

The Senate Natural Resources and the Environment Committee offered the following substitute to HB 1615:

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 12 of the Official Code of Georgia Annotated, relating to conservation and
2 natural resources, so as to require that the filing of a petition for hearing before an
3 administrative law judge does not automatically stay any permit, order, or action issued by
4 either the director of the Environmental Protection Division, the Shore Protection
5 Committee, or the Coastal Marshlands Protection Committee; to provide that such a stay may
6 be entered by an appropriate superior court upon a showing of good cause; to regulate
7 interbasin and intrabasin transfers of surface water and ground water; to change certain
8 provisions relating to permits for withdrawal, diversion, or impoundment of surface waters
9 and monitoring, recording, and reporting of water withdrawal; to change certain provisions
10 relating to permits to withdraw, obtain, or use ground water, water conservation plans,
11 factors to be considered, notice of official acts, administrative hearings, and judicial review;
12 to change certain provisions relating to water supply and water conservation management
13 plans for the Metropolitan North Georgia Water Planning District; to provide an effective
14 date; to repeal conflicting laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

16 Title 12 of the Official Code of Georgia Annotated, relating to conservation and natural
17 resources, is amended by striking paragraph (2) of subsection (c) of Code Section 12-2-2,
18 relating to the Environmental Protection Division and the procedure for aggrieved persons
19 to appeal a decision of the director, and inserting in its place a new paragraph (2) to read as
20 follows:
21

22 "(2) Any person who is aggrieved or adversely affected by any order or action of the
23 director shall, upon petition within 30 days after the issuance of such order or the taking
24 of such action, have a right to a hearing before an administrative law judge appointed by
25 the Board of Natural Resources. Notwithstanding any other provision of law to the
26 contrary, the filing of such petition by persons other than the permittee, or person to

1 whom the order or action is directed, shall not automatically stay such permit, order, or
 2 action. Pursuant to Code Section 9-11-65, an appropriate superior court may enjoin a
 3 party from activities authorized by any such permit, order, or action while such permit,
 4 order, or action is under review by an administrative law judge. The hearing before the
 5 administrative law judge shall be conducted in accordance with Chapter 13 of Title 50,
 6 the 'Georgia Administrative Procedure Act,' and the rules and regulations adopted by the
 7 board pursuant thereto. Any administrative law judge so appointed by the board shall
 8 fully meet and qualify as to all applicable conflict of interest requirements provided for
 9 in Section 304(h)(2)(D) of the Federal Water Pollution Control Act of 1972, as amended,
 10 and the rules, regulations, and guidelines promulgated thereunder. The decision of the
 11 administrative law judge shall constitute the final decision of the board and any party to
 12 the hearing, including the director, shall have the right of judicial review thereof in
 13 accordance with Chapter 13 of Title 50."

14 SECTION 2.

15 Said title is further amended by striking subsection (n) of Code Section 12-5-31, relating to
 16 permits for withdrawal, diversion, or impoundment of surface waters and monitoring,
 17 recording, and reporting of water withdrawal, and inserting in lieu thereof the following:

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

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

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

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

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

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

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

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

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

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

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

16 (2) It is the policy of this state to protect reasonable needs of both the basin of origin and
 17 the receiving basin through the regulation of interbasin transfers. It is also the policy of
 18 this state to protect the basin of origin through regulation of intrabasin transfers.
 19 Accordingly, in the consideration of applications for new surface-water withdrawal
 20 permits which if granted first applied for on or after the effective date of this subsection,
 21 which would authorize the withdrawal and transfer of surface waters across natural basins
 22 an interbasin or an intrabasin transfer, the director shall be bound by the following
 23 requirements:

