

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

**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), paragraph (6.1) of subsection (k),
23 and subsection (m.1) of Code Section 12-5-31, relating to regulated riparian rights to surface
24 waters for general or farm use, permits for withdrawal, diversion or impoundment,

25 coordination with water plans, metering of farm use, interbasin transfers, and appeal
 26 procedures, as follows:

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

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

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

62 ~~(i) the~~ The division shall receive written notice of any such transfer or assignment; ;
 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 (iii) The permittee may commence withdrawing water under the modified, amended,
 68 transferred, or assigned permit on the effective date stated on the revised permit for
 69 farm use; and

70 (iv) For all permits for which such modification, amendment, transfer, or assignment
 71 is effective on or after April 20, 2018, and for which no water-measuring device is
 72 installed, the permittee shall have one year from the updated effective date stated on
 73 the revised permit for farm use to have an acceptable type of water-measuring device
 74 installed, to have such device in operation at each point of permitted withdrawal, and
 75 to notify the division in writing once the installation has occurred. The division shall
 76 approve or disapprove the installation within 60 days of the date of notification. The
 77 permittee shall be responsible for all associated costs.

78 (D) Nothing in this paragraph shall be construed as a repeal or modification of Code
 79 Section 12-5-46."

80 "(6.1) The director may permanently revoke any permit under this Code section for farm
 81 use within the Flint River Basin applied for on or after April 20, 2006, if initial use for
 82 the purpose indicated on the permit application, as measured by a flow meter approved
 83 by the ~~State Soil and Water Conservation Commission~~ division, has not commenced
 84 within two years of the date of issuance of the permit unless the permittee can reasonably
 85 demonstrate that his or her nonuse was due to financial hardship or circumstances beyond
 86 his or her control;"

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

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

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

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

104 (C) ~~In consultation with the director, shall~~ Shall develop a priority system for the
 105 installation of water-measuring devices for measurement of farm uses of water at the
 106 points of those withdrawals for which a that have permits permit was issued as of July
 107 1, 2003. ~~The commission shall, provided that adequate funding is received, install and~~
 108 ~~commence operation and maintenance of water-measuring devices for all such farm~~
 109 ~~uses by July 1, 2009, provided, however, that the commission shall not install a~~
 110 ~~water-measuring device on any irrigation system for such a farm use if such irrigation~~
 111 ~~system is equipped with a meter as of July 1, 2003, and such meter is determined by the~~
 112 ~~commission to be properly installed and operable, but any subsequent replacement or~~
 113 ~~maintenance of such an irrigation system that necessitates replacement of such meter~~
 114 ~~shall necessitate installation of a water-measuring device by the commission; The~~
 115 division may refine the priority system from time to time based on the amount of
 116 funding received by the division, considerations regarding cost effectiveness, new
 117 technical information, changes in resource use or conditions, or other factors as deemed
 118 relevant by the director;

119 (D) ~~May charge any permittee the commission's reasonable costs for purchase and~~
 120 ~~installation of a water-measuring device for any farm use permit issued by the director~~
 121 ~~after July 1, 2003; however, for permit applications submitted to the division prior to~~
 122 ~~December 31, 2002; Shall, on behalf of the state, contract for the purchase and~~
 123 installation of that subset of water-measuring devices according to the priority system
 124 required by this Code section and no charge shall be made to the permittee for such
 125 costs. However, when the division assesses the site or attempts to install such
 126 water-measuring devices and finds that the site lacks withdrawal or irrigation
 127 infrastructure, the division shall document such withdrawal or irrigation infrastructure
 128 conditions, and notify the permittee in writing that a state funded water-measuring
 129 device or devices could not be installed, that a device or devices are still required.
 130 After the expiration of five years such permittee shall be responsible for having an
 131 acceptable type of water-measuring device installed and placed into operation and all
 132 associated costs. The permittee shall notify the division in writing once the installation
 133 has occurred. The division shall approve or disapprove the installation within 60 days
 134 of the date of notification; and

