

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

AS PASSED SENATE

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

58 (C) All permits issued under this paragraph may be modified, amended, transferred,
 59 or assigned to subsequent owners of the lands which are the subject of such permit;
 60 provided, however, that:

61 (i) ~~the~~ The division shall receive written notice of any such transfer or assignment;
 62 and

63 (ii) Any modification in or amendment to the use or capacity conditions contained
 64 in the permit or in the lands which are the subject of such permit shall require the
 65 permittee to submit an application for review and approval by the director consistent
 66 with this Code section.

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

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

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

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

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

86 (C) ~~In consultation with the director, shall~~ Shall develop a priority system for the
 87 installation of water-measuring devices for measurement of farm uses of water at the
 88 points of those withdrawals for which a that have permits permit was issued as of July
 89 1, 2003. ~~The commission shall, provided that adequate funding is received, install and~~
 90 ~~commence operation and maintenance of water-measuring devices for all such farm~~
 91 ~~uses by July 1, 2009; provided, however, that the commission shall not install a~~
 92 ~~water-measuring device on any irrigation system for such a farm use if such irrigation~~
 93 ~~system is equipped with a meter as of July 1, 2003, and such meter is determined by the~~
 94 ~~commission to be properly installed and operable, but any subsequent replacement or~~
 95 ~~maintenance of such an irrigation system that necessitates replacement of such meter~~
 96 ~~shall necessitate installation of a water-measuring device by the commission; The~~
 97 division may refine the priority system from time to time based on the amount of
 98 funding received by the division, considerations regarding cost effectiveness, new

99 technical information, changes in resource use or conditions, or other factors as deemed
 100 relevant by the director;

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

114 (E) Shall, upon scheduled intervals, read an appropriate proportion of water-measuring
 115 devices installed for measuring farm use of surface water and compile the collected data
 116 for use in meeting the purposes in paragraph (1) of this subsection, and the division
 117 shall communicate in advance with private property owners to establish reasonable
 118 times for such readings; and

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

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

126 ~~(3)~~(4) Any person who desires to commence a farm use of water for which a permit is
 127 issued after July 1, 2003, shall not commence such use prior to ~~the installation of a~~
 128 receiving approval from the division that such person has installed an acceptable type of
 129 water-measuring device by the commission at each point of withdrawal other than
 130 agricultural pump storage facilities. The permittee shall be responsible for all such costs.

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

135 (5) ~~Employees or agents of the commission are authorized to enter upon private property~~
 136 ~~at reasonable times to conduct the duties of the commission under this subsection. Until~~
 137 ~~a permittee whose permit was issued by the division before July 1, 2003, has a~~
 138 ~~water-measuring device installed in accordance with paragraph (b) of this Code section~~
 139 ~~or as provided in paragraph (2) or (3) of this subsection, such permittee shall have no~~
 140 ~~obligations pursuant to this paragraph.~~

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

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

152 ~~(6)(8)~~ Any reports of amounts of use for recreational purposes under this Code section
 153 shall be compiled separately from amounts reported for all other farm uses."

154 **SECTION 3.**

155 Said chapter is further amended by revising subsections (b) and (b.1) of Code Section
 156 12-5-105, relating to regulated reasonable use of ground water for farm use, permits to
 157 withdraw, obtain, or utilize same, metering of same, and related procedures, as follows:

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

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

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

173 (A) ~~the~~ The division shall receive written notice of any such transfer or assignment;
 174 ~~and;~~ and

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

179 ~~(2)~~(3) Permits for farm use, after initial use has commenced, shall not be revoked, in
 180 whole or in part, for nonuse; except that the director may permanently revoke any permit
 181 under this Code section for farm use within the Flint River Basin applied for on or after
 182 April 20, 2006, if initial use for the purpose indicated on the permit application, as
 183 measured by a flow meter approved by the State Soil and Water Conservation
 184 Commission, has not commenced within two years of the date of issuance of the permit
 185 unless the permittee can reasonably demonstrate that his or her nonuse was due to
 186 financial hardship or circumstances beyond his or her control;

187 ~~(3)~~(4) The director may suspend or modify a permit for farm use if he or she should
 188 determine through inspection, investigations, or otherwise that the quantity of water
 189 allowed would prevent other applicants from reasonable use of ground water beneath
 190 their property for farm use;

191 ~~(4)~~(5) During emergency periods of water shortage, the director shall give first priority
 192 to providing water for human consumption and second priority to farm use; and

193 ~~(5)~~(6) The importance and necessity of water for industrial purposes are in no way
 194 modified or diminished by this Code section.

