aquifer. Such plan shall
 12 serve to promote the conservation and reuse of water within the state, guard against a
 13 shortage of water within the state and region, and promote the efficient use of the water
 14 resource and shall be consistent with the general welfare and public interest of the state as
 15 provided in Code Section 12-5-91. Upon adoption of a regional plan, all permits issued by
 16 the division shall be consistent with such plan. The term of any permit and all provisions
 17 of any permit for which an application for renewal is made prior to the completion of any
 18 regional plan shall be extended at least until the completion of such plan. Applications for
 19 new permits shall be subject to review by the division and the division may issue such
 20 permits as appropriate pending completion of a regional plan.

21 (f) The division shall give notice of all its official acts which have or are intended to have
 22 general application and effect to all persons on its mailing list on the date when such action
 23 is taken. It shall be the duty of the division to keep such a mailing list on which it shall
 24 record the name and address of each person who requests a listing thereon, together with
 25 the date of receipt of such request. Any person may, by written request to the division, ask
 26 to be permanently recorded on such a mailing list.

27 (g) Any hearing pursuant to this Code section, other than a hearing held as a part of a
 28 public comment period, shall be held in accordance with subsection (c) of Code Section
 29 12-2-2 and also, for the purposes of this part, shall be specifically subject to subsection (a)
 30 of Code Section 50-13-19.

31 (h)(1) As used in this subsection, the term:

32 (A) 'Basin' means the Altamaha, Chattahoochee, Coosa, Flint, Ochlocknee, Ocmulgee,
 33 Oconee, Ogeechee, St. Mary's, Satilla, Savannah, Suwannee, Tallapoosa, or Tennessee
 34 River basin.

35 (B) 'Basin of origin' means the basin from which the withdrawal, diversion, or pumping
 36 of ground water occurs.

1 (C) 'Critical needs' means temporary, short-term needs for water such as those due to
 2 equipment failure, source contamination, or severe drought affecting public health and
 3 safety.

4 (D) 'Interbasin transfer' means the withdrawal, diversion, or pumping of ground water
 5 from a point within or beneath any basin of origin and the discharge of all or any part
 6 of that water into a different receiving basin by means of pipes, conduits, ditches, or
 7 canals; provided, however, interbasin transfer shall not include the following:

8 (i) Ground water transferred from one place to another in connection with mining,
 9 conveying, processing, beneficiation, sale, or shipment of any mineral, as such term
 10 is defined in paragraph (5) of Code Section 12-4-72, through whatever mode of
 11 transportation including but not limited to pipes, pipelines, conduits, ditches, or
 12 canals; and

13 (ii) Ground water contained in any intermediate or product shipped or transported for
 14 further processing or for sale.

15 (E) 'Intrabasin transfer' means the withdrawal, diversion, or pumping of ground water
 16 from a point within a basin and discharge of all or any part of that water at a different
 17 location in the basin by means of pipes, ditches, conduits, or canals; provided, however,
 18 intrabasin transfer shall not include the following:

19 (i) Ground water transferred from one place to another in connection with mining,
 20 conveying, processing, beneficiation, sale, or shipment of any mineral, as such term
 21 is defined in paragraph (5) of Code Section 12-4-72, through whatever mode of
 22 transportation including but not limited to pipes, pipelines, conduits, ditches, or
 23 canals; and

24 (ii) Ground water contained in any intermediate or product shipped or transported for
 25 further processing or for sale.

26 (F) 'Receiving basin' means the basin into which the discharge of all or any part of
 27 transferred water occurs.

