

House Bill 197

By: Representatives Powell of the 171st, England of the 116th, Burns of the 159th, Peake of the 141st, Black of the 174th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad
2 valorem taxation of property, so as to provide for taxation of land subject to a forest land
3 conservation use covenant; to provide for a performance review board to be appointed by the
4 revenue commissioner; to change certain criteria relating to current use of conservation use
5 property; to provide for penalties for violations; to provide for valuation of property while
6 an appeal of the assessment is in process; to provide for related matters; to repeal conflicting
7 laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 style="text-align:center">**SECTION 1.**

10 Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem
11 taxation of property, is amended by adding a new subsection to Code Section 48-5-7, relating
12 to the assessment of tangible property, to read as follows:

13 "(c.5) Tangible real property which qualifies as forest land conservation use property
14 pursuant to the provisions of Code Section 48-5-7.7 shall be assessed for property tax
15 purposes at 30 percent of its current use value and shall be taxed on a levy made by each
16 respective tax jurisdiction according to 30 percent of the property's current use value."

17 style="text-align:center">**SECTION 2.**

18 Said chapter is further amended by revising subsections (b), (c), (i), (j), and (m) of Code
19 Section 48-5-7.7, relating to the "Georgia Forest Land Protection Act of 2008," as follows:

20 "(b) As used in this Code section, the term:

21 (1) 'Contiguous' means real property within a county that abuts, joins, or touches and has
22 the same undivided common ownership. If an applicant's tract is divided by a county
23 boundary, public roadway, public easement, public right of way, natural boundary, land
24 lot line, or railroad track, then the applicant has, at the time of the initial application, a
25 one-time election to declare the tract as contiguous irrespective of a county boundary,

26 public roadway, public easement, public right of way, natural boundary, land lot line, or
27 railroad track.

28 (2) 'Forest land conservation use property' means forest land each tract of which consists
29 of more than 200 acres of tangible real property of an owner subject to the following
30 qualifications:

31 (A) Such property must be owned by an individual or individuals or by any entity
32 registered to do business in this state;

33 (B) Such property excludes the entire value of any residence and its underlying land
34 located on the property; as used in this subparagraph, the term 'underlying land' means
35 the minimum lot size required for residential construction by local zoning ordinances
36 or two acres, whichever is less. This provision for excluding the underlying land of a
37 residence from eligibility in the conservation use covenant shall only apply to property
38 that is first made subject to such a covenant, or is subject to a renewal of a previous
39 conservation use covenant, on or after May 1, 2013;

40 (C) Such property has as its primary use the good faith subsistence or commercial
41 production of trees, timber, or other wood and wood fiber products from or on the land.
42 Such property may, in addition, have one or more of the following secondary uses:

- 43 (i) The promotion, preservation, or management of wildlife habitat;
- 44 (ii) Carbon sequestration in accordance with the Georgia Carbon Sequestration
45 Registry;
- 46 (iii) Mitigation and conservation banking that results in restoration or conservation
47 of wetlands and other natural resources; or
- 48 (iv) The production and maintenance of ecosystem products and services, such as,
49 but not limited to, clean air and water.

50 'Forest land conservation use property' may include, but is not be limited to, land that has
51 been certified as environmentally sensitive property by the Department of Natural
52 Resources or which is managed in accordance with a recognized sustainable forestry
53 certification program, such as the Sustainable Forestry Initiative, Forest Stewardship
54 Council, American Tree Farm Program, or an equivalent sustainable forestry certification
55 program approved by the State Forestry Commission.

56 (3) 'Qualified owner' means any individual or individuals or any entity registered to do
57 business in this state.

58 (4) 'Qualified property' means forest land conservation use property as defined in this
59 subsection.

60 (5) 'Qualifying purpose' means a use that meets the qualifications of subparagraph (C)
61 of paragraph (2) of this subsection.

62 (c) The following additional rules shall apply to the qualification of forest land
63 conservation use property for conservation use assessment:

64 (1) All contiguous forest land conservation use property of an owner within a county for
65 which forest land conservation use assessment is sought under this Code section shall be
66 in a single covenant unless otherwise required under subsection (e) of this Code section;

67 (2) When one-half or more of the area of a single tract of real property is used for the
68 qualifying purpose, then the entirety of such tract shall be considered as used for such
69 qualifying purpose unless some other type of business is being operated on the portion
70 of the tract that is not being used for a qualifying purpose; provided, however, that such
71 other portion must be minimally managed so that it does not contribute significantly to
72 erosion or other environmental or conservation problems or must be used for one or more
73 secondary purposes specified in subparagraph (b)(2)(C) of this Code section. The
74 following uses of real property shall not constitute using the property for another type of
75 business:

76 (A) The lease of hunting rights or the use of the property for hunting purposes; ~~shall~~
77 ~~not constitute another type of business.~~

78 (B) The charging of admission for use of the property for fishing purposes; ~~shall not~~
79 ~~constitute another type of business.~~

80 (C) The production of pine straw ~~shall not constitute another type of business;~~ and

81 (D) The granting of easements solely for ingress and egress; and

82 (3) No otherwise qualified forest land conservation use property shall be denied
83 conservation use assessment on the grounds that no soil map is available for the county
84 or counties, if applicable, in which such property is located; provided, however, that if
85 no soil map is available for the county or counties, if applicable, in which such property
86 is located, the board of tax assessors shall use the current soil classification applicable to
87 such property."

