

House Bill 916 (AS PASSED HOUSE AND SENATE)

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 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~~ and its
37 underlying property; as used in this subparagraph, the term 'underlying property' means
38 the minimum lot size required for residential construction by local zoning ordinances
39 or two acres, whichever is less. This provision for excluding the underlying property
40 of a residence from eligibility in the conservation use covenant shall only apply to
41 property that is first made subject to a covenant or is subject to the renewal of a
42 previous covenant on or after the effective date of this subparagraph;

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

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

- 63 provided, however, that in the case of a newly formed family farm entity, an estimate
 64 of the income of such entity may be used to determine its eligibility;
- 65 (v) A bona fide nonprofit conservation organization designated under Section
 66 501(c)(3) of the Internal Revenue Code;
- 67 (vi) A bona fide club organized for pleasure, recreation, and other nonprofitable
 68 purposes pursuant to Section 501(c)(7) of the Internal Revenue Code; or
- 69 (vii) In the case of constructed storm-water wetlands, any person may own such
 70 property;
- 71 (D) Factors which may be considered in determining if such property is qualified may
 72 include, but not be limited to:
- 73 (i) The nature of the terrain;
- 74 (ii) The density of the marketable product on the land;
- 75 (iii) The past usage of the land;
- 76 (iv) The economic merchantability of the agricultural product; and
- 77 (v) The utilization or nonutilization of recognized care, cultivation, harvesting, and
 78 like practices applicable to the product involved and any implemented plans thereof;
 79 and
- 80 (E) Such property shall, if otherwise qualified, include, but not be limited to, property
 81 used for:
- 82 (i) Raising, harvesting, or storing crops;
- 83 (ii) Feeding, breeding, or managing livestock or poultry;
- 84 (iii) Producing plants, trees, fowl, or animals, including without limitation the
 85 production of fish or wildlife by maintaining not less than ten acres of wildlife habitat
 86 either in its natural state or under management, which shall be deemed a type of
 87 agriculture; provided, however, that no form of commercial fishing or fish production
 88 shall be considered a type of agriculture; or
- 89 (iv) Production of aquaculture, horticulture, floriculture, forestry, dairy, livestock,
 90 poultry, and apiarian products; or
- 91 (2) Not more than 2,000 acres of tangible real property, excluding the value of any
 92 improvements thereon, of a single owner of the types of environmentally sensitive
 93 property specified in this paragraph and certified as such by the Department of Natural
 94 Resources, if the primary use of such property is its maintenance in its natural condition
 95 or controlling or abating pollution of surface or ground waters of this state by storm-water
 96 runoff or otherwise enhancing the water quality of surface or ground waters of this state
 97 and if such owner meets the qualifications of subparagraph (C) of paragraph (1) of this
 98 subsection:

