

House Bill 1353

By: Representatives Forster of the 3rd, Smith of the 131st, Crawford of the 127th, Reese of the 98th, O`Neal of the 146th, and others

A BILL TO BE ENTITLED
AN ACT

1 To Chapter 8 of Title 12 of the Official Code of Georgia Annotated, relating to waste
2 management, so as to enact the "Uniform Environmental Covenants Act"; to provide a short
3 title; to define certain terms; to provide for nature of rights and subordination of interests; to
4 provide for contents of environmental covenants; to provide for validity and effect on other
5 instruments; to provide for relationship to other land use law; to provide for notice; to
6 provide for duration and amendment by court action; to provide for amendment or
7 termination by consent; to provide for enforcement; to provide for registry and substitute
8 notice; to provide for uniformity of application and construction; to provide for effective
9 dates; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

12 Chapter 8 of Title 12 of the Official Code of Georgia Annotated, relating to waste
13 management, is amended by adding a new article to read as follows:

14 style="text-align:center">"ARTICLE 10

15 12-8-220.

16 This article shall be known and may be cited as the 'Uniform Environmental Covenants
17 Act.'

18 12-8-221.

19 As used in this article, the term:

20 (1) 'Activity and use limitations' means restrictions or obligations created under this
21 article with respect to real property.

1 (2) 'Agency' means the Environmental Protection Division of the department or any other
2 state or federal agency that determines or approves the environmental response project
3 pursuant to which the environmental covenant is created.

4 (3) 'Common interest community' means a condominium, cooperative, or other real
5 property with respect to which a person, by virtue of the person's ownership of a parcel
6 of real property, is obligated to pay property taxes or insurance premiums, or for
7 maintenance, or improvement of other real property described in a recorded covenant that
8 creates the common interest community.

9 (4) 'Environmental covenant' means a servitude arising under an environmental response
10 project that imposes activity and use limitations.

11 (5) 'Environmental response project' means a plan or work performed for environmental
12 remediation of real property and conducted:

13 (A) Under a federal or state program governing environmental remediation of real
14 property, including without limitation Part 2 of Article 3 of this chapter;

15 (B) Incident to closure of a solid or hazardous waste management unit, if the closure
16 is conducted with approval of an agency; or

17 (C) Under a state voluntary clean-up program authorized in Article 9 of this chapter.

18 (6) 'Holder' means the grantee of an environmental covenant as specified in subsection
19 (a) of Code Section 12-8-222.

20 (7) 'Person' means an individual, corporation, business trust, estate, trust, partnership,
21 limited liability company, association, joint venture, public corporation, government,
22 governmental subdivision, agency, or instrumentality, or any other legal or commercial
23 entity.

24 (8) 'Record,' used as a noun, means information that is inscribed on a tangible medium
25 or that is stored in an electronic or other medium and is retrievable in perceivable form.

26 (9) 'State' means a state of the United States, the District of Columbia, Puerto Rico, the
27 United States Virgin Islands, or any territory or insular possession subject to the
28 jurisdiction of the United States.

29 12-8-222.

30 (a) Any person, including a person that owns an interest in the real property, the agency,
31 or a municipality or other unit of local government, may be a holder. An environmental
32 covenant may identify more than one holder. The interest of a holder is an interest in real
33 property.

34 (b) A right of an agency under this article or under an environmental covenant, other than
35 a right as a holder, is not an interest in real property.

1 (c) An agency is bound by any obligation it assumes in an environmental covenant, but an
2 agency does not assume obligations merely by signing an environmental covenant. Any
3 other person that signs an environmental covenant is bound by the obligations the person
4 assumes in the covenant, but signing the covenant does not change obligations, rights, or
5 protections granted or imposed under law other than this article except as provided in the
6 covenant.

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

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

12 (2) This article does not require a person that owns a prior interest to subordinate that
13 interest to an environmental covenant or to agree to be bound by the covenant;

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

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

21 12-8-223.

