

House Bill 373

By: Representative Knight of the 130th

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 change
3 certain requirements for proof of bona fide conservation use; to provide for payment of
4 attorney's fees and interest in certain situations; to provide for related matters; to provide for
5 an effective date; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 1 of Chapter 5 of Title 48 of the Official Code of Georgia Annotated, relating to
9 general provisions regarding ad valorem taxation of property, is amended by revising
10 subsections (a), (b), (j), (k.1), and (l) of Code Section 48-5-7.4, relating to bona fide
11 conservation use property, as follows:

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

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

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

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

27 (i) A person who owns an interest in a family owned farm entity as described in
 28 division (1)(C)(iv) of this subsection shall be considered to own only the percent of
 29 the bona fide conservation use property held by such family owned farm entity that
 30 is equal to the percent interest owned by such person in such family owned farm
 31 entity; and

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

39 (B) Such property excludes the entire value of any residence and its underlying
 40 property; as used in this subparagraph, the term 'underlying property' means the
 41 minimum lot size required for residential construction by local zoning ordinances or
 42 two acres, whichever is less. The board of tax assessors shall not require a recorded
 43 plat or survey to set the boundaries of the underlying property. This provision for
 44 excluding the underlying property of a residence from eligibility in the conservation use
 45 covenant shall only apply to property that is first made subject to a covenant or is
 46 subject to the renewal of a previous covenant on or after May 1, 2012;

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

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

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

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

53 (iv) A family owned farm entity, such as a family corporation, a family partnership,
 54 a family general partnership, a family limited partnership, a family limited
 55 corporation, or a family limited liability company, all of the interest of which is
 56 owned by one or more natural or naturalized citizens related to each other by blood
 57 or marriage within the fourth degree of civil reckoning, except that, solely with
 58 respect to a family limited partnership, a corporation, limited partnership, limited
 59 corporation, or limited liability company may serve as a general partner of the family
 60 limited partnership and hold no more than a 5 percent interest in such family limited
 61 partnership, an estate of which the devisees or heirs are one or more natural or
 62 naturalized citizens, or a trust of which the beneficiaries are one or more natural or
 63 naturalized citizens and which family owned farm entity derived 80 percent or more

64 of its gross income from bona fide conservation uses, including earnings on
 65 investments directly related to past or future bona fide conservation uses, within this
 66 state within the year immediately preceding the year in which eligibility is sought;
 67 provided, however, that in the case of a newly formed family farm entity, an estimate
 68 of the income of such entity may be used to determine its eligibility;

69 (v) A bona fide nonprofit ~~conservation~~ organization designated under Section
 70 501(c)(3) of the Internal Revenue Code;

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

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

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

77 (i) The nature of the terrain;

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

79 (iii) The past usage of the land;

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

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

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

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

86 (ii) Feeding, breeding, or managing livestock, animals, or poultry;

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

92 (iv) Production of aquaculture, horticulture, floriculture, forestry, dairy, livestock,
 93 poultry, and apiarian products; and

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

98 (2) Not more than 2,000 acres of tangible real property, excluding the value of any
 99 improvements thereon, of a single owner of the types of environmentally sensitive
 100 property specified in this paragraph and certified as such by the Department of Natural

101 Resources, if the primary use of such property is its maintenance in its natural condition
102 or controlling or abating pollution of surface or ground waters of this state by storm-water
103 runoff or otherwise enhancing the water quality of surface or ground waters of this state
104 and if such owner meets the qualifications of subparagraph (C) of paragraph (1) of this
105 subsection:

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

112 (B) Wetland areas that are determined by the United States Army Corps of Engineers
113 to be wetlands under their jurisdiction pursuant to Section 404 of the federal Clean
114 Water Act, as amended, or wetland areas that are depicted or delineated on maps
115 compiled by the Department of Natural Resources or the United States Fish and
116 Wildlife Service pursuant to its National Wetlands Inventory Program;

117 (C) Significant ground-water recharge areas as identified on maps or data compiled by
118 the Department of Natural Resources;

119 (D) Undeveloped barrier islands or portions thereof as provided for in the federal
120 Coastal Barrier Resources Act, as amended;

121 (E) Habitats as certified by the Department of Natural Resources as containing species
122 that have been listed as either endangered or threatened under the federal Endangered
123 Species Act of 1973, as amended;

124 (F) River or stream corridors or buffers which shall be defined as those undeveloped
125 lands which are:

126 (i) Adjacent to rivers and perennial streams that are within the 100 year flood plain
127 as depicted on official maps prepared by the Federal Emergency Management
128 Agency; or

129 (ii) Within buffer zones adjacent to rivers or perennial streams, which buffer zones
130 are established by law or local ordinance and within which land-disturbing activity
131 is prohibited; or

132 (G)(i) Constructed storm-water wetlands of the free-water surface type certified by
133 the Department of Natural Resources under subsection (k) of Code Section 12-2-4 and
134 approved for such use by the local governing authority.

