

The House Committee on Judiciary offers the following substitute to HB 370:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 3 of Chapter 3 of Title 23 of the Official Code of Georgia Annotated,
2 relating to quia timet, so as to provide a procedure for clearing title to coastal marshlands;
3 to provide for a short title; to provide for legislative findings, purpose, and intent; to provide
4 for definitions; to provide for in rem proceedings; to provide for presentation of abstracts to
5 the State Properties Commission; to provide for service of process and filing of pleadings;
6 to provide for special masters and trial by jury; to provide for restriction of properties for
7 conservation purposes; to provide for decrees and recording of same; to provide for joinder;
8 to provide for compensation of the special master; to provide for applicability; to provide for
9 related matters; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Article 3 of Chapter 3 of Title 23 of the Official Code of Georgia Annotated, relating to quia
13 timet, is amended by adding a new part to read as follows:

H. B. 370 (SUB)

"PART 3

23-3-75.

This part shall be known and may be cited as the 'Marshlands Restoration Act of 2023.'

23-3-76.

(a) The General Assembly of Georgia finds that significant portions of the coastal marshlands of Georgia were altered prior to the enactment of Part 4 of Article 4 of Chapter 5 of Title 12, the 'Coastal Marshlands Protection Act of 1970,' through agricultural, recreational, and other manmade activities within the coastal marshlands. The General Assembly further finds that the restoration of coastal marshlands from alteration caused by such activities will enhance the productivity of the nursery which the coastal marshlands provide for shellfish and other forms of marine life, thereby enhancing the environment and advancing the viability of the fisheries of Georgia's coastal waters. The General Assembly further finds that improving the quality of coastal marshlands will enhance recreational and economic opportunities for all Georgians. The General Assembly acknowledges that pursuant to Article 1 of Chapter 1 of Title 52, the 'Protection of Tidewaters Act,' certain portions of the coastal marshlands are owned by private parties that can trace their title to valid Crown grants or state grants and that preservation or restoration of such coastal marshlands may not occur unless undertaken by the owner or owners of said coastal marshlands. As such, the General Assembly further finds that establishing a framework to facilitate the identification and preservation or restoration of privately owned coastal marshlands is a proper function of the State of Georgia, as sovereign and trustee of the rights of the people of this state concerning coastal marshlands.

(b) The purpose of this part is to create a procedure for removing any cloud upon the title to coastal marshlands and for readily and conclusively establishing that certain named persons are the owners of the fee simple interest in such land defined by a decree entered

in such proceeding, so that there shall be no occasion for such land in this state to be unmarketable because of any uncertainty as to the owner of every interest therein.

(c) This part is intended to encourage the restoration of altered coastal marshlands to their natural state and to encourage the protection of coastal marshlands as a complete ecological system vital to this state. This part shall not amend or supersede Part 4 of Article 4 of Chapter 5 of Title 12, the 'Coastal Marshlands Protection Act of 1970,' and any physical change to any costal marshlands shall conform to all applicable laws.

23-3-77.

As used in this part, the term:

(1) 'Coastal marshlands' or 'marshlands' shall have the same meaning as provided in Code Section 12-5-282, with the added condition that such term include uplands as such term is defined in this Code section.

(2) 'Conservation purposes' means to remediate, restore, or enhance natural conditions of coastal marshlands to substantially the same condition of such marshlands as prior to manmade alteration or damage or to restrict further disturbance or development of such marshlands by easement or other legal means which permanently restrict the development of such marshlands.

(3) 'Crown grant' or 'grant' means a valid grant from the Crown of England, or one of its agents exercising jurisdiction over Georgia's coastal marshlands during the colonial period, or from the State of Georgia after its independence.

(4) 'Person' shall have the same meaning as provided in Code Section 12-5-282.

(5) 'Restoration' or 'restore' means the manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural and historical functions to a former or degraded coastal marshland.

(6) 'Trace' means to show the passage of title to property from one person to another by reference to recorded documents of title, the laws of descent and distribution,

prescription, adverse possession, historical documents in existence 20 years or more of which the authenticity is established, or any other means, which by statutory law or common law, evidence the acquisition or transfer of title.

(7) 'Uplands' means any island or hammock located within coastal marshlands above the high-water mark.

23-3-78.

Any coastal marshlands and uplands contained therein which are subject to a decree as provided for in this part shall be restricted to utilization for conservation purposes, provided that no such decree shall limit any right of the public to access navigable waters. Any person claiming a grant to coastal marshlands located in this state may bring a proceeding in rem to establish title to the coastal marshlands as against the state. A proceeding under this section is not exclusive, but rather is cumulative, and may be filed concurrently with an equitable proceeding in rem against all the world as provided by Part 2 of this article. Proceedings under this part shall be conducted in accordance with Title 9.

23-3-79.

(a) Prior to filing a proceeding under this part, a petitioner may present to the State Properties Commission an abstract of title tracing the title of the subject coastal marshlands to a grant. The abstract shall be accompanied by copies of any deeds, documents, plats, instruments, records, or other material referenced in the abstract of title. The State Properties Commission shall provide written notice to the claimant of its receipt of the abstract and any other materials and shall have 180 days from the date of such notice to provide the petitioner with written certification as to whether or not such petitioner traced the title to the coastal marshlands to a grant. The certification that the petitioner has traced the title to a grant shall be an admission of such fact in a proceeding filed under this part

and shall be binding upon the state. Failure of the State Properties Commission to issue a certification within the 180 day period shall be deemed an admission that the petitioner has traced the title to a grant, and if a court of this state later determines that the failure to do so was without cause, then the petitioner may recover reasonable attorney's fees and costs from the state.