22 (a) An environmental covenant must:

23 (1) State that the instrument is an environmental covenant executed pursuant to this
24 article;

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

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

27 (4) Identify every holder;

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

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

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

- 1 (1) Requirements for notice following transfer of a specified interest in, or concerning
2 proposed changes in use of, applications for building permits for, or proposals for any site
3 work affecting the contamination on, the property subject to the covenant;
- 4 (2) Requirements for periodic reporting describing compliance with the covenant;
- 5 (3) Rights of access to the property granted in connection with implementation or
6 enforcement of the covenant;
- 7 (4) A brief narrative description of the contamination and remedy, including the
8 contaminants of concern, the pathways of exposure, limits on exposure, and the location
9 and extent of the contamination;
- 10 (5) Limitation on amendment or termination of the covenant in addition to those
11 contained in Code Sections 12-8-228 and 12-8-229; and
- 12 (6) Rights of the holder in addition to its right to enforce the covenant pursuant to Code
13 Section 12-8-230.
- 14 (c) In addition to other conditions for its approval of an environmental covenant, the
15 agency may require those persons specified by the agency who have interests in the real
16 property to sign the covenant.

17 12-8-224.

18 (a) An environmental covenant that complies with this article runs with the land.

19 (b) An environmental covenant that is otherwise effective is valid and enforceable even
20 if:

- 21 (1) It is not appurtenant to an interest in real property;
- 22 (2) It can be or has been assigned to a person other than the original holder;
- 23 (3) It is not of a character that has been recognized traditionally at common law;
- 24 (4) It imposes a negative burden;
- 25 (5) It imposes an affirmative obligation on a person having an interest in the real
26 property or on the holder;
- 27 (6) The benefit or burden does not touch or concern real property;
- 28 (7) There is no privity of estate or contract;
- 29 (8) The holder dies, ceases to exist, resigns, or is replaced; or
- 30 (9) The owner of an interest subject to the environmental covenant and the holder are the
31 same person.

32 (c) An instrument that creates restrictions or obligations with respect to real property that
33 would qualify as activity and use limitations except for the fact that the instrument was
34 recorded before July 1, 2006, is not invalid or unenforceable because of any of the
35 limitations on enforcement of interests described in subsection (b) of this Code section or

1 because it was identified as an easement, servitude, deed restriction, or other interest. This
2 article does not apply in any other respect to such an instrument.

3 (d) This article does not invalidate or render unenforceable any interest, whether
4 designated as an environmental covenant or other interest, that is otherwise enforceable
5 under the law of this state.

6 12-8-225.

7 This article does not authorize a use of real property that is otherwise prohibited by zoning,
8 by law other than this article regulating use of real property, or by a recorded instrument
9 that has priority over the environmental covenant. An environmental covenant may prohibit
10 or restrict uses of real property which are authorized by zoning or by law other than this
11 article.

12 12-8-226.

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

15 (1) Each person that signed the covenant;

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

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

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

20 (5) Any other person the agency requires.

21 (b) The validity of a covenant is not affected by failure to provide a copy of the covenant
22 as required under this Code section.

23 12-8-227.

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

27 (b) Except as otherwise provided in subsection (c) of Code Section 12-8-228, an
28 environmental covenant is subject to the laws of this state governing recording and priority
29 of interests in real property.

30 12-8-228.

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

- 1 (1) By its terms limited to a specific duration or terminated by the occurrence of a
 2 specific event;
- 3 (2) Terminated by consent pursuant to Code Section 12-8-229;
- 4 (3) Terminated pursuant to subsection (b) of this Code section;
- 5 (4) Terminated by foreclosure of an interest that has priority over the environmental
 6 covenant; or
- 7 (5) Terminated or modified in an eminent domain proceeding, but only if:
- 8 (A) The agency that signed the covenant is a party to the proceeding;
- 9 (B) All persons identified in subsections (a) and (b) of Code Section 12-8-229 are
 10 given notice of the pendency of the proceeding; and
- 11 (C) The court determines, after hearing, that the termination or modification will not
 12 adversely affect human health or the environment.
- 13 (b) If the agency that signed an environmental covenant has determined that the intended
 14 benefits of the covenant can no longer be realized, a court, under the doctrine of changed
 15 circumstances, in an action in which all persons identified in subsections (a) and (b) of
 16 Code Section 12-8-229 have been given notice, may terminate the covenant or reduce its
 17 burden on the real property subject to the covenant. The agency's determination or its
 18 failure to make a determination upon request is subject to review pursuant to Chapter 13
 19 of Title 50, the 'Administrative Procedure Act.'
- 20 (c) Except as otherwise provided in subsections (a) and (b) of this Code section, an
 21 environmental covenant may not be extinguished, limited, or impaired through issuance of
 22 a tax deed, foreclosure of a tax lien, or application of the doctrine of adverse possession,
 23 prescription, abandonment, waiver, lack of enforcement, or acquiescence, or a similar
 24 doctrine.
- 25 12-8-229.
- 26 (a) An environmental covenant may be amended or terminated by consent only if the
 27 amendment or termination is signed by:
- 28 (1) The agency;
- 29 (2) Unless waived by the agency, the current owner of the fee simple of the real property
 30 subject to the covenant;
- 31 (3) Each person that originally signed the covenant, unless the person waived in a signed
 32 record the right to consent or a court finds that the person no longer exists or cannot be
 33 located or identified with the exercise of reasonable diligence; and
- 34 (4) Except as otherwise provided in paragraph (2) of subsection (d) of this Code section,
 35 the holder.

