

House Bill 197 (AS PASSED HOUSE AND SENATE)

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 a revision of the requirements for land that
3 is classified as bona fide conservation use property; to provide for changes to requirements
4 for land subject to a forest land conservation use covenant; to provide for a performance
5 review board to be appointed by the revenue commissioner; to change certain criteria relating
6 to current use of conservation use property; to provide for penalties for violations; to provide
7 for valuation of property while an appeal of the assessment is in process; to provide for
8 related matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

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

11 Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to ad valorem
12 taxation of property, is amended in paragraph (1) of subsection (a) of Code Section 48-5-7.4,
13 relating to bona fide conservation use property, by deleting "and" at the end of division (v)
14 of subparagraph (D), by replacing "or" with "and" at the end of division (iv) of subparagraph
15 (E), and by adding a new subparagraph to read as follows:

16 "(F) The primary purpose described in this paragraph includes land conservation and
17 ecological forest management in which commercial production of wood and wood fiber
18 products may be undertaken primarily for conservation and restoration purposes rather
19 than financial gain; or"

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

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

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

24 (1) 'Contiguous' means real property within a county that abuts, joins, or touches and has
25 the same undivided common ownership. If an applicant's tract is divided by a county

26 boundary, public roadway, public easement, public right of way, natural boundary, land
 27 lot line, or railroad track, then the applicant has, at the time of the initial application, a
 28 one-time election to declare the tract as contiguous irrespective of a county boundary,
 29 public roadway, public easement, public right of way, natural boundary, land lot line, or
 30 railroad track.

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

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

36 (B) Such property excludes the entire value of any residence and its underlying land
 37 located on the property; as used in this subparagraph, the term 'underlying land' 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 land of a
 40 residence from eligibility in the conservation use covenant shall only apply to property
 41 that is first made subject to such a covenant, or is subject to a renewal of a previous
 42 conservation use covenant, on or after January 1, 2014;

43 (C) Such property has as its primary use the good faith subsistence or commercial
 44 production of trees, timber, or other wood and wood fiber products from or on the land.
 45 Such primary use includes land conservation and ecological forest management in
 46 which commercial production of wood and wood fiber products may be undertaken
 47 primarily for conservation and restoration purposes rather than financial gain. Such
 48 property may, in addition, have one or more of the following secondary uses:

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

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

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

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

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

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

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

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

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

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

86 (C) The production of pine straw shall not constitute another type of business or native
87 grass seed; and

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

89 (E) Any type of business devoted to secondary uses listed under subparagraph
90 (b)(2)(C) of this Code section; and

91 (3) No otherwise qualified forest land conservation use property shall be denied
92 conservation use assessment on the grounds that no soil map is available for the county
93 or counties, if applicable, in which such property is located; provided, however, that if
94 no soil map is available for the county or counties, if applicable, in which such property
95 is located, the board of tax assessors shall use the current soil classification applicable to
96 such property."

97 "(f)(1) A qualified owner shall not be authorized to make application for and receive
98 conservation use assessment under this Code section for any property which at the time

99 of such application is receiving preferential assessment under Code Section 48-5-7.1 or
 100 current use assessment under Code Section 48-5-7.4; provided, however, that if any
 101 property is subject to a covenant under either of those Code sections, it may be changed
 102 from such covenant and placed under a covenant under this Code section if it is otherwise
 103 qualified. Any such change shall terminate the existing covenant and shall not constitute
 104 a breach thereof. No property may be changed more than once under this ~~subsection~~
 105 paragraph.

106 (2) Any property that is subject to a covenant under this Code section and subsequently
 107 fails to adhere to the qualifying purpose, as defined in paragraph (5) of subsection (b) of
 108 this Code section, may be changed from the covenant under this Code section and placed
 109 under a covenant provided for in Code Section 48-5-7.4 if the property otherwise
 110 qualifies under the provisions of that Code section. In such a case, the existing covenant
 111 under this Code section shall be terminated, and the change shall not constitute a breach
 112 thereof. No property may be changed more than once under this paragraph."

