

## SENATE SUBSTITUTE TO HB 237:

## 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6 surface waters and monitoring, recording, and reporting water withdrawn by certain  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 change certain provisions relating to powers and duties of the Board of Natural Resources  
15 as to public water systems; to change certain provisions relating to powers and duties of the  
16 director as to public water systems generally; to provide for preparation, review, and  
17 submission of a proposed comprehensive state-wide water management plan; to provide for  
18 rules and regulations; to change certain provisions relating to water supply and water  
19 management plans for the Metropolitan North Georgia Water Planning District; to amend  
20 Article 2 of Chapter 2 of Title 46 of the Official Code of Georgia Annotated, relating to  
21 jurisdiction of the Public Service Commission, so as to subject the rates of certain water  
22 suppliers to regulation by such commission; to amend Title 50 of the Official Code of  
23 Georgia Annotated, relating to state government, so as to change certain provisions relating  
24 to procedural requirements for adoption, amendment, or repeal of rules, emergency rules,  
25 limitations on actions to contest rules, and legislative override; to change certain provisions  
26 relating to when public disclosure of records is not required and disclosure of exempting  
27 authority; to provide legislative findings and declarations; to repeal conflicting laws; and for  
28 other purposes.

1 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

2 **PART I**

3 **SECTION 1-1.**

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

7 "(7.1) To formulate such rules and regulations and to exercise such powers as are  
8 necessary to perform its duties under subsection (o) of Code Section 12-5-31 and  
9 subsection (c) of Code Section 12-5-105;"

10 **PART II**

11 **SECTION 2-1.**

12 Chapter 5 of Title 12 of the Official Code of Georgia Annotated, relating to water resources,  
13 is amended by striking Code Section 12-5-31, relating to permits for withdrawal, diversion,  
14 or impoundment of surface waters and monitoring, recording, and reporting water withdrawn  
15 by certain irrigation systems, and inserting in lieu thereof the following:

16 "12-5-31.

17 (a) As used in this Code section, the term:

18 (1) 'Director' means the director of the Environmental Protection Division of the  
19 Department of Natural Resources or his or her designee.

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

21 (3) 'Farm uses' means irrigation of any land used for general farming, forage,  
22 aquaculture, pasture, turf production, orchards, or tree and horticultural nurseries; or  
23 provisions of water supply for farm animals, poultry farming, or any other activity  
24 conducted in the course of a farming operation. Farm uses shall also include the  
25 processing of perishable agricultural products and the irrigation of recreational turf,  
26 except in the Chattahoochee River watershed upstream from Peachtree Creek where  
27 irrigation of recreational turf shall not be considered a farm use.

28 (4) 'Impoundment' means the storing or retaining of surface waters by whatever method  
29 or means.

30 (5) 'Surface waters of the state' or 'surface waters' means any and all rivers, streams,  
31 creeks, branches, lakes, reservoirs, ponds, drainage systems, springs producing in excess  
32 of 100,000 gallons per day, and all other bodies of surface water, natural or artificial,  
33 lying within or forming a part of the boundaries of the state which are not entirely

1 confined and retained completely upon the property of a single individual, partnership,  
 2 or corporation; provided, however, that surface waters of the state or surface waters does  
 3 not include waters of the Atlantic Ocean lying within or without or forming a part of the  
 4 boundaries of the state; and provided, further, that surface waters of the state or surface  
 5 waters does not include any pond for farm use which body of water is entirely confined  
 6 or retained completely upon the property of a single individual, partnership, or  
 7 corporation.

8 (6) 'Withdrawal' means the taking away of surface waters from their natural course.

9 ~~(a)~~(b)(1) No person shall make any withdrawal, diversion, or impoundment of any of the  
 10 surface waters of the state for whatever use without obtaining a permit from the director;  
 11 provided, however, that no permit shall be required for:

12 (A) Any such withdrawal or combination of several withdrawals on one or more  
 13 properties or fields in combination as a system which does not involve more than  
 14 100,000 gallons per day on a monthly average;

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

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

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

27 (E) Any recycled water for farm use.

28 (2) ~~No permit shall~~ A permit may be required for a reduction of flow of surface waters  
 29 during the period of construction of an impoundment, including the initial filling of the  
 30 impoundment, ~~or for farm ponds or farm impoundments constructed and managed for the~~  
 31 ~~sole purpose of fish, wildlife, recreation, or other farm uses.~~ Prior to the initial  
 32 construction and filling of an impoundment, a permit issued pursuant to this Code section  
 33 shall be required for the use of such an impoundment for withdrawals greater than  
 34 100,000 gallons per day; provided, however, that no permit shall be required for  
 35 construction and filling of an impoundment for farm use which body of water is entirely  
 36 confined or retained completely upon the property of a single individual, partnership, or  
 37 corporation.

