

House Bill 528

By: Representative Burkhalter of the 36th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad
2 valorem taxation of property, so as to provide for preferential assessment of bona fide
3 conservation use property consisting of certain constructed storm-water wetlands; to change
4 certain provisions relating to assessment of tangible property; to change certain provisions
5 relating to bona fide conservation use property and bona fide residential transitional property;
6 to change certain provisions relating to authority to promulgate certain rules and regulations
7 and limits on change in current use value of conservation use property; to provide for
8 legislative declarations; to provide an effective date; to provide for applicability; to repeal
9 conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 The General Assembly declares that this Act is enacted pursuant to Article VII, Section I,
13 Paragraph III(e) of the Constitution.

14 **SECTION 2.**

15 Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem
16 taxation of property, is amended in Code Section 48-5-7, relating to assessment of tangible
17 property, by striking subsection (c.2) and inserting in lieu thereof the following:

18 "(c.2)(1) Tangible real property which is devoted to bona fide conservation uses as
19 defined in this chapter paragraph (1) or (2) of subsection (a) of Code Section 48-5-7.4 and
20 which otherwise conforms to the conditions and limitations imposed in this chapter shall
21 be assessed for property tax purposes at 40 percent of its current use value and shall be
22 taxed on a levy made by each respective tax jurisdiction according to 40 percent of the
23 property's current use value.

24 (2) Tangible real property which is devoted to a bona fide conservation use as defined
25 in paragraph (3) of subsection (a) of Code Section 48-5-7.4 and which otherwise

1 conforms to the conditions and limitations imposed in this chapter shall be assessed for
 2 ad valorem property tax purposes at 50 percent of the value which other tangible real
 3 property is assessed and shall be taxed on a levy made by each respective tax jurisdiction
 4 according to said assessment."

5 SECTION 3.

6 Said chapter is further amended by striking Code Section 48-5-7.4, relating to bona fide
 7 conservation use property and bona fide residential transitional property, and inserting in lieu
 8 thereof the following:

9 "48-5-7.4.

10 (a) For purposes of this article, the term 'bona fide conservation use property' means
 11 property described in and meeting the requirements of paragraph ~~(1) or (2)~~ (1), (2), or (3)
 12 of this subsection, as follows:

13 (1) Not more than 2,000 acres of tangible real property of a single owner, the primary
 14 purpose of which is any good faith production, including, but not limited to, subsistence
 15 farming or commercial production from or on the land of agricultural products or timber,
 16 subject to the following qualifications:

17 (A) Such property includes the value of tangible property permanently affixed to the
 18 real property which is directly connected to such owner's production of agricultural
 19 products or timber and which is devoted to the storage and processing of such
 20 agricultural products or timber from or on such real property;

21 (B) Such property excludes the entire value of any residence located on the property;

22 (C) Such property must be owned by:

23 (i) One or more natural or naturalized citizens;

24 (ii) An estate of which the devisees or heirs are one or more natural or naturalized
 25 citizens;

26 (iii) A trust of which the beneficiaries are one or more natural or naturalized citizens;

27 (iv) A family owned farm entity, such as a family corporation, a family partnership,
 28 a family general partnership, a family limited partnership, a family limited
 29 corporation, or a family limited liability company, all of the interest of which is
 30 owned by one or more natural or naturalized citizens related to each other by blood
 31 or marriage within the fourth degree of civil reckoning, except that, solely with
 32 respect to a family limited partnership, a corporation, limited partnership, limited
 33 corporation, or limited liability company may serve as a general partner of the family
 34 limited partnership and hold no more than a 5 percent interest in such family limited
 35 partnership, an estate of which the devisees or heirs are one or more natural or
 36 naturalized citizens, or a trust of which the beneficiaries are one or more natural or

1 naturalized citizens and which family owned farm entity derived 80 percent or more
 2 of its gross income from bona fide conservation uses, including earnings on
 3 investments directly related to past or future bona fide conservation uses, within this
 4 state within the year immediately preceding the year in which eligibility is sought;
 5 provided, however, that in the case of a newly formed family farm entity, an estimate
 6 of the income of such entity may be used to determine its eligibility;

7 (v) A bona fide nonprofit conservation organization designated under Section
 8 501(c)(3) of the Internal Revenue Code; or

9 (vi) A bona fide club organized for pleasure, recreation, and other nonprofitable
 10 purposes pursuant to Section 501(c)(7) of the Internal Revenue Code;

11 (D) Factors which may be considered in determining if such property is qualified may
 12 include, but not be limited to:

13 (i) The nature of the terrain;

14 (ii) The density of the marketable product on the land;

15 (iii) The past usage of the land;

16 (iv) The economic merchantability of the agricultural product; and

17 (v) The utilization or nonutilization of recognized care, cultivation, harvesting, and
 18 like practices applicable to the product involved and any implemented plans thereof;
 19 and