135 (ii) No property shall maintain its eligibility for current use assessment as a bona fide
136 conservation use property as defined in this subparagraph unless the owner of such
137 property files an annual inspection report from a licensed professional engineer

138 certifying that as of the date of such report the property is being maintained in a
 139 proper state of repair so as to accomplish the objectives for which it was designed.
 140 Such inspection report and certification shall be filed with the county board of tax
 141 assessors on or before the last day for filing ad valorem tax returns in the county for
 142 each tax year for which such assessment is sought."

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~~ wetland, the following additional rules
 145 shall 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)(A) The owner of a tract, lot, or parcel of land totaling less than ten acres shall be
 155 required by the tax assessor to submit additional relevant records regarding proof of
 156 bona fide conservation use for qualified property that on or after May 1, 2012, is either
 157 first made subject to a covenant or is subject to a renewal of a previous covenant. ~~If the~~
 158 ~~owner of the subject property provides proof~~ The provisions of this paragraph relating
 159 to requiring additional relevant records regarding proof of bona fide conservation use
 160 shall not apply to such property if the owner of the subject property provides one or
 161 more of the following:

162 (i) Proof that such owner has filed with the Internal Revenue Service a Schedule E,
 163 reporting farm related income or loss, or a Schedule F, with Form 1040, or, if
 164 applicable, a Form 4835, pertaining to such property, ~~the provisions of this paragraph,~~
 165 ~~requiring additional relevant records regarding proof of bona fide conservation use,~~
 166 ~~shall not apply to such property.;~~

167 (ii) Proof that such owner has incurred expenses for the qualifying use;

168 (iii) An affidavit in which the owner swears he or she has incurred or plans to incur
 169 expenses for the qualifying use within 24 months of the date of application;

170 (iv) Proof that such owner has generated income from the qualifying use; or

171 (v) An affidavit in which the owner swears he or she has generated or plans to
 172 generate income from the qualifying use within 24 months of the date of application.

173 Prior to a denial of eligibility under this paragraph, the tax assessor shall conduct and
 174 provide proof of a visual on-site inspection of the property. Reasonable notice shall be

175 provided to the property owner before being allowed a visual, on-site inspection of the
 176 property by the tax assessor;

177 (B) The owner of a tract, lot, or parcel of land totaling ten acres or more shall not be
 178 required by the tax assessor to submit additional relevant records regarding proof of
 179 bona fide conservation use for qualified property that on or after May 1, 2012, is either
 180 first made subject to a covenant or is subject to a renewal of a previous covenant;

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

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

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

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

202 "(j)(1) All applications for current use assessment under this Code section, including the
 203 covenant agreement required under this Code section, shall be filed on or before the last
 204 day for filing ad valorem tax returns in the county for the tax year for which such current
 205 use assessment is sought, except that in the case of property which is the subject of a
 206 reassessment by the board of tax assessors an application for current use assessment may
 207 be filed in conjunction with or in lieu of an appeal of the reassessment. An application
 208 for continuation of such current use assessment upon a change in ownership of all or a
 209 part of the qualified property shall be filed on or before the last date for filing tax returns
 210 in the year following the year in which the change in ownership occurred. Applications
 211 for current use assessment under this Code section shall be filed with the county board

212 of tax assessors who shall approve or deny the application. If the application is approved
213 on or after July 1, 1998, the county board of tax assessors shall file a copy of the
214 approved application in the office of the clerk of the superior court in the county in which
215 the eligible property is located. The clerk of the superior court shall file and index such
216 application in the real property records maintained in the clerk's office. Applications
217 approved prior to July 1, 1998, shall be filed and indexed in like manner without payment
218 of any fee. If the application is not so recorded in the real property records, a transferee
219 of the property affected shall not be bound by the covenant or subject to any penalty for
220 its breach. The fee of the clerk of the superior court for recording such applications
221 approved on or after July 1, 1998, shall be paid by the owner of the eligible property with
222 the application for preferential treatment and shall be paid to the clerk by the board of tax
223 assessors when the application is filed with the clerk. If the application is denied, the
224 board of tax assessors shall notify the applicant in the same manner that notices of
225 assessment are given pursuant to Code Section 48-5-306 and shall return any filing fees
226 advanced by the owner. Appeals from the denial of an application by the board of tax
227 assessors shall be made in the same manner that other property tax appeals are made
228 pursuant to Code Section 48-5-311.