1 (3) A permit application for the continued farm use from an impoundment or  
 2 combination of several impoundments on one or more properties or fields in combination  
 3 as a system of greater than 100,000 gallons per day must be submitted on or before July  
 4 1, 2004, by any person who used such an impoundment on or before July 1, 2003, and  
 5 desires to continue such use in the future; provided, however, that no permit shall be  
 6 required for continued use of an impoundment for farm use which body of water is  
 7 entirely confined or retained completely upon the property of a single individual,  
 8 partnership, or corporation. Such permit shall be issued by the director not later than July  
 9 1, 2005.

10 ~~(3)~~(4)(A) Notwithstanding any other provision of this Code section to the contrary, a  
 11 permit for the withdrawal or diversion of surface waters for farm uses shall be issued  
 12 by the director to any person when the applicant submits an application which provides  
 13 reasonable proof that the applicant's farm use of surface waters occurred prior to July  
 14 1, 1988, and when any such application is submitted prior to July 1, 1991. If submitted  
 15 prior to July 1, 1991, an application for a permit to be issued based upon farm uses of  
 16 surface waters occurring prior to July 1, 1988, shall be granted for the withdrawal or  
 17 diversion of surface waters at a rate of withdrawal or diversion equal to the greater of  
 18 the operating capacity in place for withdrawal or diversion on July 1, 1988, or, when  
 19 measured in gallons per day on a monthly average for a calendar year, the greatest  
 20 withdrawal or diversion capacity during the five-year period immediately preceding  
 21 July 1, 1988. If submitted after July 1, 1991, or, regardless of when submitted, if it is  
 22 based upon a withdrawal or diversion of surface waters for farm uses occurring or  
 23 proposed to occur on or after July 1, 1988, an application shall be subject to evaluation  
 24 and classification pursuant to subsections (e), (f), and (g) of this Code section, but a  
 25 permit based upon such evaluation and classification ~~shall~~ may be issued to ensure the  
 26 applicant's right to a reasonable use of such surface waters. Any permit issued pursuant  
 27 to this ~~paragraph~~ subparagraph shall be conditioned upon the requirement that the  
 28 permittee shall provide, on forms prescribed by the director, information relating to a  
 29 general description of the lands and number of acres subject to irrigation and the  
 30 permit; a description of the general type of irrigation system used; the source of  
 31 withdrawal water such as river, stream, or impoundment; and pump information,  
 32 including rated capacity, pump location, and power information. Permits issued under  
 33 this ~~paragraph~~ subparagraph shall have no term and may be transferred or assigned to  
 34 subsequent owners of the lands which are the subject of such permit; provided,  
 35 however, that the division shall receive written notice of any such transfer or  
 36 assignment. Any modification in the use or capacity conditions contained in the permit

1 or in the lands which are the subject of such permit shall require the permittee to submit  
2 an application for review and approval by the director consistent with this Code section.

3 (B) On or after July 1, 2003, the director may deny an application for a withdrawal  
4 permit for farm use or an increase in withdrawal from an existing permit for farm use  
5 based on the availability of water in the watershed or aquifer or if the applicant fails to  
6 demonstrate a need for the water. A maximum annual volume of water that the  
7 permittee may use shall be specified as a permit limit for any farm use permit issued  
8 after July 1, 2003. If use has not commenced within two years after an initial such  
9 permit has been issued, then the permit may be revoked in whole or in part. Periodic  
10 idling of use under a farm use permit due to silvicultural or agricultural rotations or  
11 implementation of Article 9 of this chapter, the 'Flint River Drought Protection Act,'  
12 shall not be cause for permit revocation.

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

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

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

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

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

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

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

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

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

1 (d) All permit applications filed with the director under this Code section shall contain the  
2 name and address of the applicant or, in the case of a corporation, the address of its  
3 principal business office in this state; the date of filing; the source of the water supply; the  
4 quantity of water applied for; the use to be made of the water and any limitation thereon;  
5 the place of use; the location of the withdrawal, diversion, or impoundment; for those  
6 permits which indicate an increase in water usage, ~~except for permits solely for agricultural~~  
7 ~~use~~, a water conservation plan approved by the director and prepared based on guidelines  
8 issued by the director; and such other information as the director may deem necessary;  
9 provided, however, that any required information already provided the director by the  
10 applicant in the context of prior dealings with the division, which information is still  
11 correct, may be incorporated into the application by adequate reference to same. For any  
12 permit solely for farm use, a water conservation plan prepared by the State Soil and Water  
13 Conservation Commission or by the federal Natural Resources Conservation Service shall  
14 be deemed in compliance with the plan requirement of this subsection. The director shall  
15 collect and disseminate such technical information as the director deems appropriate to  
16 assist applicants in the preparation of water conservation plans.

