

House Bill 1345

By: Representatives Powell of the 23rd, Smith of the 13th, Post 2, Reece of the 11th, Childers of the 13th, Post 1, Cummings of the 19th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 5 of Title 12 of the Official Code of Georgia Annotated, relating to water
2 resources, so as to provide for protection of river basins; to define certain terms; to regulate
3 interbasin transfers of water; to provide for an in-stream flow policy; to provide an
4 exemption; to provide legislative findings and declarations; to provide a short title; to provide
5 an effective date; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 This Act shall be known and may be cited as the "River Basin Protection Act of 2004."

9 **SECTION 2.**

10 Chapter 5 of Title 12 of the Official Code of Georgia Annotated, relating to water resources,
11 is amended by inserting a new Article 11 as follows:

12 "ARTICLE 11

13 12-5-590.

14 Georgia's river systems and aquifers support communities, local and regional economies,
15 and diverse ecosystems. Maintaining natural flows throughout Georgia to the maximum
16 extent practicable, while ensuring a safe yield, is essential for the overall health of its water
17 resources and the economies that depend on them. It is therefore declared to be the policy
18 of the State of Georgia to approximate natural flow levels and rates in all waters of the state
19 to the maximum extent practicable, to protect against over-allocations and
20 under-allocations of water in all river systems and aquifers or portions thereof in the state
21 to the maximum extent practicable, and to minimize consumptive uses of water to the
22 maximum extent practicable.

1 12-5-591.

2 As used in this article, the term:

3 (1) 'Basin' means the Altamaha, Chattahoochee, Coosa, Flint, Ochlockonee, Ocmulgee,
4 Oconee, Ogeechee, St. Marys, Satilla, Savannah, Suwannee, Tallapoosa, or Tennessee
5 River Basin.

6 (2) 'Biological integrity' means the maintenance of water in a water source in the volume
7 and at the times necessary to support and maintain wetlands and wildlife, including fish,
8 flora, and fauna, insofar as protection of either is required by federal or state laws or
9 regulations.

10 (3) 'Chemical integrity' means the maintenance of water in a water source in the volume
11 and at the times necessary to enable such water source to achieve the water quality
12 standards prescribed for the water source by federal or state laws or regulations in light
13 of authorized effluent discharges and other expected impacts on the water source.

14 (4) 'Consumptive use' means any use of water that is not a nonconsumptive use,
15 including, but not limited to, evaporation or the incorporation of water into a product or
16 crop.

17 (5) 'Department' means the Department of Natural Resources.

18 (6) 'Director' means the director of the division.

19 (7) 'Division' means the Environmental Protection Division of the department.

20 (8) 'Ground water' shall be defined as in paragraph (6) of Code Section 12-5-92.

21 (9) 'Interbasin transfer' means the withdrawal, diversion, or pumping of surface water
22 from one river basin, or the withdrawal or pumping of ground water from a point located
23 within or beneath one river basin, and discharge of all or any part of the water in or
24 beneath a river basin different from the basin of origin.

25 (10) 'Nonconsumptive use' means a use of withdrawn water in such a manner that it is
26 returned to its waters of origin at or near its point of withdrawal without substantial
27 diminution in quality or quantity and without resulting in or exacerbating a low flow
28 condition.

29 (11) 'Physical integrity' means the volume of water in a water source necessary to:

30 (A) Support commercial navigation of the water source as required by federal or state
31 law or regulation;

32 (B) Preserve natural, cultural, or historic resources as determined by or as required by
33 federal or state law or regulation;

34 (C) Provide adequate recreational opportunities to the people of Georgia; and

35 (D) Prevent serious depletion or exhaustion of the water source.

36 (12) 'Safe yield' means the amount of water in a water source available for withdrawal
37 without impairing the long-term utility of the water source, including the biological

1 integrity, chemical integrity, and physical integrity of the source, as determined by
2 comparing the natural and artificial replenishment of the water source to existing or
3 planned consumptive and nonconsumptive uses.

