

House Bill 1615 (COMMITTEE SUBSTITUTE) (AM)

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:

SECTION 1.

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

14 "(n)(1) As used in this subsection, the term:

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

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

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

23 (D) 'Interbasin transfer' means the withdrawal, diversion, or pumping of surface waters
24 from a point within any basin of origin and the discharge of all or any part of that water
25

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 surface-water withdrawal permits
 27 which if granted on or after July 1, 2004, would authorize ~~the withdrawal and transfer of~~
 28 surface waters across natural basins an interbasin or an intrabasin transfer, the director
 29 shall be bound by the 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 to satisfy critical needs, or to provide water within the lower Savannah and lower
25 Ogeechee river basins within the 24 coastal counties identified in the division's April
26 23, 1997, 'Interim Strategy for Managing Salt Water Intrusion in the Upper Floridan
27 Aquifer of Southeast Georgia';

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

34 (C.1) The provisions of subparagraphs (B) and (C) of this paragraph notwithstanding,
35 any new interbasin transfer of water withdrawn from the Etowah River upriver from
36 Lake Allatoona is prohibited on and after July 1, 2004;

1 (D) The director shall provide a press release regarding the proposed issuance of ~~all~~
 2 any permits authorizing such interbasin transfer of surface waters to newspapers of
 3 general circulation in all areas of the state which would be affected by such issuance.
 4 The press release shall be provided at least ~~seven~~ 30 days before the issuance of ~~these~~
 5 any such permits. If the director ~~should determine~~ determines that sufficient public
 6 interest warrants a public hearing on the issuance of ~~these~~ any such permits, he or she
 7 shall cause such a hearing to be held somewhere in the area affected prior to the
 8 issuance of ~~these~~ any such permits."

9 SECTION 2.

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

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

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

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

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

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

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

35 (E) 'Intrabasin transfer' means the withdrawal, diversion, or pumping of ground water
 36 from a point within a basin and discharge of all or any part of that water at a different

1 location in that basin by means of pipes, pipelines, ditches, conduits, or canals;
 2 provided, however, intrabasin transfer shall not include the following:

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

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

12 (2) It is the policy of this state to protect reasonable needs of both the basin of origin and
 13 the receiving basin through the regulation of interbasin transfers. It is also the policy of
 14 the state to protect the basin of origin through regulation of intrabasin transfers.
 15 Accordingly, in the consideration of applications for ground-water withdrawal permits
 16 which if granted on or after July 1, 2004, would authorize an interbasin or intrabasin
 17 transfer, the director shall be bound by the following requirements:

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

22 (ii) The regulation of interbasin transfers shall be informed by scientific knowledge,
 23 must respect natural systems, and must protect the basins of origin and the receiving
 24 basins. In addition to those factors listed in subsection (d) of this Code section, the
 25 director shall consider the following factors in considering an application for an
 26 interbasin transfer permit:

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

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

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

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

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

1 (VI) The supply of water presently available to the receiving basin, as well as the
2 overall current water demand and the reasonably foreseeable future water needs of
3 the receiving basin, including methods of water use, conservation, and efficiency
4 of use;

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

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

10 (IX) Whether the applicant has implemented all reasonable efforts to promote
11 conservation;

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

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

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

18 (XIII) Reserved;

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

21 (XV) Climatic conditions;

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

24 (XVII) Reserved;

25 (XVIII) Consultations with local governments affected by the proposed transfer and
26 use;

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

29 (XX) Impact on interstate water use;

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

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

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

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

4 (B) Any interbasin transfer that crosses more than two adjacent counties or intrabasin
5 transfer that crosses more than four adjacent counties is prohibited, except to satisfy
6 critical needs or to provide water within the lower Savannah and lower Ogeechee river
7 basins within the 24 coastal counties identified in the division's April 23, 1997, 'Interim
8 Strategy for Managing Salt Water Intrusion in the Upper Floridan Aquifer of Southeast
9 Georgia';

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

14 (D) The exemptions provided for in (B) and (C) above shall expire and be of no further
15 force and effect upon the approval of any state-wide water plan approved and adopted
16 under this title.

17 (E) The director shall provide a press release regarding the proposed issuance of any
18 permits authorizing such interbasin transfer of ground water 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 30 days before the issuance of any such permits. If
21 the director determines that sufficient public interest warrants a public hearing on the
22 issuance of any such permits, he or she shall cause such a hearing to be held
23 somewhere in the area affected prior to the issuance of any such permits."

24 SECTION 3.

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