17 (e) Subject to subsection (g) of this Code section, the Board of Natural Resources shall by  
18 rule or regulation establish a reasonable system of classification for application in  
19 situations involving competing uses, existing or proposed, for a supply of available surface  
20 waters. Such classifications shall be based upon but not necessarily limited to the following  
21 factors:

- 22 (1) The number of persons using the particular water source and the object, extent, and  
23 necessity of their respective withdrawals, diversions, or impoundments;
- 24 (2) The nature and size of the water source;
- 25 (3) The physical and chemical nature of any impairment of the water source adversely  
26 affecting its availability or fitness for other water uses;
- 27 (4) The probable severity and duration of such impairment under foreseeable conditions;
- 28 (5) The injury to public health, safety, or welfare which would result if such impairment  
29 were not prevented or abated;
- 30 (6) The kinds of businesses or activities to which the various uses are related and the  
31 economic consequences;
- 32 (7) The importance and necessity of the uses, including farm uses, claimed by permit  
33 applicants and the extent of any injury or detriment caused or expected to be caused to  
34 other water uses;
- 35 (8) Diversion from or reduction of flows in other watercourses;
- 36 (9) The prior investments of any person in lands, and plans for the usage of water in  
37 connection with such lands which plans have been submitted to the director within a

1 reasonable time after July 1, 1977, or, if for farm uses, after July 1, 1988; provided,  
2 however, that the granting of such permit shall not have unreasonably adverse effects  
3 upon other water uses in the area, including potential as well as present use; and

4 (10) The varying circumstances of each case.

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

11 (g) The division shall take into consideration the extent to which any withdrawals,  
12 diversions, or impoundments are reasonably necessary, in the judgment of the director, to  
13 meet the applicant's needs and shall grant a permit which shall meet those reasonable  
14 needs; provided, however, that the granting of such permit shall not have unreasonably  
15 adverse effects upon other water uses in the area, including but not limited to public use,  
16 farm use, and potential as well as present use; and provided, further, that the director shall  
17 grant a permit to any permit applicant who on July 1, 1977, has outstanding indebtedness  
18 in the form of revenue certificates or general obligation bonds which are being amortized  
19 through the sale of surface water, the permitted quantity of which shall be at least in an  
20 amount consistent with that quantity for which the revenue certificates or general  
21 obligation bonds were issued.

22 (h) Except for applications filed pursuant to ~~paragraph (3) of subsection (a)~~ subparagraph  
23 (b)(4)(A) of this Code section, permits may be granted for any period of time not less than  
24 ten years, unless the applicant requests a shorter period of time, nor more than 50 years.  
25 The director may base the duration of such permits on any reasonable system of  
26 classification based upon but not necessarily limited to such factors as source of supply and  
27 type of use. In evaluating any application for a permit for the use of water for a period of  
28 25 years or more, the director shall evaluate the condition of the water supply to assure that  
29 the supply is adequate to meet the multiple needs of the citizens of the state as can  
30 reasonably be projected for the term of the permit and ensure that the issuance of such  
31 permit is based upon a water development and conservation plan for the applicant or for  
32 the region. Such water development and conservation plan for the applicant or for the  
33 region shall promote the conservation and reuse of water within the state, guard against a  
34 shortage of water within the state, promote the efficient use of the water resource, and be  
35 consistent with the public welfare of the state. The board shall promulgate regulations for  
36 implementation of this subsection, including provisions for review of such permits  
37 periodically or upon a substantial reduction in average annual volume of the water resource

1 which adversely affects water supplies to determine that the permittee continues in  
2 compliance with the conditions of the permit and that the plan continues to meet the overall  
3 supply requirements for the term of the permit. In the event the director determines that a  
4 regional plan is required in connection with any application for a permit for the use of  
5 water for a period of 25 years or more, the division or a person or entity designated by the  
6 division may develop such a plan. Such regional plan shall include water development,  
7 conservation, and sustainable use and shall be based upon detailed scientific analysis of the  
8 water source, the projected future condition of the resource, current demand, and estimated  
9 future demands on the resource.

10 (i) A permittee may seek modification of any of the terms of an issued permit. The director  
11 may approve the proposed modification if the permittee establishes that a change in  
12 conditions has resulted in a need by the permittee of more water than is allowed under the  
13 existing permit, or that the proposed modification would result in a more efficient  
14 utilization of water than is possible under the existing permit, or that a proposed change in  
15 conditions would result in a need by the permittee of more water than is allowed under the  
16 existing permit. Any such modification shall be consistent with the health and safety of the  
17 citizens of this state and with this article. In any administrative review proceeding resulting  
18 from an action of the director under this subsection, the burden of proof in establishing that  
19 the requisite criteria have been met shall be upon the person seeking such modification.

