

House Bill 822

By: Representatives Ray of the 108th, McCall of the 78th, Smith of the 87th, Hudson of the 95th, Crawford of the 91st, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 2 of the Official Code of Georgia Annotated, relating to agriculture, so as to
2 provide for the protection of farmland in developing areas; to provide for the acquisition and
3 enforcement of agricultural conservation easements by the state; to provide a short title; to
4 define certain terms; to provide legislative findings and declarations; to repeal conflicting
5 laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Title 2 of the Official Code of Georgia Annotated, relating to agriculture, is amended by
9 inserting a new Chapter 6A to read as follows:

10 "CHAPTER 6A

11 ARTICLE 1

12 2-6A-1.

13 This chapter shall be known and may be cited as the 'Georgia Farmland Protection Act.'

14 2-6A-2.

15 (a) The General Assembly finds and declares the following:

16 (1) Georgia's farmland is a unique natural resource which provides food, feed, fiber,
17 forage, oilseed, and other agricultural crops necessary for the continued welfare of the
18 people of this state, the nation, and the world. These lands contribute to the economic
19 betterment and support the social fabric of local areas and the entire state. Furthermore,
20 such farmlands serve as water recharge areas and provide wildlife habitat and other
21 important environmental and esthetic benefits;

22 (2) Each year, a large amount of this state's farmland is irrevocably converted from
23 agricultural use to nonagricultural use. It has been reported that, between 1992 and 1997,

1 Georgia lost more than 184,000 acres of farmland to development, ranking third
2 nationally in prime agricultural acres lost to development; that such losses have been
3 acute not only in the metropolitan Atlanta area but also outside such cities as Albany,
4 Macon, and Savannah; and that many of the counties that contribute to Georgia's
5 reputation as a top producer of peanuts, peaches, onions, pecans, and other crops face
6 significant pressure from development;

7 (3) Continued decrease in the state's farmland base may threaten the ability of this state
8 to produce food, feed, fiber, forage, oilseed, and other agricultural crops in sufficient
9 quantities to meet domestic needs and the demands of our export markets;

10 (4) The extensive use of farmland for nonagricultural purposes undermines the economic
11 base of many rural areas;

12 (5) State and local governmental actions may result in the conversion of farmland to
13 nonagricultural uses where alternative actions would be preferred; and

14 (6) It is the policy of the state to conserve and protect its productive agricultural lands
15 for the production of food, feed, fiber, forage, oilseed, and other agricultural crops. It is
16 also the policy of this state to conserve and protect the agricultural land base as a valuable
17 natural resource which is both fragile and finite. A program to encourage and make
18 possible the long-term conservation of productive agricultural lands is a necessary part
19 of the state's agricultural land protection policies and programs; such a program is in the
20 best interests of the state and constitutes a public benefit that contributes to the health,
21 safety, and general welfare of the residents of this state; and it is appropriate to expend
22 money for that purpose.

23 (b) It is the purpose of this chapter to:

24 (1) Establish a farmland protection program, including procedures for the acquisition of
25 agricultural conservation easements by the state, so as to provide a means by which
26 agricultural land may be protected as a viable segment of the state's economy and as an
27 important resource in order to ensure that lands currently in agricultural use will continue
28 to remain available for agricultural production and not be converted to other land uses
29 and that landowners who participate in this program will be fairly compensated for their
30 agreement to accept deed restrictions limiting the use of their property;

31 (2) Encourage landowners to make a long-term commitment to agricultural production
32 by offering them financial incentives and security that land use will remain stable; and

33 (3) Maximize the use of agricultural conservation easement purchase funds and protect
34 the investment of taxpayers in agricultural conservation easements.

35 (c) This chapter is enacted pursuant to the authority granted to the General Assembly by
36 Article III, Section VI, Paragraph II(a)(3) of the Constitution of the State of Georgia; Title
37 III, Section 388 of the Federal Agriculture Improvement and Reform Act of 1996, Public

1 Law 104-127, 16 U.S.C. Section 3830; and the Farm Security and Rural Investment Act
2 of 2002, Public Law 107-171.

3 2-6A-3.