(b) A proceeding under this part shall be instituted by filing a petition in the superior court of the county or counties in which the coastal marshlands are situated.

(c) The petition shall be verified by the petitioner and shall contain a description of the coastal marshlands involved, shall identify the grant upon which the claim is based, and shall identify the basis upon which the petitioner claims to trace the title to the grant.

(d) There shall be filed with the petition a plat of survey of the coastal marshlands and a copy of all instruments or documents relied upon by the petitioner to trace the title to the grant, including a copy of any abstract reviewed by the State Properties Commission, as well as any related certification issued.

(e) Upon the filing of the petition, the petitioner shall contemporaneously file with the clerk of court for record a notice of lis pendens pursuant to Article 9 of Chapter 14 of Title 44.

23-3-80.

(a) Process upon the state shall be served upon the State Properties Commission, or the State Properties Commission may acknowledge service of process.

(b) Within 30 days of service, the State Properties Commission shall provide a copy of the petition to the Attorney General and the Department of Administrative Services by United States registered mail. Within 30 days of service, the State Properties Commission shall provide a copy of the petition to the governing authority of each county and municipality in which any portion of the property at issue is located by United States mail, postage prepaid, addressed to the governing authority of the county, municipality, or consolidated

government at the official address of such governing authority to satisfy the requirement of this subsection. If such notice is mailed, the notice requirement of this subsection shall be presumed to have been met by depositing the copy of the required notice in the United States mail.

(c) Notice of the action shall be published in the legal organ of the county where the proceeding is filed once a week for four consecutive weeks. The notice shall identify the petitioner by name; shall describe the State of Georgia as respondent and the property as defendant, with a caption setting forth the action above; and shall identify the date the action was filed.

(d) The respondent shall have 30 days after completion of service to file any pleadings; provided, however, that a court may extend such time for good cause shown.

23-3-81.

Contemporaneous with the filing of the petition, the petitioner shall file a motion for the appointment of a special master. The motion shall be served upon the State Properties Commission with the petition. The special master shall be an individual who is authorized to practice law in this state, demonstrates experience in real property law, and resides in the judicial circuit where the action was filed. After consideration of the motion and any objections filed by the respondent, the court shall appoint a special master. The appointment shall be made no later than 60 days after the filing of the motion.

23-3-82.

Upon reasonable notice to all parties, after proof of serving notice as required by this part has been filed, the special master shall have complete jurisdiction within the scope of the pleadings to ascertain and determine the validity, nature, or extent of the petitioner's grant and whether or not the title can be traced to the grant. At any time prior to a hearing before the special master any party may demand a trial by jury on any issue of fact.

23-3-83.

Any coastal marshlands and uplands contained therein which are subject to a decree as provided for in this part shall be restricted to utilization for conservation purposes.

23-3-84.

(a) For any proceedings filed under this part, a prima facie case shall exist if any of the following criteria are met:

(1) The existence of a grant from which the state divested itself of the fee simple interest in the property to the extent provided for in the grant; or

(2) Visible evidence of manmade use or manipulation of the coastal marshlands that occurred prior to the enactment of Part 4 of Article 4 of Chapter 5 of Title 12, the 'Coastal Marshlands Protection Act of 1970,' at the instance of persons in the chain of title under a claim of right and that the use was public, continuous, exclusive, uninterrupted, peaceable, and not merely passive and that title was acquired by such person.

(b) Evidence of the existence of a grant accompanied by manipulation, manmade alteration, or damage to said marshland prior to the enactment of the 'Coastal Marshlands Protection Act of 1970,' combined with a showing of good record title for 40 years, shall create a prima facie case that the title has been traced to a grant.

23-3-85.

Upon the receipt of the special master's report or upon a jury verdict, the court shall issue a decree which shall be recorded in the office of the clerk of superior court of the county or counties wherein the coastal marshlands affected are located and which, when recorded, shall operate to bind the coastal marshlands subject to the action, and such decree shall contain the following recital: 'The coastal marshlands subject to this decree, including uplands contained therein, are restricted to use for conservation purposes as defined by Part 3 of Article 3 of Chapter 3 of Title 23 of the Official Code of Georgia Annotated.' A

marginal reference to the recorded judgment and decree shall be entered upon the deed vesting title to the coastal marshlands in the petitioner. Said deed shall reference any right of the public to access navigable waters.

23-3-86.

A petitioner that obtains a decree stating that such petitioner has traced the property title to a grant shall be deemed to have met the requirements for tracing the title of land to a grant from the Crown of England or the state under the provisions of Article 1 of Chapter 1 of Title 52, the 'Protection of Tidewaters Act,' and shall be entitled to pursue conservation actions for the coastal marshlands contained in the property of title.

23-3-87.

The court shall fix a reasonable compensation, not less than \$1,000.00, to be paid to the special master appointed under this part. Such compensation shall be taxed in the discretion of the court as part of the costs; provided, however, that, if the state refused to certify the petitioner's tracing of the title to a grant and the court enters a decree establishing the tracing of the title to a grant, then the compensation paid to the special master shall be assessed against the state.

23-3-88.

(a) Two or more persons having separate and distinct parcels of land in the same county and holding under the same source of title, or persons creating separate and distinct interests in the same parcel or parcels, may file a petition under this part against the same respondents.

(b) A petitioner may join separate causes of action in one petition; provided, however, that, if they cannot be conveniently disposed of together, the court may order separate trials.

189 23-3-89.
190 The admission of coastal marshlands to the carbon sequestration registry pursuant to
191 Article 5 of Chapter 6 of Title 12, the 'Georgia Carbon Sequestration Registry Act,' shall
192 not be affected by the operation of this part."

193 **SECTION 2.**

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