

The Senate Committee on Agriculture and Consumer Affairs offered the following substitute to HB 545:

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),  
11 and to provide new subsections to read as 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 physical facilities of the~~  
 62 ~~agricultural operation or the agricultural support facility are subsequently expanded or new~~  
 63 ~~technology adopted, the established date of operation for each change is not a separately~~

64 ~~and independently established date of operation and the commencement of the expanded~~  
65 ~~operation does not divest the agricultural operation or agricultural support facility of a~~  
66 ~~previously established date of operation.~~

67 (e) Except as provided in subsection (f) of this Code section, the following changes do not  
68 divest an operation or facility named in subsection (c) of this Code section of a previously  
69 established date of operation:

70 (1) The addition or expansion of physical facilities;

71 (2) The adoption of new technology;

72 (3) A change in size of an operation or facility;

73 (4) A change in the type of agricultural operation;

74 (5) An interruption in operations for a period of five years or less; and

75 (6) The rebuilding or replacement of a physical facility which has been razed or  
76 destroyed as a result of routine maintenance, facility upgrades, or a natural disaster.

77 (f) Any change described in subsection (e) of this Code section that requires permitting or  
78 other approval by the Georgia Department of Agriculture or the Georgia Department of  
79 Natural Resources, or requires a zoning decision by a local government, shall create a  
80 newly established date of operation."

81

## **SECTION 2.**

82 All laws and parts of laws in conflict with this Act are repealed.