135 (E) Shall, at monthly intervals, read an appropriate proportion of water-measuring
 136 devices installed for measuring farm use of surface water and compile the collected data
 137 for use in meeting the purposes in paragraph (1) of this subsection, and the division
 138 shall communicate in advance with private property owners to establish reasonable
 139 times for such readings. In the event that a permittee's water-measuring devices are
 140 selected for monthly readings, the permittee may choose to perform those readings and
 141 transmit that information to the division; and

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

144 (3) Any person whose permit for agricultural water use was issued before July 1, 2003,
 145 and who desires to install a water-measuring device at no cost to the state may do so,
 146 provided that the permittee shall have an acceptable type of water-measuring device
 147 installed and placed in operation at each point of permitted withdrawal and the permittee
 148 shall notify the division in writing once the installation has occurred. The division shall
 149 approve or disapprove the installation within 60 days of the date of notification.

150 ~~(3)~~(4) Any person who desires to commence a farm use of water for which a permit is
 151 issued after July 1, 2003, shall not commence such use prior to ~~the installation of a~~
 152 receiving approval from the division that such person has installed an acceptable type of
 153 water-measuring device installed by the commission at each point of permitted
 154 withdrawal. The permittee shall be responsible for all such costs.

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

159 (5) Employees, contractors or agents of the commission division are authorized to enter
 160 upon private property at reasonable times and upon reasonable notice to conduct the
 161 duties of the commission division under this subsection.

162 (6) Regarding all permits for which a water-measuring device is installed, regardless of
 163 when the permit was issued, the division shall contract for the annual reading of such
 164 water-measuring devices. The division shall require each contractor conducting such
 165 annual readings to transmit complete and accurate data required by the division to the
 166 division annually.

167 (7) The division shall audit a subset of reported water-measuring device readings
 168 submitted by permittees for the purpose of understanding and improving the accuracy of
 169 such readings.

170 (8) The division shall contract for any maintenance, repair, or replacement of
 171 water-measuring devices installed pursuant to this Code section where maintenance,

172 repair, or replacement is required to ensure that such water-measuring devices accurately
 173 reflect the amount of water used, and no charge shall be made to the permittee for such
 174 costs.

175 (9) If the division determines that the permittee or the permittee's employees, tenants,
 176 licensees, or agents have willfully dismantled, sold, relocated, or removed any
 177 water-measuring device installed pursuant to this Code section, the permittee may be
 178 subject to enforcement action by the division, including but not limited to imposition of
 179 civil penalties.

180 ~~(6)~~(10) Any reports of amounts of use for recreational purposes under this Code section
 181 shall be compiled separately from amounts reported for all other farm uses."

182 SECTION 3.

183 Said chapter is further amended by revising subsections (c) and (d) of Code Section 12-5-97,
 184 relating to duration of permits; renewal; transfer; certified statements by holders; monitoring
 185 water use; granting permit to person withdrawing ground water prior to July 1, 1973; prior
 186 investments in land and nature of plans for water use; continued withdrawal pending decision
 187 on permit, as follows:

188 "(c) Except as provided in ~~paragraph (1)~~ of subsection (b) of Code Section 12-5-105,
 189 permits shall not be transferred except with the approval of the division.

190 (d) Except as provided in ~~paragraph (1)~~ of subsection (b) of Code Section 12-5-105, every
 191 person who is required by this part to secure a permit shall file with the division, in the
 192 manner prescribed by the division, a certified statement of quantities of water used and
 193 withdrawn, sources of water, and the nature of the use thereof not more frequently than at
 194 30 day intervals. Such statements shall be filed on forms furnished by the division within
 195 90 days after the issuance of regulations. Water users not required to secure a permit shall
 196 comply with procedures established to protect and manage the water resources of the state.
 197 Such procedures shall be within the provisions of this part and shall be adopted after public
 198 hearing. The requirements embodied in the two preceding sentences shall not apply to
 199 individual domestic water use."