4 As used in this chapter, the term:

5 (1) 'Agricultural conservation easement' or 'easement' means a type of conservation
6 easement which is subject to the provisions of Article 1 of Chapter 10 of Title 44, the
7 'Georgia Uniform Conservation Easement Act,' and which represents the right of the
8 holder to restrict or prevent the development or improvement of the land for purposes
9 other than agricultural production.

10 (2) 'Agricultural district' means a land use category created by voluntary agreement
11 between the state and one or more landowners under Article 2 of this chapter, where the
12 primary use of land is and will remain agricultural production.

13 (3) 'Agricultural production' means the production of food, feed, fiber, forage, oilseed,
14 or other agricultural crops.

15 (4) 'Conservation plan' means a plan describing best land management practices,
16 including an installation schedule and maintenance program, which, when completely
17 implemented, will improve and maintain soil, water, and related plant and animal
18 resources of the land.

19 (5) 'Development' means the carrying out of any material change in the use or
20 appearance of land or dividing land into two or more parcels.

21 (6) 'Easement value' means the difference between the unrestricted value of a farm and
22 the restricted value of the farm. If the landowner obtains an independent appraisal,
23 easement value shall be calculated according to the average of the landowner's appraisal
24 and the state's appraisal.

25 (7) 'Eligible land' means a farmland tract in which the state may acquire an agricultural
26 conservation easement as provided by this chapter.

27 (8) 'Farm' means land in this state which is being used for or is available for agricultural
28 production as defined in this Code section.

29 (9) 'Farmland tract' means land constituting all or part of a farm that is proposed for the
30 purchase of an agricultural conservation easement.

31 (10) 'Fund' means the PACE Fund created by Code Section 2-6A-23.

32 (11) 'Grantor' means the person or entity holding title to the farmland tract on which an
33 easement is conveyed.

34 (12) 'Important farmland' means land other than prime farmland or unique farmland that
35 is of state-wide or local importance for the production of food, feed, fiber, forage,

1 oilseed, or other agricultural crops and generally produces high yields of crops when
2 treated and managed according to acceptable farming methods.

3 (13) 'Landowner' means a person holding title to land.

4 (14) 'Market value' means the price as of the valuation date for the highest and best use
5 of the property which a willing and informed seller who is not obligated to sell would
6 accept for the property and which a willing and informed buyer who is not obligated to
7 buy would pay for the property.

8 (15) 'Prime farmland' means land that has the best combination of physical and chemical
9 characteristics for producing food, feed, fiber, forage, oilseed, or other agricultural crops
10 with minimum inputs of fuel, fertilizer, pesticides, and labor, without intolerable soil
11 erosion. Prime farmland also includes land that possesses the foregoing characteristics
12 but is being used currently to produce livestock or timber. Prime farmland does not
13 include land already in or committed to urban development or water storage.

14 (16) 'Restricted land' means land and buildings the use of which is subject to the terms
15 of an agricultural conservation easement.

16 (17) 'Restricted value' means the price as of the valuation date for property subject to an
17 agricultural conservation easement which a willing and informed seller who is not
18 obligated to sell would accept for the property and which a willing and informed buyer
19 who is not obligated to buy would pay for the property.

20 (18) 'State funds' means money appropriated by the General Assembly to the PACE
21 Fund for the purchase of agricultural conservation easements.

22 (19) 'Unique farmland' means land other than prime farmland that is used for the
23 production of specific high value food and fiber crops including without limitation tree
24 nuts, fruits, and vegetables and has the special combination of soil quality, location,
25 growing season, and moisture supply needed to produce economically sustained high
26 quality or high yields of such specific crops when treated and managed according to
27 acceptable farming methods.

