

House Bill 1615

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

A BILL TO BE ENTITLED
AN ACT

1 To regulate interbasin and intrabasin transfers of surface water and ground water; to amend
2 Chapter 5 of Title 12 of the Official Code of Georgia Annotated, relating to water resources,
3 so as to change certain provisions relating to permits for withdrawal, diversion, or
4 impoundment of surface waters and monitoring, recording, and reporting of water
5 withdrawal; to change certain provisions relating to permits to withdraw, obtain, or use
6 ground water; water conservation plans; factors to be considered; notice of official acts;
7 administrative hearings; and judicial review; to repeal conflicting laws; and for other
8 purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 style="text-align:center">**SECTION 1.**

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

15 "(n)(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 surface waters 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 surface waters
25 from a point within any basin of origin and the discharge of all or any part of that water

1 into a different receiving basin by means of pipes, pipelines, conduits, ditches, or
 2 canals; provided, however, interbasin transfer shall not include the following:

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

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

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

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

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

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

23 (2) It is the policy of this state to protect reasonable needs of both the basin of origin and
 24 the receiving basin through the regulation of interbasin transfers. It is also the policy of
 25 this state to protect the basin of origin through regulation of intrabasin transfers.
 26 Accordingly, in the consideration of applications for permits which if granted on or
 27 after July 1, 2004, would authorize the withdrawal and transfer of surface waters across
 28 natural basins an interbasin or an intrabasin transfer, the director shall be bound by the
 29 following requirements:

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

34 (ii) The regulation of interbasin transfers shall be informed by scientific knowledge,
 35 must respect natural systems, and must protect the basins of origin and the receiving
 36 basins. In addition to those factors listed in subsection (e) of this Code section, the

1 director shall consider the following factors in considering an application for an
2 interbasin transfer permit:

3 (I) The quantity of the proposed withdrawal and the stream flow of the basin of
4 origin, with special concern for low-flow conditions;

5 (II) Protection of the present uses and consideration of projected stream uses of the
6 basin of origin, with special concern for low-flow conditions and the ecology of the
7 stream;

8 (III) Protection of the water quality in the basin of origin, with special concern for
9 low-flow conditions;

10 (IV) The economic feasibility, cost effectiveness, and environmental impacts of the
11 proposed permit in relation to alternative sources of water supply, including the
12 cumulative impacts of current and proposed interbasin transfers in the basin;

13 (V) The overall current water demand and the reasonably foreseeable future water
14 needs of the basin of origin;

15 (VI) The supply of water presently available to the receiving basin, as well as the
16 overall current water demand and the reasonably foreseeable future water needs of
17 the receiving basin, including methods of water use, conservation, and efficiency
18 of use;

19 (VII) The beneficial impact of any proposed transfer and the demonstrated
20 capability of the applicant to implement effectively its responsibilities under the
21 requested permit;

22 (VIII) The nature of the applicant's use of the water to determine whether the use
23 is reasonable;

24 (IX) Whether the applicant has implemented all reasonable efforts to promote
25 conservation;

26 (X) Whether the proposed project requiring the interbasin transfer shall promote
27 conservation of water;

28 (XI) The requirements of other state and federal agencies with authority relating to
29 water resources;

30 (XII) The availability of water to respond to emergencies, including drought in the
31 basin of origin and in the receiving basin;

32 (XIII) Whether the project shall have any beneficial or detrimental impact on
33 navigation, hydropower or other power generation, fish and wildlife habitats,
34 aesthetics, or recreation;

35 (XIV) The quantity, quality, location, and timing of water returned to the basin of
36 origin, receiving basin, or a downstream basin;

37 (XV) Climatic conditions;

1 (XVI) Any offsetting increases in flow in the basin of origin that may be arranged
 2 through permit conditions;

3 (XVII) The number of downstream river miles from which water will be diverted
 4 as a result of the transfer;

5 (XVIII) Consultations with local governments affected by the proposed transfer and
 6 use;

7 (XIX) The correlation between surface water and ground water in the basin of
 8 origin and whether the proposed use will be harmful to the supply of either or both;

9 (XX) Impact on interstate water use;

10 (XXI) The cumulative effect on the basin of origin and the receiving basin of any
 11 water transfer or consumptive water use that is authorized or projected; and

12 (XXII) Such other factors as are reasonably necessary to carry out the purposes of
 13 Georgia law.

14 (iii) Any person proposing to receive an interbasin transfer must be implementing a
 15 water conservation plan approved by the director prior to the receipt of any requested
 16 interbasin transfer.

