

House Bill 1132

By: Representatives Lindsey of the 54th, Tumlin of the 38th, Ashe of the 56th, Teilhet of the 40th, Willard of the 49th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 44 of the Official Code of Georgia Annotated, relating to property, so as to
2 enact the "Uniform Environmental Covenants Act"; to provide for a short title; to define
3 terms; to provide for the nature of rights and subordination of interests; to provide for the
4 contents of an environmental covenant; to provide for validity and the effect on other
5 instruments; to provide for the relationship between environmental covenants and other land
6 use laws; to provide for notice of an environmental covenant; to provide for recording of
7 environmental covenant; to provide for duration of environmental covenant and amendment
8 by court action; to provide for amendment or termination of an environmental covenant by
9 consent; to provide for enforcement of environmental covenants; to provide for a registry of
10 environmental covenants and substitute notice of environmental covenants; to provide for
11 uniformity of application and construction; to provide for interaction with federal law; to
12 provide for related matters; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 style="text-align:center">**SECTION 1.**

15 Title 44 of the Official Code of Georgia Annotated, relating to property, is amended by
16 adding a new chapter to read as follows:

17 style="text-align:center">"CHAPTER 16

18 44-16-1.

19 This chapter may be known as and may be cited as the 'Uniform Environmental Covenants
20 Act.'

21 44-16-2.

22 As used in this chapter, the term:

- 1 (1) 'Activity and use limitations' means restrictions or obligations created under this
2 chapter with respect to real property.
- 3 (2) 'Agency' means the Environmental Protection Division of the Department of Natural
4 Resources or any other state or federal agency that determines or approves the
5 environmental response project pursuant to which the environmental covenant is created.
- 6 (3) 'Common interest community' means a condominium, cooperative, or other real
7 property with respect to which a person, by virtue of the person's ownership of a parcel
8 of real property, is obligated to pay property taxes or insurance premiums, or for
9 maintenance, or improvement of other real property described in a recorded covenant that
10 creates the common interest community.
- 11 (4) 'Environmental covenant' means a servitude arising under an environmental response
12 project that imposes activity and use limitations.
- 13 (5) 'Environmental response project' means a plan or work performed for environmental
14 remediation of real property and conducted:
- 15 (A) Under a federal or state program governing environmental remediation of real
16 property;
- 17 (B) Incident to closure of a solid or hazardous waste management unit, if the closure
18 is conducted with approval of an agency; or
- 19 (C) Under a state voluntary clean-up program.
- 20 (6) 'Holder' means the grantee of an environmental covenant as specified in subsection
21 (a) of Code Section 44-16-3.
- 22 (7) 'Person' means an individual, corporation, business trust, estate, trust, partnership,
23 limited liability company, association, joint venture, public corporation, government,
24 political subdivision, agency, or instrumentality, or any other legal or commercial entity.
- 25 (8) 'Record' means information that is inscribed on a tangible medium or that is stored
26 in an electronic or other medium and is retrievable in perceivable form.
- 27 44-16-3.
- 28 (a) Any person, including a person that owns an interest in the real property, the agency,
29 or a municipality or other unit of local government, may be a holder. An environmental
30 covenant may identify more than one holder. The interest of a holder is an interest in real
31 property.
- 32 (b) A right of an agency under this chapter or under an environmental covenant, other than
33 a right as a holder, is not an interest in real property.
- 34 (c) An agency is bound by any obligation it assumes in an environmental covenant, but an
35 agency does not assume obligations merely by signing an environmental covenant. Any
36 other person that signs an environmental covenant is bound by the obligations the person

1 assumes in the covenant, but signing the covenant does not change obligations, rights, or
2 protections granted or imposed under law other than as set forth in this chapter except as
3 provided in the covenant.