113 "(i)(1) If ownership of all or a part of ~~the a~~ forest land conservation use property
 114 ~~constituting at least 200 acres~~ is acquired during a covenant period by another qualified
 115 ~~owner qualified to enter into an original forest land conservation use covenant~~, then the
 116 original covenant may be continued only by both such acquiring owner and the transferor
 117 for the remainder of the term, in which event, no breach of the covenant shall be deemed
 118 to have occurred if the total size of a tract from which the transfer was made is reduced
 119 below 200 acres or the size of the tract transferred is less than 200 acres. Following the
 120 expiration of the original covenant, no new covenant shall be entered with respect to ~~the~~
 121 either tract ~~from which the transfer was made~~ unless such tract exceeds 200 acres. If a
 122 qualified owner has entered into an original forest land conservation use covenant and
 123 subsequently acquires additional qualified property contiguous to the property in the
 124 original covenant, the qualified owner may elect to enter the subsequently acquired
 125 qualified property into the original covenant for the remainder of the 15 year period of
 126 the original covenant; provided, however, that such subsequently acquired qualified
 127 property shall be less than 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 each taxable year beginning on or after January 1, ~~2010~~ 2014, all applications
 141 for conservation use assessment under this Code section, including any forest land
 142 covenant required under this Code section, shall be filed on or before the last day for
 143 filing ad valorem tax ~~returns in each county in which the property is located for the tax~~
 144 ~~year for which such forest land conservation use assessment is sought, except that in the~~
 145 ~~case of property which is the subject of a reassessment by the board of tax assessors an~~
 146 ~~application for forest land conservation use assessment may be filed in conjunction with~~
 147 ~~or in lieu of an appeal of the reassessment~~ appeals of the annual notice of assessment
 148 except that in the case of property which is the subject of a tax appeal of the annual notice
 149 of assessment under Code Section 48-5-311, an application for forest land conservation
 150 use assessment may be filed at any time while such appeal is pending. An application for
 151 continuation of such forest land conservation use assessment upon a change in ownership
 152 of all or a part of the qualified property shall be filed on or before the last date for filing
 153 tax returns in the year following the year in which the change in ownership occurred.
 154 Applications for forest land conservation use assessment under this Code section shall be
 155 filed with the county board of tax assessors in which the property is located who shall
 156 approve or deny the application. Such county board of tax assessors shall file a copy of
 157 the approved covenant in the office of the clerk of the superior court in the county in
 158 which the eligible property is located. The clerk of the superior court shall file and index
 159 such covenant in the real property records maintained in the clerk's office. If the
 160 covenant is not so recorded in the real property records, a transferee of the property
 161 affected shall not be bound by the covenant or subject to any penalty for its breach. The
 162 fee of the clerk of the superior court for recording such covenants shall be paid by the
 163 qualified owner of the eligible property with the application for forest land conservation
 164 use assessment under this Code section and shall be paid to the clerk by the board of tax
 165 assessors when the application is filed with the clerk. If the application is denied, the
 166 board of tax assessors shall notify the applicant in the same manner that notices of
 167 assessment are given pursuant to Code Section 48-5-306 and shall return any filing fees
 168 advanced by the owner. Appeals from the denial of an application or covenant by the
 169 board of tax assessors shall be made in the same manner that other property tax appeals
 170 are made pursuant to Code Section 48-5-311.

171 (2) In the event such application is approved, the qualified owner shall continue to
 172 receive annual notification of any change in the forest land fair market value of such

173 property, and any appeals with respect to such valuation shall be made in the same
 174 manner as other property tax appeals are made pursuant to Code Section 48-5-311."

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

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

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

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

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

195 ~~(3) Any such penalty shall bear interest at the rate specified in Code Section 48-2-40~~
 196 ~~from the date the covenant is breached. The penalty shall be twice the difference between~~
 197 ~~the total amount of the tax paid pursuant to the conservation use assessment under this~~
 198 ~~Code section and the total amount of taxes which would otherwise have been due under~~
 199 ~~this chapter for each completed or partially completed year of the covenant period. Any~~
 200 ~~such penalty shall bear interest at the rate specified in Code Section 48-2-40 from the date~~
 201 ~~the covenant is breached.~~

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

210 to the original covenant acreage. The resulting amount shall be the penalty amount owed
 211 by the owner of such tract of land on which the breach occurred."

212 **SECTION 3.**

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

215 "48-5-295.1.

216 (a) The county governing authority may, upon adoption of a resolution, request that a
 217 performance review of the county board of tax assessors be conducted. Such resolution
 218 shall be transmitted to the commissioner who shall appoint an independent performance
 219 review board within 30 days after receiving such resolution. The commissioner shall
 220 appoint three competent persons to serve as members of the performance review board, one
 221 of whom shall be an employee of the department and two of whom shall be ~~assessors or~~
 222 ~~chief appraisers, provided that neither chief appraiser shall be who are not members of the~~
 223 ~~board or a chief appraiser for the county under review.~~

224 (b) It shall be the duty of a performance review board to make a thorough and complete
 225 investigation of the county board of tax assessors with respect to all actions of the county
 226 board of tax assessors and appraisal staff regarding the technical competency of appraisal
 227 techniques and compliance with state law and regulations, including the Property Tax
 228 Appraisal Manual. The performance review board shall issue a written report of its
 229 findings to the commissioner and the county governing authority which shall include such
 230 evaluations, judgments, and recommendations as it deems appropriate. The county
 231 governing authority shall reimburse the members of the performance review board for
 232 reasonable expenses incurred in the performance of their duties, including mileage, meals,
 233 lodging, and costs of materials.

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

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

240 **SECTION 4.**

241 Said chapter is further amended by adding a new Code section to read as follows:

242 "48-5-295.2.

