

House Bill 517

By: Representatives Lindsey of the 54th, Wilkinson of the 52nd, and Geisinger of the 48th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 48 of the Official Code of Georgia Annotated, related to revenue and
2 taxation, so as to provide for the comprehensive revision of the manner and method of
3 assessing real property; to limit valuation increases of real property; to provide for
4 procedures, conditions, and limitations; to provide for applicability to certain types of real
5 property; to provide for the manner and method of increasing or removing mill limitations
6 regarding school systems and municipalities; to provide for optional discontinuation
7 procedures; to provide for related matters; to provide for effective dates and contingencies;
8 to provide for automatic repeal of certain provisions under certain circumstances; to repeal
9 conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Title 48 of the Official Code of Georgia Annotated, related to revenue and taxation, is
13 amended by adding a new chapter to read as follows:

14 "CHAPTER 5B

15 48-5B-1.

16 Pursuant to Article VII, Section I, Paragraph IV of the Constitution, the provisions of this
17 chapter shall control over and supercede anything to the contrary in Chapter 5 of this title.

18 48-5B-2.

19 (a) The rate of increase of the assessed value of real property for state, county, municipal,
20 or educational ad valorem tax purposes shall not exceed an aggregate of 9 percent for each
21 three-year period of successive ownership and, except as provided in this subsection, shall
22 not exceed from one taxable year to the succeeding taxable year the lesser of 3 percent or
23 the percent change in the rate of economic inflation on individual taxpayers as determined

24 by the commissioner. For such purpose, the commissioner may use the Consumer Price
 25 Index for all urban consumers published by the Bureau of Labor Statistics of the United
 26 States Department of Labor and any other reliable economic indicator determined by the
 27 commissioner or such other designee as specified by general law to be appropriate. Such
 28 rate shall be determined by the commissioner not later than December 1 of each year.
 29 Within such three-year period, such 3 percent limitation shall operate in a cumulative
 30 manner so if an increase in one year is less than 3 percent, the 3 percent cap for the next
 31 succeeding year shall be increased by an amount equal to the difference in the actual
 32 percentage increase in the preceding year and 3 percent.

33 (b) Nothing in this Code section shall be construed to prohibit the assessed value of real
 34 property from decreasing.

35 (c) If real property or interests therein are sold or transferred, such real property shall be
 36 valued for ad valorem tax purposes in an amount not to exceed fair market value.
 37 Substantial additions or improvements to such real property shall be valued for ad valorem
 38 tax purposes at their fair market value and shall be added to the owner's valuation amount
 39 under this subsection.

40 (d) Nothing in this chapter shall be construed to alter or affect in any manner the authority
 41 granted to the General Assembly under Article VII, Section II, Paragraph II of the
 42 Constitution to enact homestead exemptions.

43 48-5B-3.

44 In addition to any other provision of this chapter authorizing error or omission correction
 45 by local tax officials, the commissioner shall be authorized to correct any manifest, factual
 46 error or omission in the valuation of real property.

47 48-5B-4.

48 (a) For purposes of determining when any parcel of real property shall be reassessed, an
 49 assessable transfer of interest in any real property includes, but is not limited to, the
 50 following:

51 (1) A conveyance by deed;

52 (2) A conveyance by land contract;

53 (3) A conveyance to a trust, except if the settlor or the settlor's spouse, or both, conveys
 54 the property to the trust and the sole present beneficiary or beneficiaries are the settlor or
 55 the settlor's spouse, or both;

56 (4) A conveyance by distribution from a trust, except if the distributee is the sole present
 57 beneficiary or the spouse of the sole present beneficiary, or both;

