**South Carolina General Assembly**

122nd Session, 2017-2018

**H. 3890**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. J.E. Smith and Taylor

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Introduced in the House on March 2, 2017

Currently residing in the House Committee on **Agriculture, Natural Resources and Environmental Affairs**

Summary: Surface water withdrawal

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/2/2017 House Introduced and read first time ([House Journal‑page 22](file:///h:\hj\20170302.docx))

3/2/2017 House Referred to Committee on **Agriculture, Natural Resources and Environmental Affairs** ([House Journal‑page 22](file:///h:\hj\20170302.docx))

3/8/2017 House Member(s) request name added as sponsor: Taylor

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**VERSIONS OF THIS BILL**

[3/2/2017](file:///p:\pprever\2017-18\3890_20170302.docx)

**A** **BILL**

TO AMEND SECTION 49‑4‑35, AS AMENDED, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE REGISTRATION OF WITHDRAWAL OF SURFACE WATER FOR AGRICULTURAL USES, SO AS TO REQUIRE PERMITTING FOR NEW WITHDRAWALS AND FOR EXPANSION OF EXISTING REGISTRATIONS; TO AMEND SECTION 49‑4‑55, RELATING TO THE RIGHT OF REGISTERED SURFACE WATER WITHDRAWERS TO APPLY FOR A PERMIT AND EXEMPT WITHDRAWERS TO APPLY FOR A PERMIT OR REGISTER AN EXEMPT USE, SO AS TO CHANGE THE OPTION OF A WITHDRAWER OF SURFACE WATER FOR AGRICULTURAL USES TO OBTAIN A PERMIT INTO A REQUIREMENT AND ELIMINATE THE RIGHT OF AN EXEMPT WITHDRAWER TO REGISTER THE USE; TO AMEND SECTION 49‑4‑70, RELATING TO APPLICATIONS FOR SURFACE WATER WITHDRAWAL PERMITS AND OPERATIONAL AND CONTINGENCY PLANS, SO AS TO PROHIBIT APPLICATION TO WITHDRAWERS WHO ARE REGISTERED TO WITHDRAW SURFACE WATER FOR AGRICULTURAL USES, EXCEPT IF THE WITHDRAWER EXPANDS AN EXISTING REGISTERED USE; AND FOR OTHER PURPOSES.

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 49‑4‑35 of the 1976 Code, as last amended by Act 247 of 2010, is further amended to read:

“Section 49‑4‑35. (A) Registered surface water withdrawers must register their surface water use with the department on forms provided by the department and are subject only to the reporting requirements of Section 49‑4‑50. Registered surface water withdrawers are authorized to withdraw surface water up to their registered amount.

(B)(1) An existing registered surface water withdrawer already reporting its withdrawals to the department as of January 1, 2011, may maintain its withdrawals at its highest reported level or at the design capacity of the intake structure which will be permanent as of January 1, 2011, and is deemed to be registered with the department.

(2) A proposed registered surface water withdrawer who submits a request to the department to withdraw surface water for agricultural uses between January 2, 2011, and June 30, 2017, which is approved by the department, becomes a registered surface water withdrawer and may withdraw surface water in the amount registered with the department pursuant to subsection (A).

(3) Beginning July 1, 2017, a person seeking to withdraw surface water for agricultural uses must apply for a permit to withdraw surface water pursuant to Section 49‑4‑70.

(C) Prior to constructing or installing a water intake for the withdrawal of surface water for agricultural uses before July 1, 2017, a proposed registered surface water withdrawer must report its anticipated withdrawal quantity to the department for determination as to whether that quantity is within the safe yield for that water source at the time of the request. Upon making a determination, the department must send a detailed description of its determination to the proposed registered surface water withdrawer by registered mail. A proposed registered surface water withdrawer may not begin his proposed withdrawals pursuant to this subsection, until he notifies the department of his anticipated withdrawals and the department provides written notification to the proposed registered surface water withdrawer that authorizes him to proceed, if the anticipated withdrawals are within the safe yield at the time of the request. If the department provides a proposed registered surface water withdrawer with written notification that the anticipated withdrawals are not within the safe yield, then the proposed registered surface water withdrawer may not proceed with the construction or installation of a water intake. Proposed registered surface water withdrawers are authorized to make withdrawals up to the department approved anticipated withdrawal amounts during the first year of registration and are authorized to make withdrawals in the amounts ~~permitted by~~ registered pursuant to subsection (A) during subsequent years.

(D) Registered surface water withdrawers that begin surface water withdrawal operations ~~after the effective date of this section~~ between January 1, 2011, and June 30, 2017, shall submit a registration form to the department within thirty days after completing construction of its surface water intake. An existing registered surface water withdrawer that would like to ~~substantially~~ increase the amount of surface water for which ~~he~~ it is registered to withdraw before July 1, 2017, must submit the anticipated amount of the increase for consideration by the department in the manner provided for in subsection (C). A registered surface water withdrawer seeking to increase the amount of surface water for which it is registered to withdraw beginning July 1, 2017, must apply for a permit pursuant to Section 49‑4‑70 for approval of the increased amount.

