

House Bill 53

By: Representatives Powell of the 29th, McCall of the 30th, and Jamieson of the 28th

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

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

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

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 that basin by means of pipes, pipelines, ditches, conduits, or canals;
 11 provided, however, 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; and

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

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 this state to protect the basin of origin through regulation of intrabasin transfers.
 24 Accordingly, in ~~In~~ the consideration of applications for surface-water withdrawal permits
 25 which if granted on or after the effective date of this subsection would authorize ~~the~~
 26 ~~withdrawal and transfer of surface waters across natural basins~~ an interbasin or an
 27 intrabasin transfer, the director shall be bound by the following requirements:

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

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

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

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

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

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

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

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

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

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

22 (IX) Whether the applicant has implemented all reasonable efforts to promote
23 conservation;

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

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

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

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

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

35 (XV) Climatic conditions;

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

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

3 (XVIII) Consultations with local governments affected by the proposed transfer and
 4 use;

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

7 (XX) Impact on interstate water use;

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

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

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

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

18 (B) Any interbasin transfer that crosses more than two adjacent counties or intrabasin
 19 transfer that crosses more than four adjacent counties is prohibited, except for interbasin
 20 or intrabasin transfers that are part of a plan approved by the division pursuant to
 21 Article 10 of this chapter, the 'Metropolitan North Georgia Water Planning District Act,'
 22 to satisfy critical needs, or to provide water within the lower Savannah and lower
 23 Ogeechee river basins within the 24 coastal counties identified in the division's April
 24 23, 1997, 'Interim Strategy for Managing Salt Water Intrusion in the Upper Floridan
 25 Aquifer of Southeast Georgia';

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

32 (D) The provisions of subparagraphs (B) and (C) of this paragraph notwithstanding, any
 33 new interbasin transfer of water withdrawn from the Etowah River upriver from Lake
 34 Allatoona is prohibited on and after the effective date of this subsection;

35 (E) The exceptions provided for transfers pursuant to Article 10 of this chapter, the
 36 'Metropolitan North Georgia Water Planning District Act,' in subparagraphs (B) and (C)
 37 of this paragraph shall not be considered in the development of or included in any

1 comprehensive state-wide water management plan adopted pursuant to Article 8 of this
 2 chapter on or after the effective date of this subsection, and such exceptions shall be
 3 inapplicable on and after the adoption of any such plan; and

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

12 SECTION 2.

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

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

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

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

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

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

31 (i) Ground 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) Ground 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 ground water
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) Ground 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) Ground 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 the state to protect the basin of origin through regulation of intrabasin transfers.
19 Accordingly, in the consideration of applications for ground-water withdrawal permits
20 which if granted on or after the effective date of this subsection would authorize an
21 interbasin or intrabasin transfer, the director shall be bound by the following
22 requirements:

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

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

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

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

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

- 1 (IV) The economic feasibility, cost effectiveness, and environmental impacts of the
2 proposed permit in relation to alternative sources of water supply, including the
3 cumulative impacts of current and proposed interbasin transfers in the basin;
- 4 (V) The overall current water demand and the reasonably foreseeable future water
5 needs of the basin of origin;
- 6 (VI) The supply of water presently available to the receiving basin, as well as the
7 overall current water demand and the reasonably foreseeable future water needs of
8 the receiving basin, including methods of water use, conservation, and efficiency
9 of use;
- 10 (VII) The beneficial impact of any proposed transfer and the demonstrated
11 capability of the applicant to implement effectively its responsibilities under the
12 requested permit;
- 13 (VIII) The nature of the applicant's use of the water to determine whether the use
14 is reasonable;
- 15 (IX) Whether the applicant has implemented all reasonable efforts to promote
16 conservation;
- 17 (X) Whether the proposed project requiring the interbasin transfer shall promote
18 conservation of water;
- 19 (XI) The requirements of other state and federal agencies with authority relating to
20 water resources;
- 21 (XII) The availability of water to respond to emergencies, including drought in the
22 basin of origin and in the receiving basin;
- 23 (XIII) Reserved;
- 24 (XIV) The quantity, quality, location, and timing of water returned to the basin of
25 origin or receiving basin;
- 26 (XV) Climatic conditions;
- 27 (XVI) Any offsetting increases in flow in the basin of origin that may be arranged
28 through permit conditions;
- 29 (XVII) Reserved;
- 30 (XVIII) Consultations with local governments affected by the proposed transfer and
31 use;
- 32 (XIX) The correlation between surface water and ground water in the basin of
33 origin and whether the proposed use will be harmful to the supply of either or both;
- 34 (XX) Impact on interstate water use;
- 35 (XXI) The cumulative effect on the basin of origin and the receiving basin of any
36 water transfer or consumptive water use that is authorized or projected; and

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

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

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

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

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

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

26 SECTION 3.

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