

House Bill 54

By: Representatives Powell of the 29th, McCall of the 30th, and Bearden of the 68th

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 revising 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, as follows:

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 surface-water withdrawal permits
 27 which if granted on or after the effective date of this subsection would authorize ~~the~~
 28 ~~withdrawal and transfer of surface waters across natural basins~~ an interbasin or an
 29 intrabasin transfer, the director 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 (C) Any person who receives in one county an interbasin or intrabasin transfer of water
29 which originated in a second county is prohibited from transferring any or all of such
30 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;

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35 new interbasin transfer of water withdrawn from the Etowah River upriver from Lake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

1 (E) The exceptions provided for transfers pursuant to Article 10 of this chapter, the
 2 'Metropolitan North Georgia Water Planning District Act,' in subparagraphs (B) and (C)
 3 of this paragraph shall not be considered in the development of or included in any
 4 comprehensive state-wide water management plan adopted pursuant to Article 8 of this
 5 chapter on or after the effective date of this subsection, and such exceptions shall be
 6 inapplicable on and after the adoption of any such plan; and

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

15 SECTION 2.

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

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

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

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

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

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

34 (i) Ground water transferred from one place to another in connection with mining,
 35 conveying, processing, beneficiation, sale, or shipment of any mineral, as such term
 36 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 (E) 'Intrabasin transfer' means the withdrawal, diversion, or pumping of ground water
6 from a point within a basin and discharge of all or any part of that water at a different
7 location in that basin by means of pipes, pipelines, ditches, conduits, or canals;
8 provided, however, intrabasin transfer shall not include the following:

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

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

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

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

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

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

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

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

- 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;
- 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) Reserved;
- 26 (XIV) The quantity, quality, location, and timing of water returned to the basin of
27 origin or receiving basin;
- 28 (XV) Climatic conditions;
- 29 (XVI) Any offsetting increases in flow in the basin of origin that may be arranged
30 through permit conditions;
- 31 (XVII) Reserved;
- 32 (XVIII) Consultations with local governments affected by the proposed transfer and
33 use;
- 34 (XIX) The correlation between surface water and ground water in the basin of
35 origin and whether the proposed use will be harmful to the supply of either or both;
- 36 (XX) Impact on interstate water use;

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

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

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

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

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

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

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

28 SECTION 3.

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