

House Bill 1028 (COMMITTEE SUBSTITUTE)

By: Representatives Roberts of the 154th, O'Neal of the 146th, Porter of the 143rd, McCall of the 30th, Benfield of the 85th, and others

A BILL TO BE ENTITLED

AN ACT

1 To amend Article 1 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated,
2 relating to general provisions regarding ad valorem taxation of property, so as to revise and
3 change certain provisions regarding ad valorem taxation of forest land conservation use
4 property; to provide an effective date; to repeal conflicting laws; and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

6 **SECTION 1.**

7 Article 1 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to
8 general provisions regarding ad valorem taxation of property, is amended by revising Code
9 Section 48-5-7.7, relating to ad valorem taxation of forest land conservation use property, as
10 follows:

11 "48-5-7.7.

12 (a) This Code section shall be known and may be cited as the 'Georgia Forest Land
13 Protection Act of 2008.'

14 (b) As used in this Code section, the term:

15 (1) 'Contiguous' means real property within a county that abuts, joins, or touches and has
16 the same undivided common ownership. If an applicant's tract is divided by a county
17 boundary, public roadway, public easement, public right of way, natural boundary, land
18 lot line, or railroad track then the applicant has, at the time of the initial application, a
19 one-time election to declare the tract as contiguous irrespective of a county boundary,
20 public roadway, public easement, public right of way, natural boundary, land lot line, or
21 railroad track.

22 ~~(1)~~(2) 'Forest land conservation use property' means forest land each tract of which
23 consists of more than 200 acres of tangible real property of an owner subject to the
24 following qualifications:

25 (A) Such property must be owned by an individual or individuals or by any entity
26 registered to do business in this state;

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

28 (C) Such property has as its primary use the good faith subsistence or commercial
 29 production of trees, timber, or other wood and wood fiber products from or on the land.
 30 Such property may, in addition, have one or more of the following secondary uses:
 31 (i) The promotion, preservation, or management of wildlife habitat;
 32 (ii) Carbon sequestration in accordance with the Georgia Carbon Sequestration
 33 Registry;
 34 (iii) Mitigation and conservation banking that results in restoration or conservation
 35 of wetlands and other natural resources; or
 36 (iv) The production and maintenance of ecosystem products and services such as, but
 37 not limited to, clean air and water.

38 'Forest land conservation use property' may include, but not be limited to, land that has
 39 been certified as environmentally sensitive property by the Department of Natural
 40 Resources or which is managed in accordance with a recognized sustainable forestry
 41 certification program such as the Sustainable Forestry Initiative, Forest Stewardship
 42 Council, American Tree Farm Program, or an equivalent sustainable forestry certification
 43 program approved by the Georgia Forestry Commission.

44 ~~(2)~~(3) 'Qualified owner' means any individual or individuals or any entity registered to
 45 do business in this state.

46 ~~(3)~~(4) 'Qualified property' means forest land conservation use property as defined in this
 47 subsection.

48 ~~(4)~~(5) 'Qualifying purpose' means a use that meets the qualifications of subparagraph (C)
 49 of paragraph ~~(1)~~(2) of this subsection.

50 (c) The following additional rules shall apply to the qualification of forest land
 51 conservation use property for conservation use assessment:

52 (1) All contiguous forest land conservation use property of an owner within a county for
 53 which forest land conservation use assessment is sought under this Code section shall be
 54 in a single covenant unless otherwise required under subsection (e) of this Code section;

55 (2) When one-half or more of the area of a single tract of real property is used for the
 56 qualifying purpose, then the entirety of such tract shall be considered as used for such
 57 qualifying purpose unless some other type of business is being operated on the portion
 58 of the tract that is not being used for a qualifying purpose; provided, however, that such
 59 other portion must be minimally managed so that it does not contribute significantly to
 60 erosion or other environmental or conservation problems or must be used for one or more
 61 secondary purposes specified in subparagraph ~~(b)(1)(C)~~ (b)(2)(C) of this Code section.
 62 The lease of hunting rights or the use of the property for hunting purposes shall not
 63 constitute another type of business. The charging of admission for use of the property for

64 fishing purposes shall not constitute another type of business. The production of pine
65 straw shall not constitute another type of business; and

66 (3) No otherwise qualified forest land conservation use property shall be denied
67 conservation use assessment on the grounds that no soil map is available for the county
68 or counties, if applicable, in which such property is located; provided, however, that if
69 no soil map is available for the county or counties, if applicable, in which such property
70 is located, the board of tax assessors shall use the current soil classification applicable to
71 such property.

