

Senate Bill 240

By: Senators Rogers of the 21st, Williams of the 19th, Pearson of the 51st, Staton of the 18th and Johnson of the 1st

AS PASSED

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 the modernization and revision of certain
3 provisions regarding ad valorem taxes; to revise and change certain procedures relative to
4 the appeal of assessments for ad valorem tax purposes; to change the deadline for filing for
5 forest land conservation use assessment; to change certain provisions regarding collection
6 of costs, commissions, interest, and penalties; to provide for execution costs; to change
7 certain provisions regarding notification of changes made to a taxpayer's return; to provide
8 for additional tax return filing requirements for public utilities; to provide for related matters;
9 to provide effective dates and applicability; to repeal conflicting laws; and for other purposes.

10 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

11 **SECTION 1.**

12 Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem
13 taxation of property, is amended in subsection (f) of Code Section 48-5-311, relating to
14 county boards of tax assessors, county boards of equalization, and appeals of ad valorem tax
15 assessments, by adding new paragraphs to read as follows:

16 "(4) For any dispute involving the value of real property, at the option of the taxpayer,
17 an appeal may be submitted to binding arbitration in accordance with this paragraph:

18 (A) Following an election by the taxpayer to use the binding arbitration provisions of
19 this subsection, a binding arbitration appeal shall be effected by the taxpayer filing a
20 written notice of arbitration with the county board of tax assessors. The notice of
21 arbitration shall specifically state the grounds for arbitration. The notice shall be filed
22 within 45 days from the date of mailing the notice pursuant to Code Section 48-5-306
23 except that for counties or municipal corporations providing for the collection and
24 payment of ad valorem taxes in installments, the time for filing the notice of appeal
25 shall be 30 days. Prior to appointment of the arbitrator and within 30 days of filing the
26 notice of appeal, the taxpayer shall provide a copy of the value certified by a
27 professional real estate appraiser as classified by the Georgia Real Estate Appraisers

28 Board as specified in this paragraph to the board of assessors for consideration. If,
29 within 30 days of receiving the taxpayer's certified appraisal, the board of assessors
30 accepts the taxpayer's appraisal, that value shall become final. If the county board of
31 tax assessors rejects the taxpayer's appraisal, the county board of tax assessors shall
32 certify within 30 days the appeal to the clerk of the superior court along with any other
33 papers specified by the person seeking arbitration, including, but not limited to, the staff
34 information from the file used by the county board of tax assessors. All papers and
35 information certified to the clerk shall become a part of the record on arbitration.
36 Within 15 days of filing the certification to the clerk of the superior court, the judge
37 shall issue an order authorizing the arbitration; and

38 (B) The arbitration shall be conducted pursuant to the following procedure:

39 (i) If the parties agree, the matter shall be submitted to a single arbitrator chosen by
40 the parties. If the parties cannot agree on the single arbitrator, the arbitrator shall be
41 chosen by the chief judge of the superior court of the circuit in which the property is
42 located;

43 (ii) In order to be qualified to serve as an arbitrator, a person shall be classified as
44 a State Certified General Property Appraiser pursuant to the rules and regulations of
45 the Georgia Real Estate Appraisers Board and shall have experience or expertise in
46 appraising the type of property that is the subject of the arbitration;

47 (iii) The arbitrator, within 30 days after his or her appointment, shall set a time and
48 place to hear evidence and testimony from both parties. He or she shall provide
49 written notice to the parties personally or by registered or certified mail or statutory
50 overnight delivery not less than ten days before the hearing. The arbitrator may
51 adjourn or postpone the hearing. The chief judge of the superior court of the circuit
52 in which the property is located may direct the arbitrator to proceed promptly with the
53 hearing and the determination of the appeal upon application of any party;

54 (iv) At the hearing, the parties shall be entitled to be heard, to present documents,
55 testimony, and other matters, and to cross-examine witnesses. The arbitrator may
56 hear and determine the controversy upon the documents, testimony, and other matters
57 produced notwithstanding the failure of a party duly notified to appear;