4 (13) 'Waters of the state' shall be defined as in paragraph (13) of Code Section 12-5-22.

5 12-5-592.

6 (a) Any person seeking to make an interbasin transfer of more than 100,000 gallons of
7 water per day shall apply to the director for a permit for such transfer. When feasible, the
8 nonconsumptive portion of the interbasin transfer shall be returned to the basin of origin.
9 Water users receiving water as the result of the proposed interbasin transfer shall
10 implement water conservation procedures and must demonstrate that there are no
11 cost-effective alternatives to the interbasin transfer.

12 (b) The director shall use the following criteria in considering an application for an
13 interbasin transfer permit:

14 (1) The quantity of the proposed withdrawal and the stream flow of the basin of origin,
15 with special concern for low flow conditions;

16 (2) Protection of the present uses, and consideration of projected stream uses of the basin
17 of origin, with special concern for low flow conditions and the ecology of the stream;

18 (3) Protection of the water quality in the basin of origin, with special concern for low
19 flow conditions;

20 (4) The economic feasibility, cost effectiveness, and environmental impacts of the
21 proposed permit in relation to alternative sources of water supply, including the
22 cumulative impacts of current and proposed interbasin transfers in the basin;

23 (5) The overall current water demand and the reasonably foreseeable future water needs
24 of the basin of origin;

25 (6) The supply of water presently available to the receiving basin, as well as the overall
26 current water demand and the reasonably foreseeable future water needs of the receiving
27 basin, including methods of water use, conservation, and efficiency of use;

28 (7) The beneficial impact of any proposed transfer, and the demonstrated capability of
29 the applicant to implement effectively its responsibilities under the requested permit;

30 (8) The nature of the applicant's use of the water, to determine whether the use is
31 reasonable;

32 (9) Whether the applicant has implemented all reasonable efforts to promote
33 conservation;

34 (10) Whether the proposed project requiring the interbasin transfer shall promote
35 conservation of water;

- 1 (11) The requirements of other state and federal agencies with authority relating to water
 - 2 resources;
 - 3 (12) The availability of water to respond to emergencies, including drought in the basin
 - 4 of origin and in the receiving basin;
 - 5 (13) Whether the project shall have any beneficial or detrimental impact on navigation,
 - 6 hydropower or other power generation, fish and wildlife habitats, aesthetics, or
 - 7 recreation;
 - 8 (14) The quantity, quality, location, and timing of water returned to the basin of origin,
 - 9 receiving basin, or a downstream basin;
 - 10 (15) Climatic conditions;
 - 11 (16) Any offsetting increases in flow in the basin of origin that may be arranged through
 - 12 permit conditions;
 - 13 (17) The number of downstream river miles from which water will be diverted as a result
 - 14 of the transfer;
 - 15 (18) Consultations with local governments affected by the proposed transfer and use;
 - 16 (19) The correlation between surface water and ground water in the basin of origin, and
 - 17 whether the proposed use will be harmful to the supply of either or both;
 - 18 (20) Impact on interstate water use;
 - 19 (21) The cumulative effect on the basin of origin and the receiving basin of any water
 - 20 transfer or consumptive water use that is authorized or projected; and
 - 21 (22) Such other factors as are reasonably necessary to carry out the purposes of Georgia
 - 22 law.
- 23 (c) The director shall issue or deny any interbasin transfer permit applied for in accordance
- 24 with the provisions of this chapter. Any such interbasin transfer permit shall be issued for
- 25 a term of no more than 20 years, and shall be subject to review every ten years of its
- 26 duration. The provisions of this article shall apply to proposed new interbasin transfer
- 27 permits or modifications of existing permits. The director shall modify an existing
- 28 interbasin transfer permit or issue or deny a new one, indicating in the permit the following
- 29 provisions, terms, and conditions:
- 30 (1) The location of the withdrawal;
 - 31 (2) The authorized amount of the withdrawal and the level of consumptive use, if any,
 - 32 and required conservation measures, if any;
 - 33 (3) The dates during which water is to be withdrawn, including any seasonal or shorter
 - 34 variations in the authorized withdrawals or level of consumptive use;
 - 35 (4) The uses for which the water is authorized to be withdrawn;
 - 36 (5) The transfer of water shall be governed by any applicable in-stream flow protection
 - 37 requirements of the division;