20 (E) Such property shall, if otherwise qualified, include, but not be limited to, property
 21 used for:

22 (i) Raising, harvesting, or storing crops;

23 (ii) Feeding, breeding, or managing livestock or poultry;

24 (iii) Producing plants, trees, fowl, or animals; or

25 (iv) Production of aquaculture, horticulture, floriculture, forestry, dairy, livestock,
 26 poultry, and apiarian products; ~~or~~

27 (2) Not more than 2,000 acres of tangible real property, excluding the value of any
 28 improvements thereon, of a single owner of the types of environmentally sensitive
 29 property specified in this paragraph and certified as such by the Department of Natural
 30 Resources, if the primary use of such property is its maintenance in its natural condition
 31 and if such owner meets the qualifications of subparagraph (C) of paragraph (1) of this
 32 subsection:

33 (A) Environmentally sensitive areas, including any otherwise qualified land area 1,000
 34 feet or more above the lowest elevation of the county in which such area is located that
 35 has a percentage slope, which is the difference in elevation between two points 500 feet
 36 apart on the earth divided by the horizontal distance between those two points, of 25

1 percent or greater and shall include the crests, summits, and ridge tops which lie at
2 elevations higher than any such area;

3 (B) Wetland areas that are determined by the United States Army Corps of Engineers
4 to be wetlands under their jurisdiction pursuant to Section 404 of the federal Clean
5 Water Act, as amended, or wetland areas that are depicted or delineated on maps
6 compiled by the Department of Natural Resources or the United States Fish and
7 Wildlife Service pursuant to its National Wetlands Inventory Program;

8 (C) Significant ground-water recharge areas as identified on maps or data compiled by
9 the Department of Natural Resources;

10 (D) Undeveloped barrier islands or portions thereof as provided for in the federal
11 Coastal Barrier Resources Act, as amended;

12 (E) Habitats as certified by the Department of Natural Resources as containing species
13 that have been listed as either endangered or threatened under the federal Endangered
14 Species Act of 1973, as amended; and

15 (F) River corridors which shall be defined as those undeveloped lands adjacent to
16 rivers and perennial streams that are within the 100 year flood plain as depicted on
17 official maps prepared by the Federal Emergency Management Agency; or

18 (3)(A) Not more than 2,000 acres of tangible real property, including the value of any
19 improvements thereon, of a single owner of constructed storm-water wetlands of the
20 free-water surface type and of any of the designs authorized by this paragraph which
21 is suitable for such site if the primary use of such property is controlling or abating
22 pollution of surface or ground waters of this state by storm-water runoff or otherwise
23 enhancing the water quality of surface or ground waters of this state and compliance
24 with such design and use requirements has been certified by the local governing
25 authority. Except as otherwise provided by subparagraph (B) of this paragraph, such
26 constructed storm-water wetlands shall be of the shallow marsh, extended detention
27 wetland, pond/wetland system, or pocket wetland design, as such designs are identified
28 in United States Environmental Protection Agency, Storm Water Technology Factsheet:
29 Storm Water Wetlands, EPA 832-F-99-025, September 1999, and further described as
30 follows:

31 (i) Shallow marsh shall include a forebay deep enough to accept and hold anticipated
32 storm-water runoff, a vegetated marsh area complete with redundant pollutant
33 removal pathways of adequate size to filter anticipated water volume, a micropool to
34 accept filtered water from the marsh area, and an approved outlet structure for outflow
35 of filtered water to nearby natural waterways;

36 (ii) Extended detention wetland shall be of the same design as a shallow marsh but
37 shall provide, by means of increased aquatic bench height (earthen embankment or

1 berm) surrounding the wetland, additional vertical water storage capability of at least
 2 3 linear feet above the surface of the marsh;

3 (iii) Pond/wetland system shall include a forebay in the form of a pond of sufficient
 4 size to accept and hold anticipated storm-water runoff, a concrete spillway that will
 5 release pond water to a plunge pool that will, in turn, release water to a vegetated
 6 marsh zone with channels designed to slow the water flow to a level that will allow
 7 adequate filtering of the water, and an approved outlet structure for outflow of filtered
 8 water to nearby natural waterways; and

9 (iv) Pocket wetland shall include a reinforced swale that directs storm-water runoff
 10 to the vegetated marsh that will be of adequate size to accept anticipated storm-water
 11 runoff, a micropool that is of sufficient size to accept filtered water from the marsh
 12 and that has been excavated to intercept ground water to maintain a permanent pool,
 13 and an approved outlet structure for outflow of filtered water to nearby natural
 14 waterways.

15 (B) The Board of Natural Resources may by rules or regulations specify other
 16 additional acceptable designs for constructed storm-water wetlands for purposes of this
 17 paragraph.