58 (v) The arbitrator shall maintain a record of all pleadings, documents, testimony, and
59 other matters introduced at the hearing. The arbitrator or any party to the proceeding
60 may have the proceedings transcribed by a court reporter;

61 (vi) The provisions of this paragraph may be waived at any time by written consent
62 of the taxpayer and the board of tax assessors;

63 (vii) Within 30 days of the date of the hearing, the arbitrator shall render a decision
64 regarding the value of the property subject to arbitration;

65 (viii) In order to determine the value, the arbitrator shall consider a single value for
 66 the property submitted by the board of assessors and a single value submitted by the
 67 taxpayer. The taxpayer shall be responsible for the cost of any appraisal by the
 68 taxpayer's appraiser;

69 (ix) Upon consideration of the single value submitted by the board of assessors and
 70 the single value submitted by the taxpayer, and evidence supporting the values
 71 submitted by the board of assessors and the taxpayer, the arbitrator shall determine
 72 which value is the value for the property under appeal;

73 (x) If the taxpayer's value is determined by the arbitrator to be the value, the county
 74 shall be responsible for the fees and costs of such arbitrator. If the board of tax
 75 assessors' value is determined by the arbitrator to be the value, the taxpayer shall be
 76 responsible for the fees and costs of such arbitrator; and

77 (xi) The board of tax assessors shall have the burden of proving its opinion of value
 78 and the validity of its proposed assessment by a preponderance of evidence.

79 (5) The provisions in subsection (c) of Code Section 48-5-299 shall apply to the
 80 valuation established or rendered by any arbitrator or board of arbitration.

81 (6) If the county's tax bills are issued before an arbitrator or board of arbitration has
 82 rendered its decision on property which is on appeal, the county board of tax assessors
 83 shall specify to the county tax commissioner the higher of the taxpayer's return valuation
 84 or 85 percent of the current year's valuation as set by the county board of tax assessors.
 85 This amount shall be the basis for a temporary tax bill to be issued. Such tax bill shall
 86 be accompanied by a notice to the taxpayer that the bill is a temporary tax bill pending
 87 the outcome of the appeal process. Such notice shall also indicate that upon resolution
 88 of the appeal, there may be additional taxes due or a refund issued."

89 **SECTION 2.**

90 Said chapter is further amended in said Code section by revising subsection (g) as follows:

91 *"(g) Appeals to the superior court.*

92 (1) The taxpayer or, except as otherwise provided in this paragraph and except for a
 93 determination of value by an arbitrator pursuant to paragraph (4) of subsection (f) of this
 94 Code section, the county board of tax assessors may appeal decisions of the county board
 95 of equalization, the arbitrator, or the arbitrators, as applicable, to the superior court of the
 96 county in which the property lies. A county board of tax assessors ~~may~~ shall not appeal
 97 a decision of the county board of equalization or arbitrator or board of arbitration, as
 98 applicable, other than an arbitration pursuant to paragraph (4) of subsection (f) of this
 99 Code section changing an assessment by ~~15~~ 20 percent or less unless the board of tax
 100 assessors gives the county governing authority a written notice of its intention to appeal,

101 and, within ten days of receipt of the notice, the county governing authority by majority
102 vote does not prohibit the appeal. In the case of a joint city-county board of tax assessors,
103 such notice shall be given to the city and county governing authorities, either of which
104 may prohibit the appeal by majority vote within the allowed period of time.