- 58 (5) A change in the sole present beneficiary or beneficiaries of a trust, except a change
59 that adds or substitutes the spouse of the sole present beneficiary;
- 60 (6) A conveyance by distribution under a will or by intestate succession, except if the
61 distributee is the decedent's spouse;
- 62 (7) A conveyance by lease if the total duration of the lease, including the initial term and
63 all options for renewal, is more than 20 years or the lease grants the lessee a bargain
64 purchase option. As used in this paragraph, the term 'bargain purchase option' means the
65 right to purchase the property at the termination of the lease for not more than 80 percent
66 of the property's true cash value at the termination of the lease. This paragraph shall not
67 apply to personal property or that portion of the property not subject to the leasehold
68 interest conveyed;
- 69 (8) A transfer of an ownership interest in a single transaction or as a part of a series of
70 related transactions within a 25 year period in a corporation, partnership, sole
71 proprietorship, limited liability company, limited liability partnership, or other legal
72 entity if the ownership interest conveyed is more than 50 percent of the corporation,
73 partnership, sole proprietorship, limited liability company, limited liability partnership,
74 or other legal entity;
- 75 (9) A change of use of real property when classification of property changes as a result
76 of a local zoning ordinance change; or
- 77 (10) The passage of ten years since the last assessable transfer of interest for real
78 property owned by a publicly held entity whose stock, shares, or other ownership
79 interests are traded on a regulated exchange, a pension fund, or other similar entity.
- 80 (b) An assessable transfer of interest resulting in the appraisal required pursuant to this
81 chapter occurs at the time of execution of the instruments directly resulting in the transfer
82 of interest and without regard as to whether or not the applicable instruments are recorded.
- 83 (c) An assessable transfer of interest shall not include:
- 84 (1) Transfers not subject to federal income tax in the following circumstances pursuant
85 to the specified provisions of the Internal Revenue Code:
- 86 (A) 1033 Conversions-Fire and Insurance Proceeds to Rebuild;
87 (B) 1041 Transfers of Property Between Spouses or Incident to Divorce;
88 (C) 351 Transfer to a Corporation Controlled by Transferor;
89 (D) 355 Distribution by a Controlled Corporation;
90 (E) 368 Corporate Reorganizations; or
91 (F) 721 Nonrecognition of Gain or Loss on a Contribution to a Partnership;
- 92 (2) A transfer of that portion of property subject to a life estate or life lease retained by
93 the transferor, until expiration or termination of the life estate or life lease;

- 94 (3) A transfer through foreclosure or forfeiture of a recorded instrument or through deed
 95 or conveyance in lieu of a foreclosure or forfeiture;
 96 (4) A tax deed which is redeemed by the person to whom taxes are assessed within one
 97 year of the date of the tax sale;
 98 (5) A conveyance to a trust if the settlor or the settlor's spouse, or both, convey the
 99 property to the trust and the sole present beneficiary of the trust is the settlor or the
 100 settlor's spouse, or both;
 101 (6) A transfer for security or an assignment or discharge of a security interest;
 102 (7) A transfer of real property or other ownership interests among members of an
 103 affiliated group. As used in this paragraph, the term 'affiliated group' is as defined in
 104 Section 1504 of the Internal Revenue Code;
 105 (8) A transfer of real property or other ownership interests among corporations,
 106 partnerships, limited liability companies, limited liability partnerships, or other legal
 107 entities if the entities involved are commonly controlled; or
 108 (9) A transfer of an interest in a timeshare unit by deed or lease.

109 48-5B-5.

- 110 (a) As used in this Code section, the term 'natural person' means an individual or group of
 111 individuals who directly owns real property outside of any legal entity. A natural person
 112 shall not include a trustee, agent, officer, or member of a legal entity which has an
 113 ownership interest in real property. A legal entity includes, but is not limited to, a
 114 corporation, partnership, limited liability company, unincorporated association, or trust.
 115 (b) The department may promulgate regulations to implement this chapter, including,
 116 without limitation, providing for those circumstances that constitute a change in the
 117 beneficial ownership of real property or an assessable transfer of interest not evidenced by
 118 transfer of fee simple title. The department shall examine the substance, rather than merely
 119 the form of the transfer, and related and surrounding transactions, and may use the step
 120 transaction, economic reality, quid pro quo, personal benefit, and other judicially developed
 121 doctrines in determining whether the requisite assessable transfer of interest has occurred.
 122 (c)(1) Except as provided pursuant to paragraph (2) of this subsection, the county
 123 assessor annually shall send to each real property owner of record, or the owner's agent
 124 of record, to the address of record, a certificate prescribed by the department which shall
 125 be signed and returned by the property owner or the owner's agent certifying details of
 126 the ownership of the property. In addition to any applicable interest and penalties for the
 127 late payment of property taxes, if the owner or owner's agent knowingly falsifies any
 128 detail on the certificate, then the owner or owner's agent is subject to a civil penalty
 129 imposed by the department, the county assessor, or an assessor appointed to handle

130 multiple county assessments pursuant to an intergovernmental agreement, as applicable.
 131 The amount shall be three times the taxes lawfully due on the property. This civil penalty
 132 shall be enforceable and collectable in the same manner as property tax.

133 (2) The annual certificate requirement provided pursuant to paragraph (1) of this
 134 subsection shall not apply to a real property owner who is a natural person. However, the
 135 assessor periodically may send certificates to natural persons subject to the same
 136 requirements provided pursuant to paragraph (1) of this subsection.

137 48-5B-6.