72 (d) No property shall qualify for conservation use assessment under this Code section
73 unless and until the qualified owner of such property agrees by covenant with the
74 appropriate taxing authority to maintain the eligible property in forest land conservation
75 use for a period of 15 years beginning on the first day of January of the year in which such
76 property qualifies for such conservation use assessment and ending on the last day of
77 December of the final year of the covenant period. After the qualified owner has applied
78 for and has been allowed conservation use assessment provided for in this Code section,
79 it shall not be necessary to make application thereafter for any year in which the covenant
80 period is in effect and conservation use assessment shall continue to be allowed such
81 qualified owner as specified in this Code section. At least 60 days prior to the expiration
82 date of the covenant, the county board of tax assessors where the property is located shall
83 send by first-class mail written notification of such impending expiration. Upon the
84 expiration of any covenant period, the property shall not qualify for further conservation
85 use assessment under this Code section unless and until the qualified owner of the property
86 has entered into a renewal covenant for an additional period of 15 years; provided,
87 however, that the qualified owner may enter into a renewal contract in the fourteenth year
88 of a covenant period so that the contract is continued without a lapse for an additional 15
89 years.

90 (e) Subject to the limitations of paragraph (1) of subsection (c) of this Code section, a
91 qualified owner shall be authorized to enter into more than one covenant under this Code
92 section for forest land conservation use property. Any such qualified property may include
93 a tract or tracts of land which are located in more than one county in which event the owner
94 shall enter into a covenant with each county. In the event a single contiguous tract is
95 required to have separate covenants under this subsection, the total acreage of that single
96 contiguous tract shall be utilized for purposes of determining the 200 acre requirement of
97 this Code section.

98 (f) A qualified owner shall not be authorized to make application for and receive
99 conservation use assessment under this Code section for any property which at the time of
100 such application is receiving preferential assessment under Code Section 48-5-7.1 or

101 current use assessment under Code Section 48-7-7.4; provided, however, that if any
102 property is subject to a covenant under either of those Code sections, it may be changed
103 from such covenant and placed under a covenant under this Code section if it is otherwise
104 qualified. Any such change shall terminate the existing covenant and shall not constitute
105 a breach thereof. No property may be changed more than once under this subsection.

106 (g) Except as otherwise provided in this ~~subsection~~ Code section, no property shall
107 maintain its eligibility for conservation use assessment under this Code section unless a
108 valid covenant or covenants, if applicable, remain ~~remains~~ in effect and unless the property
109 is continuously devoted to forest land conservation use during the entire period of the
110 covenant or covenants, if applicable.

111 (h) If any breach of a covenant occurs, the existing covenant shall be terminated and all
112 qualification requirements must be met again before the property shall be eligible for
113 conservation use assessment under this Code section.

114 (i)(1) If ownership of all or a part of the forest land conservation use property
115 constituting at least 200 acres is acquired during a covenant period by another owner
116 qualified to enter into an original forest land conservation use covenant, then the original
117 covenant may be continued only by both such acquiring owner and the transferor for the
118 remainder of the term, in which event no breach of the covenant shall be deemed to have
119 occurred ~~even~~ if the total size of a tract from which the transfer was made is reduced
120 below 200 acres. Following the expiration of the original covenant, no new covenant
121 shall be entered with respect to the tract from which the transfer was made unless such
122 tract exceeds 200 acres. ~~If a breach of the covenant occurs following such transfer by~~
123 ~~either such acquiring owner or the transferor, the penalty and interest shall apply to the~~
124 ~~entire tract which was the subject of the original covenant and shall be paid by either the~~
125 ~~acquiring owner or the transferor, whichever of whom breached the covenant. Following~~
126 ~~the expiration of such covenant, no new covenant shall be entered with respect to the tract~~
127 ~~from which the transfer was made unless such tract exceeds 200 acres.~~

128 (2) If, following such transfer, a breach of the covenant occurs by the acquiring owner,
129 the penalty and interest shall apply to the entire transferred tract and shall be paid by the
130 acquiring owner who breached the covenant. In such case, the covenant shall terminate
131 on such entire transferred tract but shall continue on such entire remaining tract from
132 which the transfer was made and on which the breach did not occur for the remainder of
133 the original covenant.