1 (b) If an interest in real property is subject to an environmental covenant, the interest is not
2 affected by an amendment of the covenant unless the current owner of the interest consents
3 to the amendment or has waived in a signed record the right to consent to amendments.

4 (c) Except for an assignment undertaken pursuant to a governmental reorganization,
5 assignment of an environmental covenant to a new holder is an amendment.

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

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

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

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

11 12-8-230.

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

14 (1) A party to the covenant;

15 (2) The agency or, if it is not the agency, the Environmental Protection Division of the
16 department;

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

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

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

22 (b) This article does not limit the regulatory authority of the agency or the Environmental
23 Protection Division of the department under law other than this article with respect to an
24 environmental response project.

25 (c) A person is not responsible for or subject to liability for environmental remediation
26 solely because it has the right to enforce an environmental covenant.

27 12-8-231.

28 (a) The Environmental Protection Division of the department shall establish and maintain
29 a registry that contains all environmental covenants and any amendment or termination of
30 those covenants. The registry may also contain any other information concerning
31 environmental covenants and the real property subject to them which the Environmental
32 Protection Division of the department considers appropriate. The registry is a public record
33 for purposes of Article 4 of Chapter 18 of Title 50.

1 (b) After an environmental covenant or an amendment or termination of a covenant is filed
2 in the registry established pursuant to subsection (a) of this Code section, a notice of the
3 covenant, amendment, or termination that complies with this Code section may be recorded
4 in the land records in lieu of recording the entire covenant. Any such notice must contain:

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

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

9 (3) A statement that the covenant, amendment, or termination is available in a registry
10 at the Environmental Protection Division of the department, which discloses the method
11 of any electronic access; and

12 (4) A statement that the notice is notification of an environmental covenant executed
13 pursuant to this article.

14 (c) A statement in substantially the following form, executed with the same formalities as
15 a deed in this state, satisfies the requirements of subsection (b) of this Code section:

16 '1. This notice is filed in the land records of the [political subdivision] of [insert name
17 of jurisdiction in which the real property is located] pursuant to Code Section 12-8-231
18 of the Official Code of Georgia Annotated.

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

21 3. A legal description of the property is attached as Exhibit A to this notice. The address
22 of the property that is subject to the environmental covenant is [insert address of property]
23 [not available].

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

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

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

32 7. The full text of the covenant, amendment, or termination and any other information
33 required by the agency is on file and available for inspection and copying in the registry
34 maintained for that purpose by the Environmental Protection Division of the Department
35 of Natural Resources at [insert address and room of building in which the registry is

1 maintained]. The covenant, amendment, or termination may be found electronically at
2 [insert web address for covenant].'

3 12-8-232.

4 In applying and construing this uniform act, consideration must be given to the need to
5 promote uniformity of the law with respect to its subject matter among states that enact it."

6 **SECTION 2.**

7 (a) This Act shall become effective on July 1, 2006, except as otherwise provided by
8 subsection (b) of this section.

9 (b) Code Section 12-8-231 as enacted by Section 1 of this Act shall become effective only
10 upon the effective date of a specific appropriation of funds for the purposes of such Code
11 section as expressed in a line item making specific reference to the full funding of such
12 Code section in an appropriations Act enacted by the General Assembly.

13 **SECTION 3.**

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