

House Bill 916

By: Representatives Knight of the 126th, England of the 108th, McCall of the 30th, Roberts of the 154th, and Buckner of the 130th

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 48-5-7.4 of the Official Code of Georgia Annotated, relating to bona
2 fide conservation use property, so as to change certain qualifications and restrictions
3 regarding covenants; to provide for exceptions; to provide for a definition; to provide for an
4 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 Code Section 48-5-7.4 of the Official Code of Georgia Annotated, relating to bona fide
8 conservation use property, is amended by revising subsections (a), (b), and (i) as follows:

9 "(a) For purposes of this article, the term 'bona fide conservation use property' means
10 property described in and meeting the requirements of paragraph (1) or (2) and paragraph
11 (3) of this subsection, as follows:

12 (1) Not more than 2,000 acres of tangible real property of a single person, the primary
13 purpose of which is any good faith production, including but not limited to subsistence
14 farming or commercial production, from or on the land of agricultural products or timber,
15 subject to the following qualifications:

16 (A) Such property includes the value of tangible property permanently affixed to the
17 real property which is directly connected to such owner's production of agricultural
18 products or timber and which is devoted to the storage and processing of such
19 agricultural products or timber from or on such real property;

20 (A.1) In the application of the limitation contained in the introductory language of this
21 paragraph, the following rules shall apply to determine beneficial interests in bona fide
22 conservation use property held in a family owned farm entity as described in division
23 (1)(C)(iv) of this subsection:

24 (i) A person who owns an interest in a family owned farm entity as described in
25 division (1)(C)(iv) of this subsection shall be considered to own only the percent of
26 the bona fide conservation use property held by such family owned farm entity that

27 is equal to the percent interest owned by such person in such family owned farm
28 entity; and

29 (ii) A person who owns an interest in a family owned farm entity as described in
30 division (1)(C)(iv) of this subsection may elect to allocate the lesser of any unused
31 portion of such person's 2,000 acre limitation or the product of such person's percent
32 interest in the family owned farm entity times the total number of acres owned by the
33 family owned farm entity subject to such bona fide conservation use assessment, with
34 the result that the family owned farm entity may receive bona fide conservation use
35 assessment on more than 2,000 acres;

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

37 (C) Except as otherwise provided in division (vii) of this subparagraph, such property
38 must be owned by:

39 (i) One or more natural or naturalized citizens;

40 (ii) An estate of which the devisees or heirs are one or more natural or naturalized
41 citizens;

42 (iii) A trust of which the beneficiaries are one or more natural or naturalized citizens;

43 (iv) A family owned farm entity, such as a family corporation, a family partnership,
44 a family general partnership, a family limited partnership, a family limited
45 corporation, or a family limited liability company, all of the interest of which is
46 owned by one or more natural or naturalized citizens related to each other by blood
47 or marriage within the fourth degree of civil reckoning, except that, solely with
48 respect to a family limited partnership, a corporation, limited partnership, limited
49 corporation, or limited liability company may serve as a general partner of the family
50 limited partnership and hold no more than a 5 percent interest in such family limited
51 partnership, an estate of which the devisees or heirs are one or more natural or
52 naturalized citizens, or a trust of which the beneficiaries are one or more natural or
53 naturalized citizens and which family owned farm entity derived 80 percent or more
54 of its gross income from bona fide conservation uses, including earnings on
55 investments directly related to past or future bona fide conservation uses, within this
56 state within the year immediately preceding the year in which eligibility is sought;
57 provided, however, that in the case of a newly formed family farm entity, an estimate
58 of the income of such entity may be used to determine its eligibility;

59 (v) A bona fide nonprofit conservation organization designated under Section
60 501(c)(3) of the Internal Revenue Code;

61 (vi) A bona fide club organized for pleasure, recreation, and other nonprofitable
62 purposes pursuant to Section 501(c)(7) of the Internal Revenue Code; or

63 (vii) In the case of constructed storm-water wetlands, any person may own such
64 property;

65 (D) Factors which may be considered in determining if such property is qualified may
66 include, but not be limited to:

67 (i) The nature of the terrain;

68 (ii) The density of the marketable product on the land;

69 (iii) The past usage of the land;

70 (iv) The economic merchantability of the agricultural product; and

71 (v) The utilization or nonutilization of recognized care, cultivation, harvesting, and
72 like practices applicable to the product involved and any implemented plans thereof;
73 and

74 (E) Such property shall, if otherwise qualified, include, but not be limited to, property
75 used for:

76 (i) Raising, harvesting, or storing crops;

77 (ii) Feeding, breeding, or managing livestock or poultry;

78 (iii) Producing plants, trees, fowl, or animals, including without limitation the
79 production of fish or wildlife by maintaining not less than ten acres of wildlife habitat
80 either in its natural state or under management, which shall be deemed a type of
81 agriculture; provided, however, that no form of commercial fishing or fish production
82 shall be considered a type of agriculture; or

83 (iv) Production of aquaculture, horticulture, floriculture, forestry, dairy, livestock,
84 poultry, and apiarian products; or

85 (2) Not more than 2,000 acres of tangible real property, excluding the value of any
86 improvements thereon, of a single owner of the types of environmentally sensitive
87 property specified in this paragraph and certified as such by the Department of Natural
88 Resources, if the primary use of such property is its maintenance in its natural condition
89 or controlling or abating pollution of surface or ground waters of this state by storm-water
90 runoff or otherwise enhancing the water quality of surface or ground waters of this state
91 and if such owner meets the qualifications of subparagraph (C) of paragraph (1) of this
92 subsection:

93 (A) Environmentally sensitive areas, including any otherwise qualified land area 1,000
94 feet or more above the lowest elevation of the county in which such area is located that
95 has a percentage slope, which is the difference in elevation between two points 500 feet
96 apart on the earth divided by the horizontal distance between those two points, of 25
97 percent or greater and shall include the crests, summits, and ridge tops which lie at
98 elevations higher than any such area;

- 99 (B) Wetland areas that are determined by the United States Army Corps of Engineers
100 to be wetlands under their jurisdiction pursuant to Section 404 of the federal Clean
101 Water Act, as amended, or wetland areas that are depicted or delineated on maps
102 compiled by the Department of Natural Resources or the United States Fish and
103 Wildlife Service pursuant to its National Wetlands Inventory Program;
- 104 (C) Significant ground-water recharge areas as identified on maps or data compiled by
105 the Department of Natural Resources;
- 106 (D) Undeveloped barrier islands or portions thereof as provided for in the federal
107 Coastal Barrier Resources Act, as amended;
- 108 (E) Habitats as certified by the Department of Natural Resources as containing species
109 that have been listed as either endangered or threatened under the federal Endangered
110 Species Act of 1973, as amended;
- 111 (F) River or stream corridors or buffers which shall be defined as those undeveloped
112 lands which are:
- 113 (i) Adjacent to rivers and perennial streams that are within the 100 year flood plain
114 as depicted on official maps prepared by the Federal Emergency Management
115 Agency; or
- 116 (ii) Within buffer zones adjacent to rivers or perennial streams, which buffer zones
117 are established by law or local ordinance and within which land-disturbing activity
118 is prohibited; or
- 119 (G)(i) Constructed storm-water wetlands of the free-water surface type certified by
120 the Department of Natural Resources under subsection (k) of Code Section 12-2-4 and
121 approved for such use by the local governing authority.
- 122 (ii) No property shall maintain its eligibility for current use assessment as a bona fide
123 conservation use property as defined in this subparagraph unless the owner of such
124 property files an annual inspection report from a licensed professional engineer
125 certifying that as of the date of such report the property is being maintained in a
126 proper state of repair so as to accomplish the objectives for which it was designed.
127 Such inspection report and certification shall be filed with the county board of tax
128 assessors on or before the last day for filing ad valorem tax returns in the county for
129 each tax year for which such assessment is sought; and
- 130 (3) The governing authority of a county in which the property that otherwise meets the
131 requirements for current use assessment is located may establish a minimum number of
132 acres as a condition for qualifying for the current use assessment. Such minimum shall
133 be up to 25 acres and shall apply exclusively to qualified property that is first made
134 subject to a covenant required by subsection (d) of this Code section or is subject to the
135 renewal of a previous covenant required by subsection (d) of this Code section on or after

136 January 1, 2012; provided, however, that if the owner of the subject property has filed
137 with the Internal Revenue Service a Form 4835 Schedule E or F pertaining to such
138 property, the provisions of this paragraph shall not apply to such property."