18 (a.1) For purposes of this article, the term 'conservation use assessment' means assessment
 19 under subsection (c.2) of Code Section 48-5-7.

20 (b) The following additional rules shall apply to the qualification of conservation use
 21 property for ~~current~~ conservation use assessment:

22 (1) When one-half or more of the area of a single tract of real property is used for a
 23 qualifying purpose, then such tract shall be considered as used for such qualifying
 24 purpose unless some other type of business is being operated on the unused portion;
 25 provided, however, that such unused portion must be minimally managed so that it does
 26 not contribute significantly to erosion or other environmental or conservation problems.
 27 The lease of hunting rights or the use of the property for hunting purposes shall not
 28 constitute another type of business;

29 (2) The owner of a tract, lot, or parcel of land totaling less than ten acres shall be
 30 required by the tax assessor to submit additional relevant records regarding proof of bona
 31 fide conservation use;

32 (3) No property shall qualify as bona fide conservation use property if such ~~current~~
 33 conservation use assessment would result in any person who has a beneficial interest in
 34 such property, including any interest in the nature of stock ownership, receiving in any
 35 tax year any benefit of ~~current~~ conservation use assessment as to more than 2,000 acres.
 36 If any taxpayer has any beneficial interest in more than 2,000 acres of tangible real

1 property which is devoted to bona fide conservation uses, such taxpayer shall apply for
 2 ~~current~~ conservation use assessment only as to 2,000 acres of such land;

3 (4) No property shall qualify as bona fide conservation use property if it is leased to a
 4 person or entity which would not be entitled to conservation use assessment;

5 (5) No property shall qualify as bona fide conservation use property under paragraph (1)
 6 or (2) of subsection (a) of this Code section if such property is at the time of application
 7 for ~~current~~ conservation use assessment subject to a restrictive covenant which prohibits
 8 the use of the property for any purpose described in subparagraph (a)(1)(E) of this Code
 9 section; and

10 (6) No otherwise qualified property shall be denied ~~current~~ conservation use assessment
 11 on the grounds that no soil map is available for the county in which such property is
 12 located; provided, however, that if no soil map is available for the county in which such
 13 property is located, the owner making an application for ~~current~~ conservation use
 14 assessment shall provide the board of tax assessors with a certified soil survey of the
 15 subject property unless another method for determining the soil type of the subject
 16 property is authorized in writing by such board.

17 (c) For purposes of this article, the term 'bona fide residential transitional property' means
 18 not more than five acres of tangible real property of a single owner which is private
 19 single-family residential owner occupied property located in a transitional developing area.
 20 Such classification shall apply to all otherwise qualified real property which is located in
 21 an area which is undergoing a change in use from single-family residential use to
 22 agricultural, commercial, industrial, office-institutional, multifamily, or utility use or a
 23 combination of such uses. Change in use may be evidenced by recent zoning changes,
 24 purchase by a developer, affidavits of intent, or close proximity to property which has
 25 undergone a change from single-family residential use. To qualify as residential transitional
 26 property, the valuation must reflect a change in value attributable to such property's
 27 proximity to or location in a transitional area.

28 (c.1) For purposes of this article, the term 'residential transitional property assessment'
 29 means assessment under subsection (c.3) of Code Section 48-5-7.

30 (d) No property shall qualify for ~~current~~ conservation use assessment ~~under this Code~~
 31 ~~section~~ or residential transitional property assessment unless and until the owner of such
 32 property agrees by covenant with the appropriate taxing authority to maintain the eligible
 33 property in bona fide qualifying use for a period of ten years beginning on the first day of
 34 January of the year in which such property qualifies for such ~~current-use~~ assessment and
 35 ending on the last day of December of the final year of the covenant period. After the
 36 owner has applied for and has been allowed ~~current-use~~ such assessment ~~provided for in~~
 37 ~~this Code section~~, it shall not be necessary to make application thereafter for any year in

1 which the covenant period is in effect and ~~current use~~ such assessment shall continue to be
 2 allowed such owner as specified in this Code section. Upon the expiration of any covenant
 3 period, the property shall not qualify for further ~~current use~~ such assessment ~~under this~~
 4 ~~Code section~~ unless and until the owner of the property has entered into a renewal covenant
 5 for an additional period of ten years.

6 (e) A single owner shall be authorized to enter into more than one covenant under this
 7 Code section for bona fide conservation use property, provided that the aggregate number
 8 of acres of qualified property of such owner to be entered into such covenants does not
 9 exceed 2,000 acres. Any such qualified property may include a tract or tracts of land which
 10 are located in more than one county. A single owner shall be authorized to enter qualified
 11 property in a covenant for bona fide conservation use purposes and to enter simultaneously
 12 the residence located on such property in a covenant for bona fide residential transitional
 13 use if the qualifications for each such covenant are met. A single owner shall be authorized
 14 to enter qualified property in a covenant for bona fide conservation use purposes and to
 15 enter other qualified property of such owner in a covenant for bona fide residential
 16 transitional use.

