

First Signature: Representative Robert Dickey (140th)

Co-Sponsors: Representative Sam Watson (172nd), Representative Terry England (116th), Representative Rick Jasperse (11th), Representative Clay Pirkle (155th), Representative Beth Camp (131st)

Summary: “A BILL to be entitled an Act to amend Code Section 41-1-7 of the Official Code of Georgia Annotated, relating to treatment of agricultural facilities and operations and forest land as nuisances, so as to provide for legislative intent; to remove a definition; to limit the circumstances under which agricultural facilities and operations may be sued for a nuisance; to provide for a short title; to provide for related matters; to repeal conflicting laws; and for other purposes.”²

Status: This Bill became effective on July 1, 2022.³

TEXT OF HOUSE BILL 1150 (SENATE SUBSTITUTE LC 51 0202S)⁴

SECTION 1.

This Act shall be known and may be cited as the "Freedom to Farm Act."

SECTION 2.

Code Section 41-1-7 of the Official Code of Georgia Annotated, relating to treatment of agricultural facilities and operations and forest land as nuisances, is amended as follows:

"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

¹H.B. 1150, 156th Gen. Assemb., Reg. Sess. (Ga. 2022), <https://www.legis.ga.gov/api/legislation/document/20212022/212218> (last visited Oct. 1, 2022).

² 2021-2022 Regular Session- H.B. 1150, *Freedom to Farm Act; enact*, GA GEN. ASSEMB., <https://www.legis.ga.gov/legislation/61581> (last visited Oct. 1, 2022) [hereinafter H.B. 1150 Status Sheet].

³ *Id.*

⁴ H.B. 1150, *supra* note 1.

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, such operations often become the subject of nuisance actions. As a result, 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)~~(2) 'Agricultural operation' means:

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

(B) The planting, growing, fertilizing, 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)~~(3) 'Agricultural support facility' means any food processing plant or forest products processing plant together with all related or ancillary activities, including trucking; provided, however, that 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 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 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 facility.~~ 'Concentrated Animal Feeding Operation,' or 'CAFO,' means the same as that term is used pursuant to subsections (b) and (c) of 40 C.F.R. Section 122.23.

~~(4.1)~~(5) '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)~~(6) 'Forest products processing plant' means a commercial operation that manufactures, packages, labels, distributes, or stores any forest product or that manufactures, packages, labels, distributes, or stores any building material made from gypsum rock.

~~(4.3)~~ (7) 'Rendering plant' has the meaning provided by Code Section 4-4-40.

~~(5) 'Urban sprawl' means either of the following or both: (A) With regard to an agricultural area or agricultural operation:—~~

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

~~(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 private nuisance action shall be filed against any agricultural facility, agricultural operation, any agricultural operation at an agricultural facility, agricultural support facility, or any operation at an agricultural support facility unless the plaintiff legally possesses the real property affected by the conditions alleged to be a nuisance.

(d) No agricultural facility, 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 conditions in or around the locality of such facility or operation if the facility or operation has been in operation for ~~one year~~ two years or more. The provisions of this subsection shall not apply when a nuisance results from the negligent, improper, or illegal operation of any such facility or operation.

~~(d)~~(e) For purposes of this Code section, the established date of operation is the date on which an agricultural operation or agricultural support facility commenced operation. If the physical facilities of the agricultural operation or the agricultural support facility are subsequently expanded or new technology adopted, the

established date of operation for each change is not a separately and independently established date of operation and the commencement of the expanded operation does not divest the agricultural operation or agricultural support facility of a previously established date of operation.

(f) For purposes of this Code section, the commencement of operation of a CAFO shall create a separately and independently established date of operation for that portion of the agricultural facility, agricultural operation, any agricultural operation at an agricultural facility, agricultural support facility, or any operation at an agricultural support facility relating to the newly established CAFO.⁷

(g) Nothing in this Code section shall preempt or override any present or future rule or regulation of the Georgia Environmental Protection Division or the United States Environmental Protection Agency."

SECTION 3.