134 (3) If, following such transfer, a breach of the covenant occurs by the transferring owner,
135 the penalty and interest shall apply to the entire remaining tract from which the transfer
136 was made and shall be paid by the transferring owner who breached the covenant. In
137 such case, the covenant shall terminate on such entire remaining tract from which the

138 transfer was made but shall continue on such entire transferred tract and on which the
 139 breach did not occur for the remainder of the original covenant.
 140 (j)(1) ~~For the taxable year beginning January 1, 2009, all applications for conservation~~
 141 ~~use assessment under this Code section, including the covenant agreement required under~~
 142 ~~this Code section, shall be filed on or before June 1 of the tax year for which such~~
 143 ~~conservation use assessment is sought, except that in the case of property which is the~~
 144 ~~subject of a reassessment by the board of tax assessors an application for conservation use~~
 145 ~~assessment may be filed in conjunction with or in lieu of an appeal of the reassessment.~~
 146 ~~For each taxable year beginning on or after January 1, 2010, all applications for~~
 147 ~~conservation use assessment under this Code section, including the Any forest land~~
 148 ~~covenant agreement required under this Code section; shall be filed on or before the last~~
 149 ~~day for filing ad valorem tax returns in ~~the county~~ each county in which the property is~~
 150 ~~located~~ for the tax year for which such forest land conservation use assessment is sought,
 151 except that in the case of property which is the subject of a reassessment by the board of
 152 tax assessors an application for forest land conservation use assessment may be filed in
 153 conjunction with or in lieu of an appeal of the reassessment. An application for
 154 continuation of such forest land conservation use assessment upon a change in ownership
 155 of all or a part of the qualified property shall be filed on or before the last date for filing
 156 tax returns in the year following the year in which the change in ownership occurred.
 157 Applications for forest land conservation use assessment under this Code section shall be
 158 filed with the county board of tax assessors in which the property is located who shall
 159 approve or deny the application. ~~The~~ Such county board of tax assessors shall file a copy
 160 of the approved ~~application~~ covenant in the office of the clerk of the superior court in the
 161 county in which the eligible property is located. The clerk of the superior court shall file
 162 and index such ~~application~~ covenant in the real property records maintained in the clerk's
 163 office. If the ~~application~~ covenant is not so recorded in the real property records, a
 164 transferee of the property affected shall not be bound by the covenant or subject to any
 165 penalty for its breach. The fee of the clerk of the superior court for recording such
 166 ~~applications~~ covenants shall be paid by the qualified owner of the eligible property with
 167 the application for forest land conservation use assessment under this Code section and
 168 shall be paid to the clerk by the board of tax assessors when the application is filed with
 169 the clerk. If the application is denied, the board of tax assessors shall notify the applicant
 170 in the same manner that notices of assessment are given pursuant to Code Section
 171 48-5-306 and shall return any filing fees advanced by the owner. Appeals from the denial
 172 of an application or covenant by the board of tax assessors shall be made in the same
 173 manner that other property tax appeals are made pursuant to Code Section 48-5-311.

174 (2) In the event such application is approved, the qualified owner shall continue to
 175 receive annual notification of any change in the forest land fair market value of such
 176 property and any appeals with respect to such valuation shall be made in the same manner
 177 as other property tax appeals are made pursuant to Code Section 48-5-311.

178 (k) The commissioner shall by regulation provide uniform application and covenant forms
 179 to be used in making application for conservation use assessment under this Code section.

180 (l) In the case of an alleged breach of the covenant, the qualified owner shall be notified
 181 in writing by the board of tax assessors. The qualified owner shall have a period of 30 days
 182 from the date of such notice to cease and desist the activity alleged in the notice to be in
 183 breach of the covenant or to remediate or correct the condition or conditions alleged in the
 184 notice to be in breach of the covenant. Following a physical inspection of property, the
 185 board of tax assessors shall notify the qualified owner that such activity or activities have
 186 or have not properly ceased or that the condition or conditions have or have not been
 187 remediated or corrected. The qualified owner shall be entitled to appeal the decision of the
 188 board of tax assessors and file an appeal disputing the findings of the board of tax
 189 assessors. Such appeal shall be conducted in the same manner that other property tax
 190 appeals are made pursuant to Code Section 48-5-311.

191 (m)(1) A penalty shall be imposed under this subsection if during the period of the
 192 covenant entered into by a qualified owner the covenant is breached.