17 (f) An owner shall not be authorized to make application for and receive ~~current~~
 18 conservation use assessment ~~under this Code section~~ for any property which at the time of
 19 such application is receiving preferential assessment under Code Section 48-5-7.1 except
 20 that such owner shall be authorized to change such preferential assessment covenant in the
 21 manner provided for in subsection (s) of Code Section 48-5-7.1.

22 (g)(1) Except as otherwise provided in this subsection, no property shall maintain its
 23 eligibility for ~~current~~ conservation use assessment ~~under this Code section~~ or residential
 24 transitional property assessment unless a valid covenant remains in effect and unless the
 25 property is continuously devoted to an applicable bona fide qualifying use during the
 26 entire period of the covenant.

27 (2) No property shall maintain its eligibility for conservation use assessment as a bona
 28 fide conservation use property as defined in paragraph (3) of subsection (a) of this Code
 29 section unless the owner of such property files an annual inspection report from a
 30 licensed professional engineer certifying that as of the date of such report the property is
 31 being maintained in a proper state of repair so as to accomplish the objectives for which
 32 it was designed. Such inspection report and certification shall be filed with the county
 33 board of tax assessors on or before the last day for filing ad valorem tax returns in the
 34 county for each tax year for which such assessment is sought.

35 (3) An owner shall be authorized to change the type of bona fide qualifying conservation
 36 use of the property to another bona fide qualifying conservation use and the penalty

1 imposed by subsection (l) of this Code section shall not apply, but such owner shall give
2 notice of any such change in use to the board of tax assessors.

3 (h) If any breach of a covenant occurs, the existing covenant shall be terminated and all
4 qualification requirements must be met again before the property shall be eligible for
5 ~~current~~ conservation use assessment ~~under this Code section~~ or residential transitional
6 property assessment.

7 (i) If ownership of all or a part of the property is acquired during a covenant period by a
8 person or entity qualified to enter into an original covenant, then the original covenant may
9 be continued by such acquiring party for the remainder of the term, in which event no
10 breach of the covenant shall be deemed to have occurred.

11 (j)(1) All applications for ~~current~~ conservation use assessment ~~under this Code section~~
12 or residential transitional property assessment, including the covenant agreement required
13 under this Code section, shall be filed on or before the last day for filing ad valorem tax
14 returns in the county for the tax year for which such ~~current-use~~ assessment is sought,
15 except that in the case of property which is the subject of a reassessment by the board of
16 tax assessors an application for ~~current~~ conservation use assessment or residential
17 transitional property assessment may be filed in conjunction with or in lieu of an appeal
18 of the reassessment. An application for continuation of such ~~current~~ conservation use
19 assessment or residential transitional property assessment upon a change in ownership
20 of all or a part of the qualified property shall be filed on or before the last date for filing
21 tax returns in the year following the year in which the change in ownership occurred.
22 Applications for ~~current~~ conservation use assessment ~~under this Code section~~ or
23 residential transitional property assessment shall be filed with the county board of tax
24 assessors who shall approve or deny the application. If the application is approved on or
25 after July 1, 1998, the county board of tax assessors shall file a copy of the approved
26 application in the office of the clerk of the superior court in the county in which the
27 eligible property is located. The clerk of the superior court shall file and index such
28 application in the real property records maintained in the clerk's office. Applications
29 approved prior to July 1, 1998, shall be filed and indexed in like manner without payment
30 of any fee. If the application is not so recorded in the real property records, a transferee
31 of the property affected shall not be bound by the covenant or subject to any penalty for
32 its breach. The fee of the clerk of the superior court for recording such applications
33 approved on or after July 1, 1998, shall be paid by the owner of the eligible property with
34 the application for preferential treatment and shall be paid to the clerk by the board of tax
35 assessors when the application is filed with the clerk. If the application is denied, the
36 board of tax assessors shall notify the applicant in the same manner that notices of
37 assessment are given pursuant to Code Section 48-5-306 and shall return any filing fees

1 advanced by the owner. Appeals from the denial of an application by the board of tax
 2 assessors shall be made in the same manner that other property tax appeals are made
 3 pursuant to Code Section 48-5-311.

4 (2) In the event such application is approved, the taxpayer shall continue to receive
 5 annual notification of any change in the fair market value of such property and any
 6 appeals with respect to such valuation shall be made in the same manner as other property
 7 tax appeals are made pursuant to Code Section 48-5-311.

8 (k)(1) The commissioner shall by regulation provide uniform application and covenant
 9 forms to be used in making application for ~~current~~ conservation use assessment ~~under this~~
 10 Code section or residential transitional property assessment.