139 "(b) Except in the case of the underlying portion of a tract of real property on which is
140 actually located a constructed storm-water wetlands, the following additional rules shall
141 apply to the qualification of conservation use property for current use assessment:

142 (1) When one-half or more of the area of a single tract of real property is used for a
143 qualifying purpose, then such tract shall be considered as used for such qualifying
144 purpose unless some other type of business is being operated on the unused portion;
145 provided, however, that such unused portion must be minimally managed so that it does
146 not contribute significantly to erosion or other environmental or conservation problems.
147 The lease of hunting rights or the use of the property for hunting purposes shall not
148 constitute another type of business. The charging of admission for use of the property for
149 fishing purposes shall not constitute another type of business;

150 (2) The owner of a tract, lot, or parcel of land totaling less than ten acres shall be
151 required by the tax assessor to submit additional relevant records regarding proof of bona
152 fide conservation use; provided, however, that if the owner of the subject property has
153 filed with the Internal Revenue Service a Form 4835 Schedule E or F pertaining to such
154 property, the provisions of this paragraph shall not apply to such property;

155 (3) No property shall qualify as bona fide conservation use property if such current use
156 assessment would result in any person who has a beneficial interest in such property,
157 including any interest in the nature of stock ownership, receiving in any tax year any
158 benefit of current use assessment as to more than 2,000 acres. If any taxpayer has any
159 beneficial interest in more than 2,000 acres of tangible real property which is devoted to
160 bona fide conservation uses, such taxpayer shall apply for current use assessment only
161 as to 2,000 acres of such land;

162 (4) No property shall qualify as bona fide conservation use property if it is leased to a
163 person or entity which would not be entitled to conservation use assessment;

164 (5) No property shall qualify as bona fide conservation use property if such property is
165 at the time of application for current use assessment subject to a restrictive covenant
166 which prohibits the use of the property for the specific purpose described in subparagraph
167 (a)(1)(E) of this Code section for which bona fide conservation use qualification is
168 sought; and

169 (6) No otherwise qualified property shall be denied current use assessment on the
170 grounds that no soil map is available for the county in which such property is located;
171 provided, however, that if no soil map is available for the county in which such property
172 is located, the owner making an application for current use assessment shall provide the

173 board of tax assessors with a certified soil survey of the subject property unless another
174 method for determining the soil type of the subject property is authorized in writing by
175 such board."

176 "(i)(1) If ownership of all or a part of the property is acquired during a covenant period
177 by a person or entity qualified to enter into an original covenant, then the original
178 covenant may be continued by such acquiring party for the remainder of the term, in
179 which event no breach of the covenant shall be deemed to have occurred.

180 (2)(A) As used in this paragraph, the term 'contiguous' means real property within a
181 county that abuts, joins, or touches and has the same undivided common ownership.
182 If an applicant's tract is divided by a county boundary, public roadway, public
183 easement, public right of way, natural boundary, land lot line, or railroad track, then the
184 applicant has, at the time of the initial application, a one-time election to declare the
185 tract as contiguous irrespective of a county boundary, public roadway, public easement,
186 public right of way, natural boundary, land lot line, or railroad track.

187 (B) If a qualified owner has entered into an original bona fide conservation use
188 covenant and subsequently acquires additional qualified property contiguous to the
189 property in the original covenant, the qualified owner may elect to enter the
190 subsequently acquired qualified property into the original covenant for the remainder
191 of the ten-year period of the original covenant; provided, however, that such
192 subsequently acquired qualified property shall be less than 50 acres."

193 **SECTION 2.**

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

196 **SECTION 3.**

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