28 (20) 'Unrestricted value' means the current market value of a property.

29 ARTICLE 2

30 2-6A-10.

31 (a) The State Soil and Water Conservation Commission shall be responsible for state-wide
32 administration of an agricultural district program and shall have sole authority to certify
33 or deny agricultural district petitions as provided by this Code section. The local
34 administrative body for an agricultural district shall be the conservation district board of
35 supervisors.

1 (b) Agricultural districts shall be comprised only of agricultural land. The boundary of an
2 agricultural district shall be contiguous. No land shall be included in an agricultural district
3 without the consent of the owner.

4 (c) Any owner or owners of land may submit a petition to the local conservation district
5 board of supervisors requesting the creation of an agricultural district within the county.
6 The petition shall include a description of the proposed area, description of each land
7 parcel, location of the proposed boundaries, petitioners' names and addresses, adjacent
8 landowners' names and addresses, and other pertinent information as required in the
9 petition application.

10 (d) Upon receipt of a petition, the local conservation district board of supervisors shall
11 notify the county governing authority and any applicable local or regional planning or
12 zoning body or regional development commission by sending a copy of the petition and
13 accompanying materials to that body.

14 (e) The following factors shall be considered by the local conservation district board of
15 supervisors and the Soil and Water Conservation Commission when considering the
16 formation of any agricultural district:

17 (1) The capability of the land to support agricultural production, as indicated by soil,
18 climate, topography, or other natural factors;

19 (2) The viability of active farmlands, as indicated by markets for farm products, extent
20 and nature of farm improvements, present status of farming, anticipated trends in
21 agricultural economic conditions, and technology;

22 (3) Whether the proposed agricultural district meets the minimum size limit of 250
23 contiguous acres, unless the local conservation district board and the Soil and Water
24 Conservation Commission allow fewer than 250 contiguous acres when the proposed area
25 meets a minimum annual production performance established by the district board and
26 approved by the commission;

27 (4) County development patterns and needs and the location of the district in relation to
28 any urban development boundaries within the county;

29 (5) Any matter which may be relevant to evaluate the petition; and

30 (6) Whether an application is from more than one farm owner, in which case a
31 preference shall be given to the application.

32 (f) The local soil and water conservation district board of supervisors shall review the
33 petition application and submit a recommendation to the State Soil and Water Commission
34 within 60 days of receipt. The local conservation district recommendation shall be
35 submitted to the commission in the form of approval, approval with modifications, or
36 denial of the petition accompanied by justification for such a denial.

1 (g) The State Soil and Water Conservation Commission shall review the recommendation
2 of the district board of supervisors and certify or deny the agricultural district's petition
3 within 60 days of receipt.

4 (h) Upon the approval of a petition by the Soil and Water Conservation Commission, the
5 commission shall notify the local conservation district board of supervisors, county
6 governing authority, and any applicable local or regional planning or zoning body or
7 regional development commission for the county in which the agricultural district will lie.

8 2-6A-11.

9 (a) It shall be the policy of all state departments and agencies to support the formation of
10 agricultural districts as a means of preserving Georgia's farmlands and to mitigate the
11 impact of their present and future plans and programs upon the continued agricultural use
12 of land within an agricultural district.

13 (b) Land which is within the boundary of an agricultural district and not within the
14 boundary of any municipality shall not be subject to municipal annexation.

15 (c) The owners of land within the boundary of an agricultural district shall be exempt from
16 any assessment authorized for the extension of water service lines until the land is removed
17 from the agricultural district and developed for nonagricultural use.

18 (d) The local conservation district board of supervisors shall inform all members of an
19 agricultural district of:

20 (1) The provisions of Code Section 48-5-7.1, which provides for preferential ad valorem
21 tax assessment of tangible real property which is devoted to bona fide agricultural
22 purposes; and

23 (2) The provisions of Code Section 41-1-7, which provides protection to certain
24 agricultural operations against nuisance suits.