105 (2) An appeal by the taxpayer as provided in paragraph (1) of this subsection shall be
106 effected by mailing to or filing with the county board of tax assessors a written notice of
107 appeal. Any such notice of appeal which is mailed pursuant to this paragraph shall be
108 deemed to be filed as of the date of the United States Postal Service postmark on such
109 notice of appeal. An appeal by the county board of tax assessors shall be effected by
110 giving notice to the taxpayer. The notice to the taxpayer shall be dated and shall contain
111 the name and the last known address of the taxpayer. The notice of appeal shall
112 specifically state the grounds for appeal. The notice shall be mailed or filed within 30
113 days from the date on which the decision of the county board of equalization is mailed
114 pursuant to subparagraph (e)(6)(D) of this Code section or within 30 days from the date
115 on which the arbitration decision is rendered pursuant to subparagraph (f)(3)(D) of this
116 Code section, whichever is applicable. The county board of tax assessors shall certify to
117 the clerk of the superior court the notice of appeal and any other papers specified by the
118 person appealing including, but not limited to, the staff information from the file used by
119 either the county board of tax assessors or the county board of equalization. All papers
120 and information certified to the clerk shall become a part of the record on appeal to the
121 superior court. At the time of certification of the appeal, the county board of tax
122 assessors shall serve the taxpayer ~~or~~ and his or her attorney ~~or agent~~ of record, if any,
123 with a copy of the notice of appeal and with the civil action file number assigned to the
124 appeal. Such service shall be effected in accordance with subsection (b) of Code Section
125 9-11-5. No discovery, motions, or other pleadings may be filed by the county board of
126 tax assessors in the appeal until such service has been made.

127 (3) The appeal shall constitute a de novo action. The board of tax assessors shall have
128 the burden of proving their opinions of value and the validity of their proposed
129 assessment by a preponderance of evidence. Upon a failure of the board of tax assessors
130 to meet such burden of proof, the court may, upon motion or sua sponte, authorize the
131 finding that the value asserted by the taxpayer is unreasonable and authorize the
132 determination of the final value of the property.

133 (4)(A) The appeal shall be heard before a jury at the first term following the filing of
134 the appeal unless continued by the court upon a showing of good cause. If only
135 questions of law are presented in the appeal, the appeal shall be heard as soon as
136 practicable before the court sitting without a jury. Each hearing before the court sitting
137 without a jury shall be held within ~~40~~ 30 days following the date on which the appeal

138 is filed with the clerk of the superior court. The time of any hearing shall be set in
 139 consultation with the taxpayer and at a time acceptable to the taxpayer between the
 140 hours of 8:00 A.M. and 7:00 P.M. on a business day.

141 (B)(i) The county board of tax assessors shall use the valuation of the county board
 142 of equalization or the arbitrator or arbitrators, as applicable, in compiling the tax
 143 digest for the county. If the final determination of value on appeal is less than the
 144 valuation set by the county board of equalization, the arbitrator, or the arbitrators, as
 145 applicable, the taxpayer shall receive a deduction in such taxpayer's taxes for the year
 146 in question. Such deduction shall be refunded to the taxpayer and shall include
 147 interest on the amount of such deduction at the same rate as specified in Code Section
 148 48-2-35 which shall accrue from November 15 of the taxable year in question or the
 149 date the final installment of the tax was due or was paid, whichever is later. In no
 150 event shall the amount of such interest exceed \$150.00.

151 (ii) If the final determination of value on appeal is 80 percent or less of the valuation
 152 set by the county board of equalization as to commercial property, or 85 percent or
 153 less of the valuation set by the county board of tax assessors as to other property, the
 154 taxpayer, in addition to the interest provided for by this paragraph, shall recover costs
 155 of litigation and reasonable attorney's fees incurred in the action. This division shall
 156 not apply when the property owner has failed to return for taxation the property that
 157 is under appeal.

158 (iii) If the final determination of value on appeal is greater than the valuation set by
 159 the county board of equalization, the arbitrator, or the arbitrators, as applicable, the
 160 taxpayer shall be liable for the increase in taxes for the year in question due to the
 161 increased valuation fixed on appeal with interest at the same rate as specified in Code
 162 Section 48-2-35. Such interest shall accrue from November 15 of the taxable year in
 163 question or the date the final installment of tax was due to the date the additional taxes
 164 are remitted, but in no event shall the amount of such interest exceed \$150.00. Any
 165 taxpayer shall be exempt each taxable year from any such interest owed under this
 166 subparagraph with respect to such taxpayer's homestead property."

