

Senate Bill 451

By: Senators Walker III of the 20th, Martin of the 9th, Strickland of the 17th, Wilkinson of the 50th and Black of the 8th

A BILL TO BE ENTITLED  
AN ACT

1 To amend Code Section 2-6-27 of the Official Code of Georgia Annotated, relating to the  
2 State Soil and Water Conservation Commission – additional duties and powers, so as to  
3 remove authority of the State Soil and Water Conservation Commission to formulate certain  
4 rules and regulations in consultation with the Environmental Protection Division of the  
5 Department of Natural Resources; to amend Chapter 5 of Title 12 of the Official Code of  
6 Georgia Annotated, relating to water resources, so as to modify provisions relating to  
7 regulated riparian rights to surface waters for general or farm use, permits for withdrawal,  
8 diversion or impoundment, coordination with water plans, metering of farm use, interbasin  
9 transfers, and appeal procedures, so as to modify provisions relating to regulated reasonable  
10 use of ground water for farm use, permits to withdraw, obtain, or utilize same, metering of  
11 same, and related procedures; to modify procedures relating to applications for such permits;  
12 to modify procedures relating to the suspension of farm use permits; to modify provisions  
13 relating to measuring farm uses of water; to provide for related matters; to repeal conflicting  
14 laws; and for other purposes.

15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

16 **SECTION 1.**

17 Code Section 2-6-27 of the Official Code of Georgia Annotated, relating to the State Soil and  
18 Water Conservation Commission – additional duties and powers, is amended by deleting  
19 paragraph (7.2).

20 **SECTION 2.**

21 Chapter 5 of Title 12 of the Official Code of Georgia Annotated, relating to water resources,  
22 is amended by revising paragraph (3) of subsection (b) and subsection (m.1) of Code Section  
23 12-5-31, relating to regulated riparian rights to surface waters for general or farm use,  
24 permits for withdrawal, diversion or impoundment, coordination with water plans, metering  
25 of farm use, interbasin transfers, and appeal procedures, as follows:

26       "(3)(A) Notwithstanding any other provision of this Code section to the contrary, a  
 27       permit for the withdrawal or diversion of surface waters for farm uses shall be issued  
 28       by the director to any person when the applicant submits an application which provides  
 29       reasonable proof that the applicant's farm use of surface waters occurred prior to July  
 30       1, 1988, and when any such application is submitted prior to July 1, 1991. If submitted  
 31       prior to July 1, 1991, an application for a permit to be issued based upon farm uses of  
 32       surface waters occurring prior to July 1, 1988, shall be granted for the withdrawal or  
 33       diversion of surface waters at a rate of withdrawal or diversion equal to the greater of  
 34       the operating capacity in place for withdrawal or diversion on July 1, 1988, or, when  
 35       measured in gallons per day on a monthly average for a calendar year, the greatest  
 36       withdrawal or diversion capacity during the five-year period immediately preceding  
 37       July 1, 1988. If submitted after July 1, 1991, or, regardless of when submitted, if it is  
 38       based upon a withdrawal or diversion of surface waters for farm uses occurring or  
 39       proposed to occur on or after July 1, 1988, an application shall be subject to evaluation  
 40       and classification pursuant to subsections (e), (f), and (g) of this Code section, but a  
 41       permit based upon such evaluation and classification shall be issued to ensure the  
 42       applicant's right to a reasonable use of such surface waters. Any permit issued pursuant  
 43       to this paragraph shall be conditioned upon the requirement that the permittee shall  
 44       provide, on forms prescribed by the director, information relating to a general  
 45       description of the lands and number of acres subject to irrigation and the permit; a  
 46       description of the general type of irrigation system used; the source of withdrawal water  
 47       such as river, stream, or impoundment; and pump information, including rated capacity,  
 48       pump location, and power information.

49       (B) Applications under this paragraph submitted on or after April 20, 2006, for farm  
 50       use within the Flint River basin shall be assessed a nonrefundable application fee in the  
 51       amount of \$250.00 per application. Permits applied for under this paragraph on or  
 52       after April 20, 2006, for farm use in the Flint River basin shall have a term of 25 years  
 53       and shall be renewed at the original permitted capacity unless an evaluation of the water  
 54       supply by the division indicates that renewal at the original capacity would have  
 55       unreasonable adverse effects upon other water uses. The division may renew the  
 56       original permit at a lower capacity, but such capacity shall be based on the reasonable  
 57       use of the permittee and evaluation of the resource. All permits issued under this  
 58       paragraph may be transferred or assigned to subsequent owners of the lands which are  
 59       the subject of such permit; provided, however, that:

- 60       (i) ~~the~~ The division shall receive written notice of any such transfer or assignment;
- 61       (ii) Any modification in or amendment to the use or capacity conditions contained
- 62       in the permit or in the lands which are the subject of such permit shall require the

63 permittee to submit an application for review and approval by the director consistent  
 64 with this Code section; and  
 65 (iii) For all permits for which such modification, amendment, transfer, or assignment  
 66 is effective on or after April 20, 2018, and for which no water-measuring device is  
 67 installed, the permittee shall have one year from the effective date of such  
 68 modification, amendment, transfer, or assignment to have an acceptable type of  
 69 water-measuring device installed, to have such device in operation at each point of  
 70 withdrawal, other than from agricultural pump storage facilities, and to receive  
 71 approval from the division of such installation. The permittee shall be responsible for  
 72 all related costs.

73 (4) Nothing in this paragraph shall be construed as a repeal or modification of Code  
 74 Section 12-5-46."

75 "(m.1)(1) The State Soil and Water Conservation Commission division shall have the  
 76 duty of implementing a program of measuring farm uses of water in order to obtain clear  
 77 and accurate information on the patterns and amounts of such use, which information is  
 78 essential to proper management of water resources by the state and useful to farmers for  
 79 improving the efficiency and effectiveness of their use of water, meeting the requirements  
 80 of subsection subsections (b) and (m) of this Code section, and improving water  
 81 conservation. Accordingly, the State Soil and Water Conservation Commission shall on  
 82 behalf of the state purchase, install, operate, and maintain water-measuring devices for  
 83 farm uses that are required by this Code section to have permits. As used in this  
 84 paragraph, the term 'operate' shall include reading the water-measuring device, compiling  
 85 data, and reporting findings.

86 (2) For purposes of this subsection, the State Soil and Water Conservation Commission  
 87 The division:

88 (A) May conduct its duties with ~~commission~~ division staff and may contract with other  
 89 persons to conduct any of its duties;

90 (B) May receive and use state appropriations, gifts, grants, or other sources of funding  
 91 to carry out its duties;

92 (C) ~~In consultation with the director, shall~~ Shall develop a priority system for the  
 93 installation of water-measuring devices for measurement of farm uses of water at the  
 94 points of those withdrawals for which a that have permits permit was issued as of July  
 95 1, 2003. The commission shall, provided that adequate funding is received, install and  
 96 commence operation and maintenance of water-measuring devices for all such farm  
 97 uses by July 1, 2009, provided, however, that the commission shall not install a  
 98 water-measuring device on any irrigation system for such a farm use if such irrigation  
 99 system is equipped with a meter as of July 1, 2003, and such meter is determined by the

100 ~~commission to be properly installed and operable, but any subsequent replacement or~~  
 101 ~~maintenance of such an irrigation system that necessitates replacement of such meter~~  
 102 ~~shall necessitate installation of a water-measuring device by the commission; The~~  
 103 ~~division may refine the priority system from time to time based on the amount of~~  
 104 ~~funding received by the division, considerations regarding cost effectiveness, new~~  
 105 ~~technical information, changes in resource use or conditions, or other factors as deemed~~  
 106 ~~relevant by the director;~~

107 ~~(D) May charge any permittee the commission's reasonable costs for purchase and~~  
 108 ~~installation of a water-measuring device for any farm use permit issued by the director~~  
 109 ~~after July 1, 2003; however, for permit applications submitted to the division prior to~~  
 110 ~~December 31, 2002; Shall, on behalf of the state, purchase and install that subset of~~  
 111 ~~water-measuring devices according to the priority system required by this Code section~~  
 112 ~~and no charge shall be made to the permittee for such costs. However, when the~~  
 113 ~~division assesses the site or attempts to install such water-measuring devices and if the~~  
 114 ~~withdrawal or irrigation infrastructure necessary for the proper installation of such a~~  
 115 ~~device is not present, the division shall document such withdrawal or irrigation~~  
 116 ~~infrastructure conditions, and notify the permittee in writing that a state funded~~  
 117 ~~water-measuring device or devices could not be installed, that a device or devices are~~  
 118 ~~still required, and that such permittee is now responsible for the installation and all~~  
 119 ~~associated costs; and~~

120 ~~(E) Shall read an appropriate proportion of water-measuring devices installed for~~  
 121 ~~measuring farm use of ground water and compile the collected data for use in meeting~~  
 122 ~~the purposes in paragraph (1) of this subsection; and~~

