

House Bill 95 (COMMITTEE SUBSTITUTE)

By: Representatives Roberts of the 154th, Knight of the 126th, England of the 108th, McCall of the 30th, Burns of the 157th, 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 State 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 48-5-7.4; 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 qualified owner has entered into an original forest land
 123 conservation use covenant and subsequently acquires additional qualified property
 124 contiguous to the property in the original covenant, the qualified owner may elect to enter
 125 the subsequently acquired qualified property into the original covenant for the remainder
 126 of the 15 year period of the original covenant; provided, however, that such subsequently
 127 acquired qualified property shall be less than 200 acres. If a breach of the covenant
 128 occurs following such transfer by either such acquiring owner or the transferor, the
 129 penalty and interest shall apply to the entire tract which was the subject of the original
 130 covenant and shall be paid by either the acquiring owner or the transferor, whichever of
 131 whom breached the covenant. Following the expiration of such covenant, no new
 132 covenant shall be entered with respect to the tract from which the transfer was made
 133 unless such tract exceeds 200 acres.

134 (2) If, following such transfer, a breach of the covenant occurs by the acquiring owner,
 135 the penalty and interest shall apply to the entire transferred tract and shall be paid by the
 136 acquiring owner who breached the covenant. In such case, the covenant shall terminate
 137 on such entire transferred tract but shall continue on such entire remaining tract from

138 which the transfer was made and on which the breach did not occur for the remainder of
 139 the original covenant.

140 (3) If, following such transfer, a breach of the covenant occurs by the transferring owner,
 141 the penalty and interest shall apply to the entire remaining tract from which the transfer
 142 was made and shall be paid by the transferring owner who breached the covenant. In
 143 such case, the covenant shall terminate on such entire remaining tract from which the
 144 transfer was made but shall continue on such entire transferred tract and on which the
 145 breach did not occur for the remainder of the original covenant.

146 ~~(j)(1) For the taxable year beginning January 1, 2009, all applications for conservation~~
 147 ~~use assessment under this Code section, including the covenant agreement required under~~
 148 ~~this Code section, shall be filed on or before June 1 of the tax year for which such~~
 149 ~~conservation use assessment is sought, except that in the case of property which is the~~
 150 ~~subject of a reassessment by the board of tax assessors an application for conservation use~~
 151 ~~assessment may be filed in conjunction with or in lieu of an appeal of the reassessment.~~
 152 For each taxable year beginning on or after January 1, 2010, all applications for
 153 conservation use assessment under this Code section, including the any forest land
 154 covenant agreement required under this Code section, shall be filed on or before the last
 155 day for filing ad valorem tax returns in ~~the county~~ each county in which the property is
 156 located for the tax year for which such forest land conservation use assessment is sought,
 157 except that in the case of property which is the subject of a reassessment by the board of
 158 tax assessors an application for forest land conservation use assessment may be filed in
 159 conjunction with or in lieu of an appeal of the reassessment. An application for
 160 continuation of such forest land conservation use assessment upon a change in ownership
 161 of all or a part of the qualified property shall be filed on or before the last date for filing
 162 tax returns in the year following the year in which the change in ownership occurred.
 163 Applications for forest land conservation use assessment under this Code section shall be
 164 filed with the county board of tax assessors in which the property is located who shall
 165 approve or deny the application. ~~The~~ Such county board of tax assessors shall file a copy
 166 of the approved ~~application~~ covenant in the office of the clerk of the superior court in the
 167 county in which the eligible property is located. The clerk of the superior court shall file
 168 and index such ~~application~~ covenant in the real property records maintained in the clerk's
 169 office. If the ~~application~~ covenant is not so recorded in the real property records, a
 170 transferee of the property affected shall not be bound by the covenant or subject to any
 171 penalty for its breach. The fee of the clerk of the superior court for recording such
 172 ~~applications~~ covenants shall be paid by the qualified owner of the eligible property with
 173 the application for forest land conservation use assessment under this Code section and
 174 shall be paid to the clerk by the board of tax assessors when the application is filed with