- 99 (A) Environmentally sensitive areas, including any otherwise qualified land area 1,000
 100 feet or more above the lowest elevation of the county in which such area is located that
 101 has a percentage slope, which is the difference in elevation between two points 500 feet
 102 apart on the earth divided by the horizontal distance between those two points, of 25
 103 percent or greater and shall include the crests, summits, and ridge tops which lie at
 104 elevations higher than any such area;
- 105 (B) Wetland areas that are determined by the United States Army Corps of Engineers
 106 to be wetlands under their jurisdiction pursuant to Section 404 of the federal Clean
 107 Water Act, as amended, or wetland areas that are depicted or delineated on maps
 108 compiled by the Department of Natural Resources or the United States Fish and
 109 Wildlife Service pursuant to its National Wetlands Inventory Program;
- 110 (C) Significant ground-water recharge areas as identified on maps or data compiled by
 111 the Department of Natural Resources;
- 112 (D) Undeveloped barrier islands or portions thereof as provided for in the federal
 113 Coastal Barrier Resources Act, as amended;
- 114 (E) Habitats as certified by the Department of Natural Resources as containing species
 115 that have been listed as either endangered or threatened under the federal Endangered
 116 Species Act of 1973, as amended;
- 117 (F) River or stream corridors or buffers which shall be defined as those undeveloped
 118 lands which are:
- 119 (i) Adjacent to rivers and perennial streams that are within the 100 year flood plain
 120 as depicted on official maps prepared by the Federal Emergency Management
 121 Agency; or
- 122 (ii) Within buffer zones adjacent to rivers or perennial streams, which buffer zones
 123 are established by law or local ordinance and within which land-disturbing activity
 124 is prohibited; or
- 125 (G)(i) Constructed storm-water wetlands of the free-water surface type certified by
 126 the Department of Natural Resources under subsection (k) of Code Section 12-2-4 and
 127 approved for such use by the local governing authority.
- 128 (ii) No property shall maintain its eligibility for current use assessment as a bona fide
 129 conservation use property as defined in this subparagraph unless the owner of such
 130 property files an annual inspection report from a licensed professional engineer
 131 certifying that as of the date of such report the property is being maintained in a
 132 proper state of repair so as to accomplish the objectives for which it was designed.
 133 Such inspection report and certification shall be filed with the county board of tax
 134 assessors on or before the last day for filing ad valorem tax returns in the county for
 135 each tax year for which such assessment is sought; ~~and.~~

136 ~~(3) The governing authority of a county in which the property that otherwise meets the~~
 137 ~~requirements for current use assessment is located may establish a minimum number of~~
 138 ~~acres as a condition for qualifying for the current use assessment. Such minimum shall~~
 139 ~~be up to 25 acres and shall apply exclusively to qualified property that is first made~~
 140 ~~subject to a covenant required by subsection (d) of this Code section or is subject to the~~
 141 ~~renewal of a previous covenant required by subsection (d) of this Code section on or after~~
 142 ~~January 1, 2012."~~

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

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

154 (2) The owner of a tract, lot, or parcel of land totaling less than ~~ten~~ 10 acres shall be
 155 required by the tax assessor to submit additional relevant records regarding proof of bona
 156 fide conservation use for qualified property that on or after the effective date of this
 157 paragraph is either first made subject to a covenant or is subject to a renewal of a
 158 previous covenant. If the owner of the subject property provides proof that such owner
 159 has filed with the Internal Revenue Service a Schedule E, reporting farm related income
 160 or loss, or a Schedule F, with Form 1040, or, if applicable, a Form 4835, pertaining to
 161 such property, the provisions of this paragraph, requiring additional relevant records
 162 regarding proof of bona fide conservation use, shall not apply to such property. Prior to
 163 a denial of eligibility under this paragraph, the tax assessor shall conduct and provide
 164 proof of a visual on-site inspection of the property; Reasonable notice shall be provided
 165 to the property owner before being allowed a visual, on-site inspection of the property by
 166 the tax assessor.

167 (3) No property shall qualify as bona fide conservation use property if such current use
 168 assessment would result in any person who has a beneficial interest in such property,
 169 including any interest in the nature of stock ownership, receiving in any tax year any
 170 benefit of current use assessment as to more than 2,000 acres. If any taxpayer has any
 171 beneficial interest in more than 2,000 acres of tangible real property which is devoted to

172 bona fide conservation uses, such taxpayer shall apply for current use assessment only
 173 as to 2,000 acres of such land;

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

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

181 (6) No otherwise qualified property shall be denied current use assessment on the
 182 grounds that no soil map is available for the county in which such property is located;
 183 provided, however, that if no soil map is available for the county in which such property
 184 is located, the owner making an application for current use assessment shall provide the
 185 board of tax assessors with a certified soil survey of the subject property unless another
 186 method for determining the soil type of the subject property is authorized in writing by
 187 such board."

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

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

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

205 (1)(A) The governing authority of a county shall not publish or promulgate any
 206 information which is inconsistent with the provisions of this Chapter.

207 **SECTION 2.**

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

210 **SECTION 3.**

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