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

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

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

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

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

36 (4) For nonuse of the water supply (or a significant portion thereof) allowed by the  
37 permit for a period of two consecutive years or more, the director may revoke the permit

1 permanently, in whole or in part, unless the permittee can reasonably demonstrate that  
 2 ~~his~~ such nonuse was due to extreme hardship caused by factors beyond his or her control,  
 3 except that this paragraph shall not apply to farm use permits issued pursuant to  
 4 ~~paragraph (3) of subsection (a)~~ subparagraph (b)(4)(A) of this Code section after initial  
 5 use has commenced;

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

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

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

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

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

24 (l) Permits issued under this Code section shall not be transferable except as provided in  
 25 subparagraph (b)(4)(A) of this Code section.

26 ~~(l) Emergency period of water shortage:~~

27 (m)(1) Whenever it clearly appears to the director from specific facts shown by affidavits  
 28 of residents of the affected area of this state that an emergency period of water shortage  
 29 exists within such area, so as to place in jeopardy the health or safety of the citizens of  
 30 such area or to threaten serious harm to the water resources of the area, he or she may by  
 31 emergency order impose such restrictions on one or more permits previously issued  
 32 pursuant to this Code section as may be necessary to protect adequately such citizens or  
 33 water resources; provided, however, such order shall not be issued until an effort has been  
 34 made to give written notice of the proposed action by certified mail or statutory overnight  
 35 delivery to the permittee or permittees to be affected. Such written notice shall allow such  
 36 permittee or permittees five days from the date of mailing of the notice to appear before  
 37 the director in opposition to the proposed action. The director may impose such

1 restrictions based upon any reasonable system of classification established by the Board  
 2 of Natural Resources through rule or regulation. Such system of classification shall be  
 3 based upon but not necessarily limited to those factors set forth in subsection (e) of this  
 4 Code section;

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

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

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

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

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

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

1 permit, or otherwise, in writing, require any person holding a permit under this Code  
 2 section, or any other person who the director reasonably believes is withdrawing, diverting,  
 3 or impounding surface waters in violation of the permitting requirements of this Code  
 4 section, to:

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

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

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

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

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

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

28 (C) In consultation with the director, shall develop a priority system for installation of  
 29 water-measuring devices for farm uses that have permits as of July 1, 2003. The  
 30 commission shall, provided that adequate funding is received, install and commence  
 31 operation and maintenance of water-measuring devices for all such farm uses by July  
 32 1, 2009; provided, however, that the commission shall not install a water-measuring  
 33 device on any irrigation system for such a farm use if such irrigation system is equipped  
 34 with a meter as of July 1, 2003, and such meter is determined by the commission to be  
 35 properly installed and operable, but any subsequent replacement or maintenance of such  
 36 an irrigation system that necessitates replacement of such meter shall necessitate  
 37 installation of a water-measuring device by the commission;

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

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

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

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

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

17 (6) Any reports of amounts of use for recreational purposes under this Code section shall  
18 be compiled separately from amounts reported for all other farm uses.

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

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

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

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

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

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

1 (ii) Surface water contained in any intermediate or product shipped or transported for  
 2 further processing or for sale;

3 (iii) Transfers of water that are part of a plan for the Metropolitan North Georgia  
 4 Water Planning District approved under subsection (a) of Code Section 12-5-584; and

5 (iv) Transfers of water from a public water system supply reservoir for which a  
 6 federal permit authorizing construction was issued prior to July 1, 2003, and pursuant  
 7 to the terms of an intergovernmental agreement entered into prior to such date.

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

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

17 (ii) Surface water contained in any intermediate or product shipped or transported for  
 18 further processing or for sale;

19 (iii) Transfers of water that are part of a plan for the Metropolitan North Georgia  
 20 Water Planning District approved under subsection (a) of Code Section 12-5-584; and

21 (iv) Transfers of water from a public water system supply reservoir for which a  
 22 federal permit authorizing construction was issued prior to July 1, 2003, and pursuant  
 23 to the terms of an intergovernmental agreement entered into prior to such date.