(E) The department may modify the amount ~~an existing~~ a registered surface water withdrawer may withdraw, ~~or~~ suspend, or revoke a registered surface water withdrawer’s authority to withdraw water, if the registered surface water withdrawer withdraws ~~substantially~~ more surface water than he is registered for or anticipates withdrawing, ~~as the case may be,~~ and the withdrawals result in detrimental effects to the environment or human health.

(F) Nothing in this chapter prohibits a registered surface water user from applying for and obtaining a surface water withdrawal permit pursuant to Section 49‑4‑55.”

SECTION 2. Section 49‑4‑55 of the 1976 Code, as added by Act 247 of 2010, is amended to read:

“Section 49‑4‑55. (A) A registered surface water withdrawer is not prohibited from applying for a surface water withdrawal permit before July 1, 2017. Beginning July 1, 2017, all surface water withdrawers, including those withdrawing surface water for agricultural uses, must apply for a permit to withdraw surface water pursuant to Section 49‑4‑70. The permit application for a registered surface water withdrawer before July 1, 2017, must be considered using the criteria established in the section establishing the permit for which the registered surface water withdrawer is applying. A registered surface water withdrawer that obtains a surface water withdrawal permit must abide by all of the terms of this chapter related to permit holders and is entitled to all of the rights conferred by a permit.

(B)(1) An exempt surface water withdrawer is not prohibited from applying for a surface water withdrawal permit or, before July 1, 2017, from registering its use.

(2) An exempt surface water withdrawer’s application for a permit must be considered using the criteria established in the section establishing the permit for which the ~~registered~~ exempt surface water withdrawer is applying. An exempt surface water withdrawer that obtains a permit or registers its use, pursuant to this subsection, is entitled to all of the rights conferred ~~upon~~ by a permit or a registered surface water withdrawer, as ~~the case may be~~ applicable.”

SECTION 3. Section 49‑4‑70 of the 1976 Code, as added by Act 247 of 2010, is amended to read:

“Section 49‑4‑70. (A) After the effective date of regulations promulgated by the department pursuant to this chapter, a new surface water withdrawer must obtain a surface water withdrawal permit from the department before making surface water withdrawal. A permitted surface water withdrawer that would like to increase its permitted withdrawal amount must apply to the department for the increased amount.

(B)(1) An existing surface water withdrawer must apply for a permit pursuant to this chapter within one hundred eighty days of the effective date of regulations promulgated by the department pursuant to this chapter. An existing surface water withdrawer that applies for a permit must be issued an initial permit but the initial permit and subsequent renewals are not subject to the permitting criteria in Section 49‑4‑80 and are not subject to Section 49‑4‑150. The initial permit must authorize the existing surface water withdrawer to withdraw surface water in an amount equal to its documented historical water use, current permitted treatment capacity, design capacity of the intake structure as of the effective date of this chapter, design capacity of a pending intake structure permit application, an amount necessary to recover indebtedness from an outstanding bond or revenue certificate issued through the sale of surface water, or for a publicly owned water utility, the safe yield of the utility’s existing or permitted water supply only reservoir, whichever is greatest. An existing surface water withdrawer that applies for an initial permit may continue to withdraw surface water at its documented levels from the effective date of this act until its initial permit is issued pursuant to this section, unless the applicant requests a lesser quantity.

(2) For an existing surface water withdrawer, the operational and contingency plan required under Section 49‑4‑160 will only address appropriate industry standards for water conservation.

(3) An existing surface water withdrawer may request that its initial permit allow the surface water withdrawer to withdraw a reasonable amount in excess of the amount provided for in item (1). The department must use the criteria established in Section 49‑4‑80 to make its determination concerning approval of the quantity requested in excess of the quantity provided for in item (1). However, any increase requested by a surface water withdrawer issued a permit pursuant to Section 49‑4‑40 or Section 49‑4‑45 ~~shall~~ must be subject only to the requirements contained in the applicable section.

(C)(1) A registered surface water withdrawer is not required to apply for a permit for the registered use unless the withdrawer seeks to expand the withdrawal amount.

(2) A registered surface water withdrawer is not required to prepare or maintain an operational and contingency plan pursuant to Section 49‑4‑160 unless the withdrawer seeks to expand the withdrawal amount.

~~(C)~~(D) The expiration date of an interbasin transfer permit or an interbasin registration, including any water withdrawal right or authority contained in the permit or registration, in existence on the effective date of this chapter remains effective. For the purposes of this chapter, existing interbasin transfer permit or interbasin registration holders are deemed to be existing surface water withdrawers. A renewal of an interbasin transfer permit or registration must be made pursuant to the criteria established in this chapter for existing surface water withdrawers, except that permits or registrations renewed within three years after the effective date of this chapter must be renewed for a quantity at least equal to the permitted quantity in the expired permit. All other renewals must be issued in accordance with the criterion applicable to existing surface water withdrawers and for a quantity equal to the permitted quantity in the expired permit, unless the department demonstrates by a preponderance of the evidence that the quantity above maximum withdrawals during the permit term are not necessary to meet the permittee’s future need.”

SECTION 4. This act takes effect upon approval by the Governor.

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