167 **SECTION 2A.**

168 Said chapter is further amended by revising paragraph (1) of subsection (j) of Code Section
 169 48-5-7.7, relating to forest land conservation use assessment, as follows:

170 "(j)(1) For the taxable year beginning January 1, 2009, all AH applications for
 171 conservation use assessment under this Code section, including the covenant agreement
 172 required under this Code section, shall be filed on or before ~~the last day for filing ad~~
 173 ~~valorem tax returns in the county for~~ June 1 of the tax year for which such conservation

174 use assessment is sought, except that in the case of property which is the subject of a
 175 reassessment by the board of tax assessors an application for conservation use assessment
 176 may be filed in conjunction with or in lieu of an appeal of the reassessment. For each
 177 taxable year beginning on or after January 1, 2010, all applications for conservation use
 178 assessment under this Code section, including the covenant agreement required under this
 179 Code section, shall be filed on or before the last day for filing ad valorem tax returns in
 180 the county for the tax year for which such conservation use assessment is sought, except
 181 that in the case of property which is the subject of a reassessment by the board of tax
 182 assessors an application for conservation use assessment may be filed in conjunction with
 183 or in lieu of an appeal of the reassessment. An application for continuation of such
 184 conservation use assessment upon a change in ownership of all or a part of the qualified
 185 property shall be filed on or before the last date for filing tax returns in the year following
 186 the year in which the change in ownership occurred. Applications for conservation use
 187 assessment under this Code section shall be filed with the county board of tax assessors
 188 who shall approve or deny the application. The county board of tax assessors shall file
 189 a copy of the approved application in the office of the clerk of the superior court in the
 190 county in which the eligible property is located. The clerk of the superior court shall file
 191 and index such application in the real property records maintained in the clerk's office.
 192 If the application is not so recorded in the real property records, a transferee of the
 193 property affected shall not be bound by the covenant or subject to any penalty for its
 194 breach. The fee of the clerk of the superior court for recording such applications shall be
 195 paid by the qualified owner of the eligible property with the application for conservation
 196 use assessment under this Code section and shall be paid to the clerk by the board of tax
 197 assessors when the application is filed with the clerk. If the application is denied, the
 198 board of tax assessors shall notify the applicant in the same manner that notices of
 199 assessment are given pursuant to Code Section 48-5-306 and shall return any filing fees
 200 advanced by the owner. Appeals from the denial of an application by the board of tax
 201 assessors shall be made in the same manner that other property tax appeals are made
 202 pursuant to Code Section 48-5-311."

203 **SECTION 2B.**

204 Said chapter is further amended by revising subsection (c) of Code Section 48-5-161, relating
 205 to issuance of tax executions, as follows:

206 "(c)(1) The officer in whose hands the execution is placed shall proceed at once to collect
 207 the execution and, when the execution is paid by the defendant voluntarily or by levy and
 208 sale, the officer shall enter the amount collected including all costs, commissions,
 209 interest, and penalties as provided by law on the execution. The officer shall return the

210 execution to the tax collector or tax commissioner with the amount of tax collected. The
 211 tax collector or tax commissioner shall at once copy the entry of the officer on his or her
 212 execution docket and file the execution in his or her office.

213 (2)(A) As used in this paragraph, the term 'costs' includes, but is not limited to, title
 214 examination expenses, certified mail expenses, reasonable attorney's fees, or other such
 215 necessary research expenses.