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

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

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

1 (B) Any intrabasin transfer that crosses more than three adjacent counties or any  
 2 interbasin transfer that leaves the county of withdrawal is prohibited, except to satisfy  
 3 critical needs or to provide surface water within the lower Savannah and lower  
 4 Ogeechee river basins within the 24 coastal counties identified in the division's April  
 5 23, 1997, 'Interim Strategy for Managing Salt Water Intrusion in the Upper Floridan  
 6 Aquifer of Southeast Georgia':

7 ~~(2)~~(C) Any person who receives in one county an intrabasin transfer of water which  
 8 originated in a second county may transfer any and all of such water by means of pipes,  
 9 conduits, ditches, or canals into a third county but no further, except to satisfy critical  
 10 needs;

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

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

17 (F) The director shall provide a press release regarding the proposed issuance of all any  
 18 permits authorizing such interbasin transfer of surface waters to newspapers of general  
 19 circulation in all areas of the state which would be affected by such issuance. The press  
 20 release shall be provided at least ~~seven~~ 30 days before the issuance of ~~these~~ any such  
 21 permits. If the director ~~should determine~~ determines that sufficient public interest  
 22 warrants a public hearing on the issuance of ~~these~~ any such permits, he or she shall  
 23 cause such a hearing to be held somewhere in the area affected prior to the issuance of  
 24 ~~these~~ any such permits.

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

29 ~~(t)~~(2) Except as otherwise provided in subsection ~~(t)~~ (m) of this Code section for  
 30 emergency orders, any person who is aggrieved or adversely affected by any order or  
 31 action of the director pursuant to this Code section shall, upon petition within 30 days  
 32 after the issuance of such order or the taking of such action, have a right to a hearing  
 33 before an administrative law judge appointed by the Board of Natural Resources. The  
 34 hearing before the administrative law judge shall be conducted in accordance with  
 35 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' and the rules and  
 36 regulations adopted by the board pursuant ~~thereto~~ to such chapter. Any administrative law  
 37 judge so appointed by the board shall fully meet and qualify as to all applicable conflict

1 of interest requirements provided for in Section 304(h)(2)(D) of the Federal Water  
 2 Pollution Control Act of 1972, as amended, and the rules, regulations, and guidelines  
 3 promulgated ~~thereunder~~ pursuant to such provision of federal law. The decision of the  
 4 administrative law judge shall constitute the final decision of the board. Any party to the  
 5 hearing, including the director, shall have the right of judicial review thereof in  
 6 accordance with Chapter 13 of Title 50, including the right to seek judicial review in the  
 7 superior court of the county of the applicant's or permittee's residence.

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

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

### 17 PART III

#### 18 SECTION 3-1.

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

21 "12-5-92.

22 As used in this part, the term:

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

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

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

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

31 (5) 'Division' means the Environmental Protection Division of the Department of Natural  
 32 Resources.

33 ~~(5.1)~~(6) 'Farm uses' means irrigation of any land used for general farming, forage,  
 34 aquaculture, pasture, turf production, orchards, or tree and ~~ornamental~~ horticultural  
 35 nurseries; provisions of water supply for farm animals, poultry farming, or any other

1 activity conducted in the course of a farming operation. Farm uses shall also include the  
 2 processing of perishable agricultural products and the irrigation of recreational turf,  
 3 except in Chatham, Effingham, Bryan, and Glynn counties, where irrigation of  
 4 recreational turf shall not be considered a farm use.

5 ~~(6)~~(7) 'Ground water' means water of underground streams, channels, artesian basins,  
 6 reservoirs, lakes, and other water under the surface of the earth, whether public or private,  
 7 natural or artificial, which is contained within, flows through, or borders upon this state  
 8 or any portion thereof, including those portions of the Atlantic Ocean over which this  
 9 state has jurisdiction.

10 ~~(7)~~(8) 'Nonconsumptive use' means the use of water withdrawn from a ground-water  
 11 system or aquifer in such a manner that it is returned to the ground-water system or  
 12 aquifer from which it was withdrawn without substantial diminution in quantity or  
 13 substantial impairment in quality at or near the point from which it was withdrawn,  
 14 provided that in determining whether a use of ground water is nonconsumptive, the  
 15 division may take into consideration whether any material injury or detriment to other  
 16 water users of the area, by reason of reduction of water pressure in the aquifer or system,  
 17 has not been adequately compensated by the permit applicant who caused or substantially  
 18 contributed to such injury or detriment.

19 ~~(8)~~(9) 'Person' means any and all persons, including individuals, firms, partnerships,  
 20 associations, public or private institutions, municipalities or political subdivisions,  
 21 governmental agencies, or private or public corporations organized under the laws of this  
 22 state or any other state or country.

23 ~~(9)~~(10) 'Well' means any excavation that is cored, bored, drilled, jetted, dug, or otherwise  
 24 constructed for the purpose of locating, testing, or withdrawing ground water, or for the  
 25 purpose of evaluating, testing, developing, draining, or recharging any ground-water  
 26 reservoirs or aquifer, or any excavation that may control, divert, or otherwise cause the  
 27 movement of water from or into any aquifer, provided that this shall not include a well  
 28 constructed by an individual on land which is owned or leased by him or her, appurtenant  
 29 to a single-family dwelling, and intended for domestic use, including household purposes,  
 30 farm livestock, or gardens."