123 ~~(F) Shall issue an annual progress report on the status of water-measuring device~~  
 124 ~~installation.~~

125 ~~(3) Any person whose permit for agricultural water use was issued before July 1, 2003,~~  
 126 ~~and who desires to install a water-measuring device at no cost to the state may do so~~  
 127 ~~provided that use of such device does not commence prior to receiving approval from the~~  
 128 ~~division and that an acceptable type of water-measuring device is installed at each point~~  
 129 ~~of withdrawal other than agricultural pump storage facilities.~~

130 ~~(3)(4) Any person who desires to commence a farm use of water for which a permit is~~  
 131 ~~issued after July 1, 2003, shall not commence such use prior to ~~the installation of a~~~~  
 132 ~~receiving approval from the division that such person has installed an acceptable type of~~  
 133 ~~water-measuring device by the commission at each point of withdrawal other than~~  
 134 ~~agricultural pump storage facilities. The permittee shall be responsible for all such costs.~~

135 ~~(4) Subject to the provisions of subparagraph (C) of paragraph (2) of this subsection,~~  
 136 ~~after July 1, 2009, no one shall use water for a farm use required to have a permit under~~

137 ~~this Code section without having a water-measuring device in operation that has been~~  
 138 ~~installed by the commission.~~

139 ~~(5) Employees or agents of the commission are authorized to enter upon private property~~  
 140 ~~at reasonable times to conduct the duties of the commission under this subsection. All~~  
 141 ~~permittees, regardless of when their permit application was submitted:~~

142 ~~(A) Shall, after November 1, 2018, be responsible for the operation, maintenance,~~  
 143 ~~repair, and replacement of any such acceptable water-measuring devices, including all~~  
 144 ~~associated costs, to ensure that such water-measuring devices accurately reflect the~~  
 145 ~~amount of water used;~~

146 ~~(B) Shall, after November 1, 2019, be responsible for causing such water-measuring~~  
 147 ~~devices to be read annually between November 1 and January 31, for ensuring that such~~  
 148 ~~data is accurate and complete, and for transmitting such data to the division no later~~  
 149 ~~than March 1 on forms prescribed by the director. The permittee shall be responsible~~  
 150 ~~for all associated costs; and~~

151 ~~(C) Until a permittee whose permit was issued by the division before July 1, 2003, has~~  
 152 ~~a water-measuring device installed in accordance with paragraph (b) of this Code~~  
 153 ~~section or as provided in paragraph (2) or (3) of this subsection, such permittee shall~~  
 154 ~~have no obligations pursuant to this paragraph.~~

155 ~~(6) The division may audit a subset of reported water-measuring device readings~~  
 156 ~~submitted by permittees for the purpose of understanding and improving the accuracy of~~  
 157 ~~such readings. As deemed appropriate by the division and in conjunction with the~~  
 158 ~~Georgia Department of Agriculture, the division may develop and require new methods~~  
 159 ~~for the reading, recording, and reporting of agricultural water use data that consider the~~  
 160 ~~burden on the permittee and improve the accuracy of the data submitted to the division.~~

161 ~~(7) Employees, contractors, and agents of the division are authorized to enter upon~~  
 162 ~~private property at reasonable times to carry out the duties of the division under this~~  
 163 ~~subsection, including, but not limited to, conducting monthly readings of a subset of all~~  
 164 ~~installed water-measuring devices state-wide, conducting installation of water-measuring~~  
 165 ~~devices, and conducting site assessments.~~

166 ~~(6)(8)~~ Any reports of amounts of use for recreational purposes under this Code section  
 167 shall be compiled separately from amounts reported for all other farm uses."

### 168 **SECTION 3.**

169 Said chapter is further amended by revising subsections (b) and (b.1) of Code Section  
 170 12-5-105, relating to regulated reasonable use of ground water for farm use, permits to  
 171 withdraw, obtain, or utilize same, metering of same, and related procedures, as follows:

172 "(b) Notwithstanding any provisions of Code Section 12-5-95, 12-5-96, or 12-5-97 to the  
 173 contrary, permits to withdraw, obtain, or utilize ground waters for farm uses, as that term  
 174 is defined in paragraph (5.1) of Code Section 12-5-92, whether for new withdrawals or  
 175 under subsection (a) of this Code section, shall be governed as follows:

176 (1) ~~A permit issued, modified, or amended after July 1, 2003, for farm uses shall have~~  
 177 ~~annual reporting requirements.~~ Permits applied for under this Code section on or after  
 178 April 20, 2006, for farm use within the Flint River basin shall have a term of 25 years and  
 179 shall be renewed at the original permitted capacity unless an evaluation ~~of the water~~  
 180 ~~supply~~ by the division indicates that renewal at the original capacity would have  
 181 unreasonable adverse effects upon other water uses. The division may renew the original  
 182 permit at a lower capacity, but such capacity shall be based on the reasonable use of the  
 183 permittee and evaluation of the resource.