28 (2) It is the policy of this state to protect reasonable needs of both the basin of origin and
 29 the receiving basin through the regulation of interbasin transfers. It is also the policy of
 30 the state to protect the basin of origin through regulation of intrabasin transfers.
 31 Accordingly, in the consideration of applications for permits which if granted on or after
 32 July 1, 2003, would authorize an interbasin or intrabasin transfer, the director shall be
 33 bound by the following requirements:

34 (A) The director shall give due consideration to competing existing uses and
 35 applications for permits which would not involve interbasin transfers of ground water
 36 and, subject to subsection (d) of this Code section, shall endeavor to allocate a
 37 reasonable supply of ground water to such users and applicants;

1 (B) Any interbasin or intrabasin transfer that crosses more than two adjacent counties
 2 is prohibited, except to satisfy critical needs;

3 (C) Any person who receives in one county an interbasin transfer of water which
 4 originated in a second county, is prohibited from transferring any or all of such water
 5 by means of pipes, conduits, ditches, or canals into a third county, except to satisfy
 6 critical needs;

7 (D) Any person proposing to receive an interbasin transfer must be implementing a
 8 water conservation plan approved by the director prior to the receipt of any requested
 9 interbasin transfer;

10 (E) The director shall ensure that any interbasin transfer approved shall comply with
 11 the requirements of the Board of Natural Resources for ground water protection in the
 12 basin of origin; and

13 (F) The director shall provide a press release regarding the proposed issuance of any
 14 permits authorizing such interbasin transfer of ground water to newspapers of general
 15 circulation in all areas of the state which would be affected by such issuance. The press
 16 release shall be provided at least 30 days before the issuance of any such permits. If
 17 the director determines that sufficient public interest warrants a public hearing on the
 18 issuance of any such permits, he or she shall cause such a hearing to be held
 19 somewhere in the area affected prior to the issuance of any such permits.

20 ~~(h)~~(i)(1) As used in this subsection, the term 'aggrieved or adversely affected' means the
 21 challenged action has caused or will cause a person injury in fact and the injury is to an
 22 interest within the zone of interests to be protected or regulated by statutes that the
 23 director is empowered to administer and enforce.

24 (2) Except as otherwise provided in Code Section 12-5-102 for emergency orders, any
 25 person who is aggrieved or adversely affected by any order or action of the director
 26 pursuant to this Code section shall, upon petition within 30 days after the issuance of such
 27 order or the taking of such action, have a right to a hearing before an administrative law
 28 judge appointed by the Board of Natural Resources. The hearing before the
 29 administrative law judge shall be conducted in accordance with Chapter 13 of Title 50,
 30 the 'Georgia Administrative Procedure Act,' and the rules and regulations adopted by the
 31 board pursuant thereto ~~to such chapter~~. Any administrative law judge so appointed by the
 32 board shall fully meet and qualify as to all applicable conflict of interest requirements
 33 provided for in Section 304(h)(2)(D) of the Federal Water Pollution Control Act
 34 Amendments of 1972, as amended, and the rules, regulations, and guidelines promulgated
 35 ~~thereunder~~ pursuant to such provision of federal law. The decision of the administrative
 36 law judge shall constitute the final decision of the board. Any party to the hearing,
 37 including the director, shall have a right of judicial review thereof in accordance with

1 Chapter 13 of Title 50, including the right to seek judicial review in the superior court in
 2 the county of the applicant's or permittee's residence. For the purposes of this part, such
 3 review is also specifically subject to subsection (a) of Code Section 50-13-19.

4 ~~(2) Persons are 'aggrieved or adversely affected' where the challenged action has caused~~
 5 ~~or will cause them injury in fact and where the injury is to an interest within the zone of~~
 6 ~~interests to be protected or regulated by the statutes that the director is empowered to~~
 7 ~~administer and enforce. (3) In the event the director asserts in response to the petition~~
 8 before the administrative law judge that the petitioner is not aggrieved or adversely
 9 affected, the administrative law judge shall take evidence and hear arguments on this
 10 issue and thereafter make a ruling on this issue before continuing with the hearing. The
 11 burden of going forward with evidence on this issue shall rest with the petitioner."

12 SECTION 3-3.

13 Said chapter is further amended by striking Code Section 12-5-102, relating to emergency
 14 orders, hearings, and appeals, and inserting in lieu thereof the following:

15 "12-5-102.

