

HOUSE SUBSTITUTE TO SENATE BILL 511

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 1 of Title 41 of the Official Code of Georgia Annotated, relating to general provisions relative to nuisances, so as to change certain provisions relating to treatment of agricultural facilities and operations as nuisances; to provide that certain agricultural and forest products operations and support facilities shall not be or become nuisances due to changed conditions in or around the locations of such operations and facilities; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 1 of Title 41 of the Official Code of Georgia Annotated, relating to general provisions relative to nuisances, is amended by striking Code Section 41-1-7, relating to treatment of agricultural facilities and operations as nuisances, and inserting in lieu thereof the following:

"41-1-7.

(a) It is the declared policy of the state to conserve, protect, and encourage the development and improvement of its agricultural and forest land and facilities for the production or distribution of food and other agricultural products, including without limitation forest products. When nonagricultural land uses extend into agricultural or agriculture-supporting industrial or commercial areas or forest land or when there are changed conditions in or around the locality of an agricultural facility or agricultural support facility, ~~agricultural~~ such operations often become the subject of nuisance actions. As a result, ~~agricultural~~ such facilities are sometimes forced to cease operations. Many others are discouraged from making investments in agricultural support facilities or farm improvements or adopting new related technology or methods. It is the purpose of this Code section to reduce losses of the state's agricultural and forest land resources by limiting the circumstances under which agricultural facilities and operations or agricultural support facilities may be deemed to be a nuisance.

(b) As used in this Code section, the term:

(1) 'Agricultural area' means any land which is, or may be, legally used for an agricultural operation under applicable zoning laws, rules, and regulations at the time of commencement of the agricultural operation of the agricultural facility at issue and throughout the first year of operation of such agricultural facility. Any land which is not subject to zoning laws, rules, and regulations at the time of commencement of an agricultural operation of an agricultural facility and throughout the first year of operation of such agricultural facility shall be deemed an 'agricultural area' for purposes of this Code section.

(2) 'Agricultural facility' includes, but is not limited to, any land, building, structure, pond, impoundment, appurtenance, machinery, or equipment which is used for the commercial production or processing of crops, livestock, animals, poultry, honeybees, honeybee products, livestock products, poultry products, timber, forest products, or products which are used in commercial aquaculture. Such term shall also include any farm labor camp or facilities for migrant farm workers.

(3) 'Agricultural operation' means:

(A) The plowing, tilling, or preparation of soil at an agricultural facility;

(B) The planting, growing, fertilizing, ~~or harvesting,~~ or otherwise maintaining of crops as defined in Code Section 1-3-3 and also timber and trees that are grown for purposes other than for harvest and for sale;

(C) The application of pesticides, herbicides, or other chemicals, compounds, or substances to crops, weeds, or soil in connection with the production of crops, timber, livestock, animals, or poultry;

(D) The breeding, hatching, raising, producing, feeding, keeping, slaughtering, or processing of livestock, hogs, equines, chickens, turkeys, poultry or other fowl normally raised for food, mules, cattle, sheep, goats, dogs, rabbits, or similar farm animals for commercial purposes;

(E) The production and keeping of honeybees, the production of honeybee products, and honeybee processing facilities;

(F) The production, processing, or packaging of eggs or egg products;

(G) The manufacturing of feed for poultry or livestock;

(H) The rotation of crops, including without limitation timber production;

(I) Commercial aquaculture;

(J) The application of existing, changed, or new technology, practices, processes, or procedures to any agricultural operation; and

(K) The operation of any roadside market.

(3.1) 'Agricultural support facility' means any food processing plant or forest products processing plant together with all related or ancillary activities, including trucking; provided, however, this term expressly excludes any rendering plant facility or operation.

(4) 'Changed conditions' means any one or more of the following:

(A) Any change in the use of land in an agricultural area or in an industrial or commercial area affecting an agricultural support facility;

(B) An increase in the magnitude of an existing use of land in or around the locality of an agricultural facility or agricultural support facility and includes, but is not limited to, urban sprawl into an agricultural area or into an industrial or commercial area in or around the locality of ~~an agricultural~~ such facility, or an increase in the number of persons making any such use, or an increase in the frequency of such use; or

(C) The construction or location of improvements on land in or around the locality of an agricultural facility or agricultural support facility closer to ~~an agricultural~~ such facility than those improvements located on such land at the time of commencement of the agricultural or agricultural support operation or the agricultural facility or agricultural support facility at issue and throughout the first year of operation of said ~~agricultural~~ facility.

(4.1) 'Food processing plant' means a commercial operation that manufactures, packages, labels, distributes, or stores food for human consumption and does not provide food directly to a consumer.

(4.2) 'Forest products processing plant' means a commercial operation that manufactures, packages, labels, distributes, or stores any forest product.

(4.3) 'Rendering plant' has the meaning provided by Code Section 4-4-40.

(5) 'Urban sprawl' means either of the following or both:

(A) ~~The~~ With regard to an agricultural area or agricultural operation:

(i) The conversion of agricultural areas from traditional agricultural use to residential use; or

~~(B)~~ (ii) An increase in the number of residences in an agricultural area which increase is unrelated to the use of the agricultural area for traditional agricultural purposes.

(B) With regard to an agricultural support facility:

(i) The conversion of industrial or commercial areas to residential use; or

(ii) An increase in the number of residences in an industrial or commercial area which increase is unrelated to the use of the industrial or commercial area for traditional industrial or commercial purposes.

(c) No agricultural facility, ~~or agricultural operation,~~ any agricultural operation at an agricultural facility, agricultural support facility, or any operation at an agricultural support facility shall be or shall become a nuisance, either public or private, as a result of changed

1 conditions in or around the locality of such ~~agricultural~~ facility or operation if the
2 ~~agricultural~~ facility or operation has been in operation for one year or more. The provisions
3 of this subsection shall not apply when a nuisance results from the negligent, improper, or
4 illegal operation of any ~~agricultural~~ such facility or operation.

5 (d) For purposes of this Code section, the established date of operation is the date on
6 which an agricultural operation or agricultural support facility commenced operation. If the
7 physical facilities of the agricultural operation or the agricultural support facility are
8 subsequently expanded or new technology adopted, the established date of operation for
9 each change is not a separately and independently established date of operation and the
10 commencement of the expanded operation does not divest the agricultural operation or
11 agricultural support facility of a previously established date of operation."

12 SECTION 2.

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