184 (2) All permits issued under this Code section may be modified, amended, transferred,  
 185 or assigned to subsequent owners of the lands which are the subject of such permit;  
 186 provided, however, that:

187 (A) ~~the~~ The division shall receive written notice of any such transfer or assignment, ~~and~~  
 188 ~~;~~

189 (B) ~~any~~ Any modification in or amendment to the use or capacity conditions contained  
 190 in the permit or in the lands which are the subject of such permit shall require the  
 191 permittee to submit an application for review and approval by the director consistent  
 192 with the requirements of this part; and

193 (C) For all permits for which such modification, amendment, transfer, or assignment  
 194 is effective on or after April 20, 2018, and for which no water-measuring device is  
 195 installed, the permittee shall have one year from the effective date of such modification,  
 196 amendment, transfer, or assignment to have an acceptable type of water-measuring  
 197 device installed, to have such device in operation at each point of withdrawal other than  
 198 agricultural pump storage facilities, and to receive approval from the division of such  
 199 installation. The permittee shall be responsible for all associated costs.

200 (2)(3) Permits for farm use, after initial use has commenced, shall not be revoked, in  
 201 whole or in part, for nonuse; except that the director may permanently revoke any permit  
 202 under this Code section for farm use within the Flint River Basin applied for on or after  
 203 April 20, 2006, if initial use for the purpose indicated on the permit application, as  
 204 measured by a flow meter approved by the State Soil and Water Conservation  
 205 Commission, has not commenced within two years of the date of issuance of the permit  
 206 unless the permittee can reasonably demonstrate that his or her nonuse was due to  
 207 financial hardship or circumstances beyond his or her control;

208 ~~(3)~~(4) The director may suspend or modify a permit for farm use if he or she should  
 209 determine through inspection, investigations, or otherwise that the quantity of water  
 210 allowed would prevent other applicants from reasonable use of ground water beneath  
 211 their property for farm use;

212 ~~(4)~~(5) During emergency periods of water shortage, the director shall give first priority  
 213 to providing water for human consumption and second priority to farm use; and

214 ~~(5)~~(6) The importance and necessity of water for industrial purposes are in no way  
 215 modified or diminished by this Code section.

216 (b.1)(1) ~~The State Soil and Water Conservation Commission~~ division shall have the duty  
 217 of implementing a program of measuring farm uses of water in order to obtain clear and  
 218 accurate information on the patterns and amounts of such use, which information is  
 219 essential to proper management of water resources by the state and useful to farmers for  
 220 improving the efficiency and effectiveness of their use of water, meeting the requirements  
 221 of paragraph (1) of subsection (b) of this Code section, and improving water  
 222 conservation. ~~Accordingly, the State Soil and Water Conservation Commission shall on~~  
 223 ~~behalf of the state purchase, install, operate, and maintain water-measuring devices for~~  
 224 ~~farm uses that are required by this Code section to have permits. As used in this~~  
 225 ~~paragraph, the term 'operate' shall include reading the water-measuring device, compiling~~  
 226 ~~data, and reporting findings.~~

227 (2) For purposes of this subsection, ~~the State Soil and Water Conservation Commission~~  
 228 The division:

229 (A) May conduct its duties with ~~commission~~ division staff and may contract with other  
 230 persons to conduct any of its duties;

231 (B) May receive and use state appropriations, gifts, grants, or other sources of funding  
 232 to carry out its duties;

233 (C) ~~In consultation with the director, shall~~ Shall develop a priority system for the  
 234 installation of water-measuring devices for measurement of farm uses that have permits  
 235 of water at the points of those withdrawals for which a permit was issued as of July 1,  
 236 2003. ~~The commission shall, provided that adequate funding is received, install and~~  
 237 ~~commence operation and maintenance of water-measuring devices for all such farm~~  
 238 ~~uses by July 1, 2009, provided, however, that the commission shall not install a~~  
 239 ~~water-measuring device on any irrigation system for such a farm use if such irrigation~~  
 240 ~~system is equipped with a meter as of July 1, 2003, and such meter is determined by the~~  
 241 ~~commission to be properly installed and operable, but any subsequent replacement or~~  
 242 ~~maintenance of such an irrigation system that necessitates replacement of such meter~~  
 243 ~~shall necessitate installation of a water-measuring device by the commission~~ The  
 244 division may refine the priority system from time to time based on the amount of