4 (d) The following rules apply to interests in real property in existence at the time an
5 environmental covenant is created or amended:

6 (1) An interest that has priority under other law is not affected by an environmental
7 covenant unless the person that owns the interest subordinates that interest to the
8 covenant;

9 (2) The provisions of this chapter shall not require a person that owns a prior interest to
10 subordinate that interest to an environmental covenant or to agree to be bound by the
11 covenant;

12 (3) A subordination agreement may be contained in an environmental covenant covering
13 real property or in a separate record. If the environmental covenant covers commonly
14 owned property in a common interest community, the record may be signed by any
15 person authorized by the governing board of the owners' association; and

16 (4) An agreement by a person to subordinate a prior interest to an environmental
17 covenant affects the priority of that person's interest but does not by itself impose any
18 affirmative obligation on the person with respect to the environmental covenant.

19 44-16-4.

20 (a) An environmental covenant shall:

21 (1) State that the instrument is an environmental covenant executed pursuant to this
22 chapter;

23 (2) Contain a legally sufficient description of the real property subject to the covenant;

24 (3) Describe the activity and use limitations on the real property;

25 (4) Identify every holder;

26 (5) Be signed by the agency, every holder, and, unless waived by the agency, every
27 owner of the fee simple of the real property subject to the covenant; and

28 (6) Identify the name and location of any administrative record for the environmental
29 response project reflected in the environmental covenant.

30 (b) In addition to the information required by subsection (a) of this Code section, an
31 environmental covenant may contain other information, restrictions, and requirements
32 agreed to by the persons who signed it, including any:

33 (1) Requirements for notice following transfer of a specified interest in, or concerning
34 proposed changes in use of, applications for building permits for, or proposals for any site
35 work affecting the contamination on, the property subject to the covenant;

36 (2) Requirements for periodic reporting describing compliance with the covenant;

- 1 (3) Rights of access to the property granted in connection with implementation or
2 enforcement of the covenant;
- 3 (4) A brief narrative description of the contamination and remedy, including the
4 contaminants of concern, the pathways of exposure, limits on exposure, and the location
5 and extent of the contamination;
- 6 (5) Limitation on amendment or termination of the covenant in addition to those
7 contained in Code Sections 44-16-9 and 44-16-10; and
- 8 (6) Rights of the holder in addition to the right to enforce the covenant pursuant to Code
9 Section 44-16-11.
- 10 (c) In addition to other conditions for its approval of an environmental covenant, the
11 agency may require those persons specified by the agency who have interests in the real
12 property to sign the covenant.
- 13 44-16-5.
- 14 (a) An environmental covenant that complies with this chapter runs with the land.
- 15 (b) An environmental covenant that is otherwise effective is valid and enforceable even
16 if:
- 17 (1) It is not appurtenant to an interest in real property;
- 18 (2) It can be or has been assigned to a person other than the original holder;
- 19 (3) It is not of a character that has been recognized traditionally at common law;
- 20 (4) It imposes a negative burden;
- 21 (5) It imposes an affirmative obligation on a person having an interest in the real
22 property or on the holder;
- 23 (6) The benefit or burden does not touch or concern real property;
- 24 (7) There is no privity of estate or contract;
- 25 (8) The holder dies, ceases to exist, resigns, or is replaced; or
- 26 (9) The owner of an interest subject to the environmental covenant and the holder are the
27 same person.
- 28 (c) An instrument that creates restrictions or obligations with respect to real property that
29 would qualify as activity and use limitations except for the fact that the instrument was
30 recorded before the effective date of this chapter shall not be invalid or unenforceable
31 because of any of the limitations on enforcement of interests described in subsection (b)
32 of this Code section or because it was identified as an easement, servitude, deed restriction,
33 or other interest. This chapter shall not apply in any other respect to such an instrument.
- 34 (d) This chapter shall not invalidate or render unenforceable any interest, whether
35 designated as an environmental covenant or other interest, that is otherwise enforceable
36 under the law of this state.

1 44-16-6.