193 (2) Except as provided in subsection (i) of this Code section and paragraph (4) of this
 194 subsection, the ~~The~~ penalty shall be applicable to the entire tract which is the subject of
 195 the covenant and:

196 (A) If breached during years one through five, shall for each covenant year beginning
 197 with year one be three times the difference between the total amount of tax paid
 198 pursuant to conservation use assessment under this Code section and the total amount
 199 of taxes which would otherwise have been due under this chapter for each completed
 200 or partially completed year of the covenant period;

201 (B) If breached during years six through ten, shall for each covenant year beginning
 202 with year one be ~~2.5~~ two and one-half times the difference between the total amount
 203 of tax paid pursuant to conservation use assessment under this Code section and the
 204 total amount of taxes which would otherwise have been due under this chapter for each
 205 year or partially completed year of the covenant period; and

206 (C) If breached during years 11 through 15, shall for each covenant year beginning
 207 with year one be twice the difference between the total amount of tax paid pursuant to
 208 conservation use assessment under this Code section and the total amount of taxes
 209 which would otherwise have been due under this chapter for each completed year or
 210 partially completed year of the covenant period.

211 (3) Any such penalty shall bear interest at the rate specified in Code Section 48-2-40
 212 from the date the covenant is breached.

213 (4) If ownership of a portion of the land subject to the original covenant constituting at
 214 least 200 acres is transferred to another owner qualified to enter into an original forest
 215 land conservation use covenant in a bona fide arm's length transaction and breach
 216 subsequently occurs, then the penalty shall either be assessed against the entire remaining
 217 tract from which the transfer was made or the entire transferred tract, on whichever the
 218 breach occurred. The calculation of penalties in paragraph (2) of this subsection shall be
 219 used except that the penalty amount resulting from such calculation shall be multiplied
 220 by the percentage which represents the acreage of such tract on which the breach occurs
 221 to the original covenant acreage. The resulting amount shall be the penalty amount owed
 222 by the owner of such tract of land on which the breach occurred.

223 (n) In any case of a breach of the covenant where a penalty under subsection (m) of this
 224 Code section is imposed, an amount equal to the amount of reimbursement to each county,
 225 municipality, and board of education in each year of the covenant shall be collected under
 226 subsection (o) of this Code section and paid over to the commissioner who shall deposit
 227 such amount in the general fund.

228 (o) Penalties and interest imposed under this Code section shall constitute a lien against
 229 that portion of the property to which the penalty has been applied under subsection (m) of
 230 this Code section and shall be collected in the same manner as unpaid ad valorem taxes are
 231 collected. Except as provided in subsection (n) of this Code section, such penalties and
 232 interest shall be distributed pro rata to each taxing jurisdiction wherein conservation use
 233 assessment under this Code section has been granted based upon the total amount by which
 234 such conservation use assessment has reduced taxes for each such taxing jurisdiction on
 235 the property in question as provided in this Code section.

236 (p) The penalty imposed by subsection (m) of this Code section shall not apply in any case
 237 where a covenant is breached solely as a result of:

- 238 (1) The acquisition of part or all of the property under the power of eminent domain;
- 239 (2) The sale of part or all of the property to a public or private entity which would have
- 240 had the authority to acquire the property under the power of eminent domain; or
- 241 (3) The death of an individual qualified owner who was a party to the covenant.

242 (q) The following shall not constitute a breach of a covenant:

- 243 (1) Mineral exploration of the property subject to the covenant or the leasing of the
- 244 property subject to the covenant for purposes of mineral exploration if the primary use
- 245 of the property continues to be the good faith production from or on the land of timber;

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

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

254 (4)(A) Any property which is subject to a covenant for forest land conservation use
255 being transferred to a place of religious worship or burial or an institution of purely
256 public charity if such place or institution is qualified to receive the exemption from ad
257 valorem taxation provided for under subsection (a) of Code Section 48-5-41. No
258 qualified owner shall be entitled to transfer more than 25 acres of such person's
259 property in the aggregate under this paragraph.

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

266 (5) Leasing a portion of the property subject to the covenant, but in no event more than
267 six acres of every unit of 2,000 acres, for the purpose of placing thereon a cellular
268 telephone transmission tower. Any such portion of such property shall cease to be
269 subject to the covenant as of the date of execution of such lease and shall be subject to
270 ad valorem taxation at fair market value.