17 (iv) The director shall ensure that any interbasin transfer approved shall comply with
 18 the requirements of the Board of Natural Resources for instream flow protection in
 19 the basin of origin;

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

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

31 (D) The director shall provide a press release regarding the proposed issuance of all
 32 any permits authorizing such interbasin transfer of surface waters to newspapers of
 33 general circulation in all areas of the state which would be affected by such issuance.
 34 The press release shall be provided at least ~~seven~~ 30 days before the issuance of these
 35 any such permits. If the director ~~should determine~~ determines that sufficient public
 36 interest warrants a public hearing on the issuance of these any such permits, he or she

1 shall cause such a hearing to be held somewhere in the area affected prior to the
2 issuance of ~~these~~ any such permits."

3 **SECTION 2.**

4 Said chapter is further amended in Code Section 12-5-96, relating to permits to withdraw,
5 obtain, or use ground water; water conservation plans; factors to be considered; notice of
6 official acts; administrative hearings; and judicial review, by inserting a new subsection to
7 read as follows:

8 "(g.1)(1) As used in this subsection, the term:

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

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

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

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

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

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

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

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

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

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

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

7 (2) It is the policy of this state to protect reasonable needs of both the basin of origin and
8 the receiving basin through the regulation of interbasin transfers. It is also the policy of
9 the state to protect the basin of origin through regulation of intrabasin transfers.
10 Accordingly, in the consideration of applications for permits which if granted on or after
11 July 1, 2004, would authorize an interbasin or intrabasin transfer, the director shall be
12 bound by the following requirements:

13 (A)(i) The director shall give due consideration to competing existing uses and
14 applications for permits which would not involve interbasin transfers of ground water
15 and, subject to subsection (d) of this Code section, shall endeavor to allocate a
16 reasonable supply of ground water to such users and applicants.

17 (ii) The regulation of interbasin transfers shall be informed by scientific knowledge,
18 must respect natural systems, and must protect the basins of origin and the receiving
19 basins. In addition to those factors listed in subsection (e) of this Code section, the
20 director shall consider the following factors in considering an application for an
21 interbasin transfer permit:

22 (I) The quantity of the proposed withdrawal with special concern for low-flow
23 conditions;

24 (II) Protection of the present uses and consideration of projected ground-water uses
25 of the basin of origin, with special concern for low-flow conditions;

26 (III) Protection of the water quality in the basin of origin, with special concern for
27 low-flow conditions;

28 (IV) The economic feasibility, cost effectiveness, and environmental impacts of the
29 proposed permit in relation to alternative sources of water supply, including the
30 cumulative impacts of current and proposed interbasin transfers in the basin;

31 (V) The overall current water demand and the reasonably foreseeable future water
32 needs of the basin of origin;

33 (VI) The supply of water presently available to the receiving basin, as well as the
34 overall current water demand and the reasonably foreseeable future water needs of
35 the receiving basin, including methods of water use, conservation, and efficiency
36 of use;

1 (VII) The beneficial impact of any proposed transfer and the demonstrated
2 capability of the applicant to implement effectively its responsibilities under the
3 requested permit;

4 (VIII) The nature of the applicant's use of the water to determine whether the use
5 is reasonable;

6 (IX) Whether the applicant has implemented all reasonable efforts to promote
7 conservation;

8 (X) Whether the proposed project requiring the interbasin transfer shall promote
9 conservation of water;

10 (XI) The requirements of other state and federal agencies with authority relating to
11 water resources;

12 (XII) The availability of water to respond to emergencies, including drought in the
13 basin of origin and in the receiving basin;

14 (XIII) Reserved;

15 (XIV) The quantity, quality, location, and timing of water returned to the basin of
16 origin or receiving basin;

17 (XV) Climatic conditions;

18 (XVI) Any offsetting increases in flow in the basin of origin that may be arranged
19 through permit conditions;

20 (XVII) Reserved;

21 (XVIII) Consultations with local governments affected by the proposed transfer and
22 use;

23 (XIX) The correlation between surface water and ground water in the basin of
24 origin and whether the proposed use will be harmful to the supply of either or both;

25 (XX) Impact on interstate water use;

26 (XXI) The cumulative effect on the basin of origin and the receiving basin of any
27 water transfer or consumptive water use that is authorized or projected; and

28 (XXII) Such other factors as are reasonably necessary to carry out the purposes of
29 Georgia law.

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

33 (iv) The director shall ensure that any interbasin transfer approved shall comply with
34 the requirements of the Board of Natural Resources for ground-water protection in the
35 basin of origin;

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

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

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

15 SECTION 3.

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