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

SPONSOR'S RATIONALE

Representative Robert Dickey ("Representative Dickey") sponsored House Bill 1150 to protect the present and future interests in Georgia's agriculture industry.⁵ Representative Dickey is the Chairman of the House Agriculture and Consumer Affairs Committee which is responsible for hearing legislation on agriculture, Georgia's largest economic industry.⁶ Representative Dickey explains that House Bill 1150 creates an extra layer of protection for small farms and family farmers in the state of Georgia who are currently operating farms or wish to start operating a farm.⁷

Georgia has had right to farm laws that protect and promote Georgia farming since 1989 when it was passed into law.⁸ Senator Larry Walker III

⁵ *Freedom to Farm Act receives final passage in Georgia Legislature*, GA. FARM BUREAU (Apr. 6, 2022) <https://www.gfb.org/media-and-publications/news.cms/2022/1240/freedom-to-farm-act-receives-final-passage-in-georgialeislature#:~:text=The%20Georgia%20General%20Assembly%20has,Session%2C%20also%20called%20Sine%20Die>.

⁶ *House Committee On Agriculture & Consumer Affairs*, GA. GEN. ASS. (2022) <https://www.legis.ga.gov/committees/house/87?session=1029>.

⁷ Georgia House of Representatives, House Chamber Day 23 03.03.22 (PM), YOUTUBE, (Mar. 3, 2022), <https://www.youtube.com/watch?v=-cd0wEW308w&t=1207s>.

(“Senator Walker”), the Senate sponsor for House Bill 1150, states that House Bill 1150 will clarify the ambiguity in the language of the current right to farm statute that deals with the “change condition” aspect of House Bill 1150.⁹ The “change condition” language refers to the change of the land, and if that change to the land will restart the statute of limitations, which then opens up the possibility for the farmer to be sued again on a nuisance claim.¹⁰ House Bill 1150 also strikes out much of the language regarding the change condition of the surrounding land and then focuses on the farmers’ land, specifically narrowing the applicability of a nuisance suit.¹¹

Over the past four years, Representative Dickey has sponsored this legislation to support family farms throughout Georgia.¹² Ninety-eight percent of Georgia are family farms, and House Bill 1150 seeks to protect them from unnecessary litigation and fees related to nuisance claims that may be brought against them in the future.¹³ House Bill 1150 also addresses the effect of ‘urban encroachment,’ the growing and spreading of cities and towns into agricultural areas.¹⁴ This growing and spreading of the population into agriculture areas increases the amount of people living near farms and the likelihood of a nuisance claim against farmers operating farms.¹⁵ The nuisance claims, as Senator Walker III, states are coming from both residents moving away from the city and developers.¹⁶ The developers are pressuring the small farms by filing nuisance claims against the farms that are to expense to litigate so the farmers sell and the developers are thus able to acquire their land for residential or other business uses.¹⁷

House Bill 1150 also has language to protect the property rights of owners whose property may be adversely affected by farms and farmers

⁸ *Id.*

⁹ Georgia State Senate, Legislative day 39 (Part 1), VIMEO, (Apr. 1, 2022), <https://vimeo.com/showcase/9076378?video=694155945>.

¹⁰ O.C.G.A. § 41-4-7 (2022). (“[I]f the physical facilities of the agricultural operation or the agricultural support facility are subsequently expanded or new technology adopted, the established date of operation for each change is not a separately and independently established date of operation and the commencement of the expanded operation does not divest the agricultural operation or agricultural support facility of a previously established date of operation.”).

¹¹ *Id.*

¹² Georgia House of Representatives, *supra* note 7.

¹³ *Id.*

¹⁴ Dave Williams, *Freedom to Farm Act gets hearing in Georgia Senate committee*, GPB NEWS (Mar. 22, 2022), <https://www.gpb.org/news/2022/03/22/freedom-farm-act-gets-hearing-in-georgia-senate-committee>.

¹⁵ Georgia State Senate, *supra* note 9.

