

House Bill 197 (COMMITTEE SUBSTITUTE)

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

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **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 revising subsections (b), (c), (f), (i), (j), and (m) of Code
12 Section 48-5-7.7, relating to the "Georgia Forest Land Protection Act of 2008," as follows:

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

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

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

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

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(B) Such property excludes the entire value of any residence and its underlying land located on the property; as used in this subparagraph, the term 'underlying land' means the minimum lot size required for residential construction by local zoning ordinances or two acres, whichever is less. This provision for excluding the underlying land of a residence from eligibility in the conservation use covenant shall only apply to property that is first made subject to such a covenant, or is subject to a renewal of a previous conservation use covenant, on or after January 1, 2014;

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

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

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

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

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

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

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

- (1) All contiguous forest land conservation use property of an owner within a county for which forest land conservation use assessment is sought under this Code section shall be in a single covenant unless otherwise required under subsection (e) of this Code section;
- (2) When one-half or more of the area of a single tract of real property is used for the qualifying purpose, then the entirety of such tract shall be considered as used for such qualifying purpose unless some other type of business is being operated on the portion

of the tract that is not being used for a qualifying purpose; provided, however, that such other portion must be minimally managed so that it does not contribute significantly to erosion or other environmental or conservation problems or must be used for one or more secondary purposes specified in subparagraph (b)(2)(C) of this Code section. The following uses of real property shall not constitute using the property for another type of business:

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

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

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

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

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

"(f)(1) A qualified owner shall not be authorized to make application for and receive conservation use assessment under this Code section for any property which at the time of such application is receiving preferential assessment under Code Section 48-5-7.1 or current use assessment under Code Section 48-5-7.4; provided, however, that if any property is subject to a covenant under either of those Code sections, it may be changed from such covenant and placed under a covenant under this Code section if it is otherwise qualified. Any such change shall terminate the existing covenant and shall not constitute a breach thereof. No property may be changed more than once under this ~~subsection~~ paragraph.

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

"(i)(1) If ownership of all or a part of ~~the a~~ forest land conservation use property ~~constituting at least 200 acres~~ is acquired during a covenant period by another qualified owner ~~qualified to enter into an original forest land conservation use covenant~~, then the

original covenant may be continued only by both such acquiring owner and the transferor for the remainder of the term, in which event, no breach of the covenant shall be deemed to have occurred if the total size of a tract from which the transfer was made is reduced below 200 acres or the size of the tract transferred is less than 200 acres. Following the expiration of the original covenant, no new covenant shall be entered with respect to ~~the either~~ tract ~~from which the transfer was made~~ unless such tract exceeds 200 acres. If a qualified owner has entered into an original forest land conservation use covenant and subsequently acquires additional qualified property contiguous to the property in the original covenant, the qualified owner may elect to enter the subsequently acquired qualified property into the original covenant for the remainder of the 15 year period of the original covenant; provided, however, that such subsequently acquired qualified property shall be less than 200 acres.

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

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

(j)(1) For each taxable year beginning on or after January 1, ~~2010~~ 2014, all applications for conservation use assessment under this Code section, including any forest land covenant required under this Code section, shall be filed on or before the last day for filing ad valorem tax ~~returns in each county in which the property is located for the tax year for which such forest land conservation use assessment is sought, except that in the case of property which is the subject of a reassessment by the board of tax assessors an application for forest land conservation use assessment may be filed in conjunction with or in lieu of an appeal of the reassessment~~ appeals of the annual notice of assessment except that in the case of property which is the subject of a tax appeal of the annual notice of assessment under Code Section 48-5-311, an application for forest land conservation use assessment may be filed at any time while such appeal is pending. An application for continuation of such forest land conservation use assessment upon a change in ownership of all or a part of the qualified property shall be filed on or before the last date for filing

tax returns in the year following the year in which the change in ownership occurred. Applications for forest land conservation use assessment under this Code section shall be filed with the county board of tax assessors in which the property is located who shall approve or deny the application. Such county board of tax assessors shall file a copy of the approved covenant in the office of the clerk of the superior court in the county in which the eligible property is located. The clerk of the superior court shall file and index such covenant in the real property records maintained in the clerk's office. If the covenant is not so recorded in the real property records, a transferee of the property affected shall not be bound by the covenant or subject to any penalty for its breach. The fee of the clerk of the superior court for recording such covenants shall be paid by the qualified owner of the eligible property with the application for forest land conservation use assessment under this Code section and shall be paid to the clerk by the board of tax assessors when the application is filed with the clerk. If the application is denied, the board of tax assessors shall notify the applicant in the same manner that notices of assessment are given pursuant to Code Section 48-5-306 and shall return any filing fees advanced by the owner. Appeals from the denial of an application or covenant by the board of tax assessors shall be made in the same manner that other property tax appeals are made pursuant to Code Section 48-5-311.