200 SECTION 4.

201 Said chapter is further amended by revising subsections (b) and (b.1) of Code Section
 202 12-5-105, relating to regulated reasonable use of ground water for farm use, permits to
 203 withdraw, obtain, or utilize same, metering of same, and related procedures, as follows:

204 "(b) Notwithstanding any provisions of Code Section 12-5-95, 12-5-96, or 12-5-97 to the
 205 contrary, permits to withdraw, obtain, or utilize ground waters for farm uses, as that term

206 is defined in paragraph (5.1) of Code Section 12-5-92, whether for new withdrawals or
 207 under subsection (a) of this Code section, shall be governed as follows:

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

216 (2) ~~All permits~~ A permittee may apply to have a permit issued under this Code section
 217 ~~may be modified, amended,~~ transferred, or assigned to subsequent owners of the lands
 218 which are the subject of such permit; provided, however, that:

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

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

225 (C) The permittee may commence withdrawing water under the modified, amended,
 226 transferred, or assigned permit on the effective date stated on the revised permit for
 227 farm use; and

228 (D) For all permits for which such modification, amendment, transfer, or assignment
 229 is effective on or after April 20, 2018, and for which no water-measuring device is
 230 installed, the permittee shall have one year from the updated effective date stated on the
 231 revised permit for farm use to have an acceptable type of water-measuring device
 232 installed, to have such device in operation at each point of permitted withdrawal, and
 233 to notify the division in writing once the installation has occurred. The division shall
 234 approve or disapprove the installation within 60 days of the date of notification. The
 235 permittee shall be responsible for all associated costs;

236 ~~(2)(3)~~ Permits for farm use, after initial use has commenced, shall not be revoked, in
 237 whole or in part, for nonuse; except that the director may permanently revoke any permit
 238 under this Code section for farm use within the Flint River Basin applied for on or after
 239 April 20, 2006, if initial use for the purpose indicated on the permit application, as
 240 measured by a flow meter approved by the ~~State Soil and Water Conservation~~
 241 ~~Commission~~ division has not commenced within two years of the date of issuance of the

242 permit unless the permittee can reasonably demonstrate that his or her nonuse was due
243 to financial hardship or circumstances beyond his or her control;

244 ~~(3)~~(4) The director may suspend or modify a permit for farm use if he or she should
245 determine through inspection, investigations, or otherwise that the quantity of water
246 allowed would prevent other applicants from reasonable use of ground water beneath
247 their property for farm use;

248 ~~(4)~~(5) During emergency periods of water shortage, the director shall give first priority
249 to providing water for human consumption and second priority to farm use; and

250 ~~(5)~~(6) The importance and necessity of water for industrial purposes are in no way
251 modified or diminished by this Code section.

252 (b.1)(1) ~~The State Soil and Water Conservation Commission~~ division shall have the duty
253 of implementing a program of measuring farm uses of water in order to obtain clear and
254 accurate information on the patterns and amounts of such use, which information is
255 essential to proper management of water resources by the state and useful to farmers for
256 improving the efficiency and effectiveness of their use of water, meeting the requirements
257 of ~~paragraph (1) of subsection~~ subsections (b) and (b.1) of this Code section, and
258 improving water conservation. ~~Accordingly, the State Soil and Water Conservation~~
259 ~~Commission shall on behalf of the state purchase, install, operate, and maintain~~
260 ~~water-measuring devices for farm uses that are required by this Code section to have~~
261 ~~permits. As used in this paragraph, the term 'operate' shall include reading the~~
262 ~~water-measuring device, compiling data, and reporting findings.~~

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

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

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

269 (C) ~~In consultation with the director, shall~~ Shall develop a priority system for the
270 installation of water-measuring devices for measurement of farm uses that have permits
271 of water at the points of those withdrawals for which a permit was issued as of July 1,
272 2003. The commission shall, provided that adequate funding is received, install and
273 commence operation and maintenance of water-measuring devices for all such farm
274 uses by July 1, 2009; provided, however, that the commission shall not install a
275 water-measuring device on any irrigation system for such a farm use if such irrigation
276 system is equipped with a meter as of July 1, 2003, and such meter is determined by the
277 commission to be properly installed and operable, but any subsequent replacement or
278 maintenance of such an irrigation system that necessitates replacement of such meter

