

House Bill 143 (COMMITTEE SUBSTITUTE)

By: Representatives Dickey of the 134th, Smith of the 70th, Yearata of the 152nd, Greene of the 154th, Cannon of the 172nd, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Chapter 5 of Title 12 of the Official Code of Georgia Annotated, relating to water
2 resources, so as to revise provisions regarding water-measuring devices for farm use of
3 surface and ground water; to provide for related matters; to repeal conflicting laws; and for
4 other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

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

12 "(3)(A) Notwithstanding any other provision of this Code section to the contrary, a
13 permit for the withdrawal or diversion of surface waters for farm uses shall be issued
14 by the director to any person when the applicant submits an application which provides
15 reasonable proof that the applicant's farm use of surface waters occurred prior to
16 July 1, 1988, and when any such application is submitted prior to July 1, 1991. If

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

(B) Permits applied for under this paragraph on or after April 20, 2006, for farm use in the Flint River basin shall have a term of 25 years and shall be automatically renewed at the original permitted capacity unless an evaluation by the division indicates that renewal at the original capacity would have unreasonable adverse effects upon other water uses. The division may renew the original permit at a lower capacity, but such capacity shall be based on the reasonable use of the permittee and evaluation of the resource.

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

(i) The division shall receive written notice of any such transfer or assignment;

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

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

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

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

"(m.1)(1) The division shall have the duty of implementing a program of measuring farm uses of water in order to obtain clear and accurate information on the patterns and amounts of such use, which information is essential to proper management of water resources by the state and useful to farmers for improving the efficiency and effectiveness of their use of water, meeting the requirements of subsections (b) and (m) of this Code section, and improving water conservation.

69 (2) The division:

70 (A) May conduct its duties with division staff and may contract with other persons to
71 conduct any of its duties;

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

74 (C) Shall develop a priority system for the installation of devices for measurement of
75 farm uses of water at the points of those withdrawals for which a permit was issued as
76 of July 1, 2003. The division may refine the priority system from time to time based
77 on the amount of funding received by the division, considerations regarding cost
78 effectiveness, new technical information, changes in resource use or conditions, or
79 other factors as deemed relevant by the director;

80 (D) Shall, on behalf of the state, contract for the purchase and installation of that subset
81 of water-measuring devices according to the priority system required by this Code
82 section, and no charge shall be made to the permittee for such costs. ~~However, when~~
83 ~~the division assesses the site or attempts to install such water-measuring devices and~~
84 ~~finds that the site lacks withdrawal or irrigation infrastructure, the division shall~~
85 ~~document such withdrawal or irrigation infrastructure conditions and notify the~~
86 ~~permittee in writing that a state funded water-measuring device or devices could not be~~
87 ~~installed and that a device or devices are still required. After the expiration of five~~
88 ~~years, such permittee shall be responsible for having an acceptable type of~~
89 ~~water-measuring device installed and placed into operation and all associated costs.~~
90 ~~The permittee shall notify the division in writing once the installation has occurred.~~
91 ~~The division shall approve or disapprove the installation within 60 days of the date of~~
92 ~~notification~~ If no contractor is available, the division may use trained and certified staff
93 to perform installations, and no charge shall be made to the permittee for such costs;

94 (E) Shall, at monthly intervals, read an appropriate proportion of water-measuring
95 devices installed for measuring farm use of surface water and compile the collected data

for use in meeting the purposes in paragraph (1) of this subsection, and the division shall communicate in advance with private property owners to establish reasonable times for such readings. In the event that a permittee's water-measuring devices are selected for monthly readings, the permittee may choose to perform those readings and transmit that information to the division; and

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

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

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

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

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

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

(8) The division shall contract for any maintenance, repair, or replacement of water-measuring devices installed pursuant to this Code section where maintenance, repair, or replacement is required to ensure that such water-measuring devices accurately reflect the amount of water used, and no charge shall be made to the permittee for such costs. The division shall also have the authority to undertake repairs or replacements of water-measuring devices when such repairs or replacements are necessary to maintain compliance with water use regulations, and no charge shall be made to the permittee for such costs.

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

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

SECTION 2.

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

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

(1) Permits applied for under this Code section on or after April 20, 2006, for farm use within the Flint River basin shall have a term of 25 years and shall be automatically renewed at the original permitted capacity unless an evaluation by the division indicates that renewal at the original capacity would have unreasonable adverse effects upon other water uses. The division may renew the original permit at a lower capacity, but such capacity shall be based on the reasonable use of the permittee and evaluation of the resource;

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

(A) The division shall receive written notice of any such transfer or assignment;

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

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

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

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

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

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

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

(b.1)(1) The division shall have the duty of implementing a program of measuring farm uses of water in order to obtain clear and accurate information on the patterns and amounts of such use, which information is essential to proper management of water resources by the state and useful to farmers for improving the efficiency and effectiveness of their use of water, meeting the requirements of subsections (b) and (b.1) of this Code section, and improving water conservation.

(2) The division:

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

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

(C) Shall develop a priority system for the installation of devices for measurement of farm uses of water at the points of those withdrawals for which a permit was issued as of July 1, 2003. The division may refine the priority system from time to time based on the amount of funding received by the division, considerations regarding cost effectiveness, new technical information, changes in resource use or conditions, or other factors as deemed relevant by the director;

(D) Shall, on behalf of the state, contract for the purchase and installation of that subset of water-measuring devices according to the priority system required by this Code section, and no charge shall be made to the permittee for such costs. ~~However, when the division assesses the site or attempts to install such water-measuring devices and finds that the site lacks the withdrawal or irrigation infrastructure, the division shall document such withdrawal or irrigation infrastructure conditions and notify the permittee in writing that a state funded water-measuring device or devices could not be installed and that a device or devices are still required. After the expiration of five years, such permittee shall be responsible for having an acceptable type of water-measuring device installed and placed into operation and all associated costs. The permittee shall notify the division in writing once the installation has occurred. The division shall approve or disapprove the installation within 60 days of the date of notification. If no contractor is available, the division may use trained and certified staff to perform installations, and no charge shall be made to the permittee for such costs;~~

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

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

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

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

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

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

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

(8) The division shall contract for any maintenance, repair, or replacement of water-measuring devices installed pursuant to this Code section where maintenance, repair, or replacement is required to ensure that such water-measuring devices accurately

reflect the amount of water used, and no charge shall be made to the permittee for such costs. The division shall also have the authority to undertake repairs or replacements of water-measuring devices when such repairs or replacements are necessary to maintain compliance with water use regulations, and no charge shall be made to the permittee for such costs.

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

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

(c) Nothing in this Code section shall be construed as a repeal or modification of Code Section 12-5-104."

SECTION 3.

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