216 (B) Once a levy is made or posted on the property of an execution is issued against a
 217 delinquent or defaulting taxpayer, the sheriff or ex officio sheriff shall collect, in
 218 addition to any other costs, commissions, interest, and penalties, the actual expenses
 219 incurred by the county in issuing the execution and administering the levy by imposing
 220 a levy administration fee which shall be 5 percent of the delinquent tax or \$250.00,
 221 whichever is the lesser. Regardless of any other provision of this paragraph, however,
 222 no such levy administration fee shall be less than \$50.00.

223 (3) The levy administration fee provided by paragraph (2) of this subsection shall
 224 likewise be charged and collected when the execution is enforced through garnishment
 225 as provided for in Code Section 48-3-12."

226 **SECTION 2C.**

227 Said chapter is further amended by revising subsection (a) of Code Section 48-5-306,
 228 relating to notice of changes made in taxpayer's return, posting notice, and new assessment
 229 description, as follows:

230 *"(a) Method of giving notice to taxpayer of changes made in such taxpayer's return.* Each
 231 county board of tax assessors may meet at any time to receive and inspect the tax returns
 232 to be laid before it by the tax receiver or tax commissioner. The board shall examine all the
 233 returns of both real and personal property of each taxpayer, and if in the opinion of the
 234 board any taxpayer has omitted from such taxpayer's returns any property that should be
 235 returned or has failed to return any of such taxpayer's property at its fair market value, the
 236 board shall correct the returns, assess and fix the fair market value to be placed on the
 237 property, make a note of such assessment and valuation, and attach the note to the returns.
 238 The board shall see that all taxable property within the county is assessed and returned at
 239 its fair market value and that fair market values as between the individual taxpayers are
 240 fairly and justly equalized so that each taxpayer shall pay as nearly as possible only such
 241 taxpayer's proportionate share of taxes. When any such corrections, changes, or
 242 equalizations have been made by the board, the board shall, ~~within five days,~~ give written
 243 notice to the taxpayer of any changes made in such taxpayer's returns. The notice may be
 244 given personally by leaving the notice at the taxpayer's dwelling house, usual place of
 245 abode, or place of business with some person of suitable age and discretion residing or

246 employed in the house, abode, or business, or by sending the notice through the United
 247 States mail as first-class mail to the taxpayer's last known address. When notice is given
 248 by mail, the county board of tax assessors' return address shall appear in the upper left
 249 corner of the ~~mailing face with the direction that if not delivered 'Return in five days to' the~~
 250 ~~above return address, and the lower left corner of the mailing face shall be clearly marked~~
 251 ~~in bold type — 'OFFICIAL TAX MATTER.'~~ face of the mailing envelope and with the
 252 United States Postal Service endorsement 'Return Service Requested' and the words
 253 'Official Tax Matter' clearly printed in boldface type in a location which meets United
 254 States Postal Service regulations."

255 **SECTION 2D.**

256 Said chapter is further amended by revising subsection (b) of Code Section 48-5-511, relating
 257 to returns of public utilities to commissioner, as follows:

258 "(b) The returns of each public utility shall be in writing and sworn to under oath by the
 259 chief executive officer to be a just, true, and full return of the fair market value of the
 260 property of the public utility without any deduction for indebtedness. Each class or species
 261 of property shall be separately named and valued as far as practicable and shall be taxed
 262 like all other property under the laws of this state. The returns shall also include the capital
 263 stock, net annual profits, gross receipts, business, or income (gross, annual, net, or any
 264 other kind) for which the public utility is subject to taxation by the laws of this state. Each
 265 parcel of real estate included in the return shall be identified by its street address. If the
 266 commissioner is unable to locate the property by its street address after exercising due
 267 diligence in attempting to locate the property, then the commissioner may request more
 268 information from the taxpayer to help identify the exact location of the property. Such
 269 additional information may include a map or parcel identification information."

270 **SECTION 3.**

271 This Act shall become effective upon its approval by the Governor or upon its becoming law
 272 without such approval and Sections 1 and 2 of this Act shall be applicable to all property tax
 273 appeals submitted to arbitration or appealed to superior court on or after that date.

274 **SECTION 4.**

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