25 (e) Any member of an agricultural district who has received a summons of condemnation
26 proceedings being instituted concerning the member's land located in the agricultural
27 district may request the local soil and water conservation district board of supervisors to
28 hold a public hearing on the proposed taking of land.

29 2-6A-12.

30 (a) An agricultural district shall be established for five years with a review to be made by
31 the local soil and water conservation district board of supervisors at the end of the five-year
32 period and every five years thereafter. Each owner of land shall agree to remain in the
33 district for a five year period, which is renewable at the end of the five years. However, the
34 board shall make a review any time upon the written request of a local government which
35 demonstrates that the review is necessary in order to consider development needs of the

1 local government. The board shall consider whether the continued existence of the
 2 agricultural district is justified, any adjustments which may be necessary due to urban or
 3 county development, and other factors the board finds relevant. The board shall revise the
 4 district as necessary based on the review and subject to approval of the State Soil and
 5 Water Conservation Commission. Before the commission takes final action, all interested
 6 parties shall be given the opportunity to request the commission to amend or overturn the
 7 local board's decision.

8 (b) Any member, or any successor heir of the member, of an agricultural district may
 9 withdraw from the district upon notifying the local conservation district board of
 10 supervisors in writing.

11 (c) The withdrawal of a member from a district reducing the remaining acreage of
 12 agricultural district land to less than 250 acres or resulting in the remaining land being
 13 noncontiguous shall not cause the decertification of the district.

14 (d) The board shall notify the applicable county board of tax assessors whenever a farm
 15 is released or withdrawn from an agricultural district.

16 (e) The board may allow an amendment to an existing certified agricultural district if
 17 approved by the commission.

18 ARTICLE 3

19 2-6A-20.

20 The department is authorized to acquire agricultural conservation easements on behalf of
 21 the state as provided by this article. Acquisition may be accomplished by purchase, gift,
 22 grant, bequest, devise, covenant, or contract; but any such purchase shall be only upon
 23 voluntary application of the landowner, at a price that is equal to or less than the appraised
 24 easement value as provided in this article, and for a term of not less than 30 years subject
 25 to earlier termination only as provided by this article.

26 2-6A-22.

27 (a) The department, under the direction of the Commissioner, shall have the following
 28 powers:

29 (1) Establishing a Purchase of Agricultural Conservation Easement Program ('PACE
 30 program') in this state to implement this article;

31 (2) Making decisions in connection with each specific easement purchase to be made
 32 with state funds from the PACE fund established under Code Section 2-6A-23;

1 (3) Evaluating, as necessary, potential sites within the state on which agricultural
2 conservation easements are to be acquired, applying the criteria set forth in this article
3 and administrative rules and regulations;

4 (4) Making application for federal funds available for the purchase by the state of
5 agricultural conservation easements on eligible lands;

6 (5) Entering into cooperative agreements with the federal government or taking such
7 other actions as are reasonable and necessary to establish and maintain eligibility for
8 federal cost sharing for purposes of this article;

9 (6) Monitoring and enforcing any agricultural conservation easements acquired by the
10 state; and

11 (7) Employing the staff necessary to implement the provisions of this article.

12 (b)(1) The Commissioner shall establish fair, equitable, objective, nondiscriminatory
13 procedures for determining easement purchase priorities.

14 (2) The Commissioner shall promulgate such administrative rules and regulations as are
15 reasonable and necessary to policies and procedures for determining easement purchase
16 priorities and for purchasing easements.

17 (3) The program criteria shall be designed to ensure that land is selected for easement
18 purchase because it will make a significant contribution to agricultural production.

19 2-6A-23.

20 (a) There is created a fund to be known as the Purchase of Agricultural Conservation
21 Easement Fund ('PACE Fund'). The Commissioner shall be the custodian of the fund, shall
22 administer the fund, and may invest the resources of the fund in the same manner and
23 fashion that an insurer authorized to issue contracts of life insurance is authorized to invest
24 its resources. Moneys in the fund shall be used only as authorized under this Code section.