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

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

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

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

- 1 (III) Protection of the water quality in the basin of origin, with special concern for
2 low-flow conditions;
- 3 (IV) The economic feasibility, cost effectiveness, and environmental impacts of the
4 proposed permit in relation to alternative sources of water supply, including the
5 cumulative impacts of current and proposed interbasin transfers in the basin;
- 6 (V) The overall current water demand and the reasonably foreseeable future water
7 needs of the basin of origin;
- 8 (VI) The supply of water presently available to the receiving basin, as well as the
9 overall current water demand and the reasonably foreseeable future water needs of
10 the receiving basin, including methods of water use, conservation, and efficiency
11 of use;
- 12 (VII) The beneficial impact of any proposed transfer and the demonstrated
13 capability of the applicant to implement effectively its responsibilities under the
14 requested permit;
- 15 (VIII) The nature of the applicant's use of the water to determine whether the use
16 is reasonable;
- 17 (IX) Whether the applicant has implemented all reasonable efforts to promote
18 conservation of water;
- 19 (X) Whether the proposed project requiring the interbasin transfer shall promote
20 conservation of water;
- 21 (XI) The requirements of other state and federal agencies with authority relating to
22 water resources;
- 23 (XII) The availability of water to respond to emergencies, including drought in the
24 basin of origin and in the receiving basin;
- 25 (XIII) Whether the project shall have any beneficial or detrimental impact on
26 navigation, hydropower or other power generation, fish and wildlife habitats,
27 aesthetics, or recreation;
- 28 (XIV) The quantity, quality, location, and timing of water returned to the basin of
29 origin, receiving basin, or a downstream basin;
- 30 (XV) Climatic conditions;
- 31 (XVI) Any offsetting increases in flow in the basin of origin that may be arranged
32 through permit conditions;
- 33 (XVII) The number of downstream river miles from which water will be diverted
34 as a result of the transfer;
- 35 (XVIII) Consultations with local governments affected by the proposed transfer and
36 use;

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

3 (XX) Impact on interstate water use;

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

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

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

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

14 (B) Any interbasin transfer that transfers water through more than three adjacent
 15 counties or intrabasin transfer that transfers water through more than four adjacent
 16 counties, including without limitation the county of withdrawal and the receiving
 17 county, is prohibited, except for interbasin or intrabasin transfers that are part of a plan
 18 approved by the division pursuant to Article 10 of this chapter, the 'Metropolitan North
 19 Georgia Water Planning District Act,' to satisfy critical needs, or to provide water
 20 within the lower Savannah and lower Ogeechee river basins within the 24 coastal
 21 counties identified in the division's April 23, 1997, 'Interim Strategy for Managing Salt
 22 Water Intrusion in the Upper Floridan Aquifer of Southeast Georgia';

23 (~~2~~) (C) Permits authorizing interbasin or intrabasin transfers which were first applied
 24 for prior to the effective date of this subsection shall not be subject to the requirements
 25 of this subsection. Furthermore, any future application for the modification, renewal,
 26 or extension of such permits, provided such application is for the withdrawal of the
 27 same or a lesser quantity of water, shall be considered by the director using the same
 28 criteria as are applied to requests for modification, renewal, or extension of permits not
 29 involving interbasin or intrabasin transfers; and

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

SECTION 3.

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

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

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

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

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

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

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

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

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

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

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

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

3 (2) It is the policy of this state to protect reasonable needs of both the basin of origin and
4 the receiving basin through the regulation of interbasin transfers. It is also the policy of
5 the state to protect the basin of origin through regulation of intrabasin transfers.
6 Accordingly, in the consideration of applications for new ground-water withdrawal
7 permits first applied for on or after the effective date of this subsection, which would
8 authorize an interbasin or intrabasin transfer, the director shall be bound by the following
9 requirements:

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

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

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

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

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

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

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

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

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

- 1 (VIII) The nature of the applicant's use of the water to determine whether the use
2 is reasonable;
- 3 (IX) Whether the applicant has implemented all reasonable efforts to promote
4 conservation of water;
- 5 (X) Whether the proposed project requiring the interbasin transfer shall promote
6 conservation of water;
- 7 (XI) The requirements of other state and federal agencies with authority relating to
8 water resources;
- 9 (XII) The availability of water to respond to emergencies, including drought in the
10 basin of origin and in the receiving basin;
- 11 (XIII) Reserved;
- 12 (XIV) The quantity, quality, location, and timing of water returned to the basin of
13 origin or receiving basin;
- 14 (XV) Climatic conditions;
- 15 (XVI) Any offsetting increases in flow in the basin of origin that may be arranged
16 through permit conditions;
- 17 (XVII) Reserved;
- 18 (XVIII) Consultations with local governments affected by the proposed transfer and
19 use;
- 20 (XIX) The correlation between surface water and ground water in the basin of
21 origin and whether the proposed use will be harmful to the supply of either or both;
- 22 (XX) Impact on interstate water use;
- 23 (XXI) The cumulative effect on the basin of origin and the receiving basin of any
24 water transfer or consumptive water use that is authorized or projected; and
- 25 (XXII) Such other factors as are reasonably necessary to carry out the purposes of
26 Georgia law.
- 27 (iii) Any person proposing to receive an interbasin transfer must be implementing a
28 water conservation plan approved by the director prior to the receipt of any requested
29 interbasin transfer.
- 30 (iv) The director shall ensure that any interbasin transfer approved shall comply with
31 the requirements of the Board of Natural Resources for ground-water protection in the
32 basin of origin;
- 33 (B) Any interbasin transfer that transfers water through more than three adjacent
34 counties or intrabasin transfer that transfers water through more than four adjacent
35 counties, including without limitation the county of withdrawal and the receiving
36 county, is prohibited, except to satisfy critical needs or to provide water within the
37 lower Savannah and lower Ogeechee river basins within the 24 coastal counties

1 identified in the division's April 23, 1997, 'Interim Strategy for Managing Salt Water
2 Intrusion in the Upper Floridan Aquifer of Southeast Georgia';

3 (C) Permits authorizing interbasin or intrabasin transfers which were first applied for
4 prior to the effective date of this subsection shall not be subject to the requirements of
5 this subsection. Furthermore, any future application for the modification, renewal, or
6 extension of such permits, provided such application is for the withdrawal of the same
7 or a lesser quantity of water, shall be considered by the director using the same criteria
8 as are applied to requests for modification, renewal, or extension of permits not
9 involving interbasin or intrabasin transfers; and

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

17 SECTION 4.

18 Said title is further amended by striking subsection (a) of Code Section 12-5-244, relating
19 to administrative and judicial review under Part 2 of Article 4 of Chapter 5 of Title 12, the
20 "Shore Protection Act," and inserting in its place a new subsection (a) to read as follows:

21 "(a) Any person who is aggrieved or adversely affected by any order or action of the
22 committee shall, upon petition within 30 days after the issuance of such order or taking of
23 such action, have a right to a hearing before an administrative law judge appointed by the
24 board. Notwithstanding any other provision of law to the contrary, the filing of such
25 petition by persons other than the permittee, or person to whom the order or action is
26 directed, shall not automatically stay such permit, order, or action. Pursuant to Code
27 Section 9-11-65, an appropriate superior court may enjoin a party from activities authorized
28 by any such permit, order, or action while such permit, order, or action is under review by
29 an administrative law judge. The hearing before the administrative law judge shall be
30 conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative
31 Procedure Act,' and the rules and regulations adopted by the board pursuant thereto. The
32 decision of the administrative law judge shall constitute the final decision of the board and
33 any party to the hearing, including the committee, shall have the right of judicial review
34 thereof in accordance with Chapter 13 of Title 50."

SECTION 5.

Said title is further amended by striking subsection (b) of Code Section 12-5-283, relating to administrative and judicial review under Part 4 of Article 4 of Chapter 5 of Title 12, the "Coastal Marshlands Protection Act of 1970," and inserting in its place a new subsection (b) to read as follows:

"(b) Any person who is aggrieved or adversely affected by any order or action of the committee shall, upon petition within 30 days after the issuance of such order or the taking of such action, have a right to a hearing before an administrative law judge appointed by the board. Notwithstanding any other provision of law to the contrary, the filing of such petition by persons other than the permittee, or person to whom the order or action is directed, shall not automatically stay such permit, order, or action. Pursuant to Code Section 9-11-65, an appropriate superior court may enjoin a party from activities authorized by any such permit, order, or action while such permit, order, or action is under review by an administrative law judge. The hearing before the administrative law judge shall be conducted in accordance with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' and the rules and regulations adopted by the board pursuant thereto. The decision of the administrative law judge shall constitute the final decision of the board and any party to the hearing, including the committee, shall have the right of judicial review thereof in accordance with Chapter 13 of Title 50."

SECTION 6.

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

"(f) The district shall neither study nor include in any plan any interbasin or intrabasin transfer of water from outside the district area."

SECTION 7.

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

SECTION 8.

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