279 ~~shall necessitate installation of a water-measuring device by the commission~~ The
 280 division may refine the priority system from time to time based on the amount of
 281 funding received by the division, considerations regarding cost effectiveness, new
 282 technical information, changes in resource use or conditions, or other factors as deemed
 283 relevant by the director;

284 ~~(D) May charge any permittee the commission's reasonable costs for purchase and~~
 285 ~~installation of a water-measuring device for any farm use permit issued by the director~~
 286 ~~after July 1, 2003; however, for permit applications submitted to the division prior to~~
 287 ~~December 31, 2002; Shall, on behalf of the state, contract for the purchase and~~
 288 installation of that subset of water-measuring devices according to the priority system
 289 required by this Code section and no charge shall be made to the permittee for such
 290 costs. However, when the division assesses the site or attempts to install such
 291 water-measuring devices and finds that the site lacks the withdrawal or irrigation
 292 infrastructure, the division shall document such withdrawal or irrigation infrastructure
 293 conditions and notify the permittee in writing that a state funded water-measuring
 294 device or devices could not be installed, that a device or devices are still required.
 295 After the expiration of five years such permittee shall be responsible for having an
 296 acceptable type of water-measuring device installed and placed into operation and all
 297 associated costs. The permittee shall notify the division in writing once the installation
 298 has occurred. The division shall approve or disapprove the installation within 60 days
 299 of the date of notification; and

300 ~~(E) Shall, at monthly intervals, read an appropriate proportion of water-measuring~~
 301 ~~devices installed for measuring farm use of ground water and compile the collected data~~
 302 ~~for use in meeting the purposes in paragraph (1) of this Code section, and the division~~
 303 ~~shall communicate in advance with private property owners to establish reasonable~~
 304 ~~times for such readings. In the event that a permittee's water-measuring devices are~~
 305 ~~selected for monthly readings, the permittee may choose to perform those readings and~~
 306 ~~transmit that information to the division; and~~

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

309 ~~(3) Any person whose permit for agricultural water use was issued before July 1, 2003,~~
 310 ~~and who desires to install a water-measuring device at no cost to the state may do so,~~
 311 ~~provided that the permittee shall have an acceptable type of water-measuring device~~
 312 ~~installed and placed in operation at each point of permitted withdrawal and the permittee~~
 313 ~~shall notify the division in writing once the installation has occurred. The division shall~~
 314 ~~approve or disapprove the installation within 60 days of the date of notification.~~

315 (4) Any person who desires to commence a farm use of water for which a permit is
 316 issued after July 1, 2003, shall not commence such use prior to the installation of a
 317 receiving approval from the division that such person has installed an acceptable type of
 318 water-measuring device installed by the commission at each point of permitted
 319 withdrawal. The permittee shall be responsible for all such costs.

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

324 (5) Regarding all permits for which a water-measuring device is installed, regardless of
 325 when the permit was issued, the division shall contract for the annual reading of such
 326 water-measuring devices. The division shall require each contractor conducting such
 327 annual readings to transmit complete and accurate data required by the division to the
 328 division annually.

329 (6) The division shall audit a subset of reported water-measuring device readings
 330 submitted by permittees for the purpose of understanding and improving the accuracy of
 331 such readings.

332 (7) Employees, contractors, or agents of the commission division are authorized to enter
 333 upon private property at reasonable times and upon reasonable notice to conduct the
 334 duties of the commission division under this subsection.

335 (8) The division shall contract for any maintenance, repair, or replacement of
 336 water-measuring devices installed pursuant to this Code section where maintenance,
 337 repair, or replacement is required to ensure that such water-measuring devices accurately
 338 reflect the amount of water used, and no charge shall be made to the permittee for such
 339 costs.

340 (9) If the division determines that the permittee or the permittee's employees, tenants,
 341 licensees, or agents have willfully dismantled, sold, relocated, or removed any
 342 water-measuring device installed pursuant to this Code Section, the permittee may be
 343 subject to enforcement action by the division, including but not limited to imposition of
 344 civil penalties.

345 ~~(6)(10)~~ Any reports of amounts of use for recreational purposes under this part shall be
 346 compiled separately from amounts reported for all other farm uses."

347 SECTION 5.

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