¹⁶ *Id.*

¹⁷ *Id.*

operated outside of the legal framework.¹⁸ Property owners have the ability to sue any farm that is not abiding by property, farming, and environmental laws.¹⁹ House Bill 1150 requires that those operating a farm must follow all laws pertaining to the operation of a farm but are not immune from suit for “negligent, improper, or illegal activity.”²⁰

Over the past 25 years, farmland in Georgia has decreased by ten percent.²¹ Supporters of House Bill 1150, including the Georgia Farm Bureau, the Georgia Agribusiness Council, the Georgia Poultry Federation, and the Georgia Forestry Association are focused on supporting and preserving Georgia’s robust agricultural and agriculturally-related industries.²² Tom McCall, the president of the Georgia Farm Bureau states that “Georgia Farm Bureau has long believed that Georgia farmers have the right to make a living without fear of being sued out of business for nuisance over normal farming practices.”²³

Representative Al Williams, a member of the rural caucus, who supports House Bill 1150 spoke on the need for House Bill 1150 to help support the African American farming communities who are having trouble keeping family farms in operation.²⁴ Representative Williams also speaks on the importance of House Bill 1150 and the impact it will have in the state of Georgia’s economy.²⁵

OPPOSITION’S RATIONALE

Representative Stacey Evans opposed House Bill 1150 stating that the state law from 1989 was already clear as written and the new law would infringe on private property rights.²⁶ House Bill 1150 allows the farmer to move to a new area, wait and start operation of their farm at a later date, and

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ O.C.G.A. § 41-4-7. (2022).

²¹ Georgia State Senate, *supra* note 9.

²² Sharon P. Kane, *AgSnapshots 2021; a brief focus on Georgia’s agriculture history*, CTR. OF AGRIC. AND ENV’T SCI UNIV. OF GA. 2 (2021), <https://caed.uga.edu/content/dam/caes-subsite/caed/publications/ag-snapshots/2021CAEDAgSnapshotsWeb.pdf> (“[T]o highlight the importance of the agricultural economy to Georgia. In 2019, food and fiber production and related industries represented \$70.1 billion in output to Georgia’s \$1.12 trillion economy and more than 359,220 jobs in the economy.”).

²³ Freedom to Farm Act receives final passage in Georgia Legislature, GA. FARM BUREAU (Apr. 6, 2022).

²⁴ Georgia House of Representatives, *supra* note 7.

²⁵ *Id.*

²⁶ Dave Williams, *Freedom to Farm Act passes Georgia House of Representatives*, THE NE GA, (Mar. 4, 2022), <https://www.thenortheastgeorgian.com/regional/freedom-farm-act-passes-georgia-house-representatives>.

still be protected under House Bill 1150 essentially limiting the property rights of the residents nearby.²⁷ Representative Evans who has called House Bill 1150 the “bad neighbor bill” removes the certainty from the current law in place and discourage industrial polluters for taking responsibility for their pollution.²⁸

An attorney for the Southern Environmental Law Center, April Lipscomb, stated that the current law, prior to House Bill 1150, allows residents who lived there first to protect their property rights any time an agricultural nuisance occurs, even up to 20 years after the agriculture operation started.²⁹ Lipscomb, also agrees that the current law in effect is strong and stated that, “I am not aware of a single farm that has been shut down because of nuisances in the state of Georgia.”³⁰ The Senate minority report given by Senator Freddie Powell Sims further expanded on the length of time a nuisance claim can be brought by property owners against new farms, expressing his concern that in some instances something might not become a nuisance until a farm is several years into its operation.³¹

One of the main criticisms of House Bill 1150 is that it opens up a door for large scale industrial farms to come to Georgia and be protected under this law.³² Georgia Water Coalition strongly opposes House Bill 1150 and the implications it will cause such as the devaluation of nearby land, the taking away of property rights of the local neighbors, and the negative environmental impacts that large factory farms can now cause.³³ One of the factors that the Georgia Water Coalition points out is that those in favor of House Bill 1150 cannot produce any evidence that the small family farms are suffering from nuisance claims.³⁴ Senator Elena Parent argues that the farms currently in operation would be disadvantaged by House Bill 1150 as a result.³⁵

²⁷ Georgia House of Representatives, *supra* note 7.

²⁸ Stacey Evans, 2022 LEGISLATIVE SESSION, NEWS, UPDATE, *Evans E-Bulletin: Week Eight*, (Mar. 6, 2022) <https://staceyevans.com/2022/03/06/evans-e-bulletin-week-eight/>.