16 (a) ~~After receipt of affidavits or other sworn statements from persons setting forth an~~
 17 ~~emergency situation requiring immediate action to protect the public health or welfare, and~~
 18 ~~after the division finds that such an emergency exists requiring immediate action to protect~~
 19 ~~the public health or welfare, the division may, without notice or hearing, issue an order~~
 20 ~~reciting the existence of such an emergency and requiring that such action be taken as the~~
 21 ~~division deems necessary to meet the emergency. Such order shall, except as to farm uses,~~
 22 ~~be effective immediately, and any person to whom such order is directed shall comply~~
 23 ~~therewith immediately but, on application to the division, shall be afforded a hearing within~~
 24 ~~five days from the day on which the order is issued. On the basis of such hearing, the~~
 25 ~~division shall continue such order in effect, revoke it, or modify it. Whenever it clearly~~
 26 ~~appears to the director from specific facts shown by affidavits of residents of the affected~~
 27 ~~area of this state that an emergency period of water shortage exists within such area so as~~
 28 ~~to place in jeopardy the health or safety of the citizens of such area or to threaten serious~~
 29 ~~harm to the water resources of the area, he or she may by emergency order impose such~~
 30 ~~restrictions on one or more permits previously issued pursuant to Code Section 12-5-96 as~~
 31 ~~may be necessary to protect adequately such citizens or water resources; provided,~~
 32 ~~however, such order shall not be issued until an effort has been made to give written notice~~
 33 ~~of the proposed action by certified mail or statutory overnight delivery to the permittee or~~
 34 ~~permittees to be affected. Such written notice shall allow such permittee or permittees five~~
 35 ~~days from the date of mailing of the notice to appear before the director in opposition to~~
 36 ~~the proposed action. The director may impose such restrictions based upon any reasonable~~

1 system of classification established by the Board of Natural Resources through rule or
 2 regulation. Such system of classification shall be based upon but not necessarily limited to
 3 those factors set forth in subsection (d) of Code Section 12-5-96.

4 ~~(b) Any appeal from such order shall be in accordance with subsection (c) of Code Section~~
 5 ~~12-2-2, and, for the purposes of this part, shall be specifically subject to subsection (a) of~~
 6 ~~Code Section 50-13-19, except that the initial hearing shall be within five days from the~~
 7 ~~date on which the order was issued. Farm use permittees may continue to make use of~~
 8 ~~water to their permitted capacity during the appeal process, but failure to timely request a~~
 9 ~~hearing shall waive such right. The director shall specify in such order any change in the~~
 10 ~~conditions of the permit, any suspension of the permit, or any other restriction on~~
 11 ~~withdrawing, obtaining, or utilizing ground water for the duration of the emergency water~~
 12 ~~shortage and shall serve same on the person by hand delivery or certified mail or statutory~~
 13 ~~overnight delivery. Except as to farm uses, any such change, suspension, or other~~
 14 ~~restriction shall be effective immediately upon receipt of such order by the permittee, his~~
 15 ~~or her agent for service of process, or any agent or employee of the permittee who receives~~
 16 ~~the notification at the permittee's principal place of business in the state. Any permittee,~~
 17 ~~other than a farm use permittee, to whom such order is directed shall comply therewith~~
 18 ~~immediately. Upon application to a hearing officer appointed by the Board of Natural~~
 19 ~~Resources of this state, a permittee, including a farm use permittee, shall be afforded a~~
 20 ~~hearing within 20 days of receipt of such notice by the hearing examiner in accordance~~
 21 ~~with subsection (c) of Code Section 12-2-2. Farm use permittees may continue to make use~~
 22 ~~of water to their permitted capacity during the appeal process, but failure to timely request~~
 23 ~~a hearing in accordance with subsection (c) of Code Section 12-2-2 shall waive such right.~~

24 (c) During emergency periods of water shortage, the director shall give first priority to
 25 providing water for human consumption and second priority to farm use.

26 (d) The importance and necessity of water for industrial purposes are in no way modified
 27 or diminished by this Code section.

28 (e) Upon expiration of the emergency period of water shortage as determined by the
 29 director, the director shall immediately notify each affected permittee in writing of such
 30 expiration, and the permittees shall thereafter be authorized to operate under the permits
 31 as issued prior to the emergency period of water shortage."