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

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

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

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

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

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

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

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

SECTION 2.

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

"48-5-295.1.

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

(b) It shall be the duty of a performance review board to make a thorough and complete investigation of the county board of tax assessors with respect to all actions of the county

board of tax assessors and appraisal staff regarding the technical competency of appraisal techniques and compliance with state law and regulations, including the Property Tax Appraisal Manual. The performance review board shall issue a written report of its findings to the commissioner and the county governing authority which shall include such evaluations, judgments, and recommendations as it deems appropriate. The county governing authority shall reimburse the members of the performance review board for reasonable expenses incurred in the performance of their duties, including mileage, meals, lodging, and costs of materials.

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

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

SECTION 3.

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

"48-5-295.2.

(a) The commissioner shall appoint an independent performance review board if he or she determines, through the examination of the digest for any county in a digest review year pursuant to Code Section 48-5-342, that there is evidence which calls into question the technical competence of appraisal techniques and compliance with state law and regulations, including the Property Tax Appraisal Manual, with respect to the conservation use value of forest land.

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

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

(d) The findings of the report of the review board under subsection (c) of this Code section or of any audit performed by the Department of Revenue or the Department of Audits shall be grounds for the state to withhold local assistance grants pursuant to Code Section

48-5A-3. If the findings in the report of the performance review board indicate that the provisions of paragraph (6) of Code Section 48-5-2 have been knowingly violated by a local government in order to receive a larger local assistance grant than allowed by law, then the most recent local assistance grant requested by the local government shall be withheld by the Department of Revenue. For a second or subsequent offense, the next two requests for local assistance grants shall be withheld by the Department of Revenue.
(e) The commissioner shall promulgate such rules and regulations as may be necessary for the administration of this Code section."

SECTION 4.

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

"(iii)(I) If the county's tax bills are issued before the county board of equalization has rendered its decision on property which is on appeal, the county board of tax assessors shall specify to the county tax commissioner the ~~higher of the taxpayer's return valuation or 85 percent of the current year's valuation as set by the county board of tax assessors.~~ lesser of the valuation in the year preceding the year in which the appeal was filed or 85 percent of the current year's value, unless the property in issue has been issued a building permit and structural improvements have occurred, or structural improvements have been made without a building permit, in which case, it shall specify 85 percent of the current year's valuation as set by the county board of assessors. Depending on the circumstances of the property, this This amount shall be the basis for a temporary tax bill to be issued; provided, however, that the taxpayer may elect to pay the temporary tax bill in the amount of 100 percent of the current year's valuation if no property improvement has occurred. The county tax commissioner shall have the authority to adjust such tax bill to reflect the 100 percent value as requested by the taxpayer. Such tax bill shall be accompanied by a notice to the taxpayer that the bill is a temporary tax bill pending the outcome of the appeal process. Such notice shall also indicate that upon resolution of the appeal, there may be additional taxes due or a refund issued.

(II) If the final determination of the value on appeal is less than the valuation thus used, the taxpayer shall receive a deduction in such taxpayer's taxes for the year in question. Such deduction shall be refunded to the taxpayer or to the entity or transferee that paid the taxes and shall include interest on the amount of such deduction at the same rate as specified in Code Section 48-2-35 which shall accrue from November 15 of the taxable year in question or the date the final installment

281 of the tax was due or was paid, whichever is later. In no event shall the amount of
282 such interest exceed ~~\$150.00~~ \$5,000.00.
283 (III) If the final determination of value on appeal is greater than the valuation thus
284 used, the taxpayer shall be liable for the increase in taxes for the year in question
285 due to the increased valuation fixed on appeal with interest at the rate as specified
286 in Code Section 48-2-35. ~~Such interest shall accrue from November 15 of the~~
287 ~~taxable year in question or the date the final installment of the tax was due to the~~
288 ~~date the additional taxes are remitted, but in~~ In no event shall the amount of such
289 interest exceed ~~\$150.00~~ \$5,000.00."

290 **SECTION 5.**

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