88 "(i)(1) If ownership of all or a part of ~~the~~ a forest land conservation use property
89 ~~constituting at least 200 acres~~ is acquired during a covenant period by another qualified
90 ~~owner qualified to enter into an original forest land conservation use covenant,~~ then the
91 original covenant may be continued only by both such acquiring owner and the transferor
92 for the remainder of the term, in which event, no breach of the covenant shall be deemed
93 to have occurred if the total size of a tract from which the transfer was made is reduced
94 below 200 acres or the size of the tract transferred is less than 200 acres. Following the
95 expiration of the original covenant, no new covenant shall be entered with respect to ~~the~~
96 either tract ~~from which the transfer was made~~ unless such tract exceeds 200 acres. If a
97 qualified owner has entered into an original forest land conservation use covenant and
98 subsequently acquires additional qualified property contiguous to the property in the

99 original covenant, the qualified owner may elect to enter the subsequently acquired
 100 qualified property into the original covenant for the remainder of the 15 year period of
 101 the original covenant; provided, however, that such subsequently acquired qualified
 102 property shall be less than 200 acres.

103 (2) If, following such transfer, a breach of the covenant occurs by the acquiring owner,
 104 the penalty and interest shall apply to the entire transferred tract and shall be paid by the
 105 acquiring owner who breached the covenant. In such case, the covenant shall terminate
 106 on such entire transferred tract but shall continue on such entire remaining tract from
 107 which the transfer was made and on which the breach did not occur for the remainder of
 108 the original covenant.

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

115 (j)(1) For each taxable year beginning on or after January 1, 2010, all applications for
 116 conservation use assessment under this Code section, including any forest land covenant
 117 required under this Code section, shall be filed on or before the last day for filing ad
 118 valorem tax ~~returns in each county in which the property is located for the tax year for~~
 119 ~~which such forest land conservation use assessment is sought, except that in the case of~~
 120 ~~property which is the subject of a reassessment by the board of tax assessors an~~
 121 ~~application for forest land conservation use assessment may be filed in conjunction with~~
 122 ~~or in lieu of an appeal of the reassessment~~ appeals of the annual notice of assessment
 123 except that in the case of property which is the subject of a tax appeal of the annual notice
 124 of assessment under Code Section 48-5-311, an application for forest land conservation
 125 use assessment may be filed at any time while such appeal is pending. An application for
 126 continuation of such forest land conservation use assessment upon a change in ownership
 127 of all or a part of the qualified property shall be filed on or before the last date for filing
 128 tax returns in the year following the year in which the change in ownership occurred.
 129 Applications for forest land conservation use assessment under this Code section shall be
 130 filed with the county board of tax assessors in which the property is located who shall
 131 approve or deny the application. Such county board of tax assessors shall file a copy of
 132 the approved covenant in the office of the clerk of the superior court in the county in
 133 which the eligible property is located. The clerk of the superior court shall file and index
 134 such covenant in the real property records maintained in the clerk's office. If the
 135 covenant is not so recorded in the real property records, a transferee of the property

136 affected shall not be bound by the covenant or subject to any penalty for its breach. The
 137 fee of the clerk of the superior court for recording such covenants shall be paid by the
 138 qualified owner of the eligible property with the application for forest land conservation
 139 use assessment under this Code section and shall be paid to the clerk by the board of tax
 140 assessors when the application is filed with the clerk. If the application is denied, the
 141 board of tax assessors shall notify the applicant in the same manner that notices of
 142 assessment are given pursuant to Code Section 48-5-306 and shall return any filing fees
 143 advanced by the owner. Appeals from the denial of an application or covenant by the
 144 board of tax assessors shall be made in the same manner that other property tax appeals
 145 are made pursuant to Code Section 48-5-311.

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

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

152 (2) Except as provided in subsection (i) of this Code section and paragraph (4) of this
 153 subsection, the penalty shall be applicable to the entire tract which is the subject of the
 154 covenant, and:

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

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

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

170 (3) ~~Any such penalty shall bear interest at the rate specified in Code Section 48-2-40~~
 171 ~~from the date the covenant is breached. The penalty shall be twice the difference between~~
 172 ~~the total amount of the tax paid pursuant to the conservation use assessment under this~~

173 Code section and the total amount of taxes which would otherwise have been due under
 174 this chapter for each completed or partially completed year of the covenant period. Any
 175 such penalty shall bear interest at the rate specified in Code Section 48-2-40 from the date
 176 the covenant is breached.