25 (b) The fund shall consist of any moneys appropriated to the fund by the General
26 Assembly; any federal moneys received pursuant to Title III, Section 388 of the Federal
27 Agriculture Improvement and Reform Act of 1996, Public Law 104-127, 16 U.S.C. Section
28 3830; the Farm Security and Rural Investment Act of 2002, Public Law 107-171; any other
29 moneys made available to the fund; and any interest or earnings on such moneys accruing
30 to the fund.

31 (c) All funds appropriated to or otherwise paid into the fund shall be presumptively
32 concluded to have been committed to the purpose for which they have been appropriated
33 or paid and shall not lapse.

34 (d) The Commissioner is authorized, subject to the availability of sufficient funds and the
35 limitations contained in this article and any rules and regulations promulgated pursuant

1 thereto, to disburse the appropriate payments to the persons eligible for such payments
2 from the PACE Fund.

3 (e) Upon authorization of the Commissioner, the moneys in the fund may be used for:

4 (1) The acquisition of an agricultural conservation easement on any farmland tract within
5 the state that:

6 (A)(i) Contains at least 50 percent of prime farmland, unique farmland, important
7 farmland, or some combination thereof.

8 (ii) Is a part of an agricultural district established under Article 2 of this chapter.

9 (iii) Is in an area with access to agricultural markets for its products and with
10 infrastructure appropriate for supporting agricultural production and other support
11 services.

12 (iv) Faces development pressure.

13 (v) Is not already subject to an easement or other deed restriction that prevents its
14 conversion to nonagricultural use; or

15 (B) Otherwise satisfies land eligibility requirements for agricultural conservation
16 easement acquisition cost sharing under a federal farmland protection program
17 established pursuant to Title III, Section 388 of the Federal Agriculture Improvement
18 and Reform Act of 1996, Public Law 104-127, 16 U.S.C. Section 3830, or the Farm
19 Security and Rural Investment Act of 2002, Public Law 107-171;

20 (2) The costs of appraisal, engineering, surveying, planning, financial, legal, and other
21 services and applicable personnel costs lawfully incurred incident to the acquisition of
22 agricultural conservation easements in eligible lands and for monitoring and enforcing
23 easements on restricted lands; and

24 (3) The costs incident to securing funds from other revenue sources for the fund.

25 2-6A-24.

26 (a) During the term of an easement acquired by the department under the PACE Program,
27 the restricted land shall be used solely for agricultural production.

28 (b)(1) During the term of such an easement the landowner and the landowner's
29 successors, assigns, agents, or lessees shall not perform, nor knowingly allow others to
30 perform, any act on or affecting the restricted land that is inconsistent with the provisions
31 of this Code section. The landowner shall be deemed to have authorized the department
32 to enforce these provisions.

33 (2) Unless otherwise specified, the landowner shall not be required to take any action to
34 restore the condition of the restricted land after any act of God or other event over which
35 the landowner had no control.

1 (3) Nothing in the PACE Program shall relieve the landowner of any obligation or
2 restriction on the use of the property imposed by law.

3 (4) Neither the state nor any political subdivision thereof shall locate landfills, sewage
4 treatment plants, or other public service facilities that are not compatible with or
5 complementary to agricultural production on restricted land.

6 (c)(1) To retain the agricultural viability of the restricted land, the department shall
7 require, and the owner of the restricted land shall implement, a conservation plan
8 approved by the soil and water conservation district. This plan shall be updated every ten
9 years and any time the basic farming operation conducted on restricted land is changed.
10 All farming operations shall be conducted substantially in accordance with the plan.