32 SECTION 3-4.

33 Said chapter is further amended by striking Code Section 12-5-105, relating to permits for
 34 farm uses, notice of transfer or modification in use or capacity, nonuse, suspension or
 35 modification, priority uses, and effect on existing common or statutory law, and inserting in
 36 lieu thereof the following:

H. B. 237 (SUB)

1 "12-5-105.

2 (a)(1) Notwithstanding any provisions of Code Section 12-5-95, 12-5-96, or 12-5-97 to
 3 the contrary, a permit to withdraw, obtain, or utilize ground waters for farm uses, as that
 4 term is defined by paragraph ~~(10)~~ (6) of Code Section 12-5-92, shall be issued by the
 5 director to any person when the applicant submits an application which provides
 6 reasonable proof that the applicant's farm use of ground water occurred prior to July 1,
 7 1988, and when such application is submitted prior to July 1, 1991. If submitted prior to
 8 July 1, 1991, an application for a permit to be issued based upon farm uses of ground
 9 water occurring prior to July 1, 1988, shall be granted for the withdrawal of ground water
 10 at a rate of withdrawal equal to the greater of the operating capacity in place for
 11 withdrawal on July 1, 1988, or, when measured in gallons per day on a monthly average
 12 for a calendar year, the greatest withdrawal capacity during the five-year period
 13 immediately preceding July 1, 1988. If submitted after July 1, 1991, or, regardless of
 14 when submitted, if it is based upon a withdrawal of ground water for farm uses occurring
 15 or proposed to occur on or after July 1, 1988, an application shall be subject to evaluation
 16 and classification pursuant to Code Sections 12-5-96 and 12-5-97, but a permit based
 17 upon such evaluation and classification ~~shall~~ may be issued to ensure the applicant's right
 18 to a reasonable use of such ground water. Any permit issued pursuant to this Code
 19 section shall be further conditioned upon the requirement that the permittee shall provide,
 20 on forms prescribed by the director, information relating to a general description of the
 21 lands and number of acres subject to irrigation and the permit; the name and address of
 22 the permittee; a description of the general type of irrigation system used; well
 23 construction; and pump information, including rated capacity, pump setting depth, and
 24 power information.

25 (2) On or after July 1, 2003, the director may deny an application for a withdrawal permit
 26 for farm use or an increase in withdrawal from an existing permit for farm use based on
 27 the availability of water in the watershed or aquifer or if the applicant fails to demonstrate
 28 a need for the water. A maximum annual volume of water that the permittee may use
 29 shall be specified as a permit limit for farm use permits issued on or after July 1, 2003.

30 (b) Notwithstanding any provisions of Code Section 12-5-95, 12-5-96, or 12-5-97 to the
 31 contrary, permits to withdraw, obtain, or utilize ground waters for farm uses, as that term
 32 is defined in paragraph ~~(10)~~ (6) of Code Section 12-5-92, whether for new withdrawals or
 33 under subsection (a) of this Code section, shall be governed as follows:

34 (1) A permit issued, modified, or amended after July 1, 2003, for farm uses shall have
 35 ~~no~~ annual reporting requirements, a specified maximum annual volume, and no term and
 36 may be transferred or assigned to subsequent owners of the lands which are the subject
 37 of such permit; provided, however, that the division shall receive written notice of any

1 such transfer or assignment, and any modification in the use or capacity conditions
 2 contained in the permit or in the lands which are the subject of such permit shall require
 3 the permittee to submit an application for review and approval by the director consistent
 4 with the requirements of this part;

5 (2) Permits for farm use, ~~after initial use has commenced, shall not~~ may be revoked, in
 6 whole or in part, for nonuse after initial use has commenced; if the use has not
 7 commenced within two years after issuance; or if upon demand by the director the
 8 permittee is no longer able to show a need for the water, regardless of whether such
 9 demand is made prior to or after the initial two year period. Periodic idling of use under
 10 a farm use permit due to silvicultural or agricultural rotations or implementation of
 11 Article 9 of this chapter, the 'Flint River Drought Protection Act,' shall not be cause for
 12 revocation;

13 (3) The director may suspend or modify a permit for farm use if he or she should
 14 determine through inspection, investigations, or otherwise that the quantity of water
 15 allowed would prevent other applicants from reasonable use of ground water beneath
 16 their property for farm use;

17 (4) During emergency periods of water shortage, the director shall give first priority to
 18 providing water for human consumption and second priority to farm use; and

19 (5) The importance and necessity of water for industrial purposes are in no way modified
 20 or diminished by this Code section.