138 (a) Except as otherwise provided in subsection (b) of this Code section, upon the
 139 occurrence of an assessable transfer of property or interest therein, for each of the ensuing
 140 seven taxable years, any annual increase in the value of the property attributable thereto
 141 shall for tax purposes be limited to one-seventh of the difference between the transferee's
 142 fair market value and the most recent value of that property established by the board of
 143 assessors in the year the transfer occurred plus the rate established in Code Section
 144 48-5B-2.

145 (b)(1) In the event of a transfer of homestead real property, the appraised value of the
 146 homestead purchased by or transferred to the new owner shall be the lesser of the
 147 following three values:

148 (A) The appraised value of the newly acquired homestead real property;

149 (B) The appraised value of the former homestead real property if the purchase price of
 150 the newly acquired homestead real property is less than the sales price of the former
 151 homestead real property; or

152 (C) The appraised value of the former homestead real property plus an amount equal
 153 to the difference between the purchase price of the newly acquired homestead real
 154 property and the sales price of the former homestead real property if the purchase price
 155 of the newly acquired homestead real property is greater than the sales price of the
 156 former homestead property.

157 (2) For each of the ensuing seven taxable years, any annual increase in the value of the
 158 homestead property attributable thereto shall for tax purposes be limited to one-seventh
 159 of the difference between the transferee's value as determined under paragraph (1) of this
 160 subsection and the most recent value of that property established by the board of
 161 assessors in the year the transfer occurred plus the rate established in Code Section
 162 48-5B-2.

163 48-5B-7.

164 The provisions of this chapter shall not apply to:

- 165 (1) Property of public utilities the taxation of which is otherwise provided for in this title;
 166 (2) Any homestead's ad valorem taxes which are the subject of any such general or local
 167 law exemption that freeze the assessment of property with respect to any or all ad
 168 valorem taxes unless such general law or local law is repealed. In the event of such
 169 repeal, the initial valuation amount of the homestead property for purposes of this chapter
 170 shall be the taxable value of such property established as the initial base year assessed
 171 value of such property; provided, however, that in the case of an adjusted base year
 172 assessed value homestead exemption, the initial valuation amount of the homestead
 173 property for purposes of this chapter shall be the taxable value of the property established
 174 as the most recent adjusted base year assessed value applicable to such property;
 175 (3) Homestead real property in any county or consolidated government for which a local
 176 constitutional amendment has been continued in force and effect as part of the
 177 Constitution which freezes ad valorem property taxes with respect to such homestead real
 178 property unless such local constitutional amendment is repealed. In the event of such
 179 repeal, the initial valuation amount of each parcel of homestead real property shall be the
 180 most recent taxable value of such parcel as established under such local constitutional
 181 amendment; and
 182 (4) Real property in any county for which a local constitutional amendment has been
 183 continued in force and effect as part of the Constitution which imposes millage rate
 184 limitations regarding ad valorem property taxes with respect to real property in such
 185 county or county school district unless such local constitutional amendment is repealed.

186 48-5B-8.

- 187 (a) The mill limitation in effect on January 1, 2011, for any school system pursuant to
 188 Article VII, Section VI, Paragraph II of the Constitution may be increased or removed for
 189 any school system upon the adoption of a resolution by the board of education by a
 190 majority of the members of the board of education conditioned upon approval by a majority
 191 of the qualified voters residing within the limits of the school system voting in a
 192 referendum thereon.
 193 (b) Following the adoption of such resolution, the board of education shall notify the
 194 election superintendent by forwarding to the superintendent a copy of the resolution calling
 195 for the increase or removal of the mill limitation.
 196 (c) Upon receipt of the resolution, the election superintendent shall issue the call for an
 197 election for the purpose of submitting the question of the imposition of the tax to the voters
 198 of the school system. The election superintendent shall issue the call and shall conduct the
 199 election within 45 days but otherwise in the manner authorized under Code Section
 200 21-2-540. The election superintendent shall cause the date and purpose of the election to

201 be published once a week for four weeks immediately preceding the date of the election
 202 in the official organ of the county.

203 (d) The ballot submitting the question of increasing or removing the mill limitation shall
 204 have written or printed thereon the following:

205 '() YES Shall the current _____ mill limit applicable to taxes of the _____ school
 206 system be (increased to a _____ mill limit) (removed so that there is no mill
 207 () NO limitation)?'

208 (e) All persons desiring to vote in favor of increasing or removing the mill limitation shall
 209 vote 'Yes' and all persons opposed to increasing or removing the mill limitation shall vote
 210 'No.' If more than one-half of the votes cast are in favor of increasing or removing the mill
 211 limitation then the mill limitation shall be increased or removed accordingly. The election
 212 superintendent shall hold and conduct the election under the same rules and regulations as
 213 govern special elections. The superintendent shall canvass the returns, declare the result
 214 of the election, and certify the result to the Secretary of State and to the commissioner. The
 215 expense of the election shall be paid from school system funds.