11 (2) In addition to the requirements established by the soil and water conservation district,
12 the conservation plan shall require that:

13 (A) The use of the land for growing sod, nursery stock, and ornamental trees and
14 shrubs does not remove excessive soil from the restricted land; and

15 (B) The extraction of soil, sand, gravel, stone, or other materials for use in connection
16 with agricultural production on the restricted land is consistent with paragraph (8) of
17 subsection (d) of this Code section and is conducted in a location and manner that
18 retains the viability of the restricted land for agricultural production.

19 (d) The construction or reconstruction of any building or other structure, except those
20 existing on the date of the easement or previously approved by the department, is
21 prohibited except in accordance with this subsection:

22 (1) Existing fences may be repaired and replaced, and new fences may be built anywhere
23 on the restricted land for purposes of reasonable and customary management of livestock
24 and wildlife, without approval of the department;

25 (2) New buildings and other structures and improvements to be used solely for
26 agricultural purposes including the processing or sale of farm products predominantly
27 grown or raised on the restricted land, but not including any dwelling or farm labor
28 housing, may not be built on the restricted land without the advance written approval of
29 the department. The department shall give approval within a reasonable time unless it
30 determines that the proposed building, structure, or improvement would not be properly
31 located or would significantly diminish the agricultural production capacity of the
32 restricted land;

33 (3) All existing single-family residential dwellings may be repaired, reasonably enlarged,
34 and replaced at their current locations without further permission of the department. No
35 new single-family residential dwellings may be built on the restricted land without the
36 advance written approval of the department, and the department shall approve new
37 dwellings only for the use of the landowner's children. The department shall give such

1 approval within a reasonable time unless it determines that a proposed dwelling would
2 significantly diminish the agricultural production capacity of the restricted land;

3 (4) The subdivision of the restricted land, whether by physical or legal process, is
4 prohibited;

5 (5) The granting of rights of way through restricted land for the installation of,
6 transportation of, or use of lines for water, sewage, electric, telephone, gas, oil, or oil
7 products necessary for agricultural production is permitted. The term 'granting of rights
8 of way' includes the right to construct or install the lines. The construction or installation
9 of utility lines other than the types stated in this paragraph is prohibited on the restricted
10 land;

11 (6) No portion of the restricted land shall be paved or otherwise be covered with
12 concrete, asphalt, gravel, or any other paving material. No road for access or other
13 purposes shall be constructed without the advance written approval of the department,
14 and the department shall approve only such new roads as are necessary for agricultural
15 production. The department shall give such approval within a reasonable time unless it
16 determines that the proposed location of any road will substantially diminish or impair
17 the agricultural productivity of the restricted land;

18 (7) Trees may be cut to control insects and disease, to prevent personal injury and
19 property damage, and for firewood and other domestic uses, including construction of
20 permitted buildings and fences on the restricted land. Trees may also be cut to clear land
21 for cultivation or use of livestock but only if done in accordance with the conservation
22 plan required by subsection (c) of this Code section. Any commercial timber harvesting
23 on the restricted land shall be conducted on a sustainable yield basis and in substantial
24 accordance with a forest management plan prepared by a licensed professional forester;

25 (8) The extraction of soil, sand, gravel, stone, or other materials using any method that
26 disturbs the surface of the land is prohibited without the advance written approval of the
27 department. The department shall give approval within a reasonable time, unless it
28 determines that the proposed extraction is not for use in connection with agricultural
29 production on the restricted land or will substantially diminish or impair the agricultural
30 productivity of the restricted land. The department shall not approve any mining or
31 extraction of oil, natural gas, or other minerals;

32 (9) The dumping or accumulation of any kind of trash or refuse on the restricted land is
33 prohibited. However, this shall not prevent the storage of agricultural products and
34 by-products on the restricted land, so long as it is done in accordance with all applicable
35 laws, administrative rules and regulations, and ordinances; and

36 (10) Golf courses are prohibited on the restricted land. Buildings and facilities for any
37 other public or private recreational use may not be built on the restricted land without the

1 advance written approval of the department. The department shall not give approval
 2 unless it determines that the proposed use or facilities will not substantially diminish or
 3 impair the agricultural productivity of the restricted land.