175 the clerk. If the application is denied, the board of tax assessors shall notify the applicant
 176 in the same manner that notices of assessment are given pursuant to Code Section
 177 48-5-306 and shall return any filing fees advanced by the owner. Appeals from the denial
 178 of an application or covenant by the board of tax assessors shall be made in the same
 179 manner that other property tax appeals are made pursuant to Code Section 48-5-311.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 249 (1) Mineral exploration of the property subject to the covenant or the leasing of the
 250 property subject to the covenant for purposes of mineral exploration if the primary use
 251 of the property continues to be the good faith production from or on the land of timber;
- 252 (2) Allowing all or part of the property subject to the covenant to lie fallow or idle for
 253 purposes of any forestry conservation program, for purposes of any federal agricultural
 254 assistance program, or for other agricultural management purposes;
- 255 (3) Allowing all or part of the property subject to the covenant to lie fallow or idle due
 256 to economic or financial hardship if the qualified owner notifies the board of tax assessors
 257 on or before the last day for filing a tax return in the county where the land lying fallow
 258 or idle is located and if such qualified owner does not allow the land to lie fallow or idle
 259 for more than two years of any five-year period;
- 260 (4)(A) Any property which is subject to a covenant for forest land conservation use
 261 being transferred to a place of religious worship or burial or an institution of purely
 262 public charity if such place or institution is qualified to receive the exemption from ad
 263 valorem taxation provided for under subsection (a) of Code Section 48-5-41. No
 264 qualified owner shall be entitled to transfer more than 25 acres of such person's
 265 property in the aggregate under this paragraph.
- 266 (B) Any property transferred under subparagraph (A) of this paragraph shall not be
 267 used by the transferee for any purpose other than for a purpose which would entitle
 268 such property to the applicable exemption from ad valorem taxation provided for under
 269 subsection (a) of Code Section 48-5-41 or subsequently transferred until the expiration
 270 of the term of the covenant period. Any such use or transfer shall constitute a breach
 271 of the covenant; or
- 272 (5) Leasing a portion of the property subject to the covenant, but in no event more than
 273 six acres of every unit of 2,000 acres, for the purpose of placing thereon a cellular
 274 telephone transmission tower. Any such portion of such property shall cease to be
 275 subject to the covenant as of the date of execution of such lease and shall be subject to
 276 ad valorem taxation at fair market value.
- 277 (r) In the following cases, the penalty specified by subsection (m) of this Code section
 278 shall not apply and the penalty imposed shall be the amount by which conservation use
 279 assessment has reduced taxes otherwise due for the year in which the covenant is breached,
 280 such penalty to bear interest at the rate specified in Code Section 48-2-40 from the date of
 281 the breach:
- 282 (1) Any case in which a covenant is breached solely as a result of the foreclosure of a
 283 deed to secure debt or the property is conveyed to the lienholder without compensation
 284 and in lieu of foreclosure, if:

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

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

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

293 (2) Any case in which a covenant is breached solely as a result of a medically
294 demonstrable illness or disability which renders the qualified owner of the real property
295 physically unable to continue the property in the qualifying use, provided that the board
296 of tax assessors or boards of assessors, if applicable, shall require satisfactory evidence
297 which clearly demonstrates that the breach is the result of a medically demonstrable
298 illness or disability;

299 (3) Any case in which a covenant is breached solely as a result of a qualified owner
300 electing to discontinue the property in its qualifying use, provided such qualified owner
301 has renewed without an intervening lapse at least once the covenant for land conservation
302 use, has reached the age of 65 or older, and has kept the property in the qualifying use
303 under the renewal covenant for at least three years. Such election shall be in writing and
304 shall not become effective until filed with the county board of tax assessors or boards of
305 assessors, if applicable; or

306 (4) Any case in which a covenant is breached solely as a result of a qualified owner
307 electing to discontinue the property in its qualifying use, provided such qualified owner
308 entered into the covenant for forest land conservation use for the first time after reaching
309 the age of 67 and has either owned the property for at least 15 years or inherited the
310 property and has kept the property in the qualifying use under the covenant for at least
311 three years. Such election shall be in writing and shall not become effective until filed
312 with the county board of tax assessors where the property is located.

313 (s) Property which is subject to forest land conservation use assessment under this Code
314 section shall be separately classified from all other property on the tax digest; and such
315 separate classification shall be such as will enable any person examining the tax digest to
316 ascertain readily that the property is subject to conservation use assessment under this Code
317 section. Covenants shall be public records and shall be indexed and maintained in such
318 manner as will allow members of the public to locate readily the covenant affecting any
319 particular property subject to conservation use assessment under this Code section. Based
320 on information submitted by the county boards of tax assessors, the commissioner shall
321 maintain a central registry of conservation use property, indexed by qualified owners.

322 (t) The commissioner shall annually submit a report to the Governor, the Department of
323 Agriculture, the Georgia Agricultural Statistical Service, the ~~Georgia~~ State Forestry
324 Commission, the Department of Natural Resources, and the University of Georgia
325 Cooperative Extension Service and the House Ways and Means, Natural Resources and
326 Environment, and Agriculture and Consumer Affairs committees and the Senate Finance,
327 Natural Resources and the Environment, and Agriculture and Consumer Affairs
328 committees and shall make such report available to other members of the General
329 Assembly, which report shall show the fiscal impact of the assessments provided for in this
330 Code section. The report shall include the amount of assessed value eliminated from each
331 county's digest as a result of such assessments; approximate tax dollar losses, by county,
332 to all local governments affected by such assessments; and any recommendations regarding
333 state and local administration of this Code section, with emphasis upon enforcement
334 problems, if any, attendant with this Code section. The report shall also include any other
335 data or facts which the commissioner deems relevant.

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

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

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

359

SECTION 2.

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

362

SECTION 3.

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