229 (2) If the final determination on appeal to superior court is to approve the application for
230 current use assessment, the taxpayer shall recover costs of litigation and reasonable
231 attorney's fees incurred in the action.

232 (3) Any final determination on appeal that causes a reduction in taxes and creates a
233 refund that is owed to the taxpayer shall be paid by the tax commissioner to the taxpayer,
234 entity, or transferee that paid the taxes within 60 days from the date of the final
235 determination of value. Such refund shall include interest at the same rate specified in
236 Code Section 48-2-35 which shall accrue from the due date of the taxable year in
237 question or the date paid, whichever is later, through the date on which the final
238 determination of value was made. In no event shall the amount of such interest exceed
239 \$5,000.00. Any refund paid after the sixtieth day shall accrue interest from the sixty-first
240 day until paid with interest at the same rate specified in Code Section 48-2-35. The
241 interest accrued after the sixtieth day shall not be subject to the limits imposed by this
242 subsection. The tax commissioner shall pay the tax refund and any interest for the refund
243 from current collections in the same proportion for each of the levying authorities for
244 which the taxes were collected.

245 (4) For the purposes of this Code section, any final determination on appeal that causes
246 an increase in taxes and creates an additional billing shall be paid to the tax commissioner
247 as any other tax due. After the tax bill notice has been mailed out, the taxpayer shall be
248 afforded 60 days from the date of the postmark to make full payment of the adjusted bill.

249 Once the 60 day payment period has expired, the bill shall be considered past due and
 250 interest shall accrue from the original billing due date as specified in Code Section
 251 48-2-40 without limit until the bill is paid in full. Once past due, all other fees, penalties,
 252 and late and collection notices shall apply as prescribed in this chapter for the collection
 253 of delinquent taxes.

254 ~~(2)~~(5) In the event such application is approved, the taxpayer shall continue to receive
 255 annual notification of any change in the fair market value of such property and any
 256 appeals with respect to such valuation shall be made in the same manner as other property
 257 tax appeals are made pursuant to Code Section 48-5-311."

258 "(k.1) In the case of an alleged breach of the covenant, the owner shall be notified in
 259 writing by the board of tax assessors. The owner shall have a period of 30 days from the
 260 date of such notice to cease and desist the activity alleged in the notice to be in breach of
 261 the covenant or to remediate or correct the condition or conditions alleged in the notice to
 262 be in breach of the covenant. Following a physical inspection of property, the board of tax
 263 assessors shall notify the owner that such activity or activities have or have not properly
 264 ceased or that the condition or conditions have or have not been remediated or corrected.
 265 The owner shall be entitled to appeal the decision of the board of tax assessors and file an
 266 appeal disputing the findings of the board of tax assessors. Such appeal shall be conducted
 267 in the same manner that other property tax appeals are made pursuant to Code Section
 268 48-5-311. If the final determination on appeal to superior court is to reverse the decision
 269 of the board of tax assessors to enforce the breach of the covenant, the taxpayer shall
 270 recover costs of litigation and reasonable attorney's fees incurred in the action.

271 (l) A penalty shall be imposed under this subsection if during the period of the covenant
 272 entered into by a taxpayer the covenant is breached. The penalty shall be applicable to the
 273 entire tract which is the subject of the covenant and shall be twice the difference between
 274 the total amount of tax paid pursuant to current use assessment under this Code section and
 275 the total amount of taxes which would otherwise have been due under this chapter for each
 276 completed or partially completed year of the covenant period. ~~Any such penalty shall bear~~
 277 ~~interest at the rate specified in Code Section 48-2-40 from the date the covenant is~~
 278 ~~breached.~~ No penalty shall be imposed until the appeal of the board of tax assessors'
 279 determination of breach is concluded. After the final determination on appeal, the taxpayer
 280 shall be afforded 60 days from issuance of the bill to make full payment. Once the 60 day
 281 payment period has expired, the bill shall be considered past due and interest shall accrue
 282 from the original billing due date as specified in Code Section 48-2-40 without limit until
 283 the bill is paid in full. Once past due, all other fees, penalties, and late and collection
 284 notices shall apply as prescribed in this chapter for the collection of delinquent taxes."

285 **SECTION 2.**

286 This Act shall become effective on July 1, 2017.

287 **SECTION 3.**

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