21 (c)(1) When there is a constraint on the issuance of new permits for use in any area of the
 22 state, an otherwise qualified new user in such area has made application, and any existing
 23 user or users in such area provide their written consent to revocation of their permits, in
 24 whole or in part, in sufficient amounts, the director may issue a new permit to the applicant.
 25 The new permittee must show in such application that there will be no reduction in the
 26 water available to other users in the area. The board may provide through rules and the
 27 director may provide through permit requirements for other conditions on use as may be
 28 needed to prevent unreasonably adverse effects on third parties and the public interest. A
 29 new permit issued under this subsection shall be forfeited if use for the stated purpose has
 30 not commenced within two years after issuance.

31 (2) Participation under this subsection in the form of providing consent to revocation of
 32 all or part of a permit shall not prevent a person from using water in an amount that does
 33 not require application to the division, nor shall such consent to revocation prevent a person
 34 from applying for a new permit if the constraint on the issuance of new permits in the area
 35 is lifted.

36 (d)(1) The State Soil and Water Conservation Commission shall have the duty of
 37 implementing a program of measuring farm uses of water in order to obtain clear and

1 accurate information on the patterns and amounts of such use, which information is
 2 essential to proper management of water resources by the state and useful to farmers for
 3 improving the efficiency and effectiveness of their use of water, meeting the requirements
 4 of paragraph (1) of subsection (b) of this Code section, and improving water
 5 conservation. Accordingly, the State Soil and Water Conservation Commission shall on
 6 behalf of the state purchase, install, operate, and maintain water-measuring devices for
 7 farm uses that are required by this Code section to have permits. As used in this
 8 paragraph, the term 'operate' shall include reading the water-measuring device, compiling
 9 data, and reporting findings.

10 (2) For purposes of this subsection, the State Soil and Water Conservation Commission:

11 (A) May conduct its duties with commission staff and may contract with other persons
 12 to conduct any of its duties;

13 (B) May receive and use state appropriations, gifts, grants, or other sources of funding
 14 to carry out its duties;

15 (C) In consultation with the director, shall develop a priority system for installation of
 16 water-measuring devices for farm uses that have permits as of July 1, 2003. The
 17 commission shall, provided that adequate funding is received, install and commence
 18 operation and maintenance of water-measuring devices for all such farm uses by July
 19 1, 2009;

20 (D) May charge any permittee the commission's reasonable costs for purchase and
 21 installation of a water-measuring device for any farm use permit issued by the director
 22 after July 1, 2003; however, for permit applications submitted to the division prior to
 23 December 31, 2002, no charge shall be made for such costs; and

24 (E) Shall issue an annual progress report on the status of water-measuring device
 25 installation.

26 (3) Any person who desires to commence a farm use for which a permit is issued after
 27 July 1, 2003, shall not commence such use prior to the installation of a water-measuring
 28 device by the commission.

29 (4) Subject to the provisions of subparagraph (C) of paragraph (2) of this subsection,
 30 after July 1, 2009, no one shall use water for a farm use required to have a permit under
 31 this Code section without having a water-measuring device in operation that has been
 32 installed by the commission.

33 (5) Employees or agents of the commission are authorized to enter upon private property
 34 at reasonable times to conduct the duties of the commission under this subsection.

35 (e)(e) Nothing in this Code section shall be construed as a repeal or modification of Code
 36 Section 12-5-104."

PART IV
SECTION 4-1.