177 (4) If ownership of a portion of the land subject to the original covenant constituting at
 178 least 200 acres is transferred to another owner qualified to enter into an original forest
 179 land conservation use covenant in a bona fide arm's length transaction and breach
 180 subsequently occurs, then the penalty shall either be assessed against the entire remaining
 181 tract from which the transfer was made or the entire transferred tract, on whichever the
 182 breach occurred. The calculation of penalties in paragraph ~~(2)~~ (3) of this subsection shall
 183 be used except that the penalty amount resulting from such calculation shall be multiplied
 184 by the percentage which represents the acreage of such tract on which the breach occurs
 185 to the original covenant acreage. The resulting amount shall be the penalty amount owed
 186 by the owner of such tract of land on which the breach occurred."

187 SECTION 3.

188 Said chapter is further amended by revising paragraph (1) of subsection (b) of Code Section
 189 48-5-269, relating to uniform rules and regulations establishing a table of values for the
 190 current use value of conservation use property, as follows:

191 "(1) Sales data for arm's length, bona fide sales of comparable real property with and for
 192 the same existing use and per-acre property values determined by the capitalization of net
 193 income before property taxes, with sales data to be weighted ~~35~~ 10 percent and income
 194 capitalization values to be weighted ~~65~~ 90 percent. All sales data shall be adjusted to
 195 remove the influence of the size of the tract on the sales price of tracts below ~~50~~ 100 acres
 196 in size. Income capitalization values shall be derived from the respective conservation
 197 use property classifications, with consideration given to productivity of the respective
 198 major geological or geographical regions, and for this purpose:

199 (A) Net income before property taxes shall be determined for:

200 (i) Agricultural land by calculating a weighted average of all crop and pasture
 201 acreage in each district as designated by paragraph (2) of this subsection in the
 202 following manner:

203 (I) Crop land by calculating the five-year weighted average of per-acre net income
 204 before property taxes from the major predominant acreage crops harvested in
 205 Georgia, and as used in this subdivision, the term 'predominant acreage crops'
 206 means the top acreage crops with production in no less than 125 counties of the
 207 state; and

- 208 (II) Pasture property by calculating a five-year weighted average of per-acre rental
 209 rates from pasture land; and
- 210 (ii) Forest property by calculating a five-year weighted average of per-acre net
 211 income before property taxes from hardwood and softwood harvested in Georgia. For
 212 purposes of this division, the term 'property taxes' shall not include the tax under Code
 213 Section 48-5-7.5 which tax shall be considered in calculating net income; and
- 214 (B) The capitalization rate shall be based upon:
- 215 (i) The long-term financing rate available on January 1 from the Regional Federal
 216 Land Bank located in Columbia, South Carolina, and published pursuant to 26 U.S.C.
 217 Section 2032A(e)(7)(A)(ii), further referenced by regulations 26 C.F.R.
 218 20.2032A-4(e);
- 219 (ii) The arithmetic mean of Federal Farm Credit bond yields, whose maturity is no
 220 less than five years in the future, as published in the *Wall Street Journal* on January
 221 1 or the most recent business day of the current year, rounded to the nearest
 222 hundredth;
- 223 (iii) For the purpose of determining the income capitalization rate, divisions (i) and
 224 (ii) of this subparagraph shall be given weighted influences of 80 percent and 20
 225 percent, respectively; and
- 226 (iv) A property tax component which shall be the five-year average true tax rate for
 227 the unincorporated area of each county located within the regions established by
 228 paragraph (2) of this subsection;"

229 **SECTION 4.**

230 Said chapter is further amended by revising Code Section 48-5-295.1, relating to the
 231 performance review board, as follows:

232 "48-5-295.1.

233 (a) The commissioner shall appoint an independent performance review board if he or she
 234 determines, through the examination of the digest for any county in a digest review year
 235 pursuant to Code Section 48-5-342, there is evidence which calls into question the
 236 technical competence of appraisal techniques and compliance with state law and
 237 regulations, including the Property Tax Appraisal Manual, with respect to all actions of a
 238 county board of tax assessors and its appraisal staff.

239 ~~(a)~~(b) The county governing authority may, upon adoption of a resolution, request that a
 240 performance review of the county board of tax assessors be conducted. Such resolution
 241 shall be transmitted to the commissioner who shall appoint an independent performance
 242 review board within 30 days after receiving such resolution.