### 31 SECTION 3-2.

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

1 "12-5-96.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 (7) The importance and necessity of the uses, including farm uses, claimed by permit  
19 applicants under this Code section, or of the water uses of the area under Code Section  
20 12-5-95, and the extent of any injury or detriment caused or expected to be caused to  
21 other water uses, including public use;

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

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

25 (10) Any other relevant factors.

26 (e) The division or a party designated by the division may develop a regional water  
27 development and conservation plan for the state's major aquifers or any portion thereof.  
28 Such plan shall include water development, conservation, and sustainable use and shall be  
29 based on detailed scientific analysis of the aquifer, the projected future condition of the  
30 aquifer, and current demand and estimated future demands on the aquifer. Such plan shall  
31 serve to promote the conservation and reuse of water within the state, guard against a  
32 shortage of water within the state and region, and promote the efficient use of the water  
33 resource and shall be consistent with the general welfare and public interest of the state as  
34 provided in Code Section 12-5-91. Upon adoption of a regional plan, all permits issued by  
35 the division shall be consistent with such plan. The term of any permit and all provisions  
36 of any permit for which an application for renewal is made prior to the completion of any  
37 regional plan shall be extended at least until the completion of such plan. Applications for

1 new permits shall be subject to review by the division and the division may issue such  
2 permits as appropriate pending completion of a regional plan.

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

9 (g) Any hearing pursuant to this Code section, other than a hearing held as a part of a  
10 public comment period, shall be held in accordance with subsection (c) of Code Section  
11 12-2-2 and also, for the purposes of this part, shall be specifically subject to subsection (a)  
12 of Code Section 50-13-19.

13 (h) Permits issued under this part shall not be transferable except as provided in  
14 paragraph (1) of subsection (b) of Code Section 12-5-105.

15 (i)(1) As used in this subsection, the term:

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

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

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

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

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

33 (i.1) Waters taken from the Atlantic Ocean for purposes of desalination;

34 (ii) Ground water contained in any intermediate or product shipped or transported for  
35 further processing or for sale;

36 (iii) Transfers of water that are part of a plan for the Metropolitan North Georgia  
37 Water Planning District approved under subsection (a) of Code Section 12-5-584; and

1 (iv) Transfers of ground water within the lower Savannah and lower Ogeechee river  
 2 basins within the 24 coastal counties identified in the division's April 23, 1997,  
 3 'Interim Strategy for Managing Salt Water Intrusion in the Upper Floridan Aquifer of  
 4 Southeast Georgia.'

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

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

14 (i.1) Waters taken from the Atlantic Ocean for purposes of desalination;

15 (ii) Ground water contained in any intermediate or product shipped or transported for  
 16 further processing or for sale; and

17 (iii) Transfers of water that are part of a plan for the Metropolitan North Georgia  
 18 Water Planning District approved under subsection (a) of Code Section 12-5-584.

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

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

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

31 (B) Any intrabasin transfer that crosses more than three adjacent counties or any  
 32 interbasin transfer that leaves the county of withdrawal is prohibited, except to satisfy  
 33 critical needs;

34 (C) Any person who receives in one county an intrabasin transfer of water which  
 35 originated in a second county may transfer any or all of such water by means of pipes,  
 36 conduits, ditches, or canals into a third county but no further, except to satisfy critical  
 37 needs;

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

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

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

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

18 (2) Except as otherwise provided in Code Section 12-5-102 for emergency orders, any  
 19 person who is aggrieved or adversely affected by any order or action of the director  
 20 pursuant to this Code section shall, upon petition within 30 days after the issuance of such  
 21 order or the taking of such action, have a right to a hearing before an administrative law  
 22 judge appointed by the Board of Natural Resources. The hearing before the  
 23 administrative law judge shall be conducted in accordance with Chapter 13 of Title 50,  
 24 the 'Georgia Administrative Procedure Act,' and the rules and regulations adopted by the  
 25 board pursuant thereto to such chapter. Any administrative law judge so appointed by the  
 26 board shall fully meet and qualify as to all applicable conflict of interest requirements  
 27 provided for in Section 304(h)(2)(D) of the Federal Water Pollution Control Act  
 28 Amendments of 1972, as amended, and the rules, regulations, and guidelines promulgated  
 29 thereunder pursuant to such provision of federal law. The decision of the administrative  
 30 law judge shall constitute the final decision of the board. Any party to the hearing,  
 31 including the director, shall have a right of judicial review thereof in accordance with  
 32 Chapter 13 of Title 50, including the right to seek judicial review in the superior court in  
 33 the county of the applicant's or permittee's residence. For the purposes of this part, such  
 34 review is also specifically subject to subsection (a) of Code Section 50-13-19.