11 (2) Such application shall include an oath or affirmation by the taxpayer that he or she
 12 is in compliance with the provisions of paragraphs (3) and (4) of subsection (b) of this
 13 Code section, if applicable.

14 (3) The applicable local governing authority shall without any fee therefor accept
 15 applications for certification of property for purposes of paragraph (3) of subsection (a)
 16 of this Code section and shall certify property to the local board of tax assessors as
 17 meeting or not meeting the criteria of such paragraph. The local governing authority
 18 shall not certify any property as meeting the criteria of paragraph (3) of subsection (a) of
 19 this Code section unless:

20 (A) The owner has submitted to the local governing authority:

21 (i) A plat of the tract in question prepared by a licensed land surveyor, showing the
 22 location and measured area of such tract;

23 (ii) A certification by a licensed professional engineer that the specific design used
 24 for the constructed storm-water wetland was recommended by the engineer as suitable
 25 for such site after inspection and investigation; and

26 (iii) Information on the actual cost of constructing and estimated cost of operating the
 27 storm-water wetland, including without limitation a description of all incorporated
 28 materials, machinery, and equipment; and

29 (B) An authorized employee or agent of the local governing authority has inspected the
 30 site before, during, and after construction of the storm-water wetland to determine
 31 compliance with the requirements of paragraph (3) of subsection (a) of this Code
 32 section.

33 (l) A penalty shall be imposed under this subsection if during the period of the covenant
 34 entered into by a taxpayer the covenant is breached. The penalty shall be applicable to the
 35 entire tract which is the subject of the covenant and shall be twice the difference between
 36 the total amount of tax paid pursuant to ~~current~~ conservation use assessment ~~under this~~
 37 Code section or residential transitional property assessment and the total amount of taxes

1 which would otherwise have been due under this chapter for each completed or partially
 2 completed year of the covenant period. Any such penalty shall bear interest at the rate
 3 specified in Code Section 48-2-40 from the date the covenant is breached.

4 (m) Penalties and interest imposed under this Code section shall constitute a lien against
 5 the property and shall be collected in the same manner as unpaid ad valorem taxes are
 6 collected. Such penalties and interest shall be distributed pro rata to each taxing jurisdiction
 7 wherein ~~current~~ conservation use assessment ~~under this Code section~~ or residential
 8 transitional property assessment has been granted based upon the total amount by which
 9 such ~~current use~~ assessment has reduced taxes for each such taxing jurisdiction on the
 10 property in question as provided in this Code section.

11 (n) The penalty imposed by subsection (1) of this Code section shall not apply in any case
 12 where a covenant is breached solely as a result of:

- 13 (1) The acquisition of part or all of the property under the power of eminent domain;
- 14 (2) The sale of part or all of the property to a public or private entity which would have
 15 had the authority to acquire the property under the power of eminent domain; or
- 16 (3) The death of an owner who was a party to the covenant.

17 (o) The transfer of a part of the property subject to a covenant for a bona fide conservation
 18 use shall not constitute a breach of a covenant if:

- 19 (1) The part of the property so transferred is used for single-family residential purposes,
 20 starting within one year of the date of transfer and continuing for the remainder of the
 21 covenant period, and the residence is occupied by a person who is related within the
 22 fourth degree of civil reckoning to an owner of the property subject to the covenant; and
- 23 (2) The part of the property so transferred, taken together with any other part of the
 24 property so transferred to the same relative during the covenant period, does not exceed
 25 a total of five acres;

26 and in any such case the property so transferred shall not be eligible for a covenant for bona
 27 fide conservation use, but shall, if otherwise qualified, be eligible for ~~current use~~
 28 ~~assessment~~ as residential transitional property assessment and the remainder of the property
 29 from which such transfer was made shall continue under the existing covenant until a
 30 terminating breach occurs or until the end of the specified covenant period.

31 (p) The following shall not constitute a breach of a covenant:

- 32 (1) Mineral exploration of the property subject to the covenant or the leasing of the
 33 property subject to the covenant for purposes of mineral exploration if the primary use
 34 of the property continues to be the good faith production from or on the land of
 35 agricultural products;

1 (2) Allowing all or part of the property subject to the covenant to lie fallow or idle for
 2 purposes of any land conservation program, for purposes of any federal agricultural
 3 assistance program, or for other agricultural management purposes;

4 (3) Allowing all or part of the property subject to the covenant to lie fallow or idle due
 5 to economic or financial hardship if the owner notifies the board of tax assessors on or
 6 before the last day for filing a tax return in the county where the land lying fallow or idle
 7 is located and if such owner does not allow the land to lie fallow or idle for more than
 8 two years of any five-year period; or

9 (4)(A) Any property which is subject to a covenant for bona fide conservation use
 10 being transferred to a place of religious worship or burial or an institution of purely
 11 public charity if such place or institution is qualified to receive the exemption from ad
 12 valorem taxation provided for under subsection (a) of Code Section 48-5-41. No person
 13 shall be entitled to transfer more than 25 acres of such person's property in the
 14 aggregate under this paragraph.