3 The General Assembly finds and declares that:

4 (1) A comprehensive state-wide water management plan for this state is needed and
5 should be developed;

6 (2) A new agency of government is not required for this purpose, but rather such plan
7 should be developed by the Environmental Protection Division of the Department of
8 Natural Resources;

9 (3) Such plan should support a structured yet flexible approach to regional water
10 planning and provide guidance and incentives for regional and local water planning
11 efforts;

12 (4) Regional water planning efforts of the Environmental Protection Division should be
13 coordinated with, and not supplant, the existing efforts of the State Soil and Water
14 Conservation Commission;

15 (5) Subject to appropriation in a general appropriations Act, funding for the development
16 of a proposed comprehensive state-wide water management plan should come from the
17 general revenues of the state treasury, since the creation of such plan will provide benefits
18 to all citizens of this state; and

19 (6) The director of the Environmental Protection Division should consult with the State
20 Soil and Water Conservation Commission and other experts to examine mechanisms and
21 alternatives for funding and implementation of the comprehensive state-wide water
22 management plan.

SECTION 4-2.

24 Chapter 5 of Title 12 of the Official Code of Georgia Annotated, relating to water resources,
25 is further amended by inserting a new Article 7A to read as follows:

"ARTICLE 7A

26 12-5-510.

27 This article shall be known and may be cited as the 'Comprehensive State-wide Water
28 Management Planning Act.'

29 12-5-511.

30 As used in this article, the term:

31 (1) 'Director' means the director of the Environmental Protection Division of the
32 Department of Natural Resources.
33

1 (2) 'Division' means the Environmental Protection Division of the Department of Natural
2 Resources.

3 (3) 'Committee' means the coordinating committee established under Code Section
4 12-5-516.

5 12-5-512.

6 The general welfare and public interest require that the water resources of this state be put
7 to beneficial use to the fullest extent to which they are capable, subject to reasonable
8 regulation in order to conserve such water resources, to protect natural systems, and to
9 provide and maintain conditions which are conducive to the development and use of such
10 water resources. Accordingly, as provided in this article, the division shall propose rules
11 or regulations for establishing a comprehensive state-wide water management plan which
12 plan shall set forth state-wide water policies and which shall guide river basin management
13 plans, regional water planning efforts of the division and the State Soil and Water
14 Conservation Commission, and local water plans.

15 12-5-513.

16 (a) The proposed rules or regulations to provide a comprehensive state-wide water
17 management plan shall be developed in accord with and contain the following policy
18 statement: 'Georgia manages water resources in a sustainable manner to support the state's
19 economy, to protect public health and natural systems, and to enhance the quality of life
20 for all citizens.'

21 (b) The following principles shall guide the work of the division in developing the
22 proposed rules and regulations to provide a comprehensive state-wide water management
23 plan:

24 (1) Effective water resources management protects public health and the safety and
25 welfare of Georgia's citizens;

26 (2) Water resources are to be managed in a sustainable manner so that current and future
27 generations have access to adequate supplies of quality water that support both human
28 needs and natural systems;

29 (3) All citizens have a stewardship responsibility to conserve and protect the water
30 resources of Georgia;

31 (4) Water management efforts must recognize that economic prosperity and
32 environmental quality are interdependent;

33 (5) Water quality and quantity and surface and ground water are interrelated and require
34 integrated planning as well as reasonable and efficient use;

1 (6) A comprehensive and accessible data base must be developed to provide sound
2 scientific and economic information upon which effective water management decisions
3 can be based;

4 (7) Water resources management encourages local and regional innovation,
5 implementation, adaptability, and responsibility for watershed and river basin
6 management;

7 (8) Sound water resources management involves meaningful participation, coordination,
8 and cooperation among interested and affected stakeholders and citizens as well as all
9 levels of governmental and other entities managing or utilizing water; and

10 (9) Periodic revisions of the comprehensive state-wide water management plan may be
11 required to accommodate new scientific and policy insights as well as changing social,
12 economic, cultural, and environmental factors.

13 (c) The proposed rules or regulations to provide a state-wide comprehensive water
14 management plan shall include as a part thereof a state-wide drought management plan to
15 establish procedures for the identification of conditions that indicate the approach and
16 potential onset of drought and for the use of water in a period of drought when such a
17 period is determined to exist based upon criteria specified in the state-wide drought
18 management plan.

19 12-5-514.

20 Subject to sufficient appropriation of funds, the director is authorized to employ on a
21 full-time or part-time basis such professional personnel and clerical or other employees as
22 may be necessary to discharge the additional duties delegated to the division by this article.