2 This chapter shall not authorize a use of real property that is otherwise prohibited by
3 zoning, by general law, or by a recorded instrument that has priority over the
4 environmental covenant. An environmental covenant may prohibit or restrict uses of real
5 property which are authorized by zoning or by general law.

6 44-16-7.

7 (a) A copy of an environmental covenant shall be provided by the persons and in the
8 manner required by the agency to:

9 (1) Each person that signed the covenant;

10 (2) Each person holding a recorded interest in the real property subject to the covenant;

11 (3) Each person in possession of the real property subject to the covenant;

12 (4) Each municipality or other unit of local government in which real property subject
13 to the covenant is located; and

14 (5) Any other person the agency requires.

15 (b) The validity of an environmental covenant shall not be affected by failure to provide
16 a copy of the covenant as required under this Code section.

17 44-16-8.

18 (a) An environmental covenant and any amendment or termination of the covenant shall
19 be recorded in every county in which any portion of the real property subject to the
20 covenant is located. For purposes of indexing, a holder shall be treated as a grantee.

21 (b) Except as otherwise provided in subsection (c) of Code Section 44-16-9, an
22 environmental covenant is subject to the laws of this state governing recording and priority
23 of interests in real property.

24 44-16-9.

25 (a) An environmental covenant is perpetual unless it is:

26 (1) By its terms limited to a specific duration or terminated by the occurrence of a
27 specific event;

28 (2) Terminated by consent pursuant to Code Section 44-16-10;

29 (3) Terminated pursuant to subsection (b) of this Code section;

30 (4) Terminated by foreclosure of an interest that has priority over the environmental
31 covenant; or

32 (5) Terminated or modified in an eminent domain proceeding, but only if:

33 (A) The agency that signed the covenant is a party to the proceeding;

1 (B) All persons identified in subsections (a) and (b) of Code Section 44-16-10 are
2 given notice of the pendency of the proceeding; and

3 (C) The court determines, after hearing, that the termination or modification will not
4 adversely affect human health or the environment.

5 (b) If the agency that signed an environmental covenant has determined that the intended
6 benefits of the covenant can no longer be realized, a court, under the doctrine of changed
7 circumstances, in an action in which all persons identified in subsection (a) and (b) of Code
8 Section 44-16-10 have been given notice, may terminate the covenant or reduce its burden
9 on the real property subject to the covenant. The agency's determination or its failure to
10 make a determination upon request is subject to review pursuant to Article 1 of Chapter 13
11 of Title 50, the 'Georgia Administrative Procedure Act.'

12 (c) Except as otherwise provided in subsections (a) and (b) of this Code section, an
13 environmental covenant may not be extinguished, limited, or impaired through issuance
14 of a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession,
15 prescription, abandonment, waiver, lack of enforcement, or acquiescence, or a similar
16 doctrine.

17 (d) An environmental covenant may not be extinguished, limited, or impaired by
18 application of Chapter 2 of this title and Code Section 44-5-168.

19 44-16-10.

20 (a) An environmental covenant may be amended or terminated by consent only if the
21 amendment or termination is signed by:

22 (1) The agency;

23 (2) Unless waived by the agency, the current owner of the fee simple of the real property
24 subject to the covenant;

25 (3) Each person that originally signed the covenant, unless the person waived in a signed
26 record the right to consent or a court finds that the person no longer exists or cannot be
27 located or identified with the exercise of reasonable diligence; and

28 (4) Except as otherwise provided in paragraph (2) of subsection (d) of this Code section,
29 the holder.

30 (b) If an interest in real property is subject to an environmental covenant, the interest shall
31 not be affected by an amendment of the covenant unless the current owner of the interest
32 consents to the amendment or has waived in a signed record the right to consent to
33 amendments.

34 (c) Except for an assignment undertaken pursuant to a governmental reorganization,
35 assignment of an environmental covenant to a new holder shall be an amendment.

