

House Bill 1028

By: Representatives Roberts of the 154<sup>th</sup>, O'Neal of the 146<sup>th</sup>, Porter of the 143<sup>rd</sup>, McCall of the 30<sup>th</sup>, Benfield of the 85<sup>th</sup>, 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 style="text-align:center">**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 is acquired  
 115 during a covenant period by another owner qualified to enter into an original forest land  
 116 conservation use covenant, then the original covenant may be continued only by both  
 117 such acquiring owner and the transferor for the remainder of the term, in which event no  
 118 breach of the covenant shall be deemed to have occurred ~~even~~ if the total size of a tract  
 119 from which the transfer was made is reduced below 200 acres. Following the expiration  
 120 of the original covenant, no new covenant shall be entered with respect to the tract from  
 121 which the transfer was made unless such tract exceeds 200 acres. If a breach of the  
 122 covenant occurs following such transfer by either such the acquiring owner or the  
 123 transferor, the penalty and interest shall apply to the entire tract which was the subject of  
 124 the original covenant and shall be paid by either the acquiring owner or the transferor,  
 125 whichever of whom breached the covenant. Following the expiration of such covenant,  
 126 no new covenant shall be entered with respect to the tract from which the transfer was  
 127 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 or agreements  
142 required under this Code section, shall be filed on or before June 1 of the tax year for  
143 which such conservation use assessment is sought, except that in the case of property  
144 which is the subject of a reassessment by the board of tax assessors an application for  
145 conservation use assessment may be filed in conjunction with or in lieu of an appeal of  
146 the reassessment. For each taxable year beginning on or after January 1, 2010, all  
147 applications for conservation use assessment under this Code section, including the  
148 covenant agreement or agreements required under this Code section, shall be filed on or  
149 before the last day for filing ad valorem tax returns in ~~the county~~ each county in which  
150 the property is located for the tax year for which such conservation use assessment is  
151 sought, except that in the case of property which is the subject of a reassessment by the  
152 board of tax assessors an application for 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 conservation use assessment upon a change in ownership of all or  
155 a part of the qualified property shall be filed on or before the last date for filing tax  
156 returns in the year following the year in which the change in ownership occurred.  
157 Applications for conservation use assessment under this Code section shall be filed with  
158 the county board of tax assessors in which the property is located who shall approve or  
159 deny the application. ~~The~~ Such county board of tax assessors shall file a copy of the  
160 approved application in the office of the clerk of the superior court in the county in which  
161 the eligible property is located. The clerk of the superior court shall file and index such  
162 application in the real property records maintained in the clerk's office. If the application  
163 is not so recorded in the real property records, a transferee of the property affected shall  
164 not be bound by the covenant or subject to any penalty for its breach. The fee of the clerk  
165 of the superior court for recording such applications shall be paid by the qualified owner  
166 of the eligible property with the application for conservation use assessment under this  
167 Code section and shall be paid to the clerk by the board of tax assessors when the  
168 application is filed with the clerk. If the application is denied, the board of tax assessors  
169 shall notify the applicant in the same manner that notices of assessment are given  
170 pursuant to Code Section 48-5-306 and shall return any filing fees advanced by the  
171 owner. Appeals from the denial of an application by the board of tax assessors shall be  
172 made in the same manner that other property tax appeals are made pursuant to Code  
173 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 is transferred  
 214 to another owner qualified to enter into an original forest land conservation use covenant  
 215 in a bona fide arm's length transaction and breach subsequently occurs, then the penalty  
 216 shall either be assessed against the entire remaining tract from which the transfer was  
 217 made or the entire transferred tract, on whichever the breach occurred. The calculation  
 218 of penalties in paragraph (2) of this subsection shall be used except that the penalty  
 219 amount resulting from such calculation shall be multiplied by the percentage which  
 220 represents the acreage of such tract on which the breach occurs to the original covenant  
 221 acreage. The resulting amount shall be the penalty amount owed by the owner of such  
 222 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.