245 funding received by the division, considerations regarding cost effectiveness, new  
 246 technical information, changes in resource use or conditions, or other factors as deemed  
 247 relevant by the director;

248 ~~(D) May charge any permittee the commission's reasonable costs for purchase and~~  
 249 ~~installation of a water-measuring device for any farm use permit issued by the director~~  
 250 ~~after July 1, 2003; however, for permit applications submitted to the division prior to~~  
 251 ~~December 31, 2002, Shall, on behalf of the state, purchase and install that subset of~~  
 252 water-measuring devices according to the priority system required by this Code section  
 253 and no charge shall be made to the permittee for such costs. However, when the  
 254 division assesses the site or attempts to install such water-measuring devices and finds  
 255 the withdrawal or irrigation infrastructure necessary for the proper installation of such  
 256 a device is not present, the division shall document such withdrawal or irrigation  
 257 infrastructure conditions and notify the permittee in writing that a state funded  
 258 water-measuring device or devices could not be installed, that a device or devices are  
 259 still required, and that such permittee is now responsible for the installation and all  
 260 associated costs; and

261 (E) Shall read an appropriate proportion of water-measuring devices installed for  
 262 measuring farm use of ground water and compile the collected data for use in meeting  
 263 the purposes in paragraph (1) of this Code section; and

264 (F) Shall issue an annual progress report on the status of water-measuring device  
 265 installation.

266 (3) Any person whose permit for agricultural water use was issued before July 1, 2003,  
 267 and who desires to install a water-measuring device at no cost to the state may do so,  
 268 provided use of such device does not commence prior to receiving approval from the  
 269 division and that an acceptable type of water-measuring device is installed at each point  
 270 of withdrawal other than agricultural pump storage facilities.

271 (4) Any person who desires to commence a farm use of water for which a permit is  
 272 issued after July 1, 2003, shall not commence such use prior to ~~the installation of a~~  
 273 receiving approval from the division that such person has installed an acceptable type of  
 274 water-measuring device by the commission at each point of withdrawal other than  
 275 agricultural pump storage facilities. The permittee shall be responsible for all such costs.

276 ~~(4) Subject to the provisions of subparagraph (C) of paragraph (2) of this subsection,~~  
 277 ~~after July 1, 2009, no one shall use water for a farm use required to have a permit under~~  
 278 ~~this Code section without having a water-measuring device in operation that has been~~  
 279 ~~installed by the commission.~~

280 (5) All permittees, regardless of when their permit application was submitted:

281 (A) Shall, after November 1, 2018, be responsible for the operation, maintenance,  
 282 repair, and replacement of any such acceptable water-measuring devices, including all  
 283 associated costs, to ensure that such water-measuring devices accurately reflect the  
 284 amount of water used;

285 (B) Shall, after November 1, 2019, be responsible for causing such water-measuring  
 286 devices to be read annually between November 1 and January 31, for ensuring that such  
 287 data is accurate and complete, and for transmitting such data to the division no later  
 288 than March 1 on forms prescribed by the director. The permittee shall be responsible  
 289 for all associated costs; and

290 (C) Until a permittee whose permit was issued by the division before July 1, 2003, has  
 291 a water-measuring device installed in accordance with subsection (b) of this Code  
 292 section or as provided in paragraphs (2) or (3) of this subsection, such permittee shall  
 293 have no obligations under this paragraph.

294 (6) The division may audit a subset of reported water-measuring device readings  
 295 submitted by permittees for the purpose of understanding and improving the accuracy of  
 296 such readings. As deemed appropriate by the division and in conjunction with the  
 297 Georgia Department of Agriculture, the division may develop and require new methods  
 298 for the reading, recording, and reporting of agricultural water use data that consider the  
 299 burden on the permittee and improve the accuracy of the data submitted to the division.

300 (7) Employees, contractors, or agents of the ~~commission~~ division are authorized to enter  
 301 upon private property at reasonable times to conduct the duties of the ~~commission~~  
 302 division under this subsection, including, but not limited to, conducting monthly readings  
 303 of a subset of all installed water-measuring devices state-wide, conducting installation of  
 304 water-measuring devices, and conducting site assessments.

305 ~~(6)~~(8) Any reports of amounts of use for recreational purposes under this part shall be  
 306 compiled separately from amounts reported for all other farm uses."

307 **SECTION 4.**

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