216 48-5B-9.

217 (a) The mill limitation in effect on January 1, 2011, for any municipality may be increased
 218 or removed for any municipality upon the adoption of a resolution by the governing
 219 authority of the municipality by a majority of the members of the governing authority
 220 conditioned upon approval by a majority of the qualified voters residing within the limits
 221 of the municipality voting in a referendum thereon.

222 (b) Following the adoption of such resolution, the governing authority shall notify the
 223 municipal election superintendent by forwarding to the superintendent a copy of the
 224 resolution calling for the increase or removal of the mill limitation.

225 (c) Upon receipt of the resolution, the election superintendent shall issue the call for an
 226 election for the purpose of submitting the question of the imposition of the tax to the voters
 227 of the municipality. The election superintendent shall issue the call and shall conduct the
 228 election within 45 days but otherwise in the manner authorized under Code Section
 229 21-2-540. The election superintendent shall cause the date and purpose of the election to
 230 be published once a week for four weeks immediately preceding the date of the election
 231 in the official organ of the county.

232 (d) The ballot submitting the question of increasing or removing the mill limitation shall
 233 have written or printed thereon the following:

234 '() YES Shall the _____ mill limit applicable to taxes of the City of _____ be (increased
 235 () NO to a _____ mill limit) (removed so that there is no mill limitation)?'

236 (e) All persons desiring to vote in favor of increasing or removing the mill limitation shall
 237 vote 'Yes' and all persons opposed to increasing or removing the mill limitation shall vote
 238 'No.' If more than one-half of the votes cast are in favor of increasing or removing the mill
 239 limitation then the mill limitation shall be increased or removed accordingly. The election
 240 superintendent shall hold and conduct the election under the same rules and regulations as
 241 govern special elections. The superintendent shall canvass the returns, declare the result
 242 of the election, and certify the result to the Secretary of State and to the commissioner. The
 243 expense of the election shall be paid from municipal funds.

244 (f) The procedures provided in this Code section shall be supplemental to and not in lieu
 245 of any other method for increasing or removing a millage cap by local Act.

246 48-5B-10.

247 (a) The limitations required under Article VII, Section I, Paragraph IV of the Constitution
 248 may be discontinued for any county and each municipality or county or independent school
 249 system in such county upon the adoption of a resolution by the governing authority of the
 250 county by a majority of the members thereof, which resolution shall be conditioned upon
 251 approval by a majority of the qualified voters residing within the limits of the county voting
 252 in a referendum thereon.

253 (b) Following the adoption of such resolution, the governing authority of the county shall
 254 notify the election superintendent by forwarding to the superintendent a copy of the
 255 resolution calling for the discontinuation of the limitations.

256 (c) Upon receipt of the resolution, the election superintendent shall issue the call for an
 257 election for the purpose of submitting the question of the imposition of the tax to the voters
 258 of the appropriate county, municipality, or school system. The election superintendent
 259 shall issue the call and shall conduct the election on a date and in the manner authorized
 260 under Code Section 21-2-540. The election superintendent shall cause the date and
 261 purpose of the election to be published once a week for four weeks immediately preceding
 262 the date of the election in the official organ of the county.

263 (d) The ballot submitting the question of discontinuing the limitations shall have written
 264 or printed thereon the following:

265 ' () YES Shall the limitations on assessment increases for county, municipal, and
 266 () NO educational ad valorem taxes be discontinued in _____ county?'

267 (e) All persons desiring to vote in favor of discontinuing the limitations shall vote 'Yes,'
 268 and all persons opposed to discontinuing the limitations shall vote 'No.' If more than
 269 one-half of the votes cast are in favor of discontinuing the limitations, then the limitations
 270 shall be discontinued accordingly. The election superintendent shall hold and conduct the
 271 election under the same rules and regulations as govern special elections. The

272 superintendent shall canvass the returns, declare the result of the election, and certify the
273 result to the Secretary of State and to the commissioner. The expense of the election shall
274 be paid from county funds."

275 **SECTION 2.**

276 This Act shall become effective on January 1, 2011; provided, however, that this Act shall
277 only become effective on January 1, 2011, upon the ratification of a resolution at the
278 November, 2010, state-wide general election, which resolution amends the Constitution so
279 as to limit valuation increases of real property. If such resolution is not so ratified, this Act
280 shall not become effective and this Act shall stand repealed in its entirety on January 1, 2011.

281 **SECTION 3.**

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