²⁹ Christopher Quinn, *Kemp Signs Bill Protecting Farmers From Lawsuits Filed By Neighbors*, THE ATLANTA J. CONST., (Apr. 14, 2022), <https://www.ajc.com/politics/georgia-state-legislature/kemp-signs-bill-protecting-farmers-from-lawsuits-filed-by-neighbors/FNF64JIAPFEX3HGKCBEDGBMOQU/>.

³⁰ Molly Samuel, *Bill protecting Georgia farms from lawsuits gets pushback over property concerns*, WABE, (Feb 15, 2022), <https://www.wabe.org/proposal-to-protect-georgia-farms-from-lawsuits-gets-push-back-over-property-concerns/>.

³¹ Georgia State Senate, *supra* note 9.

³² *HB 1150 – Bad Neighbor Bill*, GEORGIA WATER COALITION, <https://www.gawater.org/hb1150>.

³³ *Id.*

³⁴ *Id.*

IMPLICATIONS IN GEORGIA

Georgia is one of the top producers of agriculture products in the United States, but this may not be true for long with the growing stress placed on the supply chain and inflation.³⁶ House Bill 1150 will allow more farms to operate, expand, and innovate without fear of nuisance lawsuits which will economically benefit the state of Georgia.³⁷ A recent case that illustrates the innovation being used in the state of Georgia under the previous Right to Farm Act was *Ga.-Pac. Consumer Prods., LP v. Ratner*.³⁸ In this case, a paper mill recycling plant was classified as an agriculture facility by the court because the plant extended the useful life of wood fibers.³⁹ According to the court in this case the plant provided both economic and conservation benefits to the state of Georgia.⁴⁰ With the passage of House Bill 1150 the farmers across the state of Georgia will be able to be protected while they innovate.⁴¹

House Bill 1150 will take away some nuisance claims homeowners and neighbors can have against farms but they still retain many other legal actions to protect their property interest so many of the current operations in Georgia will not change unless those farms undergo a change in their operation that triggers the change condition provision.⁴² Going forward with the new two-year period before nuisance claims are barred will affect the newer farms in operation and the farms that will begin operation in the future, making the local homeowner more attentive to their surroundings within those first two years.⁴³

LEGISLATIVE GENEALOGY

House Bill 1150 was entered into the House Hopper on February 1, 2022.⁴⁴ House first readers was on February 2, 2022.⁴⁵ The House second readers was on February 3, 2022.⁴⁶ The House Committee favorably reported by substitute on February 28, 2022.⁴⁷ House third readers was on March 3, 2022.⁴⁸ The House passed/adopted by substitute on March 3,

³⁵ Georgia State Senate, *supra* note 9.

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Ga.-Pac. Consumer Prods., LP v. Ratner*, 345 Ga. App 434, 437-440 (2018).

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ Georgia State Senate, *supra* note 9.

⁴² Georgia House of Representatives, *supra* note 7.

⁴³ *Id.*

⁴⁴ H.B. 1150 Status Sheet, *supra* note 2.

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

2022.⁴⁹ The Senate read and referred on March 4, 2022.⁵⁰ The Senate committee favorably reported by substitute March 29, 2022.⁵¹ The Senate read second time March 29, 2022.⁵² Senate Committee favorably reported by substitute on April 1, 2022.⁵³ Senate third readers on April 1, 2022.⁵⁴ Senate passed/adopted by substitute on April 4, 2022.⁵⁵ House agreed Senate amend or sub on April 4, 2022.⁵⁶ House sent to the Governor on April 7, 2022.⁵⁷ House date signed by Governor April 13, 2022.⁵⁸ Act 598 April 13, 2022.⁵⁹ Effective date July 1, 2022.⁶⁰

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⁴⁹ H.B. 1150 Status Sheet, *supra* note 2.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.*

⁵³ *Id.*

⁵⁴ H.B. 1150 Status Sheet, *supra* note 2.

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ H.B. 1150 Status Sheet, *supra* note 2.

⁶⁰ *Id.*