243 (c) The commissioner shall appoint three competent persons to serve as members of the
 244 performance review board, one of whom shall be an employee of the department and two
 245 of whom shall be ~~assessors or chief appraisers, neither of whom is members of the board~~
 246 ~~or~~ a chief appraiser for the county under review.

247 ~~(b)~~(d) It shall be the duty of a performance review board to make a thorough and complete
 248 investigation of the county board of tax assessors with respect to all actions of the county
 249 board of tax assessors and appraisal staff regarding the technical competency of appraisal
 250 techniques and compliance with state law and regulations, including the Property Tax
 251 Appraisal Manual. The performance review board shall issue a written report of its
 252 findings to the commissioner and the county governing authority which shall include such
 253 evaluations, judgments, and recommendations as it deems appropriate. The county
 254 governing authority shall reimburse the members of the performance review board for
 255 reasonable expenses incurred in the performance of their duties, including mileage, meals,
 256 lodging, and costs of materials.

257 ~~(c)~~(e) The findings of the report of the review board under subsection ~~(b)~~ (d) of this Code
 258 section or of any audit performed by the Department of Revenue at the request of the
 259 Governor may be grounds for removal of one or more members of the county board of tax
 260 assessors pursuant to subsection (b) of Code Section 48-5-295.

261 (f) The findings of the report of the review board under subsection (d) of this Code section
 262 or of any audit performed by the Department of Revenue or the Department of Audits shall
 263 be grounds for the state to withhold local assistance grants pursuant to Code Section
 264 48-5A-3. If the findings in the audit of the performance review board indicate that the
 265 provisions of paragraph (6) of Code Section 48-5-2 have been knowingly violated by a
 266 local government in order to receive a larger local assistance grant than allowed by law,
 267 then the most recent local assistance grant requested by the local government shall be
 268 withheld by the Department of Revenue. For a second or subsequent offense, the next two
 269 requests for local assistance grants shall be withheld by the Department of Revenue.

270 ~~(d)~~(g) The commissioner shall promulgate such rules and regulations as may be necessary
 271 for the administration of this Code section."

272 SECTION 5.

273 Said chapter is further amended by revising division (e)(6)(D)(iii) of Code Section 48-5-311,
 274 relating to county boards of equalization and review of assessments, as follows:

275 "(iii)(I) If the county's tax bills are issued before the county board of equalization
 276 has rendered its decision on property which is on appeal, the county board of tax
 277 assessors shall specify to the county tax commissioner the ~~higher of the taxpayer's~~
 278 ~~return valuation or 85 percent of the current year's valuation as set by the county~~

279 ~~board of tax assessors. lesser of the valuation in the year preceding the year in~~
 280 ~~which the appeal was filed or 85 percent of the current year's value, unless the~~
 281 ~~property in issue has been issued a building permit and structural improvements~~
 282 ~~have occurred, or structural improvements have been made without a building~~
 283 ~~permit, in which case, it shall specify 85 percent of the current year's valuation as~~
 284 ~~set by the county board of assessors. Depending on the circumstances of the~~
 285 ~~property, this~~ This amount shall be the basis for a temporary tax bill to be issued;
 286 ~~provided, however, that the taxpayer may elect to pay the temporary tax bill in the~~
 287 ~~amount of 100 percent of the current year's valuation if no property improvement~~
 288 ~~has occurred. The county tax commissioner shall have the authority to adjust such~~
 289 ~~tax bill to reflect the 100 percent value as requested by the taxpayer. Such tax bill~~
 290 shall be accompanied by a notice to the taxpayer that the bill is a temporary tax bill
 291 pending the outcome of the appeal process. Such notice shall also indicate that
 292 upon resolution of the appeal, there may be additional taxes due or a refund issued.
 293 (II) If the final determination of the value on appeal is less than the valuation thus
 294 used, the taxpayer shall receive a deduction in such taxpayer's taxes for the year in
 295 question. Such deduction shall be refunded to the taxpayer or to the entity or
 296 transferee that paid the taxes and shall include interest on the amount of such
 297 deduction at the same rate as specified in Code Section 48-2-35 which shall accrue
 298 from November 15 of the taxable year in question or the date the final installment
 299 of the tax was due or was paid, whichever is later. In no event shall the amount of
 300 ~~such~~ interest exceed ~~\$150.00~~ \$5,000.00.
 301 (III) If the final determination of value on appeal is greater than the valuation thus
 302 used, the taxpayer shall be liable for the increase in taxes for the year in question
 303 due to the increased valuation fixed on appeal with interest at the rate as specified
 304 in Code Section 48-2-35. ~~Such interest shall accrue from November 15 of the~~
 305 ~~taxable year in question or the date the final installment of the tax was due to the~~
 306 ~~date the additional taxes are remitted, but in~~ In no event shall the amount of such
 307 interest exceed ~~\$150.00~~ \$5,000.00."

308 **SECTION 6.**

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