15 (B) Any property transferred under subparagraph (A) of this paragraph shall not be
 16 used by the transferee for any purpose other than for a purpose which would entitle
 17 such property to the applicable exemption from ad valorem taxation provided for under
 18 subsection (a) of Code Section 48-5-41 or subsequently transferred until the expiration
 19 of the term of the covenant period. Any such use or transfer shall constitute a breach
 20 of the covenant.

21 (q) In the following cases, the penalty specified by subsection (l) of this Code section shall
 22 not apply and the penalty imposed shall be the amount by which ~~current~~ conservation
 23 assessment or residential transitional property assessment has reduced taxes otherwise due
 24 for the year in which the covenant is breached, such penalty to bear interest at the rate
 25 specified in Code Section 48-2-40 from the date of the breach:

26 (1) Any case in which a covenant is breached solely as a result of the foreclosure of a
 27 deed to secure debt or the property is conveyed to the lienholder without compensation
 28 and in lieu of foreclosure, if:

29 (A) The deed to secure debt was executed as a part of a bona fide commercial loan
 30 transaction in which the grantor of the deed to secure debt received consideration equal
 31 in value to the principal amount of the debt secured by the deed to secure debt;

32 (B) The loan was made by a person or financial institution who or which is regularly
 33 engaged in the business of making loans; and

34 (C) The deed to secure debt was intended by the parties as security for the loan and
 35 was not intended for the purpose of carrying out a transfer which would otherwise be
 36 subject to the penalty specified by subsection (l) of this Code section;

1 (2) Any case in which a covenant is breached solely as a result of a medically
 2 demonstrable illness or disability which renders the owner of the real property physically
 3 unable to continue the property in the qualifying use, provided that the board of tax
 4 assessors shall require satisfactory evidence which clearly demonstrates that the breach
 5 is the result of a medically demonstrable illness or disability; or

6 (3) Any case in which a covenant is breached solely as a result of an owner electing to
 7 discontinue the property in its qualifying use, provided such owner has renewed without
 8 an intervening lapse at least once the covenant for bona fide conservation use, has
 9 reached the age of 65 or older, and has kept the property in a qualifying use under the
 10 renewal covenant for at least three years. Such election shall be in writing and shall not
 11 become effective until filed with the county board of tax assessors.

12 (r) Property which is subject to ~~current~~ conservation use assessment ~~under this Code~~
 13 ~~section~~ or residential transitional property assessment shall be separately classified from
 14 all other property on the tax digest; and such separate classification shall be such as will
 15 enable any person examining the tax digest to ascertain readily that the property is subject
 16 to ~~current use~~ such assessment ~~under this Code section~~. Covenants shall be public records
 17 and shall be indexed and maintained in such manner as will allow members of the public
 18 to locate readily the covenant affecting any particular property subject to ~~current~~
 19 conservation use assessment ~~under this Code section~~ or residential transitional property
 20 assessment. Based on information submitted by the county boards of tax assessors, the
 21 commissioner shall maintain a central registry of conservation use property, indexed by
 22 owners, so as to ensure that the 2,000 acre limitations of this Code section are complied
 23 with on a state-wide basis.

24 (s) The commissioner shall annually submit a report to the Governor, the Department of
 25 Agriculture, the Georgia Agricultural Statistical Service, the Georgia Forestry Commission,
 26 the Department of Natural Resources, and the University of Georgia Cooperative Extension
 27 Service and the House Ways and Means, Natural Resources and Environment, and
 28 Agriculture and Consumer Affairs committees and the Senate Finance ~~and Public Utilities,~~
 29 Natural Resources and the Environment, and Agriculture and Consumer Affairs
 30 committees and shall make such report available to other members of the General
 31 Assembly, which report shall show the fiscal impact of the assessments provided for in this
 32 Code section and Code Section 48-5-7.5. The report shall include the amount of assessed
 33 value eliminated from each county's digest as a result of such assessments; approximate
 34 tax dollar losses, by county, to all local governments affected by such assessments; and any
 35 recommendations regarding state and local administration of this Code section and Code
 36 Section 48-5-7.5, with emphasis upon enforcement problems, if any, attendant with this

1 Code section and Code Section 48-5-7.5. The report shall also include any other data or
2 facts which the commissioner deems relevant.

3 (t) A public notice containing a brief, factual summary of the provisions of this Code
4 section shall be posted in a prominent location readily viewable by the public in the office
5 of the board of tax assessors and in the office of the tax commissioner of each county in
6 this state.