35 ~~(2) Persons are 'aggrieved or adversely affected' where the challenged action has caused~~  
 36 ~~or will cause them injury in fact and where the injury is to an interest within the zone of~~

1 ~~interests to be protected or regulated by the statutes that the director is empowered to~~  
 2 ~~administer and enforce.~~

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

### 8 SECTION 3-3.

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

11 "12-5-102.

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

1 (b) ~~Any appeal from such order shall be in accordance with subsection (c) of Code Section~~  
 2 ~~12-2-2, and, for the purposes of this part, shall be specifically subject to subsection (a) of~~  
 3 ~~Code Section 50-13-19, except that the initial hearing shall be within five days from the~~  
 4 ~~date on which the order was issued. Farm use permittees may continue to make use of~~  
 5 ~~water to their permitted capacity during the appeal process, but failure to timely request a~~  
 6 ~~hearing shall waive such right. The director shall specify in such order any change in the~~  
 7 ~~conditions of the permit, any suspension of the permit, or any other restriction on~~  
 8 ~~withdrawing, obtaining, or utilizing ground water for the duration of the emergency water~~  
 9 ~~shortage and shall serve same on the person by hand delivery or certified mail or statutory~~  
 10 ~~overnight delivery. Except as to farm uses, any such change, suspension, or other~~  
 11 ~~restriction shall be effective immediately upon receipt of such order by the permittee, his~~  
 12 ~~or her agent for service of process, or any agent or employee of the permittee who receives~~  
 13 ~~the notification at the permittee's principal place of business in the state. Any permittee,~~  
 14 ~~other than a farm use permittee, to whom such order is directed shall comply therewith~~  
 15 ~~immediately. Upon application to a hearing officer appointed by the Board of Natural~~  
 16 ~~Resources of this state, a permittee, including a farm use permittee, shall be afforded a~~  
 17 ~~hearing within 20 days of receipt of such notice by the hearing examiner in accordance~~  
 18 ~~with subsection (c) of Code Section 12-2-2. Farm use permittees may continue to make use~~  
 19 ~~of water to their permitted capacity during the appeal process, but failure to timely request~~  
 20 ~~a hearing in accordance with subsection (c) of Code Section 12-2-2 shall waive such right.~~  
 21 (c) During emergency periods of water shortage, the director shall give first priority to  
 22 providing water for human consumption and second priority to farm use.  
 23 (d) The importance and necessity of water for industrial purposes are in no way modified  
 24 or diminished by this Code section.  
 25 (e) Upon expiration of the emergency period of water shortage as determined by the  
 26 director, the director shall immediately notify each affected permittee in writing of such  
 27 expiration, and the permittees shall thereafter be authorized to operate under the permits  
 28 as issued prior to the emergency period of water shortage."

#### 29 SECTION 3-4.

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

34 "12-5-105.

35 (a)(1) Notwithstanding any provisions of Code Section 12-5-95, 12-5-96, or 12-5-97 to  
 36 the contrary, a permit to withdraw, obtain, or utilize ground waters for farm uses, as that

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

22 (2) 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 permittee  
 26 may use shall be specified as a permit limit for farm use permits issued on or after July  
 27 1, 2003.

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

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

1 the permittee to submit an application for review and approval by the director consistent  
2 with the requirements of this part;

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

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

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

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

19 (c)(1) The State Soil and Water Conservation Commission shall have the duty of  
20 implementing a program of measuring farm uses of water in order to obtain clear and  
21 accurate information on the patterns and amounts of such use, which information is  
22 essential to proper management of water resources by the state and useful to farmers for  
23 improving the efficiency and effectiveness of their use of water, meeting the requirements  
24 of paragraph (1) of subsection (b) of this Code section, and improving water  
25 conservation. Accordingly, the State Soil and Water Conservation Commission shall on  
26 behalf of the state purchase, install, operate, and maintain water-measuring devices for  
27 farm uses that are required by this Code section to have permits. As used in this  
28 paragraph, the term 'operate' shall include reading the water-measuring device, compiling  
29 data, and reporting findings.

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

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

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

35 (C) In consultation with the director, shall develop a priority system for installation of  
36 water-measuring devices for farm uses that have permits as of July 1, 2003. The  
37 commission shall, provided that adequate funding is received, install and commence

operation and maintenance of water-measuring devices for all such farm uses by July 1, 2009; provided, however, that the commission shall not install a water-measuring device on any irrigation system for such a farm use if such irrigation system is equipped with a meter as of July 1, 2003, and such meter is determined by the commission to be properly installed and operable, but any subsequent replacement or maintenance of such an irrigation system that necessitates replacement of such meter shall necessitate installation of a water-measuring device by the commission;

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

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

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

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

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

(6) Any reports of amounts of use for recreational purposes under this part shall be compiled separately from amounts reported for all other farm uses.