23 12-5-515.

24 (a) The division shall work in cooperation, coordination, and communication with the
25 coordinating committee created by Code Section 12-5-516 and any other state, local,
26 regional, or federal agency as appropriate to complete the proposed rules or regulations to
27 provide a comprehensive state-wide water management plan.

28 (b) The division shall complete the proposed comprehensive state-wide water management
29 rules and regulations and the director shall submit the final draft of such proposed plan to
30 the coordinating committee for review not later than three years after the effective date of
31 this article.

32 12-5-516.

33 (a) There shall be a coordinating committee composed of the following state officials who
34 shall serve ex officio as members of the committee: commissioner of natural resources;

1 director of the Environmental Protection Division of the Department of Natural Resources;
2 executive director of the State Soil and Water Conservation Commission, commissioner
3 of community affairs, commissioner of human resources, Attorney General, Commissioner
4 of Agriculture, and commissioner of industry, trade, and tourism. In addition, the
5 chairpersons of the Senate Natural Resources and the Environment Committee and the
6 House Committee on Natural Resources and Environment shall serve ex officio in an
7 advisory capacity to the committee to provide a legislative perspective in discussions and
8 to build institutional knowledge of the nuances of the state-wide comprehensive water
9 planning process in the General Assembly. The director shall serve as chairperson of the
10 committee.

11 (b) The committee shall:

12 (1) Ensure coordination, cooperation, and communication among state agencies and their
13 water related efforts in the development of any proposed rules or regulations to provide
14 a comprehensive state-wide water management plan;

15 (2) Review the final draft of the proposed rules or regulations to provide a
16 comprehensive state-wide water management plan upon submission by the director to
17 determine implications of the plan for responsibilities and authority of their respective
18 agencies and needs for implementing legislation; and

19 (3) Recommend such proposed rules and regulations at the regular session of the General
20 Assembly next occurring after such completion for consideration by the General
21 Assembly, along with any proposed amendments to this Code which may be necessary
22 for such purposes.

23 12-5-517.

24 (a) No rules or regulations establishing any comprehensive state-wide water management
25 plan prepared pursuant to this article shall have any force or effect unless approved by the
26 General Assembly by means of the adoption of a joint resolution ratifying such rules or
27 regulations.

28 (b) Subject to review by and recommendation of the coordinating committee in the same
29 manner provided by subsection (b) of Code Section 12-5-516, the division may
30 subsequently propose to amend or repeal any rules or regulations previously ratified by the
31 General Assembly pursuant to subsection (a) of this Code section; but no such proposed
32 amendment or repeal shall become effective unless such proposed amendment or repeal is
33 approved by the General Assembly by means of the adoption of a joint resolution ratifying
34 such amendment or repeal, except as otherwise provided by subsection (c) of this Code
35 section.

1 (c) If at any time after a joint resolution has been adopted as provided in subsection (a) of
2 this Code section and between the adjournment sine die of a regular session of the General
3 Assembly and prior to the convening date of the next regular session of the General
4 Assembly the director finds that an imminent peril to the public health, safety, or welfare,
5 requires adoption, amendment, or repeal of a rule or regulation for purposes of this article
6 and states in writing his or her reasons for that finding, the coordinating committee may
7 proceed to adopt an emergency rule or regulation for purposes of this article. Such rule or
8 regulation shall be effective upon such adoption and for not longer than the duration of the
9 emergency or until the twentieth legislative day of the next regular session of the General
10 Assembly, whichever first occurs."

11 **SECTION 4-3.**

12 Code Section 50-13-4 of the Official Code of Georgia Annotated, relating to procedural
13 requirements for adoption, amendment, or repeal of rules, emergency rules, limitations on
14 actions to contest rules, and legislative override, is amended by adding a new subsection to
15 read as follows:

16 "(i) This Code section shall not apply to rules or regulations establishing a comprehensive
17 state-wide water management plan, which rules or regulations shall be proposed, adopted,
18 amended, or repealed pursuant to Article 7A of Chapter 5 of Title 12."

19 **PART V**

20 **SECTION 5-1.**

21 All laws and parts of laws in conflict with this Act are repealed.