7 (u) Property which is subject to a covenant under this Code section which was entered into
8 during the taxable year beginning January 1, 1992, may be changed from such covenant
9 and placed in a new covenant for bona fide conservation use under this Code section if
10 such property meets all of the requirements and conditions otherwise specified under this
11 Code section and if the owner files a written request with the board of tax assessors
12 indicating such owner's desire to exercise this termination option on or before the last day
13 for the payment of ad valorem taxes in such county for the taxable year beginning January
14 1, 1993, but not later than December 31, 1993. Any such change shall terminate the
15 covenant under this Code section, shall not constitute a breach of the covenant under this
16 Code section, and shall require the establishment of a new covenant period under this Code
17 section. No property may be changed under this subsection more than once.

18 (v) The commissioner shall continue to compute a table of values established under
19 subsection (a) of Code Section 48-5-269, in accordance with the law applicable to the tax
20 year beginning on January 1, 1992, to be used to value property entered into a covenant
21 during that tax year and the covenants valued thereunder for the remainder of the covenant
22 period applicable to such persons shall be known as '92-Style' conservation use covenants.
23 Such duty shall terminate with the tax year beginning January 1, 2001. With respect to any
24 county for which the 'A2' benchmark value for agricultural land in the table of values
25 established by the commissioner for the tax year beginning on January 1, 1993, exceeds by
26 50 percent or more the 'C2' benchmark value for cropland in the table of values established
27 by the commissioner for the tax year beginning on January 1, 1992, a person within such
28 county desiring to enter into a conservation use covenant for any taxable year beginning
29 on or after January 1, 1994, shall be authorized, at such person's option, to enter a 92-Style
30 conservation use covenant. A person entering such covenant shall be governed by the prior
31 law applicable to such covenants and the applicable table of values and such covenant shall
32 expire on December 31, 2001.

33 (w) At such time as the property ceases to be eligible for ~~current~~ conservation use
34 assessment or residential transitional property assessment or when any ten-year covenant
35 period expires and the property does not qualify for further ~~current use~~ such assessment,
36 the owner of the property shall file an application for release of ~~current use~~ such treatment
37 with the county board of tax assessors who shall approve the release upon verification that

1 all taxes and penalties with respect to the property have been satisfied. After the application
 2 for release has been approved by the board of tax assessors, the board shall file the release
 3 in the office of the clerk of the superior court in the county in which the original covenant
 4 was filed. The clerk of the superior court shall file and index such release in the real
 5 property records maintained in the clerk's office. No fee shall be paid to the clerk of the
 6 superior court for recording such release. The commissioner shall by regulation provide
 7 uniform release forms.

8 (x) Notwithstanding any other provision of this Code section to the contrary, in any case
 9 where a renewal covenant is breached by the original covenantor or a transferee who is
 10 related to that original covenantor within the fourth degree by civil reckoning, the penalty
 11 otherwise imposed by subsection (1) of this Code section shall not apply if the breach
 12 occurs during the sixth through tenth years of such renewal covenant, and the only penalty
 13 imposed shall be the amount by which ~~current~~ conservation use assessment or residential
 14 transitional property assessment has reduced taxes otherwise due for each year in which
 15 such renewal covenant was in effect, plus interest at the rate specified in Code Section
 16 48-2-40 from the date the covenant is breached."

17 SECTION 4.

18 Said chapter is further amended by striking Code Section 48-5-269, relating to authority to
 19 promulgate certain rules and regulations and limits on change in current use value of
 20 conservation use property, and inserting in lieu thereof the following:

21 "48-5-269.

22 (a) Subject to the limitations contained in Chapter 2 of this title, the commissioner may
 23 promulgate rules and regulations specifically regarding this part, including, but not limited
 24 to, the following:

25 (1) Prescription of the forms, books, and records to be used for standard property tax
 26 reporting for all taxing units, including, but not limited to, the forms, books, and records
 27 to be used in the listing, appraisal, and assessment of property and how the forms, books,
 28 and records shall be compiled and kept;

29 (2) Prescription of the form and content of state-wide, uniform appraisal and assessment
 30 forms, books, and manuals;

31 (3) Development and prescription of procedures under which property sales ratio surveys
 32 shall be conducted; and

33 (4) Prescription of methods and procedures by which identification data, appraisal and
 34 assessment data, sales data, and any other information relating to the appraisal and
 35 assessment of property shall be furnished to the department using electronic data
 36 processing systems and equipment.