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

#### PART IV SECTION 4-1.

Said chapter is further amended in subsection (a) of Code Section 12-5-174, relating to powers and duties of the Board of Natural Resources as to public water systems, by striking the period at the end of paragraph (4) and inserting "; and" in lieu thereof and adding a new paragraph (5) to read as follows:

"(5) Establish by rule or regulation such policies, requirements, or standards as are necessary and appropriate governing the installation and operation of water-measuring devices on individual service connections."



## "ARTICLE 7A

12-5-510.

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

12-5-511.

As used in this article, the term:

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

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

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

12-5-512.

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

12-5-513.

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

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

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

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

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

6 (4) Water management efforts must have a sound scientific foundation and recognize  
7 that economic prosperity and environmental quality are interdependent;

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

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

13 (7) Water resources management encourages local and regional innovation,  
14 implementation, adaptability, and responsibility for watershed and river basin  
15 management;

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

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

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

28 12-5-514.

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

32 12-5-515.

33 (a) The division shall work in cooperation, coordination, and communication with the  
34 coordinating committee created by Code Section 12-5-516 and any other state, local,

1 regional, or federal agency as appropriate to complete the proposed rules or regulations to  
2 provide a comprehensive state-wide water management plan.

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

7 12-5-516.

8 (a) There shall be a coordinating committee composed of the following state officials who  
9 shall serve ex officio as members of the committee: commissioner of natural resources;  
10 director of the Environmental Protection Division of the Department of Natural Resources;  
11 executive director of the State Soil and Water Conservation Commission, commissioner  
12 of community affairs, commissioner of human resources, Attorney General, Commissioner  
13 of Agriculture, and commissioner of industry, trade, and tourism. In addition, the  
14 chairpersons of the Senate Natural Resources and the Environment Committee and the  
15 House Committee on Natural Resources and Environment shall serve ex officio in an  
16 advisory capacity to the committee to provide a legislative perspective in discussions and  
17 to build institutional knowledge of the nuances of the state-wide comprehensive water  
18 planning process in the General Assembly. The director shall serve as chairperson of the  
19 committee.

20 (b) The committee shall:

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

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

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

32 12-5-517.

33 (a) No rules or regulations establishing any comprehensive state-wide water management  
34 plan prepared pursuant to this article shall have any force or effect unless approved by the

1 General Assembly by means of the adoption of a joint resolution ratifying such rules or  
2 regulations.

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

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

#### 21 **SECTION 5-2A.**

22 Said chapter is further amended by striking subsection (f) of Code Section 12-5-584, relating  
23 to water supply and water management plans for the Metropolitan North Georgia Water  
24 Planning District, and inserting in lieu thereof the following:

25 "(f) The district shall neither study nor include in any plan any interbasin transfer of water  
26 from outside the district area unless such transfer shall be from a public water system  
27 supply reservoir for which a federal permit authorizing construction was issued prior to  
28 July 1, 2003, and pursuant to the terms of an intergovernmental agreement entered into  
29 prior to such date.

#### 30 **SECTION 5-2B.**

31 Article 2 of Chapter 2 of Title 46 of the Official Code of Georgia Annotated, relating to  
32 jurisdiction of the Public Service Commission, is amended by adding after Code Section  
33 46-2-23.1 a new Code section to read as follows:

34 "46-2-23.2.

1 The rates of each water supplier, other than a supplier owned or operated by this state or  
2 by a political subdivision of this state or under contract with this state or such a political  
3 subdivision for such operation, shall be subject to regulation by the Public Service  
4 Commission if such supplier has 3,000 or more taps. In fixing the rates for such supplier,  
5 the commission may fix such rates on the ratio of the operating expenses to the operating  
6 revenues."

7 **SECTION 5-3.**

8 Title 50 of the Official Code of Georgia Annotated, relating to state government, is amended  
9 in Code Section 50-13-4, relating to procedural requirements for adoption, amendment, or  
10 repeal of rules, emergency rules, limitations on actions to contest rules, and legislative  
11 override, by adding a new subsection to read as follows:

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

15 **SECTION 5-4.**

16 Said title is further amended in subsection (a) of Code Section 50-18-72, relating to when  
17 public disclosure of records is not required and disclosure of exempting authority, by  
18 inserting a new paragraph to read as follows:

19 "(10.1) Records of farm water use by individual farms as determined by water-measuring  
20 devices installed pursuant to Code Section 12-5-31 or 12-5-105; provided, however, that  
21 compilations of such records for an entire river basin or aquifer that do not reveal farm  
22 water use by individual farms shall be subject to disclosure under this article;"

23 **PART VI**

24 **SECTION 6-1.**

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