- 1 (6) The amount of return flow required, if any, and the required place of discharge, if
 - 2 any;
 - 3 (7) Any special provisions necessary to promote an adequate water supply for the state
 - 4 or to mitigate any future adverse conditions resulting from the transfer;
 - 5 (8) The installation, maintenance, and use of stream flow monitoring equipment;
 - 6 (9) Any requirements for metering, surveillance, and reporting the director determines
 - 7 to be necessary to ensure compliance with other conditions, limitations, or restrictions of
 - 8 the permit, including consent to inspections or investigations;
 - 9 (10) The establishment and reporting of transfer activities by the permittee;
 - 10 (11) The time within which all necessary construction authorized by the permit must be
 - 11 completed or within which the withdrawal or use of water must begin to be made, with
 - 12 the delay not to exceed five years from the date of issuance of the permit, subject to
 - 13 extension by order of the director upon showing that all due efforts and diligence toward
 - 14 the completion of the work have been made;
 - 15 (12) Any extraordinary withdrawals of the waters of the state necessary for the
 - 16 construction of any facilities necessary to withdraw or use water;
 - 17 (13) Any obligation to restore the lands or waters of the state to their condition prior to
 - 18 the issuance of the permit;
 - 19 (14) The date on which the permit expires; and
 - 20 (15) Any other conditions, limitations, and restrictions the director determines to be
 - 21 necessary to protect the public interest, the environment and ecosystems, and the public
 - 22 health, safety, and welfare, and to ensure the conservation, proper management, and
 - 23 aesthetic enhancement of the waters of the state.
- 24 (d) After receipt of a completed application and at least 30 days prior to acting on the
- 25 application, the director shall notify city and county governments and public utilities in
- 26 each county located entirely or partially within the river basin that is the source of the
- 27 proposed transfer and the receiving basin and to all persons who have filed a written
- 28 request with the director that their names be placed on a mailing list for receipt of such
- 29 notice. Any person desiring to be placed on such mailing list must so request in writing
- 30 and renew such request in December of each year. The name of any person who has not
- 31 renewed such request shall be removed from the list. The director shall cause a notice of
- 32 the proposed interbasin transfer which shall include a nontechnical description of the
- 33 applicant's request and a conspicuous statement in bold type as to the effects of the water
- 34 transfer on the basin of origin and receiving basin to be published in the legal organ or a
- 35 newspaper of general circulation in each potentially affected community in the basin of
- 36 origin and the receiving basin. Whenever there appears to be sufficient public interest, the

1 director may call a public hearing. Notice shall be given of the public hearing at least 30
2 days prior to the hearing.

3 (e) In the event an emergency period of water shortage exists within an area of the state,
4 the director may modify or revoke and reissue any interbasin transfer permit subject to the
5 terms of a state drought management plan. The director shall give public notice of any
6 emergency action taken with respect to an interbasin transfer permit to the maximum extent
7 practicable.

8 12-5-593.

9 The division shall within no more than three years after the effective date of this article
10 issue a final in-stream flow policy that incorporates safe yield for all river basins in the
11 state.

12 12-5-594.

13 Those interbasin transfers identified in the water supply and water conservation
14 management plan approved by the Metropolitan North Georgia Water Planning District
15 pursuant to subsection (a) of Code Section 12-5-584 shall be exempt from the requirements
16 of this article."

17 **SECTION 3.**

18 This Act shall become effective upon its approval by the Governor or upon its becoming law
19 without such approval.

20 **SECTION 4.**

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