195 (b.1)(1) ~~The State Soil and Water Conservation Commission~~ division shall have the duty
 196 of implementing a program of measuring farm uses of water in order to obtain clear and
 197 accurate information on the patterns and amounts of such use, which information is
 198 essential to proper management of water resources by the state and useful to farmers for
 199 improving the efficiency and effectiveness of their use of water, meeting the requirements
 200 of paragraph (1) of subsection (b) of this Code section, and improving water
 201 conservation. ~~Accordingly, the State Soil and Water Conservation Commission shall on~~
 202 ~~behalf of the state purchase, install, operate, and maintain water-measuring devices for~~
 203 ~~farm uses that are required by this Code section to have permits. As used in this~~
 204 ~~paragraph, the term 'operate' shall include reading the water-measuring device, compiling~~
 205 ~~data, and reporting findings.~~

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

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

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

212 (C) ~~In consultation with the director, shall~~ Shall develop a priority system for the
 213 installation of water-measuring devices for measurement of farm uses that have permits
 214 of water at the points of those withdrawals for which a permit was issued as of July 1,
 215 2003. The commission shall, provided that adequate funding is received, install and
 216 commence operation and maintenance of water-measuring devices for all such farm
 217 uses by July 1, 2009, provided, however, that the commission shall not install a
 218 water-measuring device on any irrigation system for such a farm use if such irrigation
 219 system is equipped with a meter as of July 1, 2003, and such meter is determined by the
 220 commission to be properly installed and operable, but any subsequent replacement or
 221 maintenance of such an irrigation system that necessitates replacement of such meter
 222 shall necessitate installation of a water-measuring device by the commission The
 223 division may refine the priority system from time to time based on the amount of
 224 funding received by the division, considerations regarding cost effectiveness, new
 225 technical information, changes in resource use or conditions, or other factors as deemed
 226 relevant by the director;

227 (D) ~~May charge any permittee the commission's reasonable costs for purchase and~~
 228 ~~installation of a water-measuring device for any farm use permit issued by the director~~
 229 ~~after July 1, 2003; however, for permit applications submitted to the division prior to~~
 230 ~~December 31, 2002, Shall, on behalf of the state, purchase and install that subset of~~
 231 ~~water-measuring devices according to the priority system required by this Code section~~
 232 ~~and no charge shall be made to the permittee for such costs. However, when the~~
 233 ~~division assesses the site or attempts to install such water-measuring devices and finds~~
 234 ~~the withdrawal or irrigation infrastructure necessary for the proper installation of such~~
 235 ~~a device is not present, the division shall document such withdrawal or irrigation~~
 236 ~~infrastructure conditions and notify the permittee in writing that a state funded~~
 237 ~~water-measuring device or devices could not be installed, that a device or devices are~~
 238 ~~still required. After the expiration of five years such permittee shall be responsible for~~
 239 ~~the installation and all associated costs; and~~

240 (E) Shall, upon scheduled intervals, read an appropriate proportion of water-measuring
 241 devices installed for measuring farm use of ground water and compile the collected data
 242 for use in meeting the purposes in paragraph (1) of this Code section, and the division

243 shall communicate in advance with private property owners to establish reasonable
 244 times for such readings; and

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

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

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

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

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

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

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

277 ~~(6)(8) Any reports of amounts of use for recreational purposes under this part shall be~~
 278 ~~compiled separately from amounts reported for all other farm uses."~~

279

SECTION 4.

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