

House Bill 545 (COMMITTEE SUBSTITUTE) (AM)

By: Representatives McCall of the 33rd, Burns of the 159th, England of the 116th, Watson of the 172nd, Pirkle of the 155th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 41-1-7 of the Official Code of Georgia Annotated, relating to
2 treatment of agricultural facilities and operations and forest land as nuisances, so as to
3 provide for legislative intent; to remove a definition; to limit the circumstances under which
4 agricultural facilities and operations may be sued for a nuisance; to provide for related
5 matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Code Section 41-1-7 of the Official Code of Georgia Annotated, relating to treatment of
9 agricultural facilities and operations and forest land as nuisances, is amended by revising
10 subsection (a), paragraphs (4) through (4.3) of subsection (b), and subsections (c) and (d) as
11 follows:

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

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

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

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

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

40 ~~(4.1)~~(4) 'Food processing plant' means a commercial operation that manufactures,
 41 packages, labels, distributes, or stores food for human consumption and does not provide
 42 food directly to a consumer.

43 ~~(4.2)~~(4.1) 'Forest products processing plant' means a commercial operation that
 44 manufactures, packages, labels, distributes, or stores any forest product or that
 45 manufactures, packages, labels, distributes, or stores any building material made from
 46 gypsum rock.

47 ~~(4.3)~~(4.2) 'Rendering plant' has the meaning provided by Code Section 4-4-40."

48 ~~"(c) No nuisance action shall be filed against any agricultural facility, agricultural~~
 49 ~~operation, any agricultural operation at an agricultural facility, agricultural support facility,~~
 50 ~~or any operation at an agricultural support facility shall be or shall become a nuisance,~~
 51 ~~either public or private, as a result of changed conditions in or around the locality of such~~
 52 ~~facility or operation if the facility or operation has been in operation for one year or more~~
 53 ~~unless the plaintiff legally possesses the real property affected by the conditions alleged to~~
 54 ~~be a nuisance, such real property is located within five miles of the source of the activity~~
 55 ~~alleged to cause the nuisance, and the action is filed within one year of the established date~~
 56 ~~of operation of such facility or operation.~~ The provisions of this subsection shall not apply
 57 when a nuisance results from the negligent, improper, or illegal operation of any such
 58 facility or operation.

59 (d) For purposes of this Code section, the established date of operation is the date on
 60 which an ~~agricultural operation or agricultural support facility~~ a facility or operation named
 61 in subsection (c) of this Code section commenced operation. If ~~the~~ physical facilities of
 62 the agricultural operation or the agricultural support facility are subsequently added or
 63 expanded, or new technology is adopted, a change in ownership or size occurs, a change

64 in the type of agricultural operation occurs, or if operations are interrupted for a period of
65 five years or less, the established date of operation for each change is not a separately and
66 independently established date of operation and the commencement of the expanded
67 operation does not such changes do not divest the agricultural operation or agricultural
68 support facility of a previously established date of operation; provided that any subsequent
69 addition or expansion, change in ownership, size, or type of operation of a facility or
70 operation named in subsection (c) of this Code section that requires permitting or approval
71 by a state agency, or authorization by a local zoning board, shall constitute a newly
72 established date of operation."

73 **SECTION 2.**

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