4 (e) Grantors of easements under the PACE Program shall retain the right to perform any
 5 act not specifically prohibited or limited by this Code section and administrative rules and
 6 regulations promulgated under its provisions. These ownership rights include, but are not
 7 limited to, the right to exclude any member of the public from trespassing on the restricted
 8 land and the right to sell or otherwise transfer the restricted land to anyone of the
 9 landowner's choice.

10 2-6A-25.

11 Other than as specified within this article, this article and administrative rules and
 12 regulations promulgated under its provisions are not intended to impose any legal or other
 13 responsibility on the department with respect to restricted land or in any way to affect any
 14 existing obligation of the landowner as owner of the restricted land. Accordingly:

15 (1) The landowner shall continue to be solely responsible for payment of all taxes and
 16 assessments levied against the restricted land; and

17 (2) The landowner shall continue to be solely responsible for the upkeep and
 18 maintenance of the restricted land to the extent it may be required by law. The department
 19 shall have no obligation for the upkeep or maintenance of the restricted land.

20 2-6A-26.

21 A deed conveying an interest in the restricted land which is under the PACE Program shall
 22 set forth the language of the easement restrictions verbatim. Within 30 days of a change in
 23 ownership of the restricted land, the prior owner shall notify the department in writing of
 24 the name and address of the new owner, together with the volume and page of the deed
 25 book in which the transfer has been recorded.

26 2-6A-27.

27 (a) If the department finds what it believes is a violation by the property owner of the
 28 terms of any easement held by the department under this article, it may take appropriate
 29 legal action. Except when an ongoing or imminent violation could irreversibly diminish or
 30 impair the agricultural productivity of the restricted land, the department shall give the
 31 landowner written notice of the violation and 60 days to correct it before taking legal
 32 action.

33 (b) The owner of the restricted land shall bear all costs associated with the correction of
 34 a violation of the easement, including:

- 1 (1) Costs of work required and materials used to correct the violation and restore the
 2 restricted land to its condition prior to the violation;
 3 (2) Administrative costs incurred by the department; and
 4 (3) Court costs and reasonable attorney's fees incurred by the department in enforcing
 5 the easement.

6 2-6A-28.

7 (a)(1) A grantor may terminate an easement purchased by the department under the
 8 PACE Program, in whole or in part, only by filing an action in the Superior Court of
 9 Fulton County and demonstrating by clear and convincing evidence that conditions on
 10 or surrounding the land subject to an agricultural conservation easement have changed
 11 so much that agricultural production is no longer viable and it has become impossible to
 12 fulfill any of the easement's conservation purposes. The grantor shall name the
 13 department as the defendant in the action. The defense of sovereign immunity is waived
 14 for purposes of this Code section.

15 (2) In the event that a finding is made by the court that a portion of the land subject to
 16 the agricultural conservation easement is no longer suitable for agricultural production,
 17 the owner shall, at the owner's expense, provide a survey of the land area on which the
 18 agricultural conservation easement is to be terminated.

19 (b)(1) No agricultural conservation easement or portion thereof which has been
 20 purchased with state funds shall be terminated by the court except upon payment by the
 21 grantor to the PACE Fund of the state proportion of the easement's then fair value. The
 22 percentage state proportion shall be equivalent to the percentage proportion of the
 23 original easement purchase price which was paid with state funds. The value of the
 24 easement shall be the greater of the following amounts:

25 (A) An amount equal in current dollars to the full cost of acquiring and monitoring the
 26 easement during its full duration, plus reasonable interest as determined by court; or

27 (B) An amount equal to the easement's current market value as determined by
 28 independent appraisal, performed at the owner's expense and satisfactory to the
 29 department.

30 (2) Proceeds from the termination of the easement paid into the PACE Fund shall be
 31 used as provided by Code Section 2-6A-23."

32 SECTION 2.

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