36 (d) Except as otherwise provided in an environmental covenant:

1 (1) A holder may not assign its interest without consent of the other parties; and

2 (2) A holder may be removed and replaced by agreement of the other parties specified
3 in subsection (a) of this Code section.

4 (e) A court of competent jurisdiction may fill a vacancy in the position of holder.

5 44-16-11.

6 (a) A civil action for injunctive or other equitable relief for violation of an environmental
7 covenant may be maintained by:

8 (1) A party to the covenant;

9 (2) The agency;

10 (3) Any person to whom the covenant expressly grants power to enforce;

11 (4) A person whose interest in the real property or whose collateral or liability may be
12 affected by the alleged violation of the covenant; or

13 (5) A municipality or other unit of local government in which the real property subject
14 to the covenant is located.

15 (b) This chapter shall not limit the regulatory authority of the agency under law other than
16 this chapter with respect to an environmental response project.

17 (c) A person shall not responsible for or subject to liability for environmental remediation
18 solely because such person has the right to enforce an environmental covenant.

19 44-16-12.

20 (a) The agency shall establish and maintain a registry that contains all environmental
21 covenants and any amendment or termination of such covenants. The registry may also
22 contain any other information concerning environmental covenants and the real property
23 subject to them which the agency considers appropriate. The registry is a public record for
24 purposes of Article 4 of Chapter 18 of Title 50.

25 (b) After an environmental covenant or an amendment or termination of a covenant is filed
26 in the registry established and maintained pursuant to subsection (a) of this Code section,
27 a notice of the covenant, amendment, or termination that complies with this Code section
28 may be recorded in the land records in lieu of recording the entire covenant. Any such
29 notice shall contain:

30 (1) A legally sufficient description and any available street address of the real property
31 subject to the covenant;

32 (2) The name and address of the owner of the fee simple interest in the real property, the
33 agency, and the holder if other than the agency;

34 (3) A statement that the covenant, amendment, or termination is available in a registry
35 at the agency, which discloses the method of any electronic access; and

1 (4) A statement that the notice is notification of an environmental covenant executed
2 pursuant to this chapter.

3 (c) A statement in substantially the following form, executed with the same formalities as
4 a deed in this state, shall satisfy the requirements of subsection (b) of this Code section:

5 '1. This notice is filed in the land records of the [political subdivision] of [insert name
6 of jurisdiction in which the real property is located] pursuant to, O.C.G.A Section
7 44-16-12.

8 2. This notice and the covenant, amendment, or termination to which it refers may
9 impose significant obligations with respect to the property described below.

10 3. A legal description of the property is attached as Exhibit A to this notice. The address
11 of the property that is subject to the environmental covenant is: [insert address of
12 property] [not available].

13 4. The name and address of the owner of the fee simple interest in the real property on
14 the date of this notice is [insert name of current owner of the property and the owner's
15 current address as shown on the tax records of the jurisdiction in which the property is
16 located].

17 5. The environmental covenant, amendment, or termination was signed by [insert name
18 and address of the agency].

19 6. The environmental covenant, amendment, or termination was filed in the registry on
20 [insert date of filing].

21 7. The full text of the covenant, amendment, or termination and any other information
22 required by the agency is on file and available for inspection and copying in the registry
23 maintained for that purpose by the Environmental Protection Division of the Department
24 of Natural Resources at 2 Martin Luther King Jr. Drive, Suite 1152, East Tower, Atlanta,
25 GA 30334. The covenant, amendment, or termination may be found electronically at
26 www.gaepd.org.'

27 44-16-13.

28 This chapter modifies, limits, or supersedes the federal Electronic Signatures in Global and
29 National Commerce Act (15 U.S.C. Section 7001 et seq.) but shall not modify, limit, or
30 supersede Section 101 of such Act (15 U.S.C. Section 7001(a)) or authorize electronic
31 delivery of any of the notices described in Section 103 of such Act (15 U.S.C. Section
32 7003(b))."

33 **SECTION 2.**

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