

House Bill 373 (COMMITTEE SUBSTITUTE)

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, a trust of which the beneficiaries are one or more natural or
 63 naturalized citizens, or an entity created by the merger or consolidation of two or

64 more entities which independently qualify as a family owned farm entity, and which
 65 family owned farm entity derived 80 percent or more of its gross income from bona
 66 fide conservation uses, including earnings on investments directly related to past or
 67 future bona fide conservation uses, within this state within the year immediately
 68 preceding the year in which eligibility is sought; provided, however, that in the case
 69 of a newly formed family farm entity, an estimate of the income of such entity may
 70 be used to determine its eligibility;

71 (v) A bona fide nonprofit ~~conservation~~ organization designated under Section
 72 501(c)(3) of the Internal Revenue Code;

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

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

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

79 (i) The nature of the terrain;

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

81 (iii) The past usage of the land;

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

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

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

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

88 (ii) Feeding, breeding, or managing livestock or poultry;

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

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

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

100 (2) Not more than 2,000 acres of tangible real property, excluding the value of any
101 improvements thereon, of a single owner of the types of environmentally sensitive
102 property specified in this paragraph and certified as such by the Department of Natural
103 Resources, if the primary use of such property is its maintenance in its natural condition
104 or controlling or abating pollution of surface or ground waters of this state by storm-water
105 runoff or otherwise enhancing the water quality of surface or ground waters of this state
106 and if such owner meets the qualifications of subparagraph (C) of paragraph (1) of this
107 subsection:

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

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

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

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

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

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

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

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

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

137 (ii) No property shall maintain its eligibility for current use assessment as a bona fide
 138 conservation use property as defined in this subparagraph unless the owner of such
 139 property files an annual inspection report from a licensed professional engineer
 140 certifying that as of the date of such report the property is being maintained in a
 141 proper state of repair so as to accomplish the objectives for which it was designed.
 142 Such inspection report and certification shall be filed with the county board of tax
 143 assessors on or before the last day for filing ad valorem tax returns in the county for
 144 each tax year for which such assessment is sought."

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

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

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

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

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

170 (iii) Proof that such owner has generated income from the qualifying use.

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

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

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

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

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

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

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

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

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

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

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

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

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

252 ~~(2)~~(5) In the event such application is approved, the taxpayer shall continue to receive
 253 annual notification of any change in the fair market value of such property and any
 254 appeals with respect to such valuation shall be made in the same manner as other property
 255 tax appeals are made pursuant to Code Section 48-5-311."

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

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

283 **SECTION 2.**

284 This Act shall become effective on July 1, 2018.

285 **SECTION 3.**

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