271 (r) In the following cases, the penalty specified by subsection (m) of this Code section
272 shall not apply and the penalty imposed shall be the amount by which conservation use
273 assessment has reduced taxes otherwise due for the year in which the covenant is breached,
274 such penalty to bear interest at the rate specified in Code Section 48-2-40 from the date of
275 the breach:

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

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

- 282 (B) The loan was made by a person or financial institution who or which is regularly
283 engaged in the business of making loans; and
- 284 (C) The deed to secure debt was intended by the parties as security for the loan and
285 was not intended for the purpose of carrying out a transfer which would otherwise be
286 subject to the penalty specified by subsection (m) of this Code section;
- 287 (2) Any case in which a covenant is breached solely as a result of a medically
288 demonstrable illness or disability which renders the qualified owner of the real property
289 physically unable to continue the property in the qualifying use, provided that the board
290 of tax assessors or boards of assessors, if applicable, shall require satisfactory evidence
291 which clearly demonstrates that the breach is the result of a medically demonstrable
292 illness or disability;
- 293 (3) Any case in which a covenant is breached solely as a result of a qualified owner
294 electing to discontinue the property in its qualifying use, provided such qualified owner
295 has renewed without an intervening lapse at least once the covenant for land conservation
296 use, has reached the age of 65 or older, and has kept the property in the qualifying use
297 under the renewal covenant for at least three years. Such election shall be in writing and
298 shall not become effective until filed with the county board of tax assessors or boards of
299 assessors, if applicable; or
- 300 (4) Any case in which a covenant is breached solely as a result of a qualified owner
301 electing to discontinue the property in its qualifying use, provided such qualified owner
302 entered into the covenant for forest land conservation use for the first time after reaching
303 the age of 67 and has either owned the property for at least 15 years or inherited the
304 property and has kept the property in the qualifying use under the covenant for at least
305 three years. Such election shall be in writing and shall not become effective until filed
306 with the county board of tax assessors where the property is located.
- 307 (s) Property which is subject to forest land conservation use assessment under this Code
308 section shall be separately classified from all other property on the tax digest; and such
309 separate classification shall be such as will enable any person examining the tax digest to
310 ascertain readily that the property is subject to conservation use assessment under this Code
311 section. Covenants shall be public records and shall be indexed and maintained in such
312 manner as will allow members of the public to locate readily the covenant affecting any
313 particular property subject to conservation use assessment under this Code section. Based
314 on information submitted by the county boards of tax assessors, the commissioner shall
315 maintain a central registry of conservation use property, indexed by qualified owners.
- 316 (t) The commissioner shall annually submit a report to the Governor, the Department of
317 Agriculture, the Georgia Agricultural Statistical Service, the Georgia Forestry Commission,
318 the Department of Natural Resources, and the University of Georgia Cooperative Extension

319 Service and the House Ways and Means, Natural Resources and Environment, and
320 Agriculture and Consumer Affairs committees and the Senate Finance, Natural Resources
321 and Environment, and Agriculture and Consumer Affairs committees and shall make such
322 report available to other members of the General Assembly, which report shall show the
323 fiscal impact of the assessments provided for in this Code section. The report shall include
324 the amount of assessed value eliminated from each county's digest as a result of such
325 assessments; approximate tax dollar losses, by county, to all local governments affected by
326 such assessments; and any recommendations regarding state and local administration of
327 this Code section, with emphasis upon enforcement problems, if any, attendant with this
328 Code section. The report shall also include any other data or facts which the commissioner
329 deems relevant.

330 (u) A public notice containing a brief, factual summary of the provisions of this Code
331 section shall be posted in a prominent location readily viewable by the public in the office
332 of the board of tax assessors and in the office of the tax commissioner of each county in
333 this state.

334 (v) At such time as the property ceases to be eligible for forest land conservation use
335 assessment or when any 15 year covenant period expires and the property does not qualify
336 for further forest land conservation use assessment, the qualified owner of the property
337 shall file an application for release of forest land conservation use treatment with the
338 county board of tax assessors where the property is located who shall approve the release
339 upon verification that all taxes and penalties with respect to the property have been
340 satisfied. After the application for release has been approved by ~~the~~ such board of tax
341 assessors, the board shall file the release in the office of the clerk of the superior court in
342 the county in which the original covenant was filed. The clerk of the superior court shall
343 file and index such release in the real property records maintained in the clerk's office. No
344 fee shall be paid to the clerk of the superior court for recording such release. The
345 commissioner shall by regulation provide uniform release forms.

346 (w) The commissioner shall have the power to make and publish reasonable rules and
347 regulations for the implementation and enforcement of this Code section. Without limiting
348 the commissioner's authority with respect to any other such matters, the commissioner may
349 prescribe soil maps and other appropriate sources of information for documenting
350 eligibility as a forest land conservation use property. The commissioner also may provide
351 that advance notice be given to a qualified owner of the intent of a board of tax assessors
352 to deem a change in use as a breach of a covenant."

353 **SECTION 2.**

354 This Act shall become effective upon its approval by the Governor or upon its becoming law
355 without such approval.

356 **SECTION 3.**

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