243 (a) The commissioner shall appoint an independent performance review board if he or she
 244 determines, through the examination of the digest for any county in a digest review year

245 pursuant to Code Section 48-5-342, that there is evidence which calls into question the
 246 technical competence of appraisal techniques and compliance with state law and
 247 regulations, including the Property Tax Appraisal Manual, with respect to the conservation
 248 use value of forest land.

249 (b) The commissioner shall appoint three competent persons to serve as members of the
 250 performance review board, one of whom shall be an employee of the department and two
 251 of whom shall be chief appraisers, provided that neither chief appraiser shall be a chief
 252 appraiser for the county under review.

253 (c) The performance review board shall issue a written report of its findings to the
 254 commissioner and the county governing authority which shall include such evaluations,
 255 judgments, and recommendations as it deems appropriate. The county governing authority
 256 shall reimburse the members of the performance review board for reasonable expenses
 257 incurred in the performance of their duties, including mileage, meals, lodging, and costs
 258 of materials.

259 (d) The findings of the report of the review board under subsection (c) of this Code section
 260 or of any audit performed by the Department of Revenue or the Department of Audits shall
 261 be grounds for the state to withhold local assistance grants pursuant to Code Section
 262 48-5A-3; provided, however, that any portion of a local assistance grant designated for use
 263 by a board of education of any political subdivision shall not be withheld pursuant to this
 264 subsection. If the findings in the report 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 (e) The commissioner shall promulgate such rules and regulations as may be necessary for
 271 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 and shall include~~
 296 ~~interest on the amount of such deduction at the same rate as specified in Code~~
 297 ~~Section 48-2-35 which shall accrue from November 15 of the taxable year in~~
 298 ~~question or the date the final installment of the tax was due or was paid, whichever~~
 299 ~~is later. In no event shall the amount of such interest exceed \$150.00. For the~~
 300 ~~purposes of this Code section, any final value that causes a deduction in taxes and~~
 301 ~~creates a refund that is owed to the taxpayer shall be paid by the tax commissioner~~
 302 ~~to the taxpayer, entity, or transferee who paid the taxes within 60 days from the date~~
 303 ~~of the final determination of value. Such refund shall include interest on the amount~~
 304 ~~of the deduction at the same rate specified in Code Section 48-2-35 which shall~~
 305 ~~accrue from November 15 of the taxable year in question or the date the final~~
 306 ~~installment was due or was paid, whichever is later, through to the date paid or 60~~
 307 ~~days from the date of the final determination, whichever is earlier. In no event shall~~
 308 ~~the amount of such interest exceed \$150.00 for homestead property or \$5,000.00 for~~
 309 ~~nonhomestead property. Any refund paid after the sixtieth day shall accrue interest~~
 310 ~~from the sixty-first day until paid with interest at the same rate specified in Code~~
 311 ~~Section 48-2-35. The interest accrued after the sixtieth day and forward shall not~~
 312 ~~be subject to the limits imposed by this subsection. The tax commissioner shall pay~~
 313 ~~the tax refund and any interest for the refund from current collections in the same~~
 314 ~~proportion for each of the levying authorities for whom the taxes were collected.~~
 315 ~~(III) If the final determination of value on appeal is greater than the valuation thus~~
 316 ~~used, the taxpayer shall be liable for the increase in taxes for the year in question~~
 317 ~~due to the increased valuation fixed on appeal with interest at the rate as specified~~

318 ~~in Code Section 48-2-35. Such interest shall accrue from November 15 of the~~
319 ~~taxable year in question or the date the final installment of the tax was due to the~~
320 ~~date the additional taxes are remitted, but in no event shall the amount of such~~
321 ~~interest exceed \$150.00. For the purposes of this Code section, any final value that~~
322 ~~causes an increase in taxes and creates an additional billing shall be paid to the tax~~
323 ~~commissioner as any other tax due along with interest as specified in Code Section~~
324 ~~48-2-35. The tax commissioner shall adjust the tax bill, including interest, within~~
325 ~~15 days from the date of the final determination of value and mail the adjusted bill~~
326 ~~to the taxpayer. Such interest shall accrue from November 15 of the taxable year~~
327 ~~in question or the final installment of the tax was due through to the date the bill~~
328 ~~was adjusted and mailed or 15 days from the date of the final determination,~~
329 ~~whichever is earlier. The interest computed on the additional billing shall in no~~
330 ~~event exceed \$150.00 for homestead property or \$5,000.00 for nonhomestead~~
331 ~~property. After the tax bill notice has been mailed out, the taxpayer shall be~~
332 ~~afforded 60 days from the date of the postmark to make full payment of the adjusted~~
333 ~~bill and interest. Once the 60 day payment period has expired, the bill shall be~~
334 ~~considered past due, and interest shall accrue as specified in Code Section 48-2-40~~
335 ~~without limit until the bill is paid in full. Once past due, all other fees, penalties,~~
336 ~~late charges, and collection notices shall apply as prescribed in this chapter for the~~
337 ~~collection of delinquent taxes."~~

338

SECTION 6.

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