1 (b) The commissioner shall promulgate after consultation with the Department of
 2 Agriculture, the Georgia Agricultural Statistical Service, the Georgia Forestry Commission,
 3 the Department of Natural Resources, and the Cooperative Extension Service, and county
 4 tax officials shall follow uniform rules and regulations establishing a table of values for the
 5 current use value of bona fide conservation use property as defined under paragraph (1) or
 6 (2) of subsection (a) of Code Section 48-5-7.4. Such rules and regulations shall apply to
 7 the evaluation of bona fide conservation use property, exclusive of any improvements
 8 thereon, which improvements shall have their current use value determined as otherwise
 9 provided by law. Such rules and regulations shall include, but not be limited to, the
 10 following provisions and criteria:

11 (1) Sales data for arm's length, bona fide sales of comparable real property with and for
 12 the same existing use and per-acre property values determined by the capitalization of net
 13 income before property taxes, with sales data to be weighted 35 percent and income
 14 capitalization values to be weighted 65 percent. All sales data shall be adjusted to remove
 15 the influence of the size of the tract on the sales price of tracts below 50 acres in size.
 16 Income capitalization values shall be derived from the respective conservation use
 17 property classifications, with consideration given to productivity of the respective major
 18 geological or geographical regions, and for this purpose:

19 (A) Net income before property taxes shall be determined for:

20 (i) Agricultural land by calculating a weighted average of all crop and pasture
 21 acreage in each district as designated by paragraph (2) of this subsection in the
 22 following manner:

23 (I) Crop land by calculating the five-year weighted average of per-acre net income
 24 before property taxes from the major predominant acreage crops harvested in
 25 Georgia, and as used in this subdivision, the term 'predominant acreage crops'
 26 means the top acreage crops with production in no less than 125 counties of the
 27 state; and

28 (II) Pasture property by calculating a five-year weighted average of per-acre rental
 29 rates from pasture land; and

30 (ii) Forest property by calculating a five-year weighted average of per-acre net
 31 income before property taxes from hardwood and softwood harvested in Georgia. For
 32 purposes of this division, the term 'property taxes' shall not include the tax under Code
 33 Section 48-5-7.5 which tax shall be considered in calculating net income; and

34 (B) The capitalization rate shall be based upon:

35 (i) The long-term financing rate available on January 1 from the Regional Federal
 36 Land Bank located in Columbia, South Carolina, and published pursuant to 26 U.S.C.

1 Section 2032A(e)(7)(A)(ii), further referenced by regulations 26 C.F.R.
2 20.2032A-4(e);

3 (ii) The arithmetic mean of Federal Farm Credit bond yields, whose maturity is no
4 less than five years in the future, as published in the *Wall Street Journal* on January
5 1 or the most recent business day of the current year, rounded to the nearest
6 hundredth;

7 (iii) For the purpose of determining the income capitalization rate, divisions (i) and
8 (ii) of this subparagraph shall be given weighted influences of 80 percent and 20
9 percent, respectively; and

10 (iv) A property tax component which shall be the five-year average true tax rate for
11 the unincorporated area of each county located within the regions established by
12 paragraph (2) of this subsection;

13 (2) The state shall be divided into an appropriate grouping of the nine crop-reporting
14 districts as delineated by the Georgia Agricultural Statistical Service for the purpose of
15 determining any calculation under this subsection;

16 (3) In no event may the current use value of any conservation use property in the table
17 of values established by the commissioner under this subsection for the taxable year
18 beginning January 1, 1993, increase or decrease by more than 15 percent from its current
19 use value as set forth in the table of values established by the commissioner under this
20 subsection for the taxable year beginning January 1, 1992. In no event may the current
21 use value of any conservation use property in the table of values established by the
22 commissioner under this subsection for the taxable year beginning January 1, 1994, or
23 any subsequent taxable year increase or decrease by more than 3 percent from its current
24 use value as set forth in the table of values established by the commissioner under this
25 subsection for the immediately preceding taxable year; and

26 (4) Environmentally sensitive properties as certified by the Department of Natural
27 Resources shall be valued according to the average value determined for property of the
28 same or similar soil type, as determined under paragraphs (1) and (2) of this subsection.

29 (c) In no event may the current use value of any bona fide conservation use property as
30 defined under paragraph (1) or (2) of subsection (a) of Code Section 48-5-7.4 increase or
31 decrease during a covenant period by more than 3 percent from its current use value for the
32 previous taxable year or increase or decrease during a covenant period by more than 34.39
33 percent from the first year of the covenant period. The limitations imposed by this
34 subsection shall apply to the total value of all the bona fide conservation use property as
35 defined under paragraph (1) or (2) of subsection (a) of Code Section 48-5-7.4 that is the
36 subject of an individual covenant, including any improvements that meet the qualifications
37 set forth in paragraph (1) of subsection (a) of Code Section 48-5-7.4; provided, however,

1 that in the event the owner changes the use of any portion of the land or adds or removes
2 therefrom any such qualified improvements, the limitations imposed by this subsection
3 shall be recomputed as if the new uses and improvements were in place at the time the
4 covenant was originally entered."

5 **SECTION 5.**

6 This Act shall become effective on January 1, 2004, and shall apply to all taxable